

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8072

3214.69 HESS HB 92

lant's contentions that service of the motion, without more, was procedurally defective, we have concluded that this procedural defect does not furnish sufficient grounds for vacation of the judgment pursuant to Civil Rule 60(b)(4) since the defect is neither jurisdictional nor does it rise to the level of a due process violation.¹⁰ Furthermore, given the particular setting of the case at bar, the procedural defect does not give rise to any other ground for relief specified in Civil Rule 60(b). We note that Alphonse has not contested the amount of support arrearage which the superior court found to be due. In the absence of any showing of a meritorious defense, we hold that the superior court did not err in denying appellant's Civil Rule 60(b) motion.¹¹

In his second specification of error, appellant asserts that the order for future child

support for both children "comprises a miscarriage of justice" because the facts before the court indicated that one of the children was no longer living with the mother. At oral argument counsel for appellee conceded that the order should be modified to require future support payments for only one minor child of the parties. Thus, on the basis of the concession by counsel for appellee, the superior court's order for future child support is to be modified accordingly.

Affirmed in part and modified in part.



10. This notice aspect of the general question will also be referred to the Standing Advisory Committee on Civil Rules. See note 8, *supra*.

11. In *Markland v. City of Fairbanks*, 513 P.2d 658 (Alaska 1973), we outlined the necessity that the Rule 60(b) movant establish a meritorious defense should the judgment be reopened.

Cf. Aguchak v. Montgomery Ward Co., Inc., 520 P.2d 1352, 1354 (Alaska 1974) (Rule 60(b)(4) motion). Except in very unusual cases, we will not reverse the superior court's denial of a Rule 60(b) motion as an abuse of discretion where the movant has not made a showing of a meritorious defense.

from:

REPORT BY THE U.S.

General Accounting Office

U.S. Child Support: Needed Efforts Underway To Increase Collections From Absent Parents

The Department of Health and Human Services' (HHS') Child Support Enforcement Program was created in 1975 to help collect support from absent parents. The program is overseen by HHS' Office of Child Support Enforcement and operated through state and local agencies.

At the Senate Budget Committee's request, GAO reviewed collection activities at five state child support offices and seven local offices. GAO found that

- absent parents paid about half the support owed, and about two-thirds of these parents' payments were delinquent by more than 30 days at least once during the study year;
- there were few standards governing collection activities, and the agencies were not acting promptly or at all to collect past due amounts; and
- the availability of collection services for families not in the Aid to Families with Dependent Children program varied.

Enacted in August 1984, the 1984 Child Support Enforcement Amendments could significantly enhance collections and correct the deficiencies GAO noted.



GAO/HRD-85-5
OCTOBER 30, 1984

SUMMARY OF CHILD SUPPORT ENFORCEMENT AMENDMENTS OF 1984Section 1 - Contents

Section 2 - Purpose of the program.--Language is added to the statement of purpose assuring that services will be made available to non-AFDC families.

Section 3 - Improved child support enforcement through required state laws and procedures.--States are required to enact laws establishing the following procedures:

1. Mandatory wage withholding for all families (AFDC and non-AFDC) if support payments are delinquent in an amount equal to 1 month's support. States must also allow absent parents to request withholding at an earlier date.
2. Imposing liens against real and personal property for amounts of overdue support.
3. Withholding of state tax refunds payable to a parent of a child receiving services, if the parent is delinquent in support payments.
4. Making available information regarding the amount of overdue support owed by an absent parent, to any consumer credit bureau, upon request of such organization.
5. Requiring individuals who have demonstrated a pattern of delinquent payments to post a bond, or give some other guarantee to secure payment of overdue support.
6. Establishing expedited processes within the state judicial system or under administrative processes for obtaining and enforcing child support orders and, at the option of the state, for determining paternity.
7. Notifying each AFDC recipient at least once each year of the amount of child support collected on behalf of that recipient.
8. Permitting the establishment of paternity until a child's 18th birthday.
9. At the option of the state, providing that child support payments must be made through the agency that administers the state's income withholding system if either the custodial or noncustodial parent requests that they be made in this manner.

The Secretary of Health and Human Services may grant an exemption to a state from the required procedures, subject to later review, if the state can demonstrate that such procedures will not improve the efficiency and effectiveness of the state Child Support Enforcement program.

Service fees to non-AFDC families.--States will be required to charge an application fee for non-AFDC cases not to exceed \$25. The state may charge the fee against the custodial parent, pay the fee out of state funds, or recover the fee from the non-custodial parent.

In addition, states may charge absent parents a late payment fee equal to between 3 and 6 percent of the amount of overdue support. The state may not take any action which would have the effect of reducing the amount paid to the child and will collect the fee only after the full amount of the support has been paid to the child. The late payment fee provision is effective upon enactment.

The enforcement provisions are generally effective October 1, 1985.

Section 4 - Federal matching of administrative costs.--The federal matching share is gradually reduced from 70 percent to 68 percent in fiscal years 1988 and 1989, and 66 percent beginning in fiscal year 1990.

Section 5 - Federal incentive payments.--The current incentive formula which gives states 12 percent of their AFDC collections (paid for out of the federal share of the collections) is replaced with a new formula that will be equal to 6 percent of the state's AFDC collections and 6 percent of its non-AFDC collections. States may qualify for higher incentive payments, up to a maximum of 10 percent of collections, if their AFDC or non-AFDC collections exceed combined administrative costs for both AFDC and non-AFDC components of the program as shown below.

<u>AFDC incentive payment</u>		<u>Non-AFDC incentive payment</u>	
<u>Ratio of AFDC collections to combined AFDC/non-AFDC administrative costs</u>	<u>Incentive equal to this percent of AFDC collections</u>	<u>Ratio of non-AFDC collections to combined AFDC/non-AFDC administrative costs</u>	<u>Incentive equal to this percent of non-AFDC collections</u>
less than 1.4 : 1	6.0	less than 1.4 : 1	6.0
1.4 : 1	6.5	1.4 : 1	6.5
1.6 : 1	7.0	1.6 : 1	7.0
1.8 : 1	7.5	1.8 : 1	7.5
2.0 : 1	8.0	2.0 : 1	8.0
2.2 : 1	8.5	2.2 : 1	8.5
2.4 : 1	9.0	2.4 : 1	9.0
2.6 : 1	9.5	2.6 : 1	9.5
2.8 : 1	10.0	2.8 : 1	10.0

The total dollar amount of incentives paid for non-AFDC families may not exceed the amount of the state's incentive payment for AFDC collections for fiscal years 1986 and 1987. Thereafter the incentive paid for non-AFDC collections will be capped at an amount equal to 105 percent of the incentive for AFDC collections in fiscal year 1988, 110 percent in fiscal year 1989, and 115 percent beginning in fiscal year 1990. For fiscal year 1985, the amount of the AFDC incentive will be calculated on the basis of AFDC collections without regard to the provision added by the Deficit Reduction Act of 1984 that requires that the first \$50 collected on behalf of an AFDC family in any month must be paid to the family without reducing the amount of the AFDC payment to the family.

States may exclude the laboratory costs of determining paternity from combined administrative costs for purposes of computing incentive payments.

States are required to pass through to local jurisdictions that participate in the cost of the program an appropriate share of the incentive payments, as determined by the state, taking into account program effectiveness and efficiency. Amounts collected in interstate cases will be credited, for purposes of computing the incentive payments, to both the initiating and responding states.

As part of the new funding formula, "hold harmless" protection is provided for fiscal years 1986 and 1987 which assures the states that for those years they will receive the higher of the amounts due them under the new incentive and federal match provisions, or no less than 80 percent of what they would have received in fiscal year 1985 under prior law.

The provision is effective beginning with fiscal year 1986 (Oct. 1, 1985).

Section 6 - Federal matching for automated management systems used in income withholding and other procedures.--The 90-percent federal matching rate currently available to states to establish an automatic data processing and information retrieval system may be used to develop and improve income withholding and other required procedures. The 90-percent matching is also available to pay for the acquisition of computer hardware.

The provision is effective October 1, 1984.

Section 7 - Continuing support enforcement for AFDC recipients whose benefits are terminated.--States must provide that families whose eligibility for AFDC is terminated will be automatically transferred from AFDC to non-AFDC status without requiring application services or payment of a fee.

The provision is effective October 1, 1984.

Section 8 - Special project grants to promote improvement in interstate enforcement.--The Secretary is authorized to make demonstration grants to states which propose to undertake new or innovative methods of support collection in interstate cases.

Section 9 - Periodic review of state programs; modifications of penalty.--The director of the federal Office of Child Support Enforcement is required to conduct audits at least every 3 years to determine whether the standards and requirements prescribed by law and regulations have been met. Under the penalty provisions, a state's AFDC matching funds must be reduced by an amount equal to at least 1 but no more than 2 percent for the first failure to comply substantially with the standards and requirements, at least 2 but no more than 3 percent for the second failure, and at least 3 but no more than 5 percent for the third and any subsequent consecutive failures.

Annual audits are required unless a state is in substantial compliance. If a state is not in substantial compliance, the penalty may be suspended only if the state is actively pursuing a corrective action plan, approved by the Secretary, which can be expected to bring the state into substantial compliance on a specific and reasonable timetable. If at the end of the corrective action period substantial compliance has been achieved, no penalties would be due. If substantial compliance has not been achieved, penalties would begin at the end of the corrective

action period if the state has implemented the corrective action plan. A state which is not in full compliance may be determined to be in substantial compliance only if the Secretary determines that any noncompliance is of a technical nature which does not adversely affect the performance of the Child Support Enforcement program.

The provision is effective beginning in fiscal year 1984.

Section 10 - Extension of sec. 1115 demonstration authority to the child support system.--The sec. 1115 demonstration authority is expanded to include the Child Support Enforcement program under specified conditions.

The provision is effective upon enactment.

Section 11 - Child support enforcement for certain children in foster care.--State child support agencies are required to undertake child support collections on behalf of children receiving foster care maintenance payments under title IV-E of the Social Security Act, if an assignment of rights to support to the state has been secured by the foster care agency. In addition, foster care agencies are required to secure an assignment to the state or any rights to support on behalf of a child receiving foster care maintenance payments under the title IV-E foster care program.

The provision is effective October 1, 1984.

Section 12 - Collecting spousal support.--Child support enforcement services must include the enforcement of spousal support, but only if a support obligation has been established with respect to the spouse, the child and spouse are living in the same household, and child support is being collected along with spousal support.

The provision is effective October 1, 1985.

Section 13 - Modifying annual report content.--The information requirements of the Secretary's annual report on Child Support Enforcement program activities are expanded to include the following data.

1. The total number of cases in which a support obligation has been established in the past year and the total amount of obligations;

2. The total number of cases in which a support obligation has been established and the total amount of obligations;

3. Cases described in (1) in which support was collected during a fiscal year and the total amount; and

4. Cases described in (2) in which support was collected during a fiscal year and the total amount.

Additionally, the annual report must include information on the child support cases filed and the collections made in each state on behalf of children residing in another state or cases against parents residing in another state. The annual report must also detail how much in administrative costs is spent in each functional expenditure category (including paternity). This information is to be separately stated for current and for past AFDC and non-AFDC cases.

The provision is effective beginning for the report issued for fiscal year 1986.

Section 14 - Requirement to publicize the availability of child support services.--States must frequently publicize, through public service announcements, the availability of child support enforcement services, together with information as to the application fee for services and a telephone number or postal address to be used to obtain additional information.

The provision is effective October 1, 1985.

Section 15 - State Commissions on Child Support.--The governor of each state is required to appoint a state Commission on Child Support. The commission must include representation from all aspects of the child support system, including custodial and non-custodial parents, the IV-D agency, the judiciary, the governor, the legislature, child welfare and social services agencies, and others.

Each state commission is to examine the functioning of the state child support system with regard to securing support and parental involvement for both AFDC and non-AFDC children, including but not limited to such specific problems as: (1) visitation, (2) establishment of appropriate objective standards for support, (3) enforcement of interstate obligations, and (4) additional federal and state legislation needed to obtain support for all children.

The commission shall submit to the governor, and make available to the public, reports on their findings and recommendations no later than October 1, 1985. Costs of operating the commissions will not be eligible for federal matching.

The Secretary may waive the requirement for a commission at the request of a state if he determines that the state has had such a commission or council within the last 5 years or is making satisfactory progress toward fully effective child support enforcement.

Section 16 - Requirement to include medical support as part of any child support order.--The Secretary is required to issue regulations to require state agencies to petition to include medical support as part of any child support order whenever health care coverage is available to the absent parent at a reasonable cost. The regulations must also provide for improved information exchange between the state IV-D agencies and the Medicaid agencies with respect to the availability of health insurance coverage.

Section 17 - Availability of federal parent locator services to state agencies.--The present requirement that the states exhaust all state child support locator resources before they request the assistance of the federal Parent Locator Service is repealed.

The provision is effective upon enactment.

Section 18 - Guidelines for determining support obligations.--Each state must develop guidelines to be considered in determining support obligations.

The provision is effective October 1, 1987.

Section 19 - Availability of social security numbers for purposes of child support enforcement.--The absent parent's social security number may be disclosed to child support agencies both through the federal Parent Locator Service and by the Internal Revenue Service.

The provision is effective upon enactment.

Section 20 - Extending Medicaid eligibility when support collection results in termination of AFDC eligibility.--If a family loses AFDC eligibility as the result (wholly or partly) of increased collection of support payments under the IV-D program, the state must continue to provide Medicaid benefits for 4 calendar months beginning with the month of ineligibility. (The family must have received AFDC in at least 3 of the 6 months immediately preceding the month of ineligibility).

The provision is effective upon enactment. It is applicable to families becoming ineligible for AFDC before October 1, 1988.

Section 21 - Collection of overdue support from federal tax refunds.--Current law requires the Secretary of the Treasury, upon receiving notice from a state child support agency that an individual owes past due support which has been assigned to the state as a condition of AFDC eligibility, to withhold from any tax refunds due that individual an amount equal to any past due support. The amendments extend this requirement to provide for withholding of refunds on behalf of non-AFDC families under specified conditions.

The provision is effective for refunds payable after the year ending December 31, 1985, and prior to January 1, 1991.

Section 22 - Wisconsin child support initiative.--The Secretary is required to grant waivers to the state of Wisconsin to allow it to implement its proposed child support initiative in all or parts of the state as a replacement for the AFDC and child support programs. The state must meet specified conditions and give specific guarantees with respect to the financial well-being of the children involved.

The provision is effective for fiscal years 1987-94.

Section 23 - Sense of the Congress that state and local governments should focus on the problems of child custody, child support, and related domestic issues.--State and local governments are urged to focus on the vital issues of child support, child custody, visitation rights, and other related domestic issues that are within the jurisdictions of such governments.

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REMARKS

NESC has finally published their analysis of state laws to the new federal law. Call me if you have any questions

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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;
 - ✓--provision limiting obligor's defenses to mistakes of fact in contested withholding cases;
 - ✓--designation by state of publicly accountable agency to administer the withholding system;
 - *--simplification of the process by the state, such as allowing employer to send in withheld amounts in one check;
 - ✓--provision for withholding income in interstate cases;
 - ✓--provision to terminate withholding;
 - ✓--provision in contested cases for state to notify obligor within 45 days whether withholding will occur;
- o ✓ Altering Sections 47.23.020 and .025 to reduce the optional late payment fee to meet the federal 3% to 6% standard.

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.

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;
- o Notification to AFDC recipients of the amount collected on their behalf in the past year;
- o Inclusion of medical insurance in the support order;
- o Continuation of medicaid benefits;
- o Provision to expand services to all children receiving foster care through federal-state assistance programs;
- o Publication of the availability of child support enforcement services through public service announcements;
- o Provision for continuation of child support services when AFDC is terminated;
- o 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;
- ✓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.

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.

Public Law 98-378
98th Congress

An Act

To amend part D of title IV of the Social Security Act to assure, through mandatory income withholding, incentive payments to States, and other improvements in the child support enforcement program, that all children in the United States who are in need of assistance in securing financial support from their parents will receive such assistance regardless of their circumstances, and for other purposes.

Aug. 16, 1984
[H.R. 4325]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE; TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Child Support Enforcement Amendments of 1984".

Child Support
Enforcement
Amendments of
1984.
42 USC 1305
note.

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- Sec. 22. Wisconsin child support initiative.
- Sec. 23. Sense of the Congress that State and local governments should focus on the problems of child custody, child support, and related domestic issues.

PURPOSE OF THE PROGRAM

SEC. 2. Section 451 of the Social Security Act is amended by striking out "and obtaining child and spousal support," and inserting in lieu thereof "obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this

42 USC 651.

42 USC 601. part to all children (whether or not eligible for aid under part A) for whom such assistance is requested."

IMPROVED CHILD SUPPORT ENFORCEMENT THROUGH REQUIRED STATE LAWS AND PROCEDURES

42 USC 654. SEC. 5. (a) Section 454 of the Social Security Act is amended—
 (1) by striking out "and" at the end of paragraph (18);
 (2) by striking out the period at the end of paragraph (19) and inserting in lieu thereof "; and"; and
 (3) by adding after paragraph (19) the following new paragraph:

"(20) provide, to the extent required by section 466, that the State (A) shall have in effect all of the laws to improve child support enforcement effectiveness which are referred to in that section, and (B) shall implement the procedures which are prescribed in or pursuant to such laws."

