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BILL SUMMARY CSHB92 (JUD)

The U.S. Department of Health and Human Services' Child Support Enforcement Program was created in 1975 to help collect court-ordered support from absent parents. The program in Alaska is operated through the Child Support Enforcement Agency (CSEA), which was established in the Department of Revenue in 1976. Recent amendments to the federal law have placed the state program out of compliance and \$1.1 million of our federal funding for the Aid to Families with Dependent Children program is at risk.

CSHB92 (JUD) would bring the state program into compliance by:

- 1) providing for an income withholding order to be part of any order of child support,
- 2) changing the current time frame of 45 days in arrears to 30 days as the trigger to invoke an income withholding order,
- 3) increasing the limit of income withholding from 50% to 55%.
- 4) providing for withholding income in interstate cases,
- 5) providing for the enforcement of spousal support orders when child support is being enforced.
- 6) requiring the court to issue a medical support order as part of a child support order under certain conditions, and
- 7) imposing a \$1000 civil penalty on employers who retaliate against an obligor.

The bill makes two additional changes not required by federal law:

- 1) provides for service of a withholding order by first class mail (rather than certified mail) if the obligor was notified of the withholding law at the time the support order was obtained, and
- 2) requires employers to provide an obligor's employment information to CSEA upon request, and imposes a \$1000 fine for noncompliance.

SECTIONAL ANALYSIS CSHB 92 JUD

Income Withholding (Required by Federal Law)

Section 1: Subsection (a) provides for an income withholding order to be part of any order of child support. The prior language refers to an income assignment order rather than withholding order. The language change keeps us consistent with Federal Law. In addition, service has been changed to provide service by first class mail if the obligor had knowledge of the income withholding at the time the support order was obtained. If the obligor did not have notice because the case is older than 1983, when the income withholding law went into effect, service is to be by certified mail or by personal service.

Subsection (b) requires employers or any other person owing money to the obligor to withhold such funds and pay the money to the Child Support Enforcement Division.

Subsection (c) changes the current time frame of 45 days in arrears to one month in arrears as the triggering mechanism to invoke an income withholding order.

Subsection (d) changes the manner of service to first class mail and tightens the time frames for court hearings brought by obligors to dispute the income withholding. It also limits the defenses allowed to be raised at the hearing to mistakes of fact and specifically provides that it is not a defense to pay some amount of money prior to the hearing to dip below the threshold of one month owed.

Subsection (e) requires the Division to send notice of the relevant withholding statutes and an explanation of the effect of the statutes to any person who owes money to the obligor. It also requires withholding to begin either fourteen days after the notice of withholding or the next pay period, whichever is earlier.

Subsection (f) imposes a penalty of not more than \$1000.00 to any employer who retaliates against an obligor solely on the basis of income withholding.

Subsection (g) makes language changes to be consistent with the remaining sections.

Subsection (h) allows the payment of court costs to either party successful in the outcome of the withholding hearing.

Income Withholding (Required by Federal Law)

Section 2: Subsection (i) sets the maximum limits of income withholding to the Federal level: 55% for obligors who have second spouses or families; 65% for obligors with no other dependants. Alaska Law had been at 50%.

Subsection (j) provides convenience to the employer who has more than one employee on income withholding orders by allowing

payments to the Division to be made in one lump sum as long as specific employees' payments are identified.

Subsection (k) provides notice of termination to the Division by the employer and includes a requirement to include with the notice the obligor's last known address and addresses of other known employers.

Subsection (l) allows the obligor to petition the court to set aside income withholding upon good cause.

Cost of Living Increases/Decreases (Not Required by Federal Law)

Section 3: This section was added by the HESS Committee and amends AS 25.24.150 to allow the court to include cost of living adjustments in support orders.

Amendments to Duties of the Division (Required by Federal Law)

Section 4: Subsection (a)(1) adds to the Division's responsibilities the obtaining and enforcement of interstate orders.

Subsection (a)(7) provides the same intent as (a)(1) and in addition allows the Division to use the laws of the State of Alaska to obtain and enforce interstate orders.

Subsection (a)(8) provides for the enforcement of spousal support orders when child support is also being enforced by the Division.

