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STATE OF ALASKA
THE LEGISLATURE

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May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary

5/5/86

1:30 pm

Original sponsor: Rules/Governor

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 370 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to aid to families with dependent
7 children and to child support and enforcement; and
8 providing for an effective date."

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

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

11 (a) The agency shall

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

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

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

21 (B) procedures for hearings conducted under AS 47.23.-
22 170; and

23 (C) subject to AS 47.23.025 and to federal law, a
24 uniform rate of interest on arrearages of support that shall be
25 charged the obligor upon notice if child support payments are 10
26 or more days overdue or if payment is made by a check backed by
27 insufficient funds;

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

1 (4) establish, enforce, and administer child support obli-
2 gations administratively in accordance with this chapter;

3 (5) administer the state plan required under 42 U.S.C.
4 651 - 665 (Title IV-D, Social Security Act) as amended;

5 (6) disburse [CHILD] support payments collected by the
6 agency to the obligee, together with interest charged under (2)(C) of
7 this subsection;

8 (7) establish and enforce through the superior courts of
9 the state child support orders from other jurisdictions pertaining to
10 obligors within the state;

11 (8) enforce and administer spousal support orders if a
12 spousal support obligation has been established with respect to the
13 spouse and if the support obligation established with respect to the
14 child of that spouse is also being administered; and

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

18 * Sec. 2. AS 47.23.062(a) is amended to read:

19 (a) A judgment, court order, or order of the child support
20 enforcement agency under this chapter providing for [THE] support [OF
21 A MINOR CHILD] must contain an income withholding order. An income
22 withholding order under this section may not be enforced unless the
23 obligor had notice of the order when it was made or an application for
24 the order was served on the obligor in the manner provided for service
25 of a summons under Rule 4, Alaska Rules of Civil Procedure.

26 * Sec. 3. AS 47.23.062(b) is amended to read:

27 (b) An income withholding order must direct the obligor, the
28 obligor's employer, future employer, and any person, political subdi-
29 vision, or department of the state to withhold money due or to be due

1 the obligor and pay the money to the agency, in an amount determined
2 under (i) [(h)] of this section.

3 * Sec. 4. 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 money unless other-
7 wise ordered by the court. An income withholding order is not limited
8 to the wages of an obligor but may include all money owed to the
9 obligor not otherwise exempt by law. Exemptions under AS 09.33 do not
10 apply to income withholdings [ASSIGNMENTS] under this section.

11 * Sec. 5. AS 47.23.062(1) is amended to read:

12 (1) A petition by the obligor to the court to terminate or
13 reduce the withholding of income may be granted upon good cause shown.
14 Payment of arrears alone does not constitute good cause.

15 * Sec. 6. AS 47.23.120(a) is amended to read:

16 (a) An obligor is liable to the state in the total amount of
17 assistance granted under AS 47.25.310 - 47.25.420 to or for the
18 benefit of a child whom the obligor owes a duty of support and the
19 relative with whom the child is living. However, [EXCEPT THAT] if a
20 support order has been entered, the liability of the obligor may not
21 exceed the amount of support provided for in the support order.

22 * Sec. 7. AS 47.23.170(e) is amended to read:

23 (e) The hearing officer shall consider the following in making a
24 determination under (d) of this section:

25 (1) the needs of the alleged obligee, disregarding the
26 income or assets of the custodian of the alleged obligee;

27 (2) the amount of the alleged obligor's liability to the
28 state under AS 47.23.120 [47.23.125] if any;

29 (3) the intent of the legislature that children be

1 supported as much as possible by their natural parents;

2 (4) the ability of the alleged obligor to pay.

3 * Sec. 3. AS 47.23.225 is amended to read:

4 Sec. 47.23.225. SUPPORT PAYMENT OBLIGATIONS AS JUDGMENTS. A
5 support [COURT] order ordering a concustodial parent obligor to make
6 periodic [CHILD] support payments to the custodian of a child is a
7 judgment that becomes vested when each payment becomes due and unpaid.
8 The custodian of the child, or the agency on behalf of that person,
9 may take legal action under AS 47.23.226 to establish a judgment for
10 [CHILD] support payments ordered by a court of this state that are
11 delinquent.