(b) Part D of title IV of such Act is further amended by adding at the end thereof the following new section:

"REQUIREMENT OF STATUTORILY PRESCRIBED PROCEDURES TO IMPROVE EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT

42 USC 666. *Supra* "SEC. 466. (a) In order to satisfy section 454(20)(A), each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part:

"(1) Procedures described in subsection (b) for the withholding from income of amounts payable as support.

"(2) Procedures under which expedited processes (determined in accordance with regulations of the Secretary) are in effect under the State judicial system or under State administrative processes (A) for obtaining and enforcing support orders, and (B) at the option of the State, for establishing paternity. The Secretary may waive the provisions of this paragraph with respect to one or more political subdivisions within the State on the basis of the effectiveness and timeliness of support order issuance and enforcement within the political subdivision (in accordance with the general rule for exemptions under subsection (d)).

"(3) Procedures under which the State child support enforcement agency shall request, and the State shall provide, that for the purpose of enforcing a support order under any State plan approved under this part—

"(A) any refund of State income tax which would otherwise be payable to an absent parent will be reduced, after notice has been sent to that absent parent of the proposed reduction and the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State), by the amount of any overdue support owed by such absent parent;

"(B) the amount by which such refund is reduced shall be distributed in accordance with section 457 (b)(4) or (d)(3) in the case of overdue support assigned to a State pursuant to section 492(a)(26) or 471(a)(17), or, in the case of overdue support which a State has agreed to collect under section 454(6), shall be distributed, after deduction of any fees

Ante, p. 1145.
Post, p. 1317.

42 USC 602.
Post, p. 1318.

Post, pp. 1310,
1319-1324.

imposed by the State to cover the costs of collection, to the child or parent to whom such support is owed; and

"(C) notice of the absent parent's social security account number (or numbers, if he has more than one such number) and home address shall be furnished to the State agency requesting the refund offset, and to the State agency enforcing the order.

"(4) Procedures under which liens are imposed against real and personal property for amounts of overdue support owed by an absent parent who resides or owns property in the State.

"(5) Procedures which permit the establishment of the paternity of any child at any time prior to such child's eighteenth birthday.

"(6) Procedures which require that an absent parent give security, post a bond, or give some other guarantee to secure payment of overdue support, after notice has been sent to such absent parent of the proposed action and of the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State).

"(7) Procedures by which information regarding the amount of overdue support owed by an absent parent residing in the State will be made available to any consumer reporting agency (as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f))) upon the request of such agency; except that (A) if the amount of the overdue support involved in any case is less than \$1,000, information regarding such amount shall be made available only at the option of the State, (B) any information with respect to an absent parent shall be made available under such procedures only after notice has been sent to such absent parent of the proposed action, and such absent parent has been given a reasonable opportunity to contest the accuracy of such information (and after full compliance with all procedural due process requirements of the State), and (C) a fee for furnishing such information, in an amount not exceeding the actual cost thereof, may be imposed on the requesting agency by the State.

"(8) Procedures under which all child support orders which are issued or modified in the State will include provision for withholding from wages, in order to assure that withholding as a means of collecting child support is available if arrearages occur without the necessity of filing application for services under this part.

Notwithstanding section 454(20)(B), the procedures which are required under paragraphs (3), (4), (6), and (7) need not be used or applied in cases where the State determines (using guidelines which are generally available within the State and which take into account the payment record of the absent parent, the availability of other remedies, and other relevant considerations) that such use or application would not carry out the purposes of this part or would be otherwise inappropriate in the circumstances.

"(b) The procedures referred to in subsection (a)(1) (relating to the withholding from income of amounts payable as support) must provide for the following:

"(1) 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 such parent's wages (as defined by the State for purposes of this section) must be withheld, in accordance with the succeeding provisions of this

Ante, p. 1306.

Withholding of income.

subsection, as is necessary to comply with the order and provide for the payment of any fee to the employer which may be required under paragraph (6)(A), up to the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)). If there are arrearages to be collected, amounts withheld to satisfy such arrearages, when added to the amounts withheld to pay current support, and provide for the fee, may not exceed the limit permitted under such section 303(b), but the State need not withhold up to the maximum amount permitted under such section in order to satisfy arrearages.

"(2) Such withholding must be provided without the necessity of any application therefor in the case of a child (whether or not eligible for aid under part A) with respect to whom services are already being provided under the State plan under this part, and must be provided in accordance with this subsection on the basis of an application for services under the State plan in the case of any other child in whose behalf a support order has been issued or modified in the State. In either case such withholding must occur without the need for any amendment to the support order involved or for any further action (other than those actions required under this part) by the court or other entity which issued such order.

"(3) An absent parent shall become subject to such withholding, and the advance notice required under paragraph (4) shall be given, on the earliest of—

"(A) the date on which the payments which the absent parent has failed to make under such order are at least equal to the support payable for one month,

"(B) the date as of which the absent parent requests that such withholding begin, or

"(C) such earlier date as the State may select.

"(4)(A) Such withholding must be carried out in full compliance with all procedural due process requirements of the State, and (subject to subparagraph (B)) the State must send advance notice to each absent parent to whom paragraph (1) applies regarding the proposed withholding and the procedures such absent parent should follow if he or she desires to contest such withholding on the grounds that withholding (including the amount to be withheld) is not proper in the case involved because of mistakes of fact. If the absent parent contests such withholding on those grounds, the State shall determine whether such withholding will actually occur, shall (within no more than 45 days after the provision of such advance notice) inform such parent of whether or not withholding will occur and (if so) of the date on which it is to begin, and shall furnish such parent with the information contained in any notice given to the employer under paragraph (6)(A) with respect to such withholding.

"(B) The requirement of advance notice set forth in the first sentence of subparagraph (A) shall not apply in the case of any State which has a system of income withholding for child support purposes in effect on the date of the enactment of this section if such system provides on that date, and continues to provide, such procedures as may be necessary to meet the procedural due process requirements of State law.

"(5) Such withholding must be administered by a public agency designated by the State, and the amounts withheld must be expeditiously distributed by the State or such agency in accordance with section 457 under procedures (specified by the State) adequate to document payments of support and to track and monitor such payments, except that the State may establish or permit the establishment of alternative procedures for the collection and distribution of such amounts (under the supervision of such public agency) otherwise than through such public agency so long as the entity making such collection and distribution is publicly accountable for its actions taken in carrying out such procedures, and so long as such procedures will assure prompt distribution, provide for the keeping of adequate records to document payments of support, and permit the tracking and monitoring of such payments.

"(6)(A)(i) The employer of any absent parent to whom paragraph (1) applies, upon being given notice as described in clause (ii), must be required to withhold from such absent parent's wages the amount specified by such notice (which may include a fee, established by the State, to be paid to the employer unless waived by such employer) and pay such amount (after deducting and retaining any portion thereof which represents the fee so established) to the appropriate agency (or other entity authorized to collect the amounts withheld under the alternative procedures described in paragraph (5)) for distribution in accordance with section 457.

"(ii) The notice given to the employer shall contain only such information as may be necessary for the employer to comply with the withholding order.

"(B) Methods must be established by the State to simplify the withholding process for employers to the greatest extent possible, including permitting any employer to combine all withheld amounts into a single payment to each appropriate agency or entity (with the portion thereof which is attributable to each individual employee being separately designated).

"(C) The employer must be held liable to the State for any amount which such employer fails to withhold from wages due an employee following receipt by such employer of proper notice under subparagraph (A), but such employer shall not be required to vary the normal pay and disbursement cycles in order to comply with this paragraph.

"(D) Provision must be made for the imposition of a fine against any employer who discharges from employment, refuses to employ, or takes disciplinary action against any absent parent subject to wage withholding required by this subsection because of the existence of such withholding and the obligations or additional obligations which it imposes upon the employer.

"(7) Support collection under this subsection must be given priority over any other legal process under State law against the same wages.

"(8) The State may take such actions as may be necessary to extend its system of withholding under this subsection so that such system will include withholding from forms of income other than wages, in order to assure that child support owed by absent parents in the State will be collected without regard to the types of such absent parents' income or the nature of their income-producing activities.

"(9) The State must extend its withholding system under this subsection so that such system will include withholding from income derived within such State in cases where the applicable support orders were issued in other States, in order to assure that child support owed by absent parents in such State or any other State will be collected without regard to the residence of the child for whom the support is payable or of such child's custodial parent.

"(10) Provision must be made for terminating withholding.

"(c) Any State may at its option, under its plan approved under section 454, establish procedures under which support payments under this part will be made through the State agency or other entity which administers the State's income withholding system in any case where either the absent parent or the custodial parent requests it, even though no arrearages in child support payments are involved and no income withholding procedures have been instituted; but in any such case an annual fee for handling and processing such payments, in an amount not exceeding the actual costs incurred by the State in connection therewith or \$25, whichever is less, shall be imposed on the requesting parent by the State.

"(d) If a State demonstrates to the satisfaction of the Secretary, through the presentation to the Secretary of such data pertaining to caseloads, processing times, administrative costs, and average support collections, and such other data or estimates as the Secretary may specify, that the enactment of any law or the use of any procedure or procedures required by or pursuant to this section will not increase the effectiveness and efficiency of the State child support enforcement program, the Secretary may exempt the State, subject to the Secretary's continuing review and to termination of the exemption should circumstances change, from the requirement to enact the law or use the procedure or procedures involved.

"(e) For purposes of this section, the term 'overdue support' means the amount of a delinquency pursuant to an obligation determined under a court order or an order of an administrative process established under State law, for support and maintenance of a minor child which is owed to or on behalf of such child, or for support and maintenance of the absent parent's spouse (or former spouse) with whom the child is living if and to the extent that spousal support (with respect to such spouse or former spouse) would be included for purposes of paragraph (4) or (6) of section 454. At the option of the State, overdue support may include amounts which otherwise meet the definition in the first sentence of this subsection but which are owed to or on behalf of a child who is not a minor child. The option to include support owed to children who are not minors shall apply independently to each procedure specified under this section."

(c) Section 454(6)(B) of such Act is amended to read as follows: "(B) an application fee for furnishing such services shall be imposed, which shall be paid by the individual applying for such services, or recovered from the absent parent, or paid by the State out of its own funds (the payment of which from State funds shall not be considered as an administrative cost of the State for the operation of the plan, and shall be considered income to the program), the amount of which (i) will not exceed \$25 (or such higher or lower amount (which shall be uniform for all States) as the Secretary may determine to be appropriate for any fiscal year to reflect increases or decreases in

Optional payment procedure. 42 USC 654.

Exemption.

administrative costs), and (ii) may vary among such individuals on the basis of ability to pay (as determined by the State), and". (d) Section 454 of such Act (as amended by subsection (a) of this section) is further amended—

- (1) by striking out "and" at the end of paragraph (19);
(2) by striking out the period at the end of paragraph (20) and inserting in lieu thereof "; and"; and
(3) by adding after paragraph (20) the following new paragraph:

"(21)(A) at the option of the State, impose a late payment fee on all overdue support (as defined in section 466(e)) under any obligation being enforced under this part, in an amount equal to a uniform percentage determined by the State (not less than 3 percent nor more than 6 percent) of the overdue support, which shall be payable by the absent parent owing the overdue support; and

"(B) assure that the fee will be collected in addition to, and only after full payment of, the overdue support, and that the imposition of the late payment fee shall not directly or indirectly result in a decrease in the amount of the support which is paid to the child (or spouse) to whom, or on whose behalf, it is owed."

(e) Section 454(5) of such Act is amended by inserting after "directly to the family" the following: ", and the individual will be notified at least annually of the amount of the support payments collected;".

(f) Section 454 of such Act is further amended by adding at the end thereof (after and below paragraph (21) (as added by subsection (d) of this section)) the following new sentence: "The State may allow the jurisdiction which makes the collection involved to retain any application fee under paragraph (6)(B) or any late payment fee under paragraph (21)."

(g)(1) Except as provided in paragraphs (2) and (3), the amendments made by this section shall become effective on October 1, 1985.

(2) Section 454(21) of the Social Security Act (as added by subsection (d) of this section), and section 466(e) of such Act (as added by subsection (b) of this section), shall be effective with respect to support owed for any month beginning after the date of the enactment of this Act.

(3) In the case of a State with respect to which the Secretary of Health and Human Services has determined that State legislation is required in order to conform the State plan approved under part D of title IV of the Social Security Act to the requirements imposed by any amendment made by this section, the State plan shall not be regarded as failing to comply with the requirements of such part solely by reason of its failure to meet the requirements imposed by such amendment prior to the beginning of the fourth month beginning after the end of the first session of the State legislature which ends on or after October 1, 1985. For purposes of the preceding sentence, the term "session" means a regular, special, budget, or other session of a State legislature.

FEDERAL MATCHING OF ADMINISTRATIVE COSTS

SEC. 4. (a) Section 455(a) of the Social Security Act is amended— (1) by inserting "(1)" after "(a)";

Ante, p. 1306

Ante, p. 1306

42 USC 654.

Supra.

Ante, p. 1310.

Effective dates. 42 USC 654 note.

Supra.

Ante, p. 1306.

42 USC 651.

42 USC 655.

(2) by striking out ", beginning with the quarter commencing July 1, 1975,";

(3) by striking out paragraph (2) and redesignating paragraphs (1) and (3) as subparagraphs (A) and (B), respectively;

(4) by amending paragraph (1)(A) as so redesignated to read as follows:

"(A) equal to the percent specified in paragraph (2) of the total amounts expended by such State during such quarter for the operation of the plan approved under section 454, and";

(5) in paragraph (1)(B) as so redesignated, by striking out "specified in clause (1) or (2)" and inserting in lieu thereof "specified in subparagraph (A)"; and

(6) by adding at the end thereof the following new paragraph:

"(2) The percent applicable to quarters in a fiscal year for purposes of paragraph (1)(A) is—

"(A) 70 percent for fiscal years 1984, 1985, 1986, and 1987,

"(B) 68 percent for fiscal years 1988 and 1989, and

"(C) 66 percent for fiscal year 1990 and each fiscal year thereafter."

(b) Subsections (d)(1)(B), (d)(2)(A), (d)(2)(B), and (e) of section 452 of such Act are each amended by striking out "455(a)(3)" and inserting in lieu thereof "455(a)(1)(B)".

(c) The amendments made by this section shall apply to fiscal years after fiscal year 1983.

FEDERAL INCENTIVE PAYMENTS

SEC. 5. (a) Section 458 of the Social Security Act is amended to read as follows:

"INCENTIVE PAYMENTS TO STATES

"SEC. 458. (a) In order to encourage and reward State child support enforcement programs which perform in a cost-effective and efficient manner to secure support for all children who have sought assistance in securing support, whether such children reside within the State or elsewhere and whether or not they are eligible for aid to families with dependent children under a State plan approved under part A of this title, and regardless of the economic circumstances of their parents, the Secretary shall, from support collected which would otherwise represent the Federal share of assistance to families of absent parents, pay to each State for each fiscal year, on a quarterly basis (as described in subsection (e)) beginning with the quarter commencing October 1, 1985, an incentive payment in an amount determined under subsection (b).

"(b)(1) Except as provided in paragraphs (2), (3), and (4), the incentive payment shall be equal to—

"(A) 6 percent of the total amount of support collected under the plan during the fiscal year in cases in which the support obligation involved is assigned to the State pursuant to section 402(a)(26) or section 471(a)(17) (with such total amount for any fiscal year being hereafter referred to in this section as the State's 'AFDC collections' for that year), plus

"(B) 6 percent of the total amount of support collected during the fiscal year in all other cases under this part (with such total amount for any fiscal year being hereafter referred to in this section as the State's 'non-AFDC collections' for that year).

"(2) If subsection (c) applies with respect to a State's AFDC collections or non-AFDC collections for any fiscal year, the percent specified in paragraph (1) (A) or (B) (with respect to such collections) shall be increased to the higher percent determined under such subsection (with respect to such collections) in determining the State's incentive payment under this subsection for that year.

"(3) The dollar amount of the portion of the State's incentive payment for any fiscal year which is determined on the basis of its non-AFDC collections under paragraph (1)(B) (after adjustment under subsection (c) if applicable) shall in no case exceed—

"(A) the dollar amount of the portion of such payment which is determined on the basis of its AFDC collections under paragraph (1)(A) (after adjustment under subsection (c) if applicable) in the case of fiscal year 1986 or 1987;

"(B) 105 percent of such dollar amount in the case of fiscal year 1988;

"(C) 110 percent of such dollar amount in the case of fiscal year 1989; or

"(D) 115 percent of such dollar amount in the case of fiscal year 1990 or any fiscal year thereafter.