Subsection (a)(9) requires the Division to obtain medical insurance as part of a support order if the costs to the obligor are reasonable.

Interstate Cases (Required by Federal Law)

Section 5: Subsections (a and b) provide for the process to obtain and enforce interstate orders from other Child Support Enforcement programs.

Rates of Penalty and Interest (Partially Required by Federal Law)

Section 6: This section eliminates the imposition of penalties for non-payment or late payment of child support. The new federal law only allows a maximum rate of 6% penalty provisions while Alaska had set a rate of 12%. The HESS and Judiciary Committees chose to eliminate all penalties since the recovery rate is minimal and the administrative burden outweighs the results.

Determination of Support Obligation (Required by Federal Law)

Section 7: This section adds language regarding the enforcement of spousal support if child support is also being administered by the Division.

Medical Support (Required by Federal Law)

Section 8: This section adds language regarding obtaining medical insurance in support orders when the cost to the obligor is reasonable.

Employment Information (Not Required by Federal Law)

Section 9: This section was added by the Judiciary Committee. It requires employers and labor unions to provide obligor's employment information to the Division upon request and imposes a \$1000.00 maximum penalty for knowingly violating the section.

Service (Not Required by Federal Law)

Section 10: This section rectifies an oversight in HB 688 of the Thirteenth Legislature to eliminate service provisions in this section in light of enactment of AS 47.23.265(a) which provides specific service provisions for all of AS 47.23.

Collection of Child Support (Not Required by Federal Law)

Section 11: This section amends AS 47.23.265 to modify service provisions to conform to changes in section 1.

Exemptions (Required by Federal Law)

Section 12: This section amends AS 47.250(i) to be consistent with exemptions in Section 2.

Income Withholding (Required by Federal Law)

Section 13: This section changes language to be consistent with section 1.

Civil Liability (Required by Federal Law)

Section 14: This section changes language to be consistent with Section 1.

Service (Not Required by Federal Law)

Section 15: This section provides general service provisions for all of AS 47.23 enforcement of child support order sections to allow service by first class mail in accordance with case law.

Payments Not Disbursed (Not Required by Federal Law)

Section 16: This section was added by the HESS Committee to provide for return of payments not disbursed to the obligor after seven years rather than to the State.

Effective Date (Required by Federal Law)

Section 17: October 1, 1985 is the effective date of the new Federal Law.

Alaska State Legislature



House of Representatives House Judiciary Committee

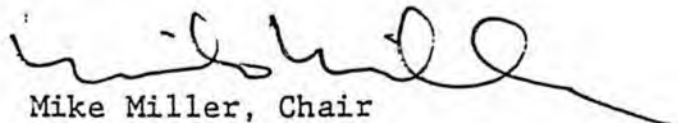
Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4990

LETTER OF INTENT FOR CSHB 92 (JUD)

It is the intent of the House Judiciary Committee, in amending AS 09.65.132(h) in sec. 1 of CSHB 92 (JUD), that either party in an income withholding proceeding may be ordered by the court to pay all court costs and that payment of attorney's fees will continue to fall under Civil Rule 82, Alaska Rules of Civil Procedure.

It is the further intent of the Committee that the term "alimony", as used in a number of other states, is included in the meaning of the term "spousal support".

It is also the recommendation of the Committee that the Revisor of Statutes consider placing all of the statutes relating to child and spousal support, presently found in Titles 9 and 47, in Title 35 of the Alaska Statutes, Marital and Domestic Relations.


Mike Miller, Chair

House Letter of Intent Amended Miller

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date

REQUEST

Bill/Resolution No: CSHB 92 JUD
 Title: An Act relating to child
 - support enforcement
 Sponsor: Governor
 Requestor: Governor
 Date of Request: 4-2-85

FISCAL DETAIL

Agency Affected: Revenue
 Program Category Affected: Revenue
Collection and Management
 BRU, Program of Subprogram(s) Affected:
Child Support Enforcement Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<u>OPERATING</u>						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 SUPPLIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
<u>TOTAL OPERATING</u>	-	-	-	-	-	-
<u>CAPITAL</u>	-	-	-	-	-	-
<u>REVENUE</u>	*(69.5)	(69.6)	(69.6)	(69.6)	(69.6)	(69.6)

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
<u>TOTAL</u>	-	-	-	-	-	-

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

not applicable

* Due to the immediate effective date of the bill, the FY 85 fiscal impact is unknown at this time. However, in no event will it exceed the 69.6 figure shown above.