12 * Sec. 9. AS 47.23.226 is amended to read:

13 Sec. 47.23.226. COLLECTION OF [CHILD] SUPPORT. To collect the
14 payment due, the custodian of a child, or the agency on behalf of that
15 person, shall file with the court (1) a motion requesting establish-
16 ment of a judgment; (2) an affidavit that states that one or more
17 payments of [CHILD] support are 30 or more days past due and that
18 specifies the amounts past due and the dates they became past due; and
19 (3) notice of the obligor's right to respond. Service on the obligor
20 must [SHALL] be in the manner provided in AS 47.23.265. The child's
21 custodian, or the agency on behalf of the custodian, shall file with
22 the court proof of service of the petition, affidavit, and notice.
23 The obligor shall respond no later than 15 days after service by
24 filing an affidavit with the court. If the obligor's affidavit states
25 that the obligor has paid any of the amounts claimed to be delinquent,
26 describes in detail the method of payment or offers any other defense
27 to the petition, then the obligor is entitled to a hearing. After the
28 hearing, if any, the court shall enter a judgment for the amount of
29 money owed. If the obligor does not file an affidavit under this

1 section, the court shall enter a default judgment against the obligor.

2 * Sec. 10. AS 47.23.255(b) is amended to read:

3 (b) A person required by court order to make [CHILD] support
4 payments through the agency shall keep the agency informed of the
5 person's current address.

6 * Sec. 11. AS 47.23.273 is amended to read:

7 Sec. 47.23.273. REPORTING OF PAYMENT INFORMATION CONCERNING
8 DELINQUENT OBLIGORS. (a) The agency may provide to credit bureaus or
9 lending institutions of any kind information about delinquent [CHILD]
10 support owed by obligors. The information [SO] provided must consist
11 solely of the payment history of the obligor for a period not to
12 exceed 10 years before the date the information is provided.

13 (b) Upon an obligor's payment of delinquent [CHILD] support, the
14 agency shall immediately notify all credit bureaus and lending insti-
15 tutions that were furnished information about the obligor under (a) of
16 this section that the obligor is no longer delinquent.

17 * Sec. 12. AS 47.23.900(3) is amended to read:

18 (3) "duty of support" includes a duty of [CHILD] support
19 imposed or imposable by law, by a court order, decree or judgment, or
20 by a finding or decision rendered under this chapter whether inter-
21 locutory or final, whether incidental to a proceeding for divorce,
22 legal separation, separate maintenance, or otherwise, and includes the
23 duty to pay arrearages of support past due and unpaid together with
24 penalties and interest on arrearages imposed under AS 47.23.-
25 020(a)(2)(C);

26 * Sec. 13. AS 47.23.900(7) is amended to read:

27 (7) "support order" means any judgment, decree, or order of
28 [CHILD] support in favor of an obligee whether temporary or final, or
29 subject to modification, revocation, or remission, regardless of the

kind of action or proceeding in which it is entered.

* Sec. 14. AS 47.25 is amended by adding a new section to read:

Sec. 47.25.345. ASSIGNMENT OF SUPPORT RIGHTS. An applicant for or recipient of assistance under AS 47.25.310 - 47.25.420 is considered to have assigned to the state, through the child support enforcement agency, all rights to accrued and continuing support that the applicant and other persons for whom assistance is sought may have from all sources. The assignment takes effect upon a determination that the applicant is eligible for assistance under AS 47.25.310 - 47.25.420. Except with respect to the amount of any unpaid support obligation accrued under the assignment, the assignment terminates when the applicant ceases to receive assistance.

* Sec. 15. This Act takes effect immediately in accordance with AS 01.-10.070(c).