"(4) The Secretary shall make such additional payments to the State under this part, for fiscal year 1986 or 1987, as may be necessary to assure that the total amount of payments under this section and section 455(a)(1)(A) for such fiscal year is no less than 80 percent of the amount that would have been payable to that State and its political subdivisions for such fiscal year under this section and section 455(a)(1)(A) if those sections (including the amendments made by section 5(c)(2)(A) of the Child Support Enforcement Amendments of 1984) had remained in effect as they were in effect for fiscal year 1985.

"(c) If the total amount of a State's AFDC collections or non-AFDC collections for any fiscal year bears a ratio to the total amount expended by the State in that year for the operation of its plan approved under section 454 for which payment may be made under section 455 (with the total amount so expended in any fiscal year being hereafter referred to in this section as the State's 'combined AFDC/non-AFDC administrative costs' for that year) which is equal to or greater than 1.4, the relevant percent specified in subparagraph (A) or (B) of subsection (b)(1) (with respect to such collections) shall be increased to—

"(1) 6.5 percent, plus

"(2) one-half of 1 percent for each full two-tenths by which such ratio exceeds 1.4;

except that the percent so specified shall in no event be increased (for either AFDC collections or non-AFDC collections) to more than 10 percent. For purposes of the preceding sentence, laboratory costs incurred in determining paternity in any fiscal year may at the option of the State be excluded from the State's combined AFDC/non-AFDC administrative costs for that year.

"(d) In computing incentive payments under this section, support which is collected by one State on behalf of individuals residing in another State shall be treated as having been collected in full by each such State.

"(e) The amounts of the incentive payments to be made to the various States under this section for any fiscal year shall be estimated by the Secretary at or before the beginning of such year on the basis of the best information available. The Secretary shall

42 USC 652.

Effective date.
42 USC 652 note.

42 USC 658.

42 USC 602.
Ante, p. 1318.

Ante, p. 1311.

Ante, p. 1312.

42 USC 654.
42 USC 655.

make such payments for such year, on a quarterly basis (with each quarterly payment being made no later than the beginning of the quarter involved), in the amounts so estimated, reduced or increased to the extent of any overpayments or underpayments which the Secretary determines were made under this section to the States involved for prior periods and with respect to which adjustment has not already been made under this subsection. Upon the making of any estimate by the Secretary under the preceding sentence, any appropriations available for payments under this section shall be deemed obligated."

Ante, p. 1306

(b) Section 454 of such Act (as amended by subsections (a), (d), and (f) of section 3 of this Act) is amended—

(1) by striking out "and" at the end of paragraph (20);

(2) by striking out the period at the end of paragraph (21) and inserting in lieu thereof "; and"; and

(3) by inserting immediately after paragraph (21) the following new paragraph:

"(22) in order for the State to be eligible to receive any incentive payments under section 458, provide that, if one or more political subdivisions of the State participate in the costs of carrying out activities under the State plan during any period, each such subdivision shall be entitled to receive an appropriate share (as determined by the State) of any such incentive payments made to the State for such period, taking into account the efficiency and effectiveness of the activities carried out under the State plan by such political subdivision."

Effective dates
42 USC 558 note.

(c)(1) The amendments made by the preceding provisions of this section shall become effective on October 1, 1985.

Ante, p. 1312

(2)(A) Effective until September 30, 1985, section 458(a) of the Social Security Act is amended by striking out "distributed as provided in section 457 to reduce or repay assistance payments" and inserting in lieu thereof "distributed as provided in paragraphs (1), (2), and (4)(A) of section 457(b)".

Ante, p. 1115
42 USC 658 note.

(B) The reference to provisions of section 457(b) of the Social Security Act in the amendment made by subparagraph (A) of this paragraph is a reference to such provisions as in effect after the effective date of section 2640(b) of the Deficit Reduction Act of 1984.

Ante, p. 1115.

90-PERCENT MATCHING FOR AUTOMATED MANAGEMENT SYSTEMS USED IN INCOME WITHHOLDING AND OTHER REQUIRED PROCEDURES

42 USC 651.

SEC. 6. (a) Section 454(16) of the Social Security Act is amended by striking out "and (D)" and inserting in lieu thereof the following: "(D) to facilitate the development and improvement of the income withholding and other procedures required under section 466(a) through the monitoring of support payments, the maintenance of accurate records regarding the payment of support, and the prompt provision of notice to appropriate officials with respect to any arrearages in support payments which may occur, and (E)".

Ante, p. 1311.

(b) Section 455(a)(1)(B) of such Act (as redesignated by section 4(a) of this Act) is amended—

(1) by inserting after "automatic data processing and information retrieval system" the following: "(including in such sums the full cost of the hardware components of such system)"; and

(2) by inserting before the semicolon at the end thereof the following: ", or meets such requirements without regard to clause (D) thereof".

(c) The amendments made by this section shall apply with respect to quarters beginning on or after October 1, 1984.

Effective date.
42 USC 654, note.

CONTINUATION OF SUPPORT ENFORCEMENT FOR AFDC RECIPIENTS WHOSE BENEFITS ARE BEING TERMINATED

SEC. 7. (a) Section 457(c) of the Social Security Act is amended—

42 USC 657.

(1) by striking out "may" in the matter preceding paragraph (1) and inserting in lieu thereof "shall"; and

(2) by striking out "the net amount of" in paragraph (2), and by striking out "to the family" and all that follows in such paragraph and inserting in lieu thereof "to the family (without requiring any formal reapplication and without the imposition of any application fee) on the same basis as in the case of other individuals who are not receiving assistance under part A of this title,".

42 USC 601.

(b) The amendments made by subsection (a) shall become effective October 1, 1984.

Effective date.
42 USC 657 note.

SPECIAL PROJECT GRANTS TO PROMOTE IMPROVEMENTS IN INTERSTATE ENFORCEMENT

SEC. 8. Section 455 of the Social Security Act is amended by adding at the end thereof the following new subsection:

42 USC 655.

"(c)(1) In order to encourage and promote the development and use of more effective methods of enforcing support obligations under this part in cases where either the children on whose behalf the support is sought or their absent parents do not reside in the State where such cases are filed, the Secretary is authorized to make grants, in such amounts and on such terms and conditions as the Secretary determines to be appropriate, to States which propose to undertake new or innovative methods of support collection in such cases and which will use the proceeds of such grants to carry out special projects designed to demonstrate and test such methods.

"(2) A grant under this subsection shall be made only upon a finding by the Secretary that the project involved is likely to be of significant assistance in carrying out the purpose of this subsection; and with respect to such project the Secretary may waive any of the requirements of this part which would otherwise be applicable, to such extent and for such period as the Secretary determines is necessary or desirable in order to enable the State to carry out the project.

"(3) At the time of its application for a grant under this subsection the State shall submit to the Secretary a statement describing in reasonable detail the project for which the proceeds of the grant are to be used, and the State shall from time to time thereafter submit to the Secretary such reports with respect to the project as the Secretary may specify.

Reports.

"(4) Amounts expended by a State in carrying out a special project assisted under this section shall be considered, for purposes of section 458(b) (as amended by section 5(a) of the Child Support Enforcement Amendments of 1984), to have been expended for the operation of the State's plan approved under section 454.

"(5) There is authorized to be appropriated the sum of \$7,000,000 for fiscal year 1985, \$12,000,000 for fiscal year 1986, and \$15,000,000 for each fiscal year thereafter, to be used by the Secretary in making grants under this subsection."

Ante, p. 1312.
42 USC 654.
Appropriation
authorization.

PERIODIC REVIEW OF EFFECTIVENESS OF STATE PROGRAMS;
MODIFICATION OF PENALTY

42 USC 652

SEC. 9. (a)(1) Section 452(a)(4) of the Social Security Act is amended by striking out "not less often than annually" and inserting in lieu thereof "not less often than once every three years (or not less often than annually in the case of any State to which a reduction is being applied under section 403(h)(1), or which is operating under a corrective action plan in accordance with section 403(h)(2))".

Infra

42 USC 602

(2) Section 402(a)(27) of such Act is amended by striking out "operate a child support program in conformity with such plan" and inserting in lieu thereof "operates a child support program in substantial compliance with such plan".

42 USC 603

(b) Section 403(h) of such Act is amended to read as follows:
"(h)(1) Notwithstanding any other provision of this Act, if a State's program operated under part D is found as a result of a review conducted under section 452(a)(4) not to have complied substantially with the requirements of such part for any quarter beginning after September 30, 1983, and the Secretary determines that the State's program is not complying substantially with such requirements at the time such finding is made, the amounts otherwise payable to the State under this part for such quarter and each subsequent quarter, prior to the first quarter throughout which the State program is found to be in substantial compliance with such requirements, shall be reduced (subject to paragraph (2)) by—

42 USC 651

Supra

- "(A) not less than one nor more than two percent, or
- "(B) not less than two nor more than three percent, if the finding is the second consecutive such finding made as a result of such a review, or
- "(C) not less than three nor more than five percent, if the finding is the third or a subsequent consecutive such finding made as a result of such a review.

"(2)(A) The reductions required under paragraph (1) shall be suspended for any quarter if—

- "(i) the State submits a corrective action plan, within a period prescribed by the Secretary following notice of the finding under paragraph (1), which contains steps necessary to achieve substantial compliance within a time period which the Secretary finds to be appropriate;
 - "(ii) the Secretary approves such corrective action plan (and any amendments thereto) as being sufficient to achieve substantial compliance; and
 - "(iii) the Secretary finds that the corrective action plan (and any amendment thereto approved by the Secretary under clause (ii)), is being fully implemented by the State and that the State is progressing in accordance with the timetable contained in the plan to achieve substantial compliance with such requirements.
- "(B) A suspension of the penalty under subparagraph (A) shall continue until such time as the Secretary determines that—

- "(i) the State has achieved substantial compliance,
- "(ii) the State is no longer implementing its corrective action plan, or
- "(iii) the State is implementing or has implemented its corrective action plan but has failed to achieve substantial compliance within the appropriate time period (as specified in subparagraph (A)(i)).

"(C)(i) In the case of a State whose penalty suspension ends pursuant to subparagraph (B)(i), the penalty shall not be applied.

"(ii) In the case of a State whose penalty suspension ends pursuant to subparagraph (B)(ii), the penalty shall be applied as if the suspension had not occurred.

"(iii) In the case of a State whose penalty suspension ends pursuant to subparagraph (B)(iii), the penalty shall be applied to all quarters ending after the expiration of the time period specified in such subparagraph (and prior to the first quarter throughout which the State program is found to be in substantial compliance).

"(3) For purposes of this subsection, section 402(a)(27), and section 452(a)(4), a State which is not in full compliance with the requirements of this part shall be determined to be in substantial compliance with such requirements only if the Secretary determines that any noncompliance with such requirements is of a technical nature which does not adversely affect the performance of the child support enforcement program."

(c) The amendments made by this section shall be effective on and after October 1, 1983.

Ante, p. 1316.
Ante, p. 1317

Effective date.
42 USC 602 note.

EXTENSION OF SECTION 1115 DEMONSTRATION AUTHORITY TO CHILD
SUPPORT ENFORCEMENT PROGRAM

SEC. 10. (a) Section 1115(a) of the Social Security Act is amended—

42 USC 1315.

- (1) by striking out "part A" in the matter preceding paragraph (1) and inserting in lieu thereof "part A or D";
- (2) by striking out "402," in paragraph (1) and inserting in lieu thereof "402, 454,"; and
- (3) by striking out "403," in paragraph (2) and inserting in lieu thereof "403, 455,".

(b) Section 1115 of such Act is further amended by adding at the end thereof the following new subsection:

42 USC 1315.

"(c) In the case of any experimental, pilot, or demonstration project undertaken under subsection (a) to assist in promoting the objectives of part D of title IV, the project—

42 USC 651.

- "(1) must be designed to improve the financial well-being of children or otherwise improve the operation of the child support program;
- "(2) may not permit modifications in the child support program which would have the effect of disadvantaging children in need of support; and
- "(3) must not result in increased cost to the Federal Government under the program of aid to families with dependent children."

CHILD SUPPORT ENFORCEMENT FOR CERTAIN CHILDREN IN FOSTER CARE

SEC. 11. (a)(1) Section 457 of the Social Security Act is amended by adding at the end thereof the following new subsection:

42 USC 657.

"(d) Notwithstanding the preceding provisions of this section, amounts collected by a State as child support for months in any period on behalf of a child for whom a public agency is making foster care maintenance payments under part E—

42 USC 670.

- "(1) shall be retained by the State to the extent necessary to reimburse it for the foster care maintenance payments made with respect to the child during such period (with appropriate

reimbursement of the Federal Government to the extent of its participation in the financing);

"(2) shall be paid to the public agency responsible for supervising the placement of the child to the extent that the amounts collected exceed the foster care maintenance payments made with respect to the child during such period but not the amounts required by a court or administrative order to be paid as support on behalf of the child during such period; and the responsible agency may use the payments in the manner it determines will serve the best interests of the child, including setting such payments aside for the child's future needs or making all or a part thereof available to the person responsible for meeting the child's day-to-day needs; and

"(3) shall be retained by the State, if any portion of the amounts collected remains after making the payments required under paragraphs (1) and (2), to the extent that such portion is necessary to reimburse the State (with appropriate reimbursement to the Federal Government to the extent of its participation in the financing) for any past foster care maintenance payments (or payments of aid to families with dependent children) which were made with respect to the child (and with respect to which past collections have not previously been retained);

and any balance shall be paid to the State agency responsible for supervising the placement of the child, for use by such agency in accordance with paragraph (2)."

(2) Section 457(b) of such Act is amended by inserting "(subject to subsection (d))" after "shall" in the matter preceding paragraph (1).

(b) Part D of title IV of such Act is further amended—

(1) in section 454(4)(B), by inserting "including an assignment with respect to a child on whose behalf a State agency is making foster care maintenance payments under part E," immediately after "such assignment is effective," and by inserting "or E" immediately after "part A"; and

(2) in section 456(a), by inserting "or secured on behalf of a child receiving foster care maintenance payments" immediately after "section 402(a)(26)".

(c) Section 471(a) of such Act is amended—

(1) by striking out "and" at the end of paragraph (15);

(2) by striking out the period at the end of paragraph (16) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(17) provides that, where appropriate, all steps will be taken, including cooperative efforts with the State agencies administering the plans approved under parts A and D, to secure an assignment to the State of any rights to support on behalf of each child receiving foster care maintenance payments under this part."

(d) Section 464(a) of such Act is amended—

(1) by inserting "or section 471(a)(17)" after "402(a)(26)"; and

(2) by striking out "457(b)(3)" and inserting in lieu thereof "457 (b)(4) or (d)(3)".

(e) The amendments made by this section shall become effective October 1, 1984, and shall apply to collections made on or after that date.

ENFORCEMENT WITH RESPECT TO BOTH CHILD AND SPOUSAL SUPPORT

SEC. 12. (a) Section 454(4)(B) of the Social Security Act is amended—

(1) by striking out "and, at the option of the State," and inserting in lieu thereof ", and"; and

(2) by inserting ", and only if the support obligation established with respect to the child is being enforced under the plan" immediately after "but only if a support obligation has been established with respect to such spouse".

(b) Clause (A) of section 454(6) of such Act is amended—

(1) by striking out ", at the option of the State,"; and

(2) by inserting ", and only if the support obligation established with respect to the child is being enforced under the plan" immediately after "but only if a support obligation has been established with respect to such spouse".

(c) The amendments made by this section shall become effective October 1, 1985.

Effective date.
42 USC 654 note.

MODIFICATIONS IN CONTENT OF ANNUAL REPORT OF THE SECRETARY

SEC. 13. (a) Section 452(a)(10)(C) of the Social Security Act is amended to read as follows:

"(C) the following data, with the data required under each clause being separately stated for cases where the child is receiving aid to families with dependent children (or foster care maintenance payments under part E), cases where the child was formerly receiving such aid or payments and the State is continuing to collect support assigned to it under section 402(a)(26) or 471(a)(17), and all other cases under this part:

"(i) the total number of cases in which a support obligation has been established in the fiscal year for which the report is submitted, and the total amount of such obligations;

"(ii) the total number of cases in which a support obligation has been established, and the total amount of such obligations;

"(iii) the number of cases described in clause (i) in which support was collected during such fiscal year, and the total amount of such collections;

"(iv) the number of cases described in clause (ii) in which support was collected during such fiscal year, and the total amount of such collections; and

"(v) the number of child support cases filed in each State in such fiscal year, and the amount of the collections made in each State in such fiscal year, on behalf of children residing in another State or against parents residing in another State;"

(b) Section 452(a)(10) of such Act is further amended—

(1) by striking out "and" at the end of subparagraph (G);

(2) by striking out the period at the end of subparagraph (H) and inserting in lieu thereof "; and"; and

(3) by inserting immediately after subparagraph (H) the following new subparagraph:

42 USC 602.
Ante. p. 1318.

42 USC 652.

Ante. p. 1145.
42 USC 657.