ANALYSIS: See attached.

Prepared By: Holli Ilene Ploog
 Division: Child Support Enforcement

Phone: 276-3441
 Date: 4-2-85

Approved by Commissioner: [Signature]
 Agency: Revenue

Date: 4/4/85

Distribution (by Agency preparing fiscal note):

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

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CS 1092 (and)
 Title: "An Act relating to child
 and sponsal support;..."
 Sponsor: House Rules/Governor
 Requestor: Governor's Ofc./OMB
 Date of Request: 1/18/85

FISCAL DETAIL

Agency Affected: Department of Law
 Program Category Affected: General Government
 ERU, Program or Subprogram(s) Affected: Legal Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
500 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
900 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE						
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FUNDING: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary. This bill is a housekeeping measure that is intended to streamline existing child support laws. The bill brings Alaska's child support statutes into conformance with PL 98-378, and it simplifies interstate child support enforcement actions. Because of this simplification, it is expected that interstate transactions will increase. Any impact caused by this increase should, however, be offset by the efficiencies that will be realized through streamlining the state's existing child support statutes. Consequently, there will not be a fiscal impact for the Department of Law.

Prepared By: Richard I. Pagano, Director Phone: 465-3672
 Division: Administrative Services Date: 1/22/85

Approved by Commissioner: Richard I. Pagano/for Date: 1/22/85
 Agency: Department of Law

- Distribution (by Agency preparing fiscal note):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST
 Bill/Resolution No.: PS HB 92 (Am)
 Title: An Act relating to child and spousal support
 Sponsor: Rules, by request
 Requestor: Revenue
 Date of Request: 1/18/85

FISCAL DETAIL
 Agency Affected: Health & Social Services
 Program Category Affected: _____
 BRU, Program or Subprogram(s) Affected: Assistance Payments, AFDC Component

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
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						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

HB 92 has a potential cost-avoidance impact upon Aid to Families with Dependent Children (AFDC) utilization and expenditures. If enacted, it should result in some single parent families being supported sufficiently to eliminate their need to apply for AFDC. It should also slightly increase the numbers of current AFDC recipient families leaving the AFDC rolls. Finally, enactment helps to ensure compliance with federal program requirements, thereby avoiding federal

Prepared By: John R. Taber, Director *JRT* Phone: 455-3347
 Division: Public Assistance Date: _____

Approved by Commissioner: John R. Taber *JRT* Date: 1/30/85 *JCC*
 Agency: _____

Distribution (by Agency preparing fiscal note):

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

ANALYSIS CONT.

fiscal penalties, which would be taken against the 50% federal AFDC funding. However, no data exists by which the total potential amount of cost-avoidance might be estimated.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 18, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to child support enforcement. This bill is intended to ensure that Alaska Statutes are in compliance with the federal Child Support Enforcement Amendments of 1984, PL 98-378, which strengthens enforcement techniques of state agencies. It is essential that these provisions be in effect by October 1, 1985, in order for the state to continue to obtain federal funding of 70 percent for support enforcement. Other provisions of the bill strengthen the remedies presently available by amending AS 47.23 and AS 09.65.132.

Sections 1 and 3 of the bill are necessitated by Sec. 466 of PL 98-378, which mandates that each state must have in effect a law that will permit the establishment of the parentage of a child at any time before the child's 18th birthday. Section 1 adds new AS 09.10.095, which acts as a statute of limitation. Section 3 amends AS 25.20.050, relating to establishment of paternity, to specify that such an action must be permitted until the child is 18. As a statute of limitation, a child's right to bring such an action would toll during his minority, so an action could still be maintained until age 20. AS 25.20.050 would not prohibit an action at that time, but simply reflects the federal mandate that parentage actions be permitted at least until the child reaches age 18.