AMENDMENT

TO: CSSB 370 (HESS)

BY GRUENBERG

OFFERED IN THE HOUSE JUDICIARY COMMITTEE

Page 3, lines 16 - 21

AS 47.23.120(a) is amended to read:

(a) An obligor is liable to the state in the total amount of assistance granted under AS 47.25.310 - 47.25.420 to or for the benefit of a child whom the obligor owes a duty of support and the relative with whom the child is living. However, [EXCEPT THAT] if a support order has been entered, the liability of the obligor may not exceed the amount of support provided for in the support order.

MEMORANDUM

TO: HOUSE HESS COMMITTEE MEMBERS
FROM: NANCY BENNETT, COMMITTEE STAFF
DATE: APRIL 28, 1986
RE: TODAY'S AGENDA

We have three bills up for consideration today:

SB 370 -AFDC and Child Support Enforcement

We have a draft Committee Substitute incorporating the amendments suggested by Holli Ploog on Thursday (the changes are sections 2 and 4). We also have new documents in the bill file: 45 CFR ch.11, federal regulations for assignment of rights of support; 45 CFR 303.100, federal regulations for income withholding; and correspondence on mandatory wage withholding.

SB 319 - creating a special education service agency

This bill is similar in content to HB 543, passed by the committee earlier this session. There is a comparison of the two bills in your bill file. The major difference is the funding section.

HB 684 - relating to school vehicle safety

This bill would mandate seatbelts in school buses purchased or leased after the effective date of this act, or child safety devices for children under four. The buses must also have seat backs over 28 inches high if over 10,000 lbs. gross weight and meet U.S. DOT safety standards. Buses may eliminate seatbelts to provide for wheelchairs and special equipment. The bill also provides a section granting bus drivers immunity from personal liability for injury to a passenger not wearing a seat belt or safety device.

September 19, 1985

Representative Max Gruenberg
914 Clay Court
Anchorage, AK 99503

Dear Max:

Enclosed is the final letter from Region X regarding the status of statutory compliance with the Child Support Enforcement Amendments of 1984. I am slightly confused and frustrated about this analysis since their original position was to not require all provisions to be in statute (i.e. regulations, procedures were sufficient) and now they are taking a more hard line approach. Vince Herberholt advised me that OCSE will be reassessing their position this week and we should know sometime soon (I hope!) what we need to do to satisfy their requirements.


For your information, in number 1, Mandatory Wage Withholding, we have taken care of the first concern in regulation, the second is programmed into the computer, the fourth is in regulation, and the fifth is taken care of by forms and procedure. Only the third concern, regarding termination of wage withholding, is a problem. If you recall, we discussed this issue in the Judiciary Committee and did not get agreement to keep in the language from the HESS version which would have met the federal requirements. Perhaps we should try again this session.

The second issue cited, Consumer Reporting Agencies, is taken care of by regulation.

After I get a clearer picture of what OCSE's position is, we can discuss how we want to handle it.

As always, thank you for your continued interest and cooperation.

Sincerely,


Holli Ploog
Director

enclosure

Region X
M/S 415
2901 Third Avenue
Seattle, WA 98121

RECEIVED

SEP 13 1985

September 9, 1985

Ms. Hollie Ploog
Director
Child Support Enforcement Division
550 W. 7th, Hunt Bldg., 4th Floor
Anchorage, Alaska 99501

CSED

Re: Revised Analysis Of State Statutes

Dear Hollie:

As part of the compliance process, my office has analyzed Alaska's child support statutes to determine how well they meet the requirements of P.L. 98-378 with regards to the eight (8) mandatory provisions. It is our determination that there are two (2) provisions that do not meet the specific requirements of the 1984 Child Support Amendments.

They are:

1. Mandatory Wage Withholding

P.L. 98-378 requires that wage withholding be applied to all IV-D cases. Alaska's statutes demonstrate that all types of IV-D cases are included in the process except enforcement of spousal support.

P.L. 98-378 requires the State to allocate amounts available for multiple withholding from the same absent parent's wages. Alaska's statutes do not contain this language.