Post. p. 1319.

42 USC 670.

Ante. p. 1167.
42 USC 656.

42 USC 671.

42 USC 601, 651.

Post. p. 1322.

Effective date.
42 USC 654 note.

"(1) the amount of administrative costs which are expended in each functional category of expenditures, including establishment of paternity."

Effective date: 12 USC 652 note. (c) The amendments made by this section shall be effective for reports for fiscal year 1986 and each fiscal year thereafter.

REQUIREMENT THAT AVAILABILITY OF CHILD SUPPORT ENFORCEMENT SERVICES BE PUBLICIZED

Ante, p. 1314

SEC. 14. (a) Section 454 of the Social Security Act (as amended by the preceding provisions of this Act) is further amended—

- (1) by striking out "and" at the end of paragraph (21);
(2) by striking out the period at the end of paragraph (22) and inserting in lieu thereof "; and"; and
(3) by inserting immediately after paragraph (22) the following new paragraph:

"(23) provide that the State will regularly and frequently publicize, through public service announcements, the availability of child support enforcement services under the plan and otherwise, including information as to any application fees for such services and a telephone number or postal address at which further information may be obtained."

Effective date: 42 USC 654 note. (b) The amendments made by subsection (a) shall become effective October 1, 1985.

STATE COMMISSIONS ON CHILD SUPPORT

42 USC 654 note. 42 USC 601, 651.

SEC. 15. (a) As a condition of the State's eligibility for Federal payments under part A or D of title IV of the Social Security Act for quarters beginning more than 30 days after the date of the enactment of this Act and ending prior to October 1, 1985, the Governor of each State, on or before December 1, 1984, shall (subject to subsection (f)) appoint a State Commission on Child Support.

(b) Each State Commission appointed under subsection (a) shall be composed of members appropriately representing all aspects of the child support system, including custodial and non-custodial parents, the agency or organizational unit administering the State's plan under part D of such title IV, the State judiciary, the executive and legislative branches of the State government, child welfare and social services agencies, and others.

(c) It shall be the function of each State Commission to examine, investigate, and study the operation of the State's child support system for the primary purpose of determining the extent to which such system has been successful in securing support and parental involvement both for children who are eligible for aid under a State plan approved under part A of title IV of such Act and for children who are not eligible for such aid, giving particular attention to such specific problems (among others) as visitation, the establishment of appropriate objective standards for support, the enforcement of interstate obligations, the availability, cost, and effectiveness of services both to children who are eligible for such aid and to children who are not, and the need for additional State or Federal legislation to obtain support for all children.

Report Public availability.

(d) Each State Commission shall submit to the Governor of the State and make available to the public, no later than October 1, 1985, a full and complete report of its findings and recommendations resulting from the examination, investigation, and study under this

section. The Governor shall transmit such report to the Secretary of Health and Human Services along with the Governor's comments thereon.

(e) None of the costs incurred in the establishment and operation of a State Commission under this section, or incurred by such a Commission in carrying out its functions under subsections (c) and (d), shall be considered as expenditures qualifying for Federal payments under part A or D of title IV of the Social Security Act or be otherwise payable or reimbursable by the United States or any agency thereof.

42 USC 601, 651.

(f) If the Secretary determines, at the request of any State on the basis of information submitted by the State and such other information as may be available to the Secretary, that such State—

(1) has placed in effect and is implementing objective standards for the determination and enforcement of child support obligations,

Ante, p. 1305.

(2) has established within the five years prior to the enactment of this Act a commission or council with substantially the same functions as the State Commissions provided for under this section, or

(3) is making satisfactory progress toward fully effective child support enforcement and will continue to do so, then such State shall not be required to establish a State Commission under this section and the preceding provisions of this section shall not apply.

INCLUSION OF MEDICAL SUPPORT IN CHILD SUPPORT ORDERS

SEC. 16. Section 452 of the Social Security Act is amended by adding at the end thereof the following new subsection:

42 USC 652.

"(f) The Secretary shall issue regulations to require that State agencies administering the child support enforcement program under this part petition for the inclusion of medical support as part of any child support order whenever health care coverage is available to the absent parent at a reasonable cost. Such regulation shall also provide for improved information exchange between such State agencies and the State agencies administering the State medicaid programs under title XIX with respect to the availability of health insurance coverage."

Regulations.

42 USC 1396.

INCREASED AVAILABILITY OF FEDERAL PARENT LOCATOR SERVICE TO STATE AGENCIES

SEC. 17. Section 453(f) of the Social Security Act is amended by striking out ", after determining that the absent parent cannot be located through the procedures under the control of such State agencies,"

42 USC 653.

STATE GUIDELINES FOR CHILD SUPPORT AWARDS

SEC. 18. (a) Part D of title IV of the Social Security Act (as amended by section 3(b) of this Act) is further amended by adding at the end thereof the following new section:

Ante, p. 1306.

"STATE GUIDELINES FOR CHILD SUPPORT AWARDS

"Sec. 467. (a) Each State, as a condition for having its State plan approved under this part, must establish guidelines for child support

42 USC 667.

award amounts within the State. The guidelines may be established by law or by judicial or administrative action.

"(b) The guidelines established pursuant to subsection (a) shall be made available to all judges and other officials who have the power to determine child support awards within such State, but need not be binding upon such judges or other officials.

"(c) The Secretary shall furnish technical assistance to the States for establishing the guidelines, and each State shall furnish the Secretary with copies of its guidelines."

(b) The amendment made by subsection (a) shall become effective on October 1, 1987.

Effective date
42 USC 667 note

AVAILABILITY OF SOCIAL SECURITY NUMBERS FOR CHILD SUPPORT ENFORCEMENT PURPOSES

42 USC 653.

SEC. 19. (a) Section 453(b) of the Social Security Act is amended by inserting "the social security account number (or numbers, if the individual involved has more than one such number) and" before "the most recent address".

26 USC 6103.

(b)(1) Section 6103(1)(G)(A)(i) of the Internal Revenue Code of 1954 is amended by inserting "social security account number (or numbers, if the individual involved has more than one such number)," before "address".

Ante, p. 820.

(2) Section 6103(1)(8)(A) of such Code is amended by inserting "social security account numbers," before "net earnings".

EXTENSION OF ELIGIBILITY UNDER TITLE XIX WHEN SUPPORT COLLECTION RESULTS IN TERMINATION OF AFDC ELIGIBILITY

42 USC 606.

SEC. 20. (a) Section 406 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(h) Each dependent child, and each relative with whom such a child is living (including the spouse of such relative as described in subsection (b)), who becomes ineligible for aid to families with dependent children as a result (wholly or partly) of the collection or increased collection of child or spousal support under part D, and who has received such aid in at least three of the six months immediately preceding the month in which such ineligibility begins, shall be deemed to be a recipient of aid to families with dependent children for purposes of title XIX for an additional four calendar months beginning with the month in which such ineligibility begins."

42 USC 651.

42 USC 1396.

Effective date,
42 USC 606 note.

(b) The amendment made by subsection (a) shall apply only with respect to individuals becoming ineligible for aid to families with dependent children (as described in section 406(h) of the Social Security Act as added by such subsection) on or after the date of the enactment of this Act and before October 1, 1988.

Supra.

Ante, p. 1101.
42 USC 1396a.

(c) Section 1902(a)(10)(A)(i)(1) of such Act is amended by inserting "or 406(h)" after "402(a)(37)".

COLLECTION OF PAST-DUE SUPPORT FROM FEDERAL TAX REFUNDS

42 USC 664.

SEC. 21. (a) Section 464(n) of the Social Security Act (as amended by section 12(d) of this Act) is further amended by inserting "(1)" after "SEC. 464. (n)" and by adding at the end thereof the following new paragraphs:

"(2)(A) Upon receiving notice from a State agency administering a plan approved under this part that a named individual owes past-due support (as that term is defined for purposes of this paragraph under subsection (c)) which such State has agreed to collect under section 454(6), and that the State agency has sent notice to such individual in accordance with paragraph (3)(A), the Secretary of the Treasury shall determine whether any amounts, as refunds of Federal taxes paid, are payable to such individual (regardless of whether such individual filed a tax return as a married or unmarried individual). If the Secretary of the Treasury finds that any such amount is payable, he shall withhold from such refunds an amount equal to such past-due support, and shall concurrently send notice to such individual that the withholding has been made, including in such notice a notification to any other person who may have filed a joint return with such individual of the steps which such other person may take in order to secure his or her proper share of the refund. The Secretary of the Treasury shall pay the amount withheld to the State agency, and the State shall pay to the Secretary of the Treasury any fee imposed by the Secretary of the Treasury to cover the costs of the withholding and any required notification. The State agency shall, subject to paragraph (3)(B), distribute such amount to or on behalf of the child to whom the support was owed.

Ante, p. 1319.
1319.
Post, p. 1324.

"(B) This paragraph shall apply only with respect to refunds payable under section 6402 of the Internal Revenue Code of 1954 after December 31, 1985, and before January 1, 1991.

Effective date,
Ante, p. 1154.

"(3)(A) Prior to notifying the Secretary of the Treasury under paragraph (1) or (2) that an individual owes past-due support, the State shall send notice to such individual that a withholding will be made from any refund otherwise payable to such individual. The notice shall also (i) instruct the individual owing the past-due support of the steps which may be taken to contest the State's determination that past-due support is owed or the amount of the past-due support, and (ii) provide information, as may be prescribed by the Secretary of Health and Human Services by regulation in consultation with the Secretary of the Treasury, with respect to procedures to be followed, in the case of a joint return, to protect the share of the refund which may be payable to another person.

"(B) If the Secretary of the Treasury determines that an amount should be withheld under paragraph (1) or (2), and that the refund from which it should be withheld is based upon a joint return, the Secretary of the Treasury shall notify the State that the withholding is being made from a refund based upon a joint return, and shall furnish to the State the names and addresses of each taxpayer filing such joint return. In the case of a withholding under paragraph (2), the State may delay distribution of the amount withheld until the State has been notified by the Secretary of the Treasury that the other person filing the joint return has received his or her proper share of the refund, but such delay may not exceed six months.

"(C) If the other person filing the joint return with the named individual owing the past-due support takes appropriate action to secure his or her proper share of a refund from which a withholding was made under paragraph (1) or (2), the Secretary of the Treasury shall pay such share to such other person. The Secretary of the Treasury shall deduct the amount of such payment from amounts subsequently payable to the State agency to which the amount originally withheld from such refund was paid.

"(D) In any case in which an amount was withheld under paragraph (1) or (2) and paid to a State, and the State subsequently determines that the amount certified as past-due support was in excess of the amount actually owed at the time the amount withheld is to be distributed to or on behalf of the child, the State shall pay the excess amount withheld to the named individual thought to have owed the past-due support (or, in the case of amounts withheld on the basis of a joint return, jointly to the parties filing such return)."

Ante, p. 1322

(b)(1) Section 464(a)(1) of such Act (as redesignated by subsection (a) of this section) is amended by striking out "and pay" in the second sentence and inserting in lieu thereof the following: "shall concurrently send notice to such individual that the withholding has been made (including in or with such notice a notification to any other person who may have filed a joint return with such individual of the steps which such other person may take in order to secure his or her proper share of the refund), and shall pay".

42 USC 664

(2) Section 464(b) of such Act is amended—

(A) by inserting "(1)" after "(b)";

(B) by striking out "The regulations shall specify" in the second sentence and inserting in lieu thereof "The regulations shall be consistent with the provisions of subsection (a)(3), shall specify";

(C) by striking out "and provide" and inserting in lieu thereof "and shall provide";

(D) by adding at the end of paragraph (1) as so redesignated the following: "Any fee paid to the Secretary of the Treasury pursuant to this subsection may be used to reimburse appropriations which bore all or part of the cost of applying such procedure."; and

(E) by adding at the end thereof the following new paragraph:

Ante, p. 1322

"(2) In the case of withholdings made under subsection (a)(2), the regulations promulgated pursuant to this subsection shall include the following requirements:

"(A) The withholding shall apply only in the case where the State determines that the amount of the past-due support which will be owed at the time the withholding is to be made, based upon the pattern of payment of support and other enforcement actions being pursued to collect the past-due support, is equal to or greater than \$500. The State may limit the \$500 threshold amount to amounts of past-due support accrued since the time that the State first began to enforce the child support order involved under the State plan, and may limit the application of the withholding to past-due support accrued since such time.

"(B) The fee which the Secretary of the Treasury may impose to cover the costs of the withholding and notification may not exceed \$25 per case submitted."

42 USC 664

(c) Section 464(c) of such Act is amended—

(1) by striking out "(c) As used in this part" and inserting in lieu thereof "(c)(1) Except as provided in paragraph (2), as used in this part"; and

(2) by adding at the end thereof the following new paragraph:

Ante, p. 1322

"(2) For purposes of subsection (a)(2), the term 'past-due support' means only past-due support owed to or on behalf of a minor child."

Ante, p. 1307.

(d) Section 454(C) of the Social Security Act (as amended by section 3(c) of this Act) is further amended—

(1) by redesignating clause (C) as clause (D);

(2) by striking out "fee so imposed" in clause (D) as so redesignated and inserting in lieu thereof "fees so imposed"; and

(3) by striking out "and" at the end of clause (B) and inserting in lieu thereof ", (C) a fee of not more than \$25 may be imposed in any case where the State requests the Secretary of the Treasury to withhold past-due support owed to or on behalf of such individual from a tax refund pursuant to section 464(a)(2), and".

(e)(1) Section 6402(c) of the Internal Revenue Code of 1954 is amended—

Ante, p. 1322.
26 USC 6102.

(A) by striking out "to which such support has been assigned" and inserting in lieu thereof "collecting such support"; and

(B) by inserting before the last sentence thereof the following: "A reduction under this subsection shall be applied first to satisfy any past-due support which has been assigned to the State under section 402(a)(26) or 471(a)(17) of the Social Security Act, and shall be applied to satisfy any other past-due support after any other reductions allowed by law (but before a credit against future liability for an internal revenue tax) have been made."

42 USC 602
Ante, p. 1318.

(2) Section 6402 of such Code (as amended by section 2653 of the Deficit Reduction Act of 1984) is further amended by redesignating subsection (g) as subsection (h), and by inserting after subsection (f) the following new subsection:

Ante, p. 1154.

"(g) TREATMENT OF PAYMENTS TO STATES.—The Secretary may provide that, for purposes of determining interest, the payment of any amount withheld under subsection (c) to a State shall be treated as a payment to the person or persons making the overpayment."

(f)(1) Section 6103(l) of such Code (as so amended) is further amended by adding at the end thereof the following new paragraph:

Ante, p. 1155

"(11) DISCLOSURE OF CERTAIN INFORMATION TO AGENCIES REQUESTING A REDUCTION UNDER SECTION 6402(c).—

Supra.

"(A) RETURN INFORMATION FROM INTERNAL REVENUE SERVICE.—The Secretary shall, upon receiving a written request, disclose to officers and employees of a State agency seeking a reduction under section 6402(c)—

"(i) the fact that a reduction has been made or has not been made under such subsection with respect to any taxpayer;

"(ii) the amount of such reduction;

"(iii) whether such taxpayer filed a joint return;

"(iv) taxpayer identity information with respect to the taxpayer against whom a reduction was made or not made and of any other person filing a joint return with such taxpayer; and

"(v) the fact that a payment was made (and the amount of the payment) on the basis of a joint return in accordance with section 464(a)(3) of the Social Security Act.

Ante, p. 1322.

"(B) RESTRICTION ON USE OF DISCLOSED INFORMATION.—Any officers and employees of an agency receiving return information under subparagraph (A) shall use such information only for the purposes of, and to the extent necessary in, establishing appropriate agency records or in the defense of any litigation or administrative procedure ensuing from a reduction made under section 6402(c)."

Supra.

Ante, p. 1155. (2) Section 6103(p)(3)(A) of such Code (as so amended) is further amended by striking out "or (10)" and inserting in lieu thereof "(10), or (11)".

Ante, p. 1155. (3) Section 6103(p)(4) of such Code (as so amended) is further amended by striking out "or (10)" and inserting in lieu thereof "(10), or (11)".

Ante, p. 1156. (4) Section 6103(p)(4)(F)(ii) of such Code (as so amended) is further amended by striking out "or (10)" and inserting in lieu thereof "(10), or (11)".

Ante, p. 1156. (5) Section 7213(a)(2) of such Code (as so amended) is further amended by striking out "or (10)" and inserting in lieu thereof "(10), or (11)".

Effective date. 26 USC 6103 note. Ante, p. 1325. (g) The amendments made by this section shall apply with respect to refunds payable under section 6402 of the Internal Revenue Code of 1954 after December 31, 1985.