Section 2 amends AS 09.65.132 to conform to federal requirements relating to income withholding orders. The use of the term "income withholding order" in substitution for "income assignment order" will provide for consistency in state and federal statutes. PL 98-378 requires that collections be deposited and distributed by a public agency designated by the state. In this case, the agency is the child support enforcement division of the Department of

Revenue (referred to as the "agency"). Since the agency will be required to administer any income withheld, and will be accountable for collection and distribution, the bill also requires that all applications for income withholding orders be filed through the agency. The effectiveness of AS 09.65.132 as an enforcement tool is strengthened by requiring an automatic procedure to trigger withholding without court intervention if an obligor does not request a hearing, and an expedited decision if a hearing is requested. The service requirement is also amended so that no more restrictive service provision is necessary than would be required under normal motion practice in a typical lawsuit. PL 98-378 also requires that employers who discharge an employee, discipline an employee, or refuse to hire a person, because of an income withholding order, be fined; therefore the bill adds a provision making commission of any of those acts a misdemeanor punishable by a fine of not more than \$1,000. This misdemeanor is not classified; thus the imprisonment provisions of AS 12.55.135 do not apply.

Section 2 of the bill also amends AS 09.65.132(g) to remove the income exemption for collections from income under an income withholding order, because new subsection (h) requires that at least the amount of the support obligation be withheld, subject to the limits of 15 U.S.C. sec. 1673(b). 15 U.S.C. sec. 1673(b) allows withholding of 50 percent of an individual's disposable earnings, or 60 percent if the individual does not support a spouse or dependent child. The maximum amount allowed to be withheld is raised to 55 and 65 percent, respectively, if collection is for arrearages over 12 weeks old. Section 11 of the bill modifies AS 47.23.250(i) to also remove the income exemptions set out in that subsection.

Section 4 of the bill contains a new chapter, AS 25.26, the Interstate Income Withholding Act, which is also required by PL 98-378. This chapter draws heavily upon a Model Interstate Income Withholding Act, drafted by the Child Support Projects section of the American Bar Association and the National Conference of State Legislatures. The Model Act was prepared to assist states to meet the deadline of October 1, 1985 for implementation of the interstate withholding requirements. The Model Act enables states that enact similar provisions to order income withholding in another state in the same manner as they would impose intrastate withholding, without the necessity of filing a new action in the other state, as is necessary under the

existing Uniform Reciprocal Enforcement of Support Act (AS 25.25) or other enforcement statutes.

Sections 5, 7, and 8 of the bill amend several sections of AS 47.23 to reflect other requirements of PL 98-378. The child support enforcement agency will be responsible for enforcing existing spousal support orders where it is also enforcing a child support order. It must also attempt to obtain medical support orders as a part of a child support order if health care coverage is available to the obligor at a reasonable cost.

Section 6 of the bill reflects a change in the percentage of penalty that must be assessed, if any is imposed, to comport with PL 98-378. Under the federal law, the penalty rate must be between three and six percent; the bill imposes the highest penalty possible. Even at the six percent penalty rate, the present penalty is reduced by one-half from the 12 percent penalty now assessed.

Section 9 of the bill corrects an oversight. Section 11, ch. 144, SLA 1984, enacted AS 47.23.265, which currently sets out specific service provisions for all of AS 47.23. Service provisions contained in AS 47.23.150 should have been deleted at the same time, but were not. The amendment to AS 47.23.150 in sec. 9 of the bill accomplishes the deletion.

Section 10 of the bill amends AS 47.23.226 to refer to the general service provision in AS 47.23.265. Section 14 of the bill then modifies that general service provision so that no more restrictive service requirements are necessary than are appropriate under Rule 5 of the Alaska Rules of Civil Procedure. Civil Rule 5 allows service either upon a party or his attorney by first class mail. It has been perceived as a problem to some of the individuals handling child support cases on behalf of the agency that the previous requirement of service by registered or certified mail often set up a barrier to the receipt of the notice. Since the affected sections only relate to the enforcement of previously established support orders, the court has continuing jurisdiction to enforce those orders. Balchen v. Balchen, 566 P.2d 324 (Alaska 1977). In that case, the Alaska Supreme Court acknowledged that the proper service provision in enforcement actions is Civil Rule 5(b), and not Civil Rule 4 which requires personal or restricted delivery service. The court even commented that there would be merit to providing, in matters of support enforcement, that service could be made directly upon the party rather than

upon the attorney for the party from the earlier divorce proceeding.