P.L. 98-378 requires that there be provisions for terminating wage withholding when payment of overdue support is not the sole basis for termination. Alaska's statute states that termination of withholding may be granted when petitioned by the obligor and when good cause is shown.

P.L. 98-378 states that the withheld amount must be sent to the State within 10 days of the date the employee is paid. Alaska's statutes contain language which says that the amount withheld "shall be sent to the agency".

P.L. 98-378 states that notice to the employer must include a statement that withholding is binding upon the employer until further notice by the State. Alaska's statutes do not contain this language.

2. Making Information Available To Consumer Reporting Agencies

P.L. 98-378 requires that information on an absent parent be made available to consumer reporting agencies at their request if child support is owed in an amount greater than \$1,000. Alaska's statute (47.23.273) allows for the reporting of information by the IV-D agency, although it is not mandatory.

P.L. 98-378 requires the State to provide advance notice to the absent parent, including procedures to contest the accuracy of the information. Alaska's statutes contain no procedures to contest the action.

In light of these findings, I would like to review the options I believe are available to you at this time:

1. Clarify Your Statutes. If you have basic statutory authority you may clarify your law using regulations, court rules or procedures so that it meets the requirements of P.L. 98-378. This technique requires the State to apply for an authority exemption (see AT 85-5). In applying for this exemption, Alaska must show how current or proposed State regulations, court rules, or procedures clarify the statutory language and provide the necessary authority to meet the Federal law.
2. Request A Delay. If you intend to introduce bills at your next legislative session to meet the requirements of the Federal law (i.e., extending wage withholding to spousal support) you may request a delay in the State Plan process. (See AT 85-11)
3. Request An Exemption. If you believe your current procedures are more efficient and effective than those required by Federal law, you may request an operational exemption. In applying for this exemption, Alaska must meet specific criteria identified in AT 85-5.
4. Take No Action. If you believe that your current statutes meet the requirements in the Federal law and regulations, you may indicate that conclusion in the State Plan preprint. OCSE will review the Plan submission and formally determine if the Plan is approvable. If OCSE determines that the law does not meet Federal requirements and the Plan is not approvable, OCSE will notify the State. At that time, the State may request a reconsideration from the Director, OCSE, under 45 CFR 301.14.

Ms. Hollie Ploog, Director

Page 3

You may wish to discuss this matter with CCSE as a policy issue before you choose one of the options outlined above.

I believe that Alaska can meet the majority of the Federal requirements by clarifying its laws with regulations and procedures and requesting an authority exemption before October 1, 1985.

If you would like to discuss this matter further, please feel free to contact me or Phyllis Benton of my staff. I hope all of the above information is helpful to you.

Sincerely,

Ruthie Jackson

Ruthie Jackson
Regional Representative

BILL SHEFFIELD
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 29, 1986

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that automatically assigns to the state the support rights of recipients of Aid to Families with Dependent Children (AFDC), clarifies a nonsupporting parent's liability for AFDC paid for his or her child, and makes technical amendments to the support enforcement statutes.

AFDC is a joint federal-state program that provides financial assistance to needy dependent children living with parents or relatives. In order to participate in the AFDC program, a state must require that all applicants for and recipients of AFDC assign their rights to support, from any source, to the state. 45 C.F.R. sec. 232.11. In order to comply with federal law, the Department of Health and Social Services requires an applicant to sign a form assigning those rights, and transmits the form to the child support enforcement division (CSED) of the Department of Revenue for action. By making assignment of AFDC applicants' and recipients' support rights automatic, sec. 1 of the bill eliminates the need to pass papers from one state agency to another, thereby allowing CSED to proceed more expeditiously to collect support.

Sections ¹ ~~2~~ and ⁶ ~~7~~ -- ¹¹ 12 of the bill amend child support enforcement statutes in AS 47.23 to reflect CSED's duty under AS 47.23.020 to collect spousal support in cases in which it is administering child support. By referring to

"support," rather than "child support," the statutes would enhance the agency's ability to meet its statutory directive.

The amendment to AS 47.23.062(b), in sec. 3 of the bill, merely corrects a reference to reflect amendments enacted in the 1985 session.