WISCONSIN CHILD SUPPORT INITIATIVE

Waiver. 42 USC 602 note. 42 USC 601, 651. 42 USC 607. 42 USC 606. SEC. 22. (a)(1) If the State of Wisconsin requests the Secretary of Health and Human Services to waive the requirements of parts A and D of title IV of the Social Security Act, or to waive the requirements of part D and only those requirements of part A of such Act as relate to the provision of aid to dependent children as defined (without regard to section 407) in section 406(a) of the Social Security Act (hereafter referred to in this section as "dependent children in single-parent families"), in order to permit the State to make an adequate test in any county or counties, or throughout the State, of its Child Support Initiative, the Secretary shall waive such requirements if--

Public availability. 42 USC 601, 651. (A) the State provides a complete description, in accordance with paragraph (2), of the program known as the Initiative, which it will operate in place of the programs under such parts A and D, and makes the description readily available to the public throughout the State;

(B) the Governor provides assurances that, under the Initiative, assistance will be provided to all children in need of financial support, and the State will continue to operate an effective child support enforcement program;

Medical assistance eligibility. 42 USC 1396. 42 USC 601. (C) the State agrees that, during the conduct of such test, it will continue to determine eligibility for medical assistance under the State plan approved under title XIX of the Social Security Act, applying the criteria (insofar as may be applicable to members of families with dependent children affected by the Initiative) in effect under its State plan approved under part A of title IV for the month preceding the month in which the Initiative (approved under this section) becomes effective, except that such criteria shall be deemed to have been changed to the extent necessary to comply with generally applicable changes in Federal law or regulations occurring after the date of the enactment of this Act;

Reports. (D) the State specifies measurable performance objectives, submits an evaluation plan (including criteria for evaluating the Initiative), and agrees to submit interim and final evaluations and reports, at such time or times and containing such information, as the Secretary may require; and

Audit. Public availability. (E) the State agrees to obtain, at least once every two years, a financial and compliance audit of the funds received under this

section and to obtain, after the close of the operation of the Initiative under this section, such an audit and make it public within the State on a timely basis and provide a copy to the Secretary within 30 days after its completion.

(2) The program description provided under paragraph (1)(A) shall describe in detail how the proposed Initiative will affect children and families, with specific reference to the principles for calculating benefits and establishing and enforcing child support obligations. The description shall also include estimates of cost and program effects and provide other relevant information necessary for the Secretary to determine whether the financial well-being of children and their families will be adversely affected by the operation of the Initiative.

(b) The Child Support Initiative proposed by the State of Wisconsin as detailed in the program description submitted to the Secretary, and the related requested waivers, shall become effective within 120 days after its submission unless the Secretary determines that the financial well-being of children in the State will be adversely affected by the Initiative. The Secretary shall notify the State in writing that, effective with the beginning of the following quarter (or of such later quarter as the State may select), the State may operate its Child Support Initiative instead of its programs of aid to families with dependent children (or, if the State had so requested, instead of its program of aid to dependent children in single-parent families) and child support enforcement in such county or counties, or on a statewide basis, as the State has indicated in its request. Except as specifically provided in subsection (c), no amount will be payable for any quarter under section 403(a) (or under section 403(a) with respect to single-parent families, if the State had so requested), 455(a), or 458 of the Social Security Act with respect to such county or counties in which the Initiative is in effect.

(c)(1) For each quarter during which such program is in effect throughout the State, the Secretary will pay to the State the sum of its proportionate share (as defined in paragraph (4)(A)) of each of the following:

(A) the amount advanced by the Secretary to all the other States (as defined in section 1101(a) of the Social Security Act) for such quarter with respect to section 403(a) (1) and (2) of such Act;

(B) the amount so advanced by the Secretary with respect to section 403(a)(3) of such Act;

(C) the amount so advanced by the Secretary with respect to section 455(a) of such Act; and

(D) the amount so advanced by the Secretary with respect to section 458(a) of such Act,

reduced by so much of its proportionate share of support collections on behalf of individuals receiving aid to families with dependent children (as defined in paragraph (4)(B)) as would have been credited to the Federal Government under section 457(b) of such Act had such collections been made in the last quarter of fiscal year 1986.

(2) If in any quarter the Initiative approved under this section is in operation in fewer than all the counties in the State, the amount paid to the State with respect to the counties to which the waiver under subsection (a) applies shall equal (in lieu of the amount specified in paragraph (1)) the proportionate share with respect to the counties in which the Initiative is operated (as defined in paragraph (5)(A)) of the amount advanced to the State under the

Effective date.

42 USC 603.

Ante, pp. 1311, 1312.

42 USC 1301. 42 USC 603.

Ante, p. 1311.

Ante, p. 1312.

Ante, p. 1318.

four authorities specified in paragraph (1) with respect to all the other counties for such quarter, reduced by so much of the proportionate share of support collections (as defined in paragraph (5)(B)) with respect to the counties in which the Initiative is operated, as would have been credited to the Federal Government under section 457(b) of such Act had such collections been made in the last quarter of fiscal year 1986.

Ante, p. 1318

(3) Payment under this subsection shall be estimated by the Secretary before the beginning of each quarter during which the Initiative is in effect on the basis of the advances made under parts A and D of title IV of the Social Security Act for such quarter, and the Secretary shall make payments for such quarter on a monthly basis (with each payment made no later than the beginning of the month involved), in the amounts so estimated, and adjusted as necessary to reflect the amount of any previously made overpayment or underpayment under this section. Payment of any amount determined with respect to paragraphs (1)(A) and (1)(B) shall be made from amounts appropriated to carry out part A of title IV of the Social Security Act for the appropriate fiscal year; payment of any amount determined with respect to paragraphs (1)(C) and (1)(D) shall be made from amounts appropriated to carry out part D of title IV of the Social Security Act.

42 USC 601, 6...

(4)(A) The State's proportionate share of each amount enumerated in paragraph (1) shall be the portion of such amount that bears the same ratio to such amount as the corresponding portion advanced to the State for quarters in fiscal years 1984 through 1986 bears to the total corresponding amount advanced to all the other States for such quarters.

(B) The State's proportionate share of support collections means the amount that bears the same ratio to such collections on behalf of individuals receiving aid to families with dependent children by all the other States for the quarter involved as such collections by the State for quarters in fiscal years 1984 through 1986 bear to the total of such collections by all the other States for such quarters.

(5)(A) The proportionate share with respect to the counties in which the Initiative is operated, in the case of—

42 USC 603.

(i) the amount advanced to the State with respect to all other counties under section 403(a)(1) of the Social Security Act;

(ii) the amount so advanced under section 403(a)(3) of such Act;

Ante, p. 1311.

(iii) the amount so advanced under section 455(a) of such Act; and

Ante, p. 1312.

(iv) the amount so advanced with respect to section 458(n) of such Act,

is the sum of such amounts, each having been multiplied by the ratio of (I) the corresponding amount advanced with respect to such counties for all quarters in fiscal years 1984 through 1986 to (II) the corresponding amount advanced with respect to all the other counties in the State for all such quarters.

(B) The proportionate share of support collections for any quarter, with respect to the counties in which the Initiative is operated, means the amount that bears the same ratio to such collections on behalf of individuals receiving aid to families with dependent children with respect to all the other counties in the State for such quarter as such collections by such counties for quarters in fiscal years 1984 through 1986 bear to the total of such collections by all the other counties in the State for such quarters.

(6) If the State requests, under subsection (a), waiver of only these requirements under part A of title IV of the Social Security Act as relate to the provision of aid to dependent children in single-parent families, and continues to operate its program of aid to families with dependent children deprived by reason of the unemployment of a parent—

42 USC 601.

(A) the State's proportionate share of the amount specified in paragraph (1)(A) (and only that amount) shall be computed under paragraph (4) by application of the ratio of (i) the amount advanced to the State, under section 403(a)(1) of the Social Security Act for quarters in fiscal years 1984 through 1986 with respect to expenditures in the form of aid to dependent children in single-parent families, to (ii) the amount advanced to all the other States, under section 403(a) (1) and (2) of such Act with respect to such expenditures, rather than by application of the ratio specified in paragraph (4); and

42 USC 601.

(B) part A of title IV of such Act shall continue to apply to the State's program of aid to families with dependent children deprived by reason of the unemployment of a parent; except that section 403(a)(3) shall not apply during the period that, or in the part or parts of the State where, the Initiative is in effect.

42 USC 601.

42 USC 603.

(d)(1) The State may cease to conduct the Initiative under this section and (if it so chooses) return to the administration of its plans approved under part A and part D of title IV of the Social Security Act upon the provision of the Secretary of at least 3 months advance notice (or such greater advance notice as may be necessary so that administration of such plans will resume at the beginning of a quarter in the fiscal year).

42 USC 601, 651.

(2) The Secretary may terminate approval of the Initiative upon the giving of at least 3 months advance notice (or such greater advance notice as may be necessary as specified in paragraph (1)) to the State if it is determined that the financial well-being of children in the State (or county or counties involved) would be better achieved by the operation of programs under part A and part D of title IV of the Social Security Act.

(c) This section shall be in effect for quarters beginning after September 30, 1986, and ending before October 1, 1994.

Effective date.

SENSE OF THE CONGRESS THAT STATE AND LOCAL GOVERNMENTS SHOULD FOCUS ON THE PROBLEMS OF CHILD CUSTODY, CHILD SUPPORT, AND RELATED DOMESTIC ISSUES

SEC. 23. (a) The Congress finds that—

(1) the divorce rate in the United States has reached alarming proportions and the number of children being raised in single parent families has grown accordingly;

(2) there is a critical lack of child support enforcement, which Congress has undertaken to address through the child support enforcement program;

(3) Congress is strengthening that program to recognize the needs of all children;

(4) related domestic issues, such as visitation rights and child custody, are often intricately intertwined with the child support problem and have received inadequate consideration; and

(5) these related issues remain within the jurisdiction of State and local governments, but have a critical impact on the health and welfare of the children of the Nation.

(b) It is the sense of Congress that—

(1) State and local governments must focus on the vital issues of child support, child custody, visitation rights, and other related domestic issues that are properly within the jurisdictions of such governments;

(2) all individuals involved in the domestic relations process should recognize the seriousness of these matters to the health and welfare of our Nation's children and assign them the highest priority; and

(3) a mutual recognition of the needs of all parties involved in divorce actions will greatly enhance the health and welfare of America's children and families.

Approved August 16, 1984.

LEGISLATIVE HISTORY—H.R. 4325:

HOUSE REPORTS: No. 98-527 (Comm. on Ways and Means) and No. 98-925 (Comm. of Conference).

SENATE REPORT No. 98-387 (Comm. on Finance)

CONGRESSIONAL RECORD:

Vol. 129 (1983): Nov. 16, considered and passed House.

Vol. 130 (1984): Apr. 25, considered and passed Senate, amended.

Aug. 1, Senate agreed to conference report.

Aug. 8, House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 20, No. 33 (1984):

Aug. 16, 1984, P. presidential statement.

○

Introduced: 1/18/85
Referred: Health, Education & Social
Services, Judiciary and Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

HOUSE BILL NO. 92

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

6 For an Act entitled: "An Act relating to child and spousal support; and
7 providing for an effective date."

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

*Sec. 466 of PL 98-578
mandates each state
must permit the establishment
of parentage at any time
before child's 18th
birthday*

* Section 1. AS 09.10 is amended by adding a new section to read:

Sec. 09.10.095. ACTIONS FOR ESTABLISHMENT OF PARENTAGE. A
person may bring an action to adjudicate parentage only if it is com-
menced before the child whose parentage is at issue reaches the age of
18.

* Sec. 2. AS 09.65.132 is amended to read:

*PL 98-578 requires
income withholding--
collections be deposited &
distributed by a public
agency designated by state.
withholding must occur
without amendment of
support order, must
comply with Consumer
Credit Reporting Act. (15 USC 1673b)
must occur when support
is due one month,
diligence must have
priority over other legal
necesses amount withheld
must be current support
and arrears, requires
notice and opportunity
to contest action for
mistakes of fact, must
inform 45 days after
notice sent whether &
when withholding will
begin, must give
employer notice if amount
to be withheld, subject employer
to fine for discharging/refusing to hire/
disciplining employee, employer liable
for amount not withheld, effort for
employer minimal*

Sec. 09.65.132. INCOME WITHHOLDING [ASSIGNMENT] ORDER FOR CHILD
SUPPORT. (a) A judgment, court order, or order of the child support
enforcement agency (AS 47.23) providing for the support of a minor
child must [SHALL] contain an income withholding [ASSIGNMENT] order.

(b) An income withholding [ASSIGNMENT] order must [SHALL] direct
the obligor, the obligor's employer, future employer, and any person,
political subdivision, or department of the state to withhold [ASSIGN]
money due or to be due the obligor and pay the money to the [OBLIGEE
OR, WHERE THE ORDER IS ISSUED TO THE CHILD SUPPORT ENFORCEMENT AGENCY
(AS 47.23) OR COLLECTIONS ARE BEING MADE THROUGH THE CHILD SUPPORT EN-
FORCEMENT AGENCY, TO THAT] agency, in an amount determined under (h)
of this section [SUFFICIENT TO MEET THE SUPPORT PAYMENTS IMPOSED BY
THE COURT OR BY THE CHILD SUPPORT ENFORCEMENT AGENCY UNDER AS 47.23.-
140].

(c) The agency, on behalf of an [AN] obligee or person or public

1 agency designated to receive support payments, may request an income
2 withholding [ASSIGNMENT] order to take effect by alleging in a sworn
3 statement that the obligor is in arrears in an amount at least equal
4 to the support payable for one month [HAS FAILED TO MAKE A SUPPORT
5 PAYMENT IN FULL WITHIN 45 DAYS OF THE DATE THE PAYMENT WAS DUE] and by
6 filing that statement with the court.

7 (d) If an application is [HAS BEEN] filed with the clerk of
8 court, the obligor must be served with notice, in the manner provided
9 by Rule 5 of the Rules of Civil Procedure, on [SHALL BE SENT BY CER-
10 TIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE LAST KNOWN ADDRESS OF
11 THE OBLIGOR. THE NOTICE SHALL BE POSTMARKED NO LATER THAN 10 DAYS
12 AFTER] the date on which the application is [WAS] filed. The notice
13 must [AND SHALL] inform the obligor that the income withholding order
14 [ASSIGNMENT] will take effect 15 days after the date on which the
15 notice was served [RECEIVED] unless the obligor requests a hearing
16 within 15 days after the notice was served [SENT]. If the obligor
17 request: a hearing, an income withholding order [ASSIGNMENT] may not
18 take effect until the conclusion of the hearing. The court shall hold
19 a hearing requested under this section within 15 days after the date
20 the obligor requests the hearing, to determine if there are any mis-
21 takes of fact which would make the withholding order improper or if
22 the amount to be withheld is incorrect. Notice of the withholding
23 decision must be sent to the obligor within 45 days after the notice
24 of proposed withholding. [IF THE OBLIGOR PAYS ALL SUPPORT PAYMENTS DUE
25 BEFORE THE HEARING, AN INCOME ASSIGNMENT ORDER MAY NOT TAKE EFFECT.]

26 (e) The obligee or person or public agency that requested the
27 income withholding [ASSIGNMENT] order shall immediately send a copy of
28 the income withholding [ASSIGNMENT] order by certified mail to persons
29 who may owe money to an obligor. An income withholding [ASSIGNMENT]

1 order made under this section is binding upon a person, employer,
2 political subdivision, or department of the state immediately upon
3 receipt of a copy of the income withholding [ASSIGNMENT] order. The
4 employer must begin withholding the specified amount from the employ-
5 ee's wages no later than the first pay period that occurs 14 days
6 after the mailing date on the notice. The amount withheld must be
7 sent to the agency.

8 (f) An employer may not discharge, discipline, or refuse to
9 employ an obligor on the basis of an income withholding order [ASSIGN-
10 MENT] under this section. If an employer discharges, disciplines, or

11 refuses to employ an obligor because of an income withholding obliga-
12 tion, the court, after notice and hearing, may order reinstatement or
13 restitution to the obligor, or both. A person who violates this
14 subsection or a regulation adopted to implement it, is guilty of a
15 misdemeanor and, upon conviction, is punishable by a fine of not more
16 than \$1,000.

17 (g) An income withholding order [ASSIGNMENT] under this section
18 has priority over all other attachments, executions, garnishments, or
19 other legal process brought under state law against the same wages
20 [ASSIGNMENTS UNLESS OTHERWISE ORDERED BY THE COURT]. An income with-
21 holding order [ASSIGNMENT] is not limited to the wages of an obligor
22 but may include all money owed to the obligor not otherwise exempt by
23 law. Exemptions under AS 09.38 do not apply to income assignments
24 under this section[; HOWEVER, 50 PERCENT OF THE OBLIGOR'S NET DISPOS-
25 ABLE EARNINGS IS EXEMPT FROM EXECUTION UNDER THIS SECTION. IN THIS
26 SUBSECTION, "NET DISPOSABLE EARNINGS" HAS THE MEANING GIVEN IN
27 15 U.S.C. 1672].