Sections 12 and 13 of the bill simply change language in statutes pertaining to income assignment orders to reflect the new term, "income withholding" orders.

Sincerely,

A handwritten signature in cursive script that reads "Bill Sheffield". The signature is written in dark ink and is positioned above the printed name and title.

Bill Sheffield
Governor

ALASKA

The federal Child Support Amendments of 1984 mandate certain legislative modifications of the Alaska Child Support program. The following provisions in Alaska law contain many of the features mandated by P.L. 98-378:

- o Sections 47.23.110-47.23.280, which create an administrative process for the enforcement of child support obligations;
- o Section 47.23.230, which provides for the imposition of liens against real and personal property;
- o Section 47.23.253, which provides for the intercept-of any refund or disbursement by the Department of Revenue for the satisfaction of child support obligations;
- o Section 47.23.273, which approves the dissemination of information on the obligor's child support debts to any consumer credit bureau;
- o Section 47.23.060, the provision by which a court may require a parent to post a bond or security to insure collection of child support obligations;
- o Section 47.23.100, which provides equal treatment of non-AFDC and AFDC clients;
- o 15 Alaska Administrative Code 147.010(c), which provides guidelines to be used in the setting of support orders.

Modifications of Alaska law to meet the Child Support Enforcement Amendments of 1984 would include:

- o ^{not necessary - see 09.65.132} Altering Sections 47.23.070 and .250 to create a mandatory rather than a discretionary income withholding statute and to include:
 - ✓--recognition of income withholding order as top priority; 09.65.132(g)
 - ✓--provision limiting obligor's defenses to mistakes of fact in contested withholding cases; 09.65.132(d)
 - ✓--designation by state of publicly accountable agency to administer the withholding system; (Child Support Enforcement Agency, Dept. Revenue)
 - *--simplification of the process by the state, such as allowing employer to send in withheld amounts in one check; 09.65.132(j)
 - ✓--provision for withholding income in interstate cases; 47.23.020(a)(1)
 - ✓--provision to terminate withholding; 09.65.132(i)
 - ✓--provision in contested cases for state to notify obligor within 45 days whether withholding will occur; 09.65.132(d)
- o ✓ Altering Sections 47.23.020 and .025 to reduce the optional late payment fee to meet the federal 3% to 5% standard. 47.23.025

The adoption of new provisions to Alaska law would include:

- ✓o Provision for withholding to be part of all support orders issued or modified after 10-1-85. 04.05.132

The following are areas not currently addressed by state statutes and may be implemented by statutory enactment, administrative plan, judicial procedure, or executive action:

- o The enforcement of spousal support when it is part of the support order; 47.23.020(a)(8)
- o_{no} Notification to AFDC recipients of the amount collected on their behalf in the past year;
- o Inclusion of medical insurance in the support order; (47.23.020(a)(9))
- o_{no} Continuation of medicaid benefits;
- o_{no} Provision to expand services to all children receiving foster care through federal-state assistance programs;
- o_{no} Publication of the availability of child support enforcement services through public service announcements;
- o_{no} Provision for continuation of child support services when AFDC is terminated;
- o_{no} Implementation of a fee for non-AFDC services.

Drafters of state law may wish to be aware of federal regulations affecting their state child support programs. Two pertinent examples are:

- ✕ o Procedure for employer to notify the state or local withholding agency of the termination of the obligor's employment and of the obligor's last known address as well as the name and address of the new employer, if known; 47.23.075
- ✓o Procedure to implement the withholding no later than the first pay period that occurs after 14 days from the mailing date on the notice. 09.05.132(e)

FOR MORE INFORMATION

For more information contact Deborah Dale or Charles Brackney, National Conference of State Legislatures, 1125 17th Street, Suite 1500, Denver, Colorado 80202, 303/292-6600.