The amendment to AS 47.23.062(1), in sec. 4 of the bill, is to bring our statute into compliance with federal law. 45 C.F.R. 303.100(a)(9).

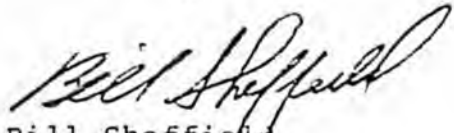
By adding the phrase "for the benefit of" before the word "child" in AS 47.23.120(a), sec. 5 of the bill makes clear that a nonsupporting parent is potentially liable for the full amount of an AFDC grant paid to the parent or relative caring for the nonsupporting parent's child, rather than just the portion paid "to" the child. This is appropriate, because AFDC grants are calculated to allow parents or relatives to care for needy dependent children. The full amount of the grants is intended to benefit the children.

The amendment to AS 47.23.170(e)(2), in sec. 6 of the bill, is a technical one, to correct an incorrect reference.

Finally, sec. 13 provides that the bill take effect immediately so that the agency can fully exercise its enforcement authority and collect support without delay.

Because the bill brings Alaska law into compliance with federal law, expedites the support enforcement process, and fosters the agency's ability to meet its statutory directive to collect both child and spousal support, I urge your prompt passage of this bill.

Sincerely,



Bill Sheffield
Governor

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No.: SB370
 Title : _____

 Sponsor : Rules Committee by
 Requestor : request of the Governor
 Date of Request : 01/10/86

FISCAL DETAIL

Agency Affected : Revenue
BRU: Child Support Enforcement Division

 Components : Operating

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: Holli I. Ploog Phone: 263-6202
 Division: Child Support Enforcement Division Date: 01/10/86

Approved by Commissioner: Matt Barber for Date: 1-16-86
Mary A. Nordale Commissioner
 Agency: Department of Revenue

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST 56370

Bill/Resolution No. : Proposed

Title : An Act Relating to Aid to Families with Dependent Children...

Sponsor : Rules by Request

Requestor : Governor

Date of Request : 1/86

FISCAL DETAIL

Agency Affected : Health & Social services

BRU : Assistance Payments

Components : AFDC

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING : (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS : Attach a separate page if necessary

Bill will result in no new costs and in no measurable savings.

Prepared by : John B. Taber, Director Phone : 165-3347

Division : Division of Public Assistance Date : 12/27/85

Approved by Commissioner : John R. Poy Date : 12/31/85

Agency : _____

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST 12271
Bill/Resolution No.: Proposed
Title: An Act Relating to Aid to Families with Dependent Children...
Sponsor: Rules by Request
Requestor: Governor
Date of Request: 1/86

FISCAL DETAIL
Agency Affected: Health & Social Services
BRU: Public Assistance/Administra
Components: Eligibility Determination

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING : (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS : Attach a separate page if necessary

Bill will result in no new costs; it will reduce paperwork, but not so substantially as to result in measurable savings.

Prepared by: John P. Taber, Director Phone: 465-3347
 Division: Division of Public Assistance Date: 12-27-85

Approved by Commissioner: John R. Gray Date: 12/31/85
 Agency: _____

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

§ 232.11

45 CFR Ch. II (10-1-85 Edition)

needs are considered in determining the amount of assistance.

(g) The State or local agency shall notify the applicant or recipient that the furnishing of the SSN is a condition of eligibility for assistance required by section 402(a)(25) of the Social Security Act and that the SSN will be utilized in the administration of the AFDC program.

[40 FR 27154, June 26, 1975, as amended at 40 FR 52376, Nov. 10, 1975]

§ 232.11 Assignment of rights to support.

(a) The State plan must provide that:

(1) As a condition of eligibility for assistance, each applicant for or recipient of AFDC shall assign to the State any rights to support from any other person as such applicant or recipient may have:

(i) In his own behalf or in behalf of any other family member for whom the applicant or recipient is applying for or receiving assistance; and

(ii) Which have accrued at the time such assignment is executed.