28 (h) The amount withheld from the obligor's wages must be equal
29 to the current support obligation, up to the limits of 15 U.S.C. sec.

1 1673(u). If the current support payment does not equal the limits of
2 15 U.S.C. sec. 1673(b), an additional amount may be withheld toward
3 *reg'd.* any arrearages. The combined total amount withheld for current sup-
4 port and arrearages may not exceed the limits of 15 U.S.C. sec.
5 1673(b).

6 (i) An obligor may petition the court to terminate the with-
7 holding of income upon good cause shown, such as the emancipation of a
8 *reg'd.* child for whom support is paid, the lack of contact by the agency with
9 the obligee, or the timely payment history of an obligor for a three-
10 year period.

11 (j) The court may order an obligor to pay all court [COURTS]
12 costs involved in an income withholding [ASSIGNMENT] proceeding under
13 this section.

14 * Sec. 3. AS 25.20.050 is amended by adding a new subsection to read:

15 *See section 1* (e) An action to adjudicate parentage must be permitted to be
16 initiated until the child whose parentage is at issue reaches age 18.

17 * Sec. 4. AS 25 is amended by adding a new chapter to read:

18 *must have withholding* Chapter 26. INTERSTATE INCOME WITHHOLDING ACT.

19 *for interstate cases -* Sec. 25.26.010. PURPOSE. The purpose of this chapter is to

20 *this chapter modelled* enhance the enforcement of support obligations (1) by providing a

21 *after ABA legislation* quick and effective procedure for the withholding of income derived in

22 this jurisdiction to enforce support orders of other jurisdictions,

23 and (2) by requiring that income withholding, to enforce the support

24 orders of this jurisdiction, be sought in other jurisdictions. This

25 chapter must be construed liberally to effect that purpose.

26 Sec. 25.26.020. INITIATION OF INCOME WITHHOLDING AND COOPERATION

27 WITH OTHER JURISDICTIONS. On behalf of a client, or on application of

28 a resident obligee or obligor of a support order issued by this state,

29 or by an agency to whom the obligee has assigned support rights, the

1 Alaska child support enforcement agency shall request the agency of
2 another jurisdiction in which the obligor derives income to obtain an
3 income withholding order. The Alaska agency shall compile and trans-
4 mit to the agency of the other jurisdiction all documentation required
5 to enter a support order for this purpose. The Alaska agency also
6 shall transmit to the agency of the other jurisdiction a certified
7 copy of any subsequent modifications of the support order. If the
8 Alaska agency receives notice that the obligor is contesting income
9 withholding in another jurisdiction, it shall promptly notify the
10 individual obligee of the date, time, and place of the hearings and of
11 the obligee's right to attend.

12 Sec. 25.26.030. RESPONSIBILITIES FOR ENTERING A SUPPORT ORDER OF
13 ANOTHER JURISDICTION FOR PURPOSES OF INCOME WITHHOLDING. (a) Upon
14 receiving from an agency of another jurisdiction a support order of
15 another jurisdiction, along with the documentation specified in (b) of
16 this section, the Alaska agency shall file the documents with the
17 clerk of the court in which withholding is being sought. The clerk of
18 the court shall accept the documents filed. The acceptance consti-
19 tutes entry of the support order under this chapter.

20 (b) The following documentation is required for the entry of a
21 support order of another jurisdiction:

22 (1) a certified copy of the support order with all modi-
23 fications;

24 (2) a certified copy of an income withholding order, if
25 any, still in effect;

26 (3) a copy of the portion of the income withholding statute
27 of the jurisdiction which issued the support order, which states the
28 requirements for obtaining income withholding under the laws of that
29 jurisdiction;

1 (4) a sworn statement of the obligee or certified statement
2 of the agency of the arrearages and the assignment of support rights,
3 if any;

4 (5) a statement of

5 (A) the name, address, and social security number of
6 the obligor, if known;

7 (B) the name and address of the obligor's employer or
8 of any other source of income of the obligor derived in this
9 state against which income withholding is sought;

10 (C) the name and address of the agency or person to
11 whom support payments collected by income withholding must be
12 transmitted.

13 (c) If the documentation received by the agency under (a) of
14 this section does not conform to the requirements of (b) of this
15 section, the agency shall remedy any defect that it can without the
16 assistance of the requesting agency or person. If the agency is
17 unable to make such corrections, the requesting agency or person must
18 immediately be notified of the necessary additions or corrections. In
19 neither case may the documentation be returned. The agency shall file
20 with the court the documentation required by (a) and (b) of this
21 section even if it is not in the usual form required by the laws or
22 court rules of this state, so long as the substantive requirements of
23 this section are met.

24 (d) A support order entered under (a) of this section is en-
25 forceable by an income withholding order against income derived in
26 this state, in the manner and with the effect set out in AS 25.26.040
27 -- 25.26.100 and AS 09.65.132. Entry of the order does not confer
28 jurisdiction on the courts or agencies of this state for any purpose
29 other than income withholding.

1 Sec. 25.26.040. NOTICE. (a) On the date that a support order
2 is entered under AS 25.26.030, the agency shall serve upon the
3 obligor, in accordance with AS 09.65.132(d), notice of a proposed
4 income withholding. That notice must contain the same information
5 required by AS 09.65.132(d). The notice must also advise the obligor
6 that the income withholding was requested on the basis of a support
7 order of another jurisdiction.

8 (b) If the obligor seeks a hearing to contest the proposed
9 income withholding, the agency shall immediately notify the requesting
10 agency, the obligee, the obligor, or an attorney for either, of
11 the date, time, and place of the hearing, and of the obligee's right
12 to attend the hearing.

13 Sec. 25.26.050. INCOME WITHHOLDING HEARING. (a) At a hearing
14 contesting proposed income withholding based on a support order en-
15 tered under AS 25.26.050, the entered order, accompanying sworn or
16 certified statement, and a certified copy of an income withholding
17 order, if any, still in effect, constitute prima facie proof, without
18 further proof or foundation, that (1) the support order is valid; (2)
19 the amount of current support payments and arrearages is as stated;
20 and (3) the obligee would be entitled to income withholding under the
21 laws of the jurisdiction that issued the support order.

22 (b) Once a prima facie case has been established, the obligor
23 may raise only the following, with the burden on the obligor to estab-
24 lish the defenses:

25 (1) that withholding is not proper because of a mistake of
26 fact that is not res judicata concerning such matters as an error in
27 the amount of current support owed or arrearage that had accrued;
28 mistaken identity of the obligor; or error in the amount of income to
29 be withheld;

1 (2) that the court or agency that issued the support order
2 entered under this chapter lacked personal jurisdiction over the
3 obligor;

4 (3) that the support order entered under this chapter was
5 obtained by fraud; or

6 (4) that the statute of limitations precludes enforcement
7 of all or part of the arrearages.

8 (c) If the obligor presents evidence that constitutes a full or
9 partial defense, the court shall, on the request of the obligee,
10 continue the case to permit further evidence relative to the defense
11 to be adduced by either party. However, if the obligor acknowledges
12 liability sufficient to entitle the obligee to income withholding, the
13 court shall require income withholding for the payment of the current
14 support obligation under the support order and of so much of any
15 arrearages as is not in dispute, while continuing the case with re-
16 spect to those matters still in dispute. The court shall determine
17 those matters still in dispute as soon as possible, and, if appropri-
18 ate, shall modify the withholding order to conform to that resolution.

19 (d) In addition to other procedural devices available to a
20 party, any party to the proceeding, or a guardian ad litem or other
21 representative of the child, may adduce testimony of witnesses in
22 another state, including the parties, and of any of the children, by
23 deposition, written discovery, photographic discovery such as vid-
24 eotaped depositions, or personal appearance before the court by tele-
25 phone or photographic means. The court, on its own motion, may direct
26 that the testimony of a person be taken in another state and may
27 prescribe the manner in which and the terms upon which the testimony
28 is to be taken.

29 (e) A court of this state may request the appropriate court or

1 agency of another state to hold a hearing to adduce evidence, to
2 permit a deposition to be taken to order a party to produce or give
3 evidence under other procedures of that state, and to forward to the
4 court of this state certified copies of the evidence adduced in com-
5 pliance with the request.

6 (f) Upon request of a court or agency of another state the
7 courts of this state, which are competent to hear support matters, may
8 order a person in this state to appear at a hearing or deposition
9 before the court to adduce evidence or to produce or give evidence
10 under other procedures available in this state. A certified copy of
11 the evidence adduced, such as a transcript or videotape, must be
12 forwarded by the clerk of the court to the requesting court or agency.

13 (g) A person within this state may voluntarily testify by state-
14 ment or affidavit in this state for use in a proceeding to obtain
15 income withholding outside this state.

16 Sec. 25.26.060. INCOME WITHHOLDING ORDER. If the obligor does
17 not request a hearing in the time provided, or if a hearing is held
18 and it is determined that the obligee has or is entitled to income
19 withholding under the local law of the jurisdiction that issued the
20 support order, the court shall issue an income withholding order under
21 AS 09.65.132. The agency shall notify the requesting agency or person
22 of the date upon which withholding will begin.

23 Sec. 25.26.070. NOTICE TO EMPLOYER AND OTHER PROVISIONS. The
24 provisions of AS 09.65.132 apply to income withholding based on a
25 support order of another jurisdiction entered under this chapter.

26 Sec. 25.26.080. DISTRIBUTION OF COLLECTED SUPPORT PAYMENTS. (a)
27 The income withholding order must direct payment to be made to the
28 agency. The agency shall transmit to the agency or person designated
29 in AS 25.26.030(b)(5)(C) payments received under an income withholding

1 order that is based on a support order of another jurisdiction entered
2 under this chapter.

3 (b) A support order entered under AS 25.26.030 does not nullify,
4 and is not nullified by, a support order made by a court of this state
5 under any other law, or a support order made by a court of any other
6 state. Amounts collected by withholding of income must be credited
7 against the amounts accruing or accrued for any period under a support
8 order issued by either this state or another state.

9 Sec. 25.26.090. CHANGES IN ORIGINAL ORDER. The agency, upon
10 receiving a certified copy of an amendment or modification to a sup-
11 port order entered under AS 25.26.030, shall initiate, as though the
12 order were a support order of this state, necessary procedures to
13 amend or modify the income withholding order of this state which was
14 based upon the entered support order. The court shall amend or modify
15 the income withholding order to conform to the modified support order.

16 Sec. 25.26.100. CHANGES IN JURISDICTION. If the agency deter-
17 mines that the obligor has obtained employment in another state or has
18 a new or additional source of income in another state, it shall
19 promptly notify the agency that requested the income withholding of
20 the changes, and shall forward to that agency all information it has
21 or can obtain with respect to the obligor's new address and the name
22 and address of the obligor's new employer or other source of income.
23 The agency shall include with the notice a certified copy of the
24 income withholding order in effect in this state.

25 Sec. 25.26.110. VOLUNTARY INCOME WITHHOLDING. A person who is
26 the obligor on a support order of another jurisdiction may obtain
27 voluntary income withholding by filing with the agency a request for
28 the withholding and a certified copy of the support order of the other
29 jurisdiction. The court shall issue an income withholding order under

1 AS 09.65.132. Payment must be made to the agency.

2 Sec. 25.26.120. CHOICE OF LAW. (a) The law of this state
3 applies in all actions and proceedings concerning the issuance, en-
4 forcement, and duration of income withholding orders issued by a court
5 of this state, based upon a support order of another jurisdiction
6 entered under AS 25.26.030, except as provided in (b) of this section.

7 (b) The law of the jurisdiction that issued the support order
8 governs the following:

9 (1) the interpretation of the support order entered under
10 AS 25.26.030, including amount, form of payment, and the duration of
11 support;

12 (2) the amount of support arrearages necessary to require
13 the issuance of an income withholding order.

14 Sec. 25.26.130. ADDITIONAL REMEDIES. The remedy provided in
15 this chapter is in addition to, and not in substitution for, any other
16 remedy otherwise available to enforce a support order of another
17 jurisdiction. Relief under this chapter may not be denied, delayed,
18 or otherwise affected because of the availability of other remedies,
19 nor may relief under any other statute be delayed or denied because of
20 the availability of the remedy in this chapter.

21 Sec. 25.26.200. DEFINITIONS. In this chapter,

22 (1) "agency" means the child support enforcement agency of
23 the Alaska Department of Revenue (AS 47.23) and, when the context
24 requires, means either a court or an administrative unit of another
25 jurisdiction with functions similar to those described in this chap-
26 ter, including the issuance and enforcement of support orders;

27 (2) "child" means a person, whether above or below the age
28 of majority, with respect to whom a support order exists;

29 (3) "court" means the superior court of this state and,

1 when the context requires, means either a court or an agency of another
2 jurisdiction with functions similar to those described in this
3 chapter, including the issuance and enforcement of support orders;

4 (4) "employer" means a payor of income;

5 (5) "income" means all money owed to an obligor, including
6 wages, that is not otherwise exempt by law;

7 (6) "income derived in this jurisdiction" means income, the
8 payor of which is subject to the jurisdiction of this state for the
9 purpose of imposing and enforcing income withholding under AS 09.-
10 65.132;

11 (7) "jurisdiction" means a state or political subdivision,
12 territory, or possession of the United States, the District of
13 Columbia, and the Commonwealth of Puerto Rico;

14 (8) "obligee" means a person or entity entitled to receive
15 support under an order of support; the term includes an agency of
16 another jurisdiction to which a person has assigned his or her right
17 of support;

18 (9) "obligor" means a person required to make payments
19 under the terms of a support order for a child, spouse, or former
20 spouse;

21 (10) "support order" means an order, decree, or judgment
22 for the support, or for the payment of arrearages on the support, of a
23 child, spouse, or former spouse, issued by a court or agency of another
24 jurisdiction, whether interlocutory or final, whether prospectively
25 or retroactively modifiable, and whether incidental to a proceeding
26 for divorce, judicial or legal separation, separate maintenance,
27 paternity, guardianship, civil protection, or other proceeding.

28 PL 98-395* Sec. 5. AS 47.23.020(a) is amended to read:

29 *must enforce*
Personal support (a) The agency shall
when child support administered,
HB 92 *must obtain medical support order*
where reasonable costs, must enforce
withholding in statute

- 1 (1) obtain, enforce, and administer child support orders of
2 the superior courts of the state;
- 3 (2) adopt regulations to carry out the purpose of this
4 chapter, including regulations that [WHICH] establish
- 5 (A) schedules for determining the amount an obligor is
6 liable to contribute toward the support of an obligee under this
7 chapter and under 42 U.S.C. 651 -- 665 (Title IV-D, Social Secu-
8 rity Act);
- 9 (B) procedures for hearings conducted under AS 47.23.-
10 170; and
- 11 (C) subject to AS 47.23.025 and to federal law, a
12 uniform schedule of penalties and a rate of interest on arrear-
13 ages of support that must [SHALL] be charged the obligor upon
14 notice if child support payments are 10 or more days overdue or
15 if payment is made by a check backed by insufficient funds;
- 16 (3) administer and enforce the Uniform Reciprocal Enforce-
17 ment of Support Act (AS 25.25);
- 18 (4) establish, enforce, and administer child support obli-
19 gations administratively in accordance with this chapter;
- 20 (5) administer the state plan required under 42 U.S.C. 651
21 -- 665 (Title IV-D, Social Security Act) as amended;
- 22 (6) disburse child support payments collected by the agency
23 to the obligee together with interest charged under (2)(C) of this
24 subsection; [AND]
- 25 (7) deposit penalties charged under (2)(C) of this sub-
26 section in the general fund;
- 27 (8) administer and enforce the Interstate Income Withhold-
28 ing Act (AS 25.26);
- 29 (9) enforce and administer spousal support orders only if a

1 spousal support obligation has been established with respect to the
2 spouse and if the support obligation established with respect to the
3 child of that spouse is also being administered; and

4 (10) obtain medical support orders as part of a child sup-
5 port order if health care coverage is available to the obligor at a
6 reasonable cost.

7 * Sec. 6. AS 47.23.025 is amended to read:

8 ^{PL 98-378:} Sec. 47.23.025. RATES OF PENALTY AND INTEREST. A penalty im-
9 ^{may impose} ^{penalty, not to} ^{exceed} posed under AS 47.23.020(a)(2)(C) must be 6 percent [MAY NOT BE AT A
10 ^{6%} RATE THAT EXCEEDS THE RATE OF INTEREST IMPOSED ON DELINQUENT TAXES
11 UNDER AS 43.05.225]. The rate of interest imposed under AS 47.23.-
12 020(a)(2)(C) must [SHALL] equal the rate imposed under AS 43.05.225 or
13 a lesser rate that is the maximum rate of interest permitted to be
14 imposed under federal law.

