

SB

117

STATE OF ALASKA



SENATE JUDICIARY COMMITTEE

SEN. JAY KERTTULA
SEN. ARLISS STURGULEWSKI
SEN. RICK HALFORD
SEN. JOE JOSEPHSON
SEN. PAT RODEY

P.O. BOX V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3717
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LETTER OF INTENT

SENATE BILL NO. 117

Under this bill, as requested by the governor, the Division of Child Support Enforcement in the Department of Revenue is allowed to bill for the services provided in collecting child support payments. Attorney time will be billed at the full rate for attorney services. It would seem that there would be major cost savings for those seeking child support payments due them if attorneys from the Department of Law were not assigned on a case-by-case basis but rather were assigned full-time to the division. That way they could build expertise in the field of child support enforcement and be able to deal with the cases expeditiously, thus saving money for the clients. Savings for the clients would be in the best interests of the children for whom the money is collected. It is therefore the intent of the Senate Judiciary Committee that the Department of Law assign one or two staff attorneys full-time to the Division of Child Support Enforcement.

Senator Jay Kerttula

Senator Arliss Sturgulewski

Senator Rick Halford

Senator Joe Josephson

Senator Pat Rodey

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

SB 117

Revision Date : _____

REQUEST

Bill/Resolution No. : _____
 Title : An Act Relating to Child Support Enforcement

Sponsor : Department of Revenue
 Requestor : _____
 Date of Request : December 1, 1986

FISCAL DETAIL

Agency Affected : Department of Revenue
 BRU : Child Support Enforcement Division

Components : Operating

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						

CAPITAL						
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REVENUE	*	*	*	*	*	*
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FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

* Estimated annual income generation of \$100,000 - 1,000,000 by imposing fee structure.

Prepared by : Holli Ploog
 Division : Child Support Enforcement Division

Phone : 276-3441
 Date : 12/1/86

Approved by Commissioner : Wilton B. Barber
 Agency : Department of Revenue

Date : 12-1-86

Distribution (by Agency preparing fiscal note) :

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

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 9, 1987

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

Dear Senator Faiks:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the duties and authority of the child support enforcement division of the Department of Revenue. This bill amends statutory provisions concerning the collection of child support. The amendments will enhance the expeditious handling of child support enforcement matters and will permit the division to charge fees for the services that it provides.

Section 1 of the bill, which amends AS 47.23.020(a)(7), makes clear that child support orders from other jurisdictions may be enforced administratively as well as through the judicial process.

Section 2 of the bill, which amends AS 47.23.020(b), requires the division to credit the obligor with payments made directly to the obligee only if the payments are made before the obligor is ordered to make payments through the child support enforcement division. Currently the division must credit all direct payments, regardless of when they were made. This requirement causes an extra cost to the state in two ways: (1) the division may not, under federal law, report these direct payments to the federal authorities as income, and therefore the state does not receive federal incentive payments for these direct payments; and (2) the division's computer is not programmed to make adjustments for direct payments made after the division is involved, requiring manual audits to be performed. These manual audits are time-consuming and take time away from other enforcement activities. Because of the cost of reprogramming the computer, that alternative is not cost-effective, especially after taking into consideration the fact that manual input would still be required.

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Section 3 of the bill, which amends AS 47.23.100, gives the division authority to impose a fee for services provided under AS 47.23.010 -- 47.23.280. Currently, the division is prohibited from charging a fee other than an application fee that is mandated by federal law. The authority to charge fees would allow the division to pursue cost recovery, including attorney time and court costs incurred in the establishment (of support orders) and enforcement activities.

Section 4 of the bill, which amends AS 47.23.105, allows the division to process an obligor's request for an audit within 30 days rather than the currently mandated 10 days. The division does not have sufficient staff to process audit requests within the 10-day time frame without neglecting other areas of concern, particularly audits needed for court enforcement actions.

Section 5 of the bill, which amends AS 47.23.226, provides that the division may seek a judgment without the necessity of filing a motion before the court to do so. The action would be brought before the court on the basis of an affidavit, supplied by either the child's custodian or the division, and notice to the obligor that the action had been commenced. If a motion is not required, the division would not have to use attorney time for this function. The division currently obtains income withholding orders from the court using an affidavit rather than a motion.

Section 6 of the bill amends AS 47.23.250(e) to correspond with federal law and AS 47.23.062(e), which mandate that an obligor's employer begin withholding money from the obligor's wages 14 days after the mailing date on the notice regarding the withholding, or on the first day of the next pay period if that is earlier. Currently, because of the inconsistent time periods, the division does not receive payments on administrative withholding orders for a period of 30 days.

Section 7 amends AS 47.23.250(i) to correspond to the provisions of AS 47.23.062(g). AS 47.23.062(g) gives priority to court-ordered child support garnishments over all other attachments against the same money, unless ordered otherwise by the court. The amendment would require that administrative orders be treated in the same fashion.