(2) If the relative with whom a child is living fails to comply with the requirements of paragraph (a)(1), (2), or (3) of this section, such relative shall be denied eligibility without regard to other eligibility factors.

(3) If the relative with whom a child is living is found to be ineligible for assistance because of failure to comply with the requirements of paragraph (a)(1), (2), or (3) of this section, any aid for which such child is eligible (determined without regard to the needs of the ineligible relative) will be provided in the form of protective payments as described in § 234.60 of this chapter.

(4) For new applicants, the requirements of paragraph (a) of this section shall be effective August 1, 1975; and for current recipients, it shall be effective as determined by the State agency but not later than the time of the next redetermination of eligibility required by § 205.10(a)(9) of this chapter and in any event not later than February 1, 1976.

(b) An assignment by operation of State law which is substantially identical to the requirements of paragraph

(a)(1) may be utilized in lieu of the assignment described in that paragraph.

(c) If there is a failure to execute an assignment pursuant to this section, the State may attempt to establish paternity and collect child support pursuant to appropriate State statutes and regulations.

[40 FR 27154, June 26, 1975, as amended at 40 FR 52376, Nov. 10, 1975]

§ 232.12 Cooperation in obtaining support.

The State plan must meet all requirements of this section.

(a) The plan shall provide that as a condition of eligibility for assistance, each applicant for or recipient of AFDC will be required to cooperate (unless good cause for refusing to do so is determined to exist in accordance with §§ 232.40 through 232.49 of this chapter) with the State in:

(1) Identifying and locating the parent of a child for whom aid is claimed;

(2) Establishing the paternity of a child born out of wedlock for whom aid is claimed;

(3) Obtaining support payments for the applicant or recipient and for a child for whom aid is claimed; and

(4) Obtaining any other payments or property due the applicant or recipient or the child.

(b) The plan shall specify that cooperate includes any of the following actions that are relevant to, or necessary for, the achievement of the objectives specified in paragraph (a) of this section:

(1) Appearing at an office of the State or local agency or the child support agency as necessary to provide verbal or written information, or documentary evidence, known to, possessed by, or reasonably obtainable by the applicant or recipient;

(2) Appearing as a witness at judicial or other hearings or proceedings;

(3) Providing information, or attesting to the lack of information, under penalty of perjury; and

(4) Paying to the child support agency any support payments received from the absent parent after an assignment under § 232.11 has been made. This includes support payments received in the current month and any

meet the requirements in paragraph (f) of this section.

(2) If the complaint cannot be resolved by the submitting State and the absent parent requests an administrative review in the State with the order upon which the referral for offset is based, the submitting State must notify the State with the order of the request for an administrative review and provide that State with all necessary information, including the information listed under paragraph (a)(4) of this section, within 10 days of the absent parent's request for an administrative review.

(3) The State with the order must send a notice to the absent parent and, in non-AFDC cases the custodial parent, of the time and place of the administrative review, conduct the review and make a decision within 45 days of receipt of the notice and information from the submitting State.

(4) If the administrative review results in a deletion of, or decrease in, the amount referred for offset, the State with the order must notify the Office in writing within time frames established by the Office and include the information specified in paragraph (b) of this section.

(5) Upon resolution of a complaint after an offset has been made, the State with the order must notify the submitting State of its decision promptly.

(6) When an administrative review is conducted in the State with the order, the submitting State is bound by the decision made by the State with the order.

(7) Based on the decision of the State with the order, the IV-D agency in the submitting State must take steps to refund any excess amount to the absent parent promptly.

(8) In computing incentives under § 303.52 of this part, if the case is referred to the State with the order for an administrative review, the collections made as a result of Federal tax refund offset will be treated as having been collected in full by both the submitting State and the State with the order.

(h) *Distribution of collections.* (1) Collections received by the IV-D agency as a result of refund offset to satisfy AFDC or non-AFDC past-due support shall be distributed as past-due support as required under § 302.51(b) (4) and (5) of this chapter.