15 * Sec. 7. AS 47.23.045 is amended to read:

16 ^{Am'd PL 98-378} Sec. 47.23.045. DETERMINATION OF SUPPORT OBLIGATION. The agency
17 may appear in an action seeking an award of support on [IN] behalf of
18 a child owed a duty of support, or to enforce a spousal support order
19 if a spousal support obligation has been established and if the sup-
20 port obligation, established with respect to a child of that spouse,
21 is also being administered, and may also appear in an action seeking
22 modification of a support order, decree or judgment already entered.
23 Action under this section may be undertaken upon application of an
24 obligee, or at the agency's own discretion if the obligor is liable to
25 the state under AS 47.23.120(a) or (b).

26 * Sec. 8. AS 47.23.060(c) is amended to read:

27 ^{Am'd PL 98-378} (c) In a court proceeding where the support of a minor child is
28 at issue, the court may order either or both parents to pay the amount
29 necessary for support, maintenance, nurture, and education of the

1 child. The court shall issue a medical support order as part of a
2 child support order if health care coverage is available to the
3 obligor at a reasonable cost. Upon a showing of good cause the court
4 may order the parents required to pay support to give reasonable
5 security for payments. An order for prospective child support may be
6 modified or revoked as the court considers necessary.

7 * Sec. 9. AS 47.23.150(a) is amended to read:

8 *corrects oversight in* (a) Action to enforce a support order administratively under
9 *Ch. 144 SLA 1984* AS 47.23.230 -- 47.23.270 is initiated by the agency serving a notice
10 *when* on the obligor of the obligor's liability under the support order.
11 *AS 47.23.265 enacted* [NOTICE UNDER THIS SUBSECTION SHALL BE SERVED PERSONALLY OR BY REGIS-
12 *which sets out general notice provisions in all of* TERED, CERTIFIED, OR INSURED MAIL, RETURN RECEIPT REQUESTED, FOR
13 *47.23* RESTRICTED DELIVERY ONLY TO THE PERSON TO WHOM THE NOTICE IS DIRECTED
14 OR TO THE PERSON AUTHORIZED UNDER FEDERAL REGULATION TO RECEIVE THAT
15 PERSON'S RESTRICTED DELIVERY MAIL.]

16 * Section 10. AS 47.23.226 is amended to read:

17 *notice changes not* Sec. 47.23.226. ACTION TO COLLECT CHILD SUPPORT. To commence an
18 *revised by PL 96-378* action to collect the payment due, the custodian of a child, or the
19 agency on behalf of that person, shall file with the court (1) a
20 petition requesting establishment of a judgment; (2) an affidavit that
21 states that one or more payments of child support are 30 or more days
22 past due and that specifies the amounts past due and the dates they
23 became past due; and (3) notice of the obligor's right to respond.
24 Service on the obligor must [SHALL] be in the manner provided in
25 AS 47.23.265 [BY THE RULES OF CIVIL PROCEDURE FOR SERVICE OF SUMMONS
26 IN A CIVIL ACTION]. The child's custodian, or the agency on behalf of
27 the custodian, shall file with the court proof of service of the
28 petition, affidavit, and notice. The obligor shall respond no later
29 than 15 days after service by filing an affidavit with the court. If

1 the obligor's affidavit states that the obligor has paid any of the
2 amounts claimed to be delinquent, describes in detail the method of
3 payment or offers any other defense to the petition, then the obligor
4 is entitled to a hearing. After the hearing, if any, the court shall
5 enter a judgment for the amount of money owed. If the obligor does
6 not file an affidavit under this section, the court shall enter a
7 default judgment against the obligor.

8 * Sec. 11 AS 47.23.250(i) is amended to read:
9 *As amended by PL 98-378*
10 *Execution* (i) Exemptions under AS 09.38 do not apply to proceedings to
11 *sections* enforce the payment of child support under AS 47.23.230 -- 47.23.270;
12 *where 50% exempt* however, 50 percent of the obligor's net disposable earnings is exempt
13 *Diminishes* from execution under AS 47.23.230 -- 47.23.253 [47.23.270]. In this
14 *withholding orders which will now be subject to* subsection, "net disposable earnings" has the meaning given in 15
15 *15 USC 1673(b)* U.S.C. 1672.

15 * Sec. 12. AS 47.23.255 is amended to read:
16 *Simply changes language of* Sec. 47.23.255. INCOME WITHHOLDING [ASSIGNMENT] ORDERS. (a) The
17 *assignment* agency shall pay the obligee all money recovered by the agency under
18 *to withholding or other* an income withholding [ASSIGNMENT] order except for costs that are
19 *legal drafting changes* recovered from the obligor.
20 *shall format* (b) Notwithstanding AS 47.23.250, an income withholding [ASSIGN-
21 MENT] order contained in a decision of the agency that has not been
22 set aside by the superior court under AS 47.23.220 must [SHALL] be
23 enforced under the procedure established in AS 09.65.132.

24 * Sec. 13. AS 47.23.260 is amended to read:
25 *also simple language change* Sec. 47.23.260. CIVIL LIABILITY UPON FAILURE TO COMPLY WITH AN
26 ORDER OR LIEN. If any person, political subdivision, or department of
27 the state (1) fails to make an answer to an order to withhold and
28 deliver within the time prescribed in AS 47.23.250; (2) fails or
29 refuses to deliver property in accordance with an order issued under

1 AS 47.23.250; (3) pays over, releases, sells, transfers, or conveys
2 real property subject to a lien filed under AS 47.23.230 to or for the
3 benefit of the obligor or any other person; (4) fails or refuses to
4 surrender upon demand property attached; (5) fails or refuses to honor
5 an assignment of wages or an income withholding [ASSIGNMENT] order
6 under AS 09.65.132 presented by the agency, the person, political
7 subdivision, or department of the state is liable to the agency in an
8 amount equal to 100 percent of the amount constituting the basis of
9 the lien, order to withhold and deliver, attachment, or withholding
10 [ASSIGNMENT] of wages or income, together with costs, interest, and
11 reasonable attorney fees.

12 * Sec. 14. AS 47.23.265(a) is amended to read:

13 *notice* (a) Except as otherwise provided under this chapter, when a
changes not
14 *reg'd by* notice, paper, or other document is required by this chapter to be
PL 98-378
15 given or served upon a person by the agency, the notice, paper, or
16 other document may be served as required by Rule 5, Alaska Rules of
17 Civil Procedure [SENT BY REGISTERED OR CERTIFIED MAIL TO THE LAST
18 KNOWN ADDRESS OF THAT PERSON]. [SERVICE BY MAIL UNDER THIS CHAPTER IS
19 EFFECTED WHEN THE NOTICE, PAPER, OR OTHER DOCUMENT IS PROPERLY AD-
20 DRESSED REGISTERED OR CERTIFIED, AND MAILED.]

21 * Sec. 15. This Act takes effect immediately in accordance with AS 01.-
22 10.070(c).

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600
465-3603

January 31, 1985

The Honorable Max Gruenberg
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: HB 92 Child and Spousal
Support

Dear Representative Gruenberg:

Holli Ploog asked me to send you the material you requested during the public hearing on HB 92. I have enclosed a copy of the Revised Uniform Reciprocal Enforcement of Support Act (1968), */ as well as copies of 15 U.S.C. 1673 and the Model Interstate Income Withholding Act (with commentary).

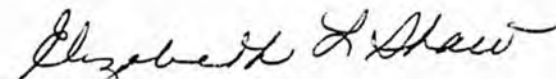
The Department of Law has no proposed amendments to the statutes which control establishment or enforcement of interstate or intrastate child support actions.

By tomorrow I plan to have completed a response to your question regarding due process notice requirement.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:


Elizabeth L. Shaw
Assistant Attorney General

ELS:bap
Enclosure
cc: Holli Ploog

*/ In a quick comparison of our statutes and the Revised Uniform Reciprocal Enforcement of Support Act, I highlighted the areas of difference which I spotted.

Appendix A
REVISED UNIFORM RECIPROCAL
ENFORCEMENT
OF SUPPORT ACT (1968)

Drafted by the
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS SEVENTY-SEVENTH YEAR
AT PHILADELPHIA, PENNSYLVANIA
JULY 22—AUGUST 1, 1968

APPROVED BY THE AMERICAN BAR ASSOCIATION AT ITS
MEETING AT PHILADELPHIA, PENNSYLVANIA
AUGUST 7, 1968

The Committee which acted for the National Conference of Commissioners on Uniform State Laws in preparing the Revised Uniform Reciprocal Enforcement of Support Act was as follows:

W. J. BROCKELBANK, 203 South Polk Street, Moscow, Idaho 83843, *Chairman*

BOYD M. BENSON, 76 Third Street, S.W., The National Bank of South Dakota Building, Huron, South Dakota 57350

WILLIAM S. BURRAGE, 3 Court Square, Middlebury, Vermont 05753

LOWRY N. COE, 8400 Wisconsin Avenue, Bethesda, Maryland 20014

FRED T. HANSON, 316 Norris Avenue, McCook, Nebraska
69001

EUGENE A. BURDICK, P.O. Box 757, Williston, North Dakota
58801, *Chairman of Section F*

PART I—*General Provisions*

SECTION 1. [*Purposes.*] The purposes of this Act are to improve and extend by reciprocal legislation the enforcement of duties of support.

SECTION 2. [*Definitions.*]

(a) "Court" means the [here insert name] court of this State and when the context requires means the court of any other state as defined in a substantially similar reciprocal law.

(b) "Duty of support" means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court, whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid.

(c) "Governor" includes any person performing the functions of Governor or the executive authority of any state covered by this Act.

(d) "Initiating state" means a state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "Initiating court" means the court in which a proceeding is commenced.

(e) "Law" includes both common and statutory law.

(f) "Obligee" means a person including a state or political subdivision to whom a duty of support is owed or a person including a state or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(g) "Obligor" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

(h) "Prosecuting attorney" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(i) "Register" means to [record] [file] in the Registry of Foreign Support Orders.

(j) "Registering court" means any court of this State in which a support order of a rendering state is registered.

(k) "Rendering state" means a state in which the court has issued a support order for which registration is sought or granted in the court of another state.

(l) "Responding state" means a state in which any responsive proceeding pursuant to the proceeding in the initiating state is commenced. "Responding court" means the court in which the responsive proceeding is commenced.

(m) "State" includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

(n) "Support order" means any judgment, decree, or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

SECTION 3. [*Remedies Additional to Those Now Existing.*] The remedies herein provided are in addition to and not in substitution for any other remedies.

SECTION 4. [*Extent of Duties of Support.*] Duties of support arising under the law of this State, when applicable under section 7, bind the obligor present in this State regardless of the presence or residence of the obligee.

PART II—*Criminal Enforcement*

SECTION 5. [*Interstate Rendition.*] The Governor of this State may

(1) demand of the Governor of another state the surrender of a person found in that state who is charged criminally in this State with failing to provide for the support of any person; or

(2) surrender on demand by the Governor of another state a person found in this State who is charged criminally in that state with failing to provide for the support of any person. Provisions for extradition of criminals not inconsistent with this Act apply to the demand even if the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and has not fled therefrom. The demand, the oath, and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding state.

SECTION 6. [*Conditions of Interstate Rendition.*]

(a) Before making the demand upon the Governor of another state for the surrender of a person charged criminally in this State with failing to provide for the support of a person, the Governor of this State may require any prosecuting attorney of this State to satisfy him that at least [60] days prior thereto the obligee initiated proceedings for support under this Act or that any proceeding would be of no avail.

(b) If, under a substantially similar Act, the Governor of another state makes a demand upon the Governor of this State for the surrender of a person charged criminally in that state with failure to provide for the support of a person, the Governor may require any prosecuting attorney to investigate the demand and to report to him whether

proceedings for support have been initiated or would be effective. If it appears to the Governor that a proceeding would be effective but has not been initiated he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If proceedings have been initiated and the person demanded has prevailed therein the Governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

PART III—*Civil Enforcement*

SECTION 7. [*Choice of Law.*] Duties of support applicable under this Act are those imposed under the laws of any state where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

SECTION 8. [*Remedies of State or Political Subdivision Furnishing Support.*] If a state or a political subdivision furnishes support to an individual obligee it has the same right to initiate a proceeding under this Act as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

SECTION 9. [*How Duties of Support Enforced.*] All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this Act including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

SECTION 10. [*Jurisdiction.*] Jurisdiction of any proceeding under this Act is vested in the [here insert title of court desired].

SECTION 11. [*Contents and Filing of [Petition] for Support; Venue.*]

(a) The [petition] shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought, and all other pertinent information. The obligee may include in or attach to the [petition] any information which may help in locating or identifying the obligor including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his Social Security number.

(b) The [petition] may be filed in the appropriate court of any state in which the obligee resides. The court shall not decline or refuse to accept and forward the [petition] on the ground that it should be filed with some other court of this or any other state where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

SECTION 12. [*Officials to Represent Obligee.*] If this State is acting as an initiating state the prosecuting attorney upon the request of the court [a state department of welfare, a county commissioner, an overseer of the poor, or other local welfare officer] shall represent the obligee in any proceeding under this Act. [If the prosecuting attorney neglects or refuses to represent the obligee the [Attorney General] may order him to comply with the request of the court or may undertake the representation.] [If the

prosecuting attorney neglects or refuses to represent the obligee, the [Attorney General] [State Director of Public Welfare] may undertake the representation.]

SECTION 13. [*Petition for a Minor.*] A [petition] on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

SECTION 14. [*Duty of Initiating Court.*] If the initiating court finds that the [petition] sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding state may obtain jurisdiction of the obligor or his property it shall so certify and cause 3 copies of the [petition] and its certificate and one copy of this Act to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating state. If the name and address of the responding court is unknown and the responding state has an information agency comparable to that established in the initiating state it shall cause the copies to be sent to the state information agency or other proper official of the responding state, with a request that the agency or official forward them to the proper court and that the court of the responding state acknowledge their receipt to the initiating court.

SECTION 15. [*Costs and Fees.*] An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs requested by the initiating court and incurred in this State when acting as a responding state, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor,

be paid in whole or in part by the obligor or by the [state or political subdivision thereof]. These costs or fees do not have priority over amounts due to the obligee.

SECTION 16. [*Jurisdiction by Arrest.*] If the court of this State believes that the obligor may flee it may

(1) as an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

(2) as a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

SECTION 17. [*State Information Agency.*]

(a) The [Attorney General's Office, State Attorney's Office, Welfare Department or other Information Agency] is designated as the state information agency under this Act, it shall

(1) compile a list of the courts and their addresses in this State having jurisdiction under this Act and transmit it to the state information agency of every other state which has adopted this or a substantially similar Act. Upon the adjournment of each session of the [legislature] the agency shall distribute copies of any amendments to the Act and a statement of their effective date to all other state information agencies;

(2) maintain a register of lists of courts received from other states and transmit copies thereof promptly to every court in this state having jurisdiction under this Act; and

(3) forward to the court in this State which has jurisdiction over the obligor or his property petitions, certificates and copies of the Act it receives from courts or information agencies of other states.

(b) If the state information agency does not know the location of the obligor or his property in the state and no state location service is available it shall use all means at its disposal to obtain this information, including the examination of official records in the state and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices both state and federal where such offices are able to cooperate, and requests made to the Social Security Administration as permitted by the Social Security Act as amended.

(c) After the deposit of 3 copies of the [petition] and certificate and one copy of the Act of the initiating state with the clerk of the appropriate court, if the state information agency knows or believes that the prosecuting attorney is not prosecuting the case diligently it shall inform the [Attorney General] [State Director of Public Welfare], who may undertake the representation.

SECTION 18. [*Duty of the Court and Officials of This State as Responding State.*]

(a) After the responding court receives copies of the [petition], certificate, and Act from the initiating court the clerk of the court shall docket the case and notify the prosecuting attorney of his action.

(b) The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this State to enable the court to obtain jurisdiction over the obligor or his property and shall request the court [clerk of the court] to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

(c) [If the prosecuting attorney neglects or refuses to represent the obligee the [Attorney General] may order him

to comply with the request of the court or may undertake the representation.] [If the prosecuting attorney neglects or refuses to represent the obligee, the [Attorney General] [State Director of Public Welfare] may undertake the representation.]

SECTION 19. [Further Duties of Court and Officials in the Responding State.]

(a) The prosecuting attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the [petition] or otherwise the court cannot obtain jurisdiction the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended [petition] from the initiating court.

(b) If the obligor or his property is not found in the [county], and the prosecuting attorney discovers that the obligor or his property may be found in another [county] of this State or in another state he shall so inform the court. Thereupon the clerk of the court shall forward the documents received from the court in the initiating state to a court in the other [county] or to a court in the other state or to the information agency or other proper official of the other state with a request that the documents be forwarded to the proper court. All powers and duties provided by this Act apply to the recipient of the documents so forwarded. If the clerk of a court of this State forwards documents to another court he shall forthwith notify the initiating court.