Section 8 of the bill, which repeals AS 47.23.180(c), clarifies the procedure for appeal from administrative

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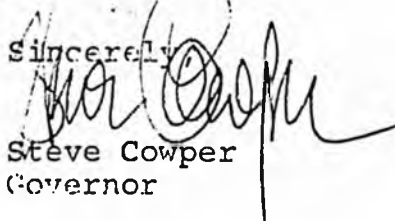
Hon. Jan Faiks

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decisions. An administrative decision may be appealed to the court under AS 47.23.210. Currently, AS 47.23.180(c) makes it appear that while the administrative process is going on, the obligor can go into court and seek another forum for relief. Often the court will not be informed that the obligor is currently involved in an administrative procedure. Although the court should be available to the obligor as an alternative forum for an appeal, it should not be used to avoid or subvert the administrative procedure.

The amendments in this bill would allow the child support enforcement division to meet its responsibility to collect support in an expeditious and cost-effective manner.

Sincerely,



Steve Cowper
Governor

Box 241
Juneau, Alaska 99802

March 17, 1987

Senator Jalmar Kertulla
Capital Building
Juneau, Alaska 99811

Dear Senator Kertulla:

Senate Bill 117 concerning child support enforcement is currently in your Judiciary Committee and may pass out on March 19, 1987. Before it does, please consider amending it.

Several major constitutional problems result from existing statute. Senator Duncan has received complaints from his constituents over them.

Foremost among the problems is a violation of due process right to a hearing consistent with "fairness." A fair hearing of an agency decision affords the aggrieved party the opportunity to have a record made of proceedings, call witnesses, testify under oath as to the truth of evidence, call the opposing party to testify under oath, and have at least an attorney preside as the hearing officer.

Presently, the child support agency allows an "informal hearing" at which the obligor may only present cancelled checks for child support payments made. The obligor may not testify as to payments made, subpoena the obligee bank statements for proof of deposit, or in any other way present non-documentary proof of payment.

If a spouse motivated through multiple forms of animosity wants to put the other spouse through the wringer, existing statute provides the machinery. Existing statute requires the obligor to search up to 18 years of cancelled checks. If the checks are not produced, a debt is established even if the obligor has made payment.

Even if the obligor has years of cancelled checks and refutes the affidavit of non payment of the other spouse, the agency can do nothing under existing statute to penalize her for making fraudulent accusations or committing perjury. Thus a spouse can claim non payment of \$7,000, be found to have lied to the agency, and the agency will not and cannot do anything to collect for wasting the resources of the agency or harrasing the obligor. The agency represents the obligee.

This representation of the obligee is the source of the second major problem which needs change. An obligee who makes \$20,000 can force the obligor^{OR} to hire an attorney to appeal to Superior Court a fraudulent claim. The burden the obligee has of hiring an attorney even if he cannot afford one can result in settlement of an unfair fraudulent claim in order to avoid the expense of hiring an attorney. Statute creates this unfair advantage. While indigent parties should retain the representation of the attorney general, there is no reason a non-indigent party should retain the free state funded services which can be used to harrasse the other spouse.

Further specific changes follow.

1. 47.23.100 should allow the agency to charge for any fraudulent claim of non-payment that the obligee makes in a sworn affidavit to the agency. The discretion to assess a fine should be sufficiently broad to prevent fraudulent claims. The language should explicitly allow for assessment of fraudulent claims.

2. 47 23 105 should require the agency to complete the audit within 30 days. After 110 days, no audit was performed after I submitted cancelled checks. The language should state the agency must perform the audit within the time limit.

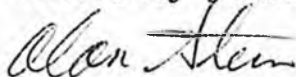
The audit should be made on all payments made not merely to those made to the agency. Many individuals make payments directly to spouses. The agency should have the authority under this section to subpoena records of the obligee to ascertain if payments have been deposited.

The audit should be performed more than once a year upon good cause such as providing newly discovered proof of past payment. Interest adjustments should reflect payment from the date the payment month was made. ~~47~~

47 23 226 should be changed to allow a notice period and response time to the court of 30 days. Obligors are often out of state or in remote locations. They are often separated from records of payment by at least a 1000 miles eg fishermen in Bering Sea, loggers in Oregon etc. To require them to make sworn statements about specific detailed lengthy transactions without opportunity to conduct a search for an accurate sworn response on 15 day time limit is grossly unfair. For good cause, the agency should have power to extend the time limit.

The place of hearing should not be in court which requires the obligor to hire an attorney but by an agency hearing officer. Fairness requires the state absorb the cost of providing a hearing at the first stage that affords all due process protections to both parties.

Sincerely yours,



Alan Stein

cc Senator Eliason
Duncan