(2) Collections received by the IV-D agency in foster care maintenance cases shall be distributed as past-due support under § 302.52(b) (3) and (4) of this chapter.

(3) The IV-D agency must inform individuals who apply for services under § 302.33 of this chapter in advance that

amounts offset will be applied first to satisfy any past-due support which has been assigned to the State under § 232.11 of this title or section 471(a)(17) of the Act and submitted for Federal tax refund offset.

(4) If the amount collected is in excess of the amounts required to be distributed under §§ 302.51(b) (4) and (5) or 302.52(b) (3) and (4) of this chapter, the IV-D agency must repay the excess to the absent parent whose refund was offset or jointly to the parties filing a joint return within a reasonable period in accordance with State law.

(5) In cases where the Secretary of the Treasury, through OCSE, notifies the State that an offset is being made to satisfy non-AFDC past-due support from a refund based on a joint return, the State may delay distribution until notified that the unobligated spouse's proper share of the refund has been paid or for a period not to exceed six months from notification of offset, whichever is earlier.

(6) Collections from offset may be applied only against the past-due support which was specified in the advance notice described in paragraph (e)(1) of this section.

(i) *Payment of fee.* (1) A refund offset fee, in such amount as the Secretary of the Treasury and the Secretary of Health and Human Services have agreed to be sufficient to reimburse the IRS for the full cost of the offset procedure, shall be billed and collected from the IV-D agency by the Secretary of Health and Human Services or designee and credited to the IRS appropriations which bore all or part of the costs involved in making the collection. The fee which the Secretary of the Treasury may impose with respect to non-AFDC submissions shall not exceed \$25 per submission.

(2) The State IV-D agency may charge an individual who applies for services under § 302.33 of this chapter a fee not to exceed \$25 for submitting past-due support for Federal tax refund offset. The State must inform the individual in advance of the amount of any fee charged.

(j) Each State involved in a referral of past-due support for offset must comply with instructions issued by the Office.

(k) *Limitation of referral for offset of non-AFDC past-due support.*

Offset of Federal income tax refunds to satisfy past-due support in non-AFDC cases is limited to refunds payable under section 6402 of the Internal Revenue Code of 1954 after December 31, 1955, and before January 1, 1951.

Q. By adding new §§ 303.100 through 303.104 to read as follows:

§ 303.100 Procedures for wage or income withholding.

(a) *Withholding requirement.* (1) The State must ensure that in the case of each absent parent against whom a support order is or has been issued or modified in the State, and is being enforced under the State plan, so much of his or her wages must be withheld, in accordance with this section, as is necessary to comply with the order.

(2) In addition to the amount to be withheld to pay the current month's obligation, the amount to be withheld must include an amount to be applied toward liquidation of overdue support.

(3) The total amount to be withheld under paragraphs (a)(1), (a)(2) and, if applicable, (d)(1)(iii) of this section may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)).

(4) In the case of a support order being enforced under the State plan, the withholding must occur without the need for any amendment to the support order involved or any further action by the court or entity that issued it. The State must take steps to implement the withholding and to send the advance notice required under paragraph (b) of this section on the earliest of: (i) the date on which the parent fails to make payments in an amount equal to the support payable for one month, (ii) such earlier date that is in accordance with State law, or (iii) the date on which the absent parent requests withholding.

(5) The only basis for contesting a withholding under this section is a mistake of fact, which for purposes of this section means an error in the amount of current or overdue support or the identity of the alleged absent parent.

(6) If there is more than one notice for withholding against a single absent parent, the State must allocate amounts available for withholding giving priority to current support up to the limits imposed under section 303(b) of the Consumer Credit Corporation Act (15 U.S.C. 1673(b)).

(7) The withholding must be carried out in full compliance with all procedural due process requirements of the State.

(8) Payment of overdue support upon receipt of the notice required under paragraph (b) of this section may not be the sole basis for not implementing withholding.

(9) The State must have procedures for promptly terminating the withholding, but in no case should payment of overdue support be the sole basis for termination of withholding.