(c) If the prosecuting attorney has no information as to the location of the obligor or his property he shall so inform the initiating court.

SECTION 20. [Hearing and Continuance.] If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence

constituting a defense the court, upon request of either party, shall continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

SECTION 21. [Immunity from Criminal Prosecution.] If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

SECTION 22. [Evidence of Husband and Wife] Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this Act. Husband and wife are competent witnesses [and may be compelled] to testify to any relevant matter, including marriage and parentage.

SECTION 23. [Rules of Evidence.] In any hearing for the civil enforcement of this Act the court is governed by the rules of evidence applicable in a civil court action in the _____ Court. If the action is based on a support order issued by another court a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity (Section 27) or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

SECTION 24. [*Order of Support.*] If the responding court finds a duty of support it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this Act shall require that payments be made to the [clerk] [bureau] [probation department] of the court of the responding state. [The court and prosecuting attorney of any [county] in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the [county] in which it was first issued. If enforcement is impossible or cannot be completed in the [county] in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any [county] in which it appears that proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.]

SECTION 25. [*Responding Court to Transmit Copies to Initiating Court.*] The responding court shall cause a copy of all support orders to be sent to the initiating court.

SECTION 26. [*Additional Powers of Responding Court.*] In addition to the foregoing powers a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular to:

(1) require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due;

(2) require the obligor to report personally and to make payments at specified intervals to the [clerk] [bureau] [probation department] of the court; and

(3) punish under the power of contempt the obligor who violates any order of the court.

SECTION 27. [*Paternity.*] If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.

SECTION 28. [*Additional Duties of Responding Court.*] A responding court has the following duties which may be carried out through the [clerk] [bureau] [probation department] of the court:

(1) to transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise; and

(2) to furnish to the initiating court upon request a certified statement of all payments made by the obligor.

SECTION 29. [*Additional Duty of Initiating Court.*] An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the [clerk] [bureau] [probation department] of the court.

SECTION 30. [*Proceedings Not to be Stayed.*] A responding court shall not stay the proceeding or refuse a hearing under this Act because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other state. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the [petition] being heard the court must

conform its support order to the amount allowed in the other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

SECTION 31. [*Application of Payments.*] A support order made by a court of this State pursuant to this Act does not nullify and is not nullified by a support order made by a court of this State pursuant to any other law or by a support order made by a court of any other state pursuant to a substantially similar act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another state shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this State.

[SECTION 32. [*Effect of Participation in Proceeding.*] Participation in any proceeding under this Act does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.]

[SECTION 33. [*Interstate Application.*] This Act applies if both the obligee and the obligor are in this State but in different [counties]. If the court of the [county] in which the [petition] is filed finds that the [petition] sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another [county] in this State may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the [petition] and a certification of the findings to the court of the [county] in which the obligor or his property is found. The clerk of the court of the [county] receiving these documents shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court in the [county] to which the copies are forwarded then shall have duties corresponding to those

imposed upon them when acting for this State as a responding state.]

SECTION 34. [*Appeals.*] If the [Attorney General] [State Director of Public Welfare] is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may

(a) perfect an appeal to the proper appellate court if the support order was issued by a court of this State, or

(b) if the support order was issued in another state, cause the appeal to be taken in the other state. In either case expenses of appeal may be paid on his order from funds appropriated for his office.

PART IV—*Registration of Foreign Support Orders*

SECTION 35. [*Additional Remedies.*] If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in the following sections.

SECTION 36. [*Registration.*] The obligee may register the foreign support order in a court of this State in the manner, with the effect, and for the purposes herein provided.

SECTION 37. [*Registry of Foreign Support Orders.*] The clerk of the court shall maintain a Registry of Foreign Support Orders in which he shall [file] foreign support orders.

SECTION 38. [*Official to Represent Obligee.*] If this State is acting either as a rendering or a registering state the prosecuting attorney upon the request of the court [a state department of welfare, a county commissioner, an overseer of the poor, or other local welfare official] shall represent the obligee in proceedings under this Part.

[If the prosecuting attorney neglects or refuses to represent the obligee, the [Attorney General] may order him to comply with the request of the court or may undertake the representation.] [If the prosecuting attorney

neglects or refuses to represent the obligee, the [Attorney General] [State Director of Public Welfare] may undertake the representation.]

SECTION 39. [Registration Procedure; Notice.]

(a) An obligee seeking to register a foreign support order in a court of this State shall transmit to the clerk of the court (1) three certified copies of the order with all modification thereof, (2) one copy of the reciprocal enforcement of support act of the state in which the order was made, and (3) a statement verified and signed by the obligee, showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the states in which the order is registered. Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the Registry of Foreign Support Orders. The filing constitutes registration under this Act.

(b) Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

SECTION 40. [Effect of Registration; Enforcement Procedure.]

(a) Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this State and may be enforced and satisfied in like manner.

(b) The obligor has [20] days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition the registered support order is confirmed.

(c) At the hearing to enforce the registered support order the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering state. If he shows to the court any ground upon which enforcement of a support order of this State may be stayed the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this State.

SECTION 41. [Uniformity of Interpretation.] This Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

SECTION 42. [Short Title.] This Act may be cited as the Revised Uniform Reciprocal Enforcement of Support Act (1968).

SECTION 43. [Severability.] If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

individual are required to be withheld for payment of any debt, the process by which bankruptcy trustee takes title is "a legal or equitable procedure." In re Cedor, D.C. Cal. 1972, 337 F.Supp. 1103, affirmed 470 F.2d 996, certiorari denied 93 S.Ct. 2148, 411 U.S. 973, 36 L.Ed.2d 697.

The term "garnishment" as used in this subchapter setting forth maximum amount which may be garnished from earnings of individual for any work week is not restricted but includes any legal or equitable procedure through which earnings of an individual are required to be withheld for payment of any debt, thus encompassing orders of support as well as ordinary creditor-debtor "garnishment." General Motors Acceptance Corp. v. Metropolitan Opera Ass'n, Inc., 1978, 413 N.Y.S.2d 818, 98 Misc.2d 307.

nishment that portion of worker's checking account funds attributable to her wages and falling within this subchapter's maximum. Edwards v. Henry, 1980, 293 N.W.2d 756, 97 Mich.App. 173.

4. Ripeness

Where Department of Labor had not reached final conclusion regarding its position on coverage of term "garnishment" as used in this subchapter, plaintiffs were not entitled to declaratory relief that term included wage assignments or injunctive relief requiring Secretary of Labor to enforce provisions of this subchapter as so interpreted, and controversy between plaintiffs and Secretary was not ripe for judicial determination. Western v. Hodgson, D.C.W.Va.1973, 359 F.Supp. 194, affirmed 494 F.2d 379.

§ 1673. Restriction on garnishment

Maximum allowable garnishment

(a) Except as provided in subsection (b) of this section and in section 1675 of this title, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed

(1) 25 per centum of his disposable earnings for that week, or

(2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 206(a)(1) of Title 29 in effect at the time the earnings are payable, whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

Exceptions

(b)(1) The restrictions of subsection (a) of this section do not apply in the case of

(A) any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review.

(B) any order of any court of the United States having jurisdiction over cases under chapter 13 of Title 11.

(C) any debt due for any State or Federal tax.

(2) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed—

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(A) where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is used), 50 per centum of such individual's disposable earnings for that week; and

(B) where such individual is not supporting such a spouse or dependent child described in clause (A), 60 per centum of such individual's disposable earnings for that week;

except that, with respect to the disposable earnings of any individual for any workweek, the 50 per centum specified in clause (A) shall be deemed to be 55 per centum and the 60 per centum specified in clause (B) shall be deemed to be 65 per centum, if and to the extent that such earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

Execution or enforcement of garnishment order or process prohibited

(c) No court of the United States or any State, and no State (or officer or agency thereof), may make, execute, or enforce any order or process in violation of this section.

(Pub.L. 90-321, Title III, § 303, May 29, 1968, 82 Stat. 163; Pub.L. 95-30, Title V, § 501(e)(1)-(3), May 23, 1977, 91 Stat. 161, 162; Pub.L. 95-598, Title III, § 312(a), Nov. 6, 1978, 92 Stat. 2676.)

Historical Note

References in Text. Chapter 13 of Title 11, referred to in subsec. (b)(1)(B), is section 1301 et seq. of Title 11, Bankruptcy.

1978 Amendment. Subsec. (b)(1)(B). Pub. L. 95-598 substituted "court of the United States having jurisdiction over cases under chapter 13 of Title 11" for "court of bankruptcy under chapter XIII of the Bankruptcy Act".

1977 Amendment. Subsec. (b). Pub.L. 95-30, § 501(e)(1), (2), designated existing provisions as par. (1) and existing pars. (1), (2), and (3) as subpars. (A), (B), and (C) thereof, substituted "for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review" for "of any court for the support of any person" in subpar. (A) as so redesignated, and added par. (2).

Subsec. (c). Pub.L. 95-30, § 501(e)(3), inserted ", and no State (or officer or agency thereof)," following "or any State".

Cross References

Enforcement of legal obligations to provide child support and make alimony payments, see section 659 of Title 42, The Public Health and Welfare.

West's Federal Forms

Garnishment, matters pertaining to, see §§ 5196 to 5226.

Code of Federal Regulations

Federal employees, child support and/or alimony, see 5 CFR 581.101 et seq.

Policies and procedures applicable, see 29 CFR 870.1 et seq.

Railroad Retirement Board, provisions respecting,

Remuneration of Board personnel, see 20 CFR 363.1 et seq.

Retirement and unemployment benefits, see 20 CFR 350.1 et seq.

Library References

Consumer Credit § 38.

C.J.S. Interest and Usury; Consumer Credit § 325.

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I. Constitutionality

This section does not offend due process by unconstitutionally impairing obligation of contracts. *Hodgson v. Hamilton Municipal Court*, D.C.Ohio 1972, 349 F.Supp. 1125.

Congress had rational basis for determining that this subchapter was needed to carry into execution powers of Congress to regulate commerce and to establish uniform bankruptcy laws, and restriction of this section on garnishment, is constitutional and valid exercise

of Congressional power. *Hodgson v. Cleveland Municipal Court*, D.C.Ohio 1971, 326 F.Supp. 419.

2. Construction

This section is remedial in general purpose, and the exceptions to its coverage should be strictly construed. *In re Cedar*, D.C.Cal. 1972, 337 F.Supp. 1103, affirmed 470 F.2d 996, certiorari denied 93 S.Ct. 2148, 411 U.S. 973, 36 L.Ed.2d 697.

Any exception to maximum garnishment restrictions must be narrowly construed. *V— v. S—*, Mo.App.1979, 579 S.W.2d 149.

3. Construction with bankruptcy provisions

In enacting this subchapter Congress, in an effort to avoid necessity of bankruptcy, sought to regulate garnishment in its usual sense as a levy on periodic payments of compensation needed to support wage earner and his family on a week-to-week, month-to-month basis, and did not intend to drastically alter delicate balance of a debtor's protections and obligations during bankruptcy procedure. *Kokoszka v. Belford*, Conn.1974, 94 S.Ct. 2431, 417 U.S. 642, 41 L.Ed.2d 374, rehearing denied 95 S.Ct. 160, 419 U.S. 886, 42 L.Ed.2d 131.

This subchapter does not restrict right of trustee in bankruptcy to treat income tax refund as property of bankrupt's estate. *Id.*

Decisions under former section 35 of Title 11, providing that debts for alimony, maintenance or support are not dischargeable pertain to existence and preservation of debt; such decisions do not pertain to manner or means of collecting debt, which are governed by state procedures when those procedures do not purport to provide for less limitation on garnishments than this section. *Dyche v. Dyche*, Mo.1978, 570 S.W.2d 293.

MODEL INTERSTATE INCOME WITHHOLDING ACT

SECTION 1. GENERAL PROVISIONS

(a) Purpose: The purpose of this Act is to enhance the enforcement of support obligations by providing a quick and effective procedure for the withholding of income derived in this jurisdiction to enforce support orders of other jurisdictions and by requiring that income withholding, to enforce the support orders of this jurisdiction, be sought in other jurisdictions. This Act shall be construed liberally to effect that purpose.

(b) Definitions: As used in this Act:

(1) "Support order" means any order, decree, or judgment for the support, or for the payment of arrearages on such support, of a child, spouse, or former spouse issued by a court or agency of another jurisdiction, whether interlocutory or final, whether or not prospectively or retroactively modifiable, whether incidental to a proceeding for divorce, judicial or legal separation, separate maintenance, paternity, guardianship, civil protection, or otherwise.

(2) "Jurisdiction" means any state or political subdivision, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(3) "Court" means the [insert name] court of this state and, when the context requires, means either the court or agency of any other jurisdiction with functions similar to those defined in this Act, including the issuance and enforcement of support orders.

(4) "Agency" means the [insert name of the income withholding agency] of this state and, when the context requires, means either the court or agency of any other jurisdiction with functions similar to those defined in this Act, including the issuance and enforcement of support orders.

(5) "Child" means any child, whether above or below the age of majority, with respect to whom a support order exists.

(6) "Obligor" means any person required to make payments under the terms of a support order for a child, spouse, or former spouse.

(7) "Obligee" means any person or entity which is entitled to receive support under an order of support and shall include an agency of another jurisdiction to which a person has assigned his or her right to support.

(8) "Income" means [income] as defined in section [cite to definition of income in state withholding law].

(9) "[Employer] [Payor]" means any payor of income.

(10) "Income derived in this jurisdiction" means any income, the payor of which is subject to the jurisdiction of this state for the purpose of imposing and enforcing income withholding under sections _____ through _____ [state's regular intrastate income withholding procedures].

(c) Remedies Additional to Those Now Existing: The remedy herein provided is in addition to, and not in substitution for, any other remedy otherwise available to enforce a support order of another jurisdiction. Relief under this Act shall not be denied, delayed, or otherwise affected because of the availability of other remedies, nor shall relief under any other statute be delayed or denied because of the availability of this remedy.

COMMENT

Subsection (a) states the twofold purpose of the Act: first, to establish a quick and effective procedure for withholding of income in the enacting state in order to enforce a sister state support order, and, second, to require that the appropriate agency in the enacting state seek to have its own support orders enforced in other states by the interstate withholding mechanism. The larger purpose of the Act is intended to enhance interstate support enforcement and the Act should be liberally interpreted and construed toward that end.

As used throughout this commentary, the term "forum state" will refer to the state being asked to utilize its withholding system to enforce a sister state order. The term "requesting state" will refer to the state which seeks this assistance from the forum state.

Most state child support and income withholding laws define frequently used terms. These definitions, for the most part, will also apply to income withholding based on a support order of another jurisdiction. However, for purposes of interstate income withholding, some additional terms and special definitions are needed and these are included in subsection (b).

"Support order," as defined in (b)(1), includes every kind of order for the support of a child, spouse or former spouse, no matter the nature of the legal proceeding in which it was entered. The Act applies to support orders issued by an administrative agency of the requesting state, even if the forum state does not use an administrative process for this purpose. Orders for the support of a spouse or former spouse are included in order to comply with the Child Support Enforcement Amendments of 1984, which requires that income withholding, along with other remedies, be available to enforce support due to a spouse or former spouse with whom the child is living. Social Security Act §466(e), 42 U.S.C. §666(e).

While the full faith and credit clause of the Constitution may not require enforcement of orders that are non-final or modifiable, this subsection includes non-final or temporary support orders, as well as orders which are prospectively or retroactively modifiable. Obligor remain free to seek appropriate modifications in the state which originally issued the support order or any other state which has personal jurisdiction over the parties, and these changes will be reflected in changes in the forum state's withholding order. See Sections 2, 9(a). It should be noted that there is no requirement that a support order include in its terms a conditional order of withholding in order to be entitled to enforcement by this means. Arrearages need not be reduced to judgment before this remedy is used and the remedy is available to enforce the ongoing support obligation.

The definition of "jurisdiction," (b)(2), does not include foreign countries. If foreign nations do not utilize income withholding, this Act could not apply. States wishing to include foreign nations under this Act must define "jurisdiction" accordingly. In so doing, it should be required that foreign support decrees will be recognized under this Act only if withholding or a similar remedy would be required under the facts of the case in that country and "reasonable notice and opportunity to be heard" was given "to all affected persons" at the time of the support decree. Griffin v. Griffin, 327 U.S. 220, 229 (1946).

In subsections (b)(3) and (b)(4) the enacting state should insert the names of the court, if any, and agency respectively, which are responsible for income withholding functions. Typically, these functions might include sending notice to the obligor, conducting income withholding hearings, and sending notice to the payor. Depending on the context in which it is used, "court" may refer either to the specific named court in the enacting state or to the court or agency of another state with similar functions. States may elect to use an administrative agency, rather than a court, to issue withholding orders. "Agency" may also refer to a court or agency of a sister state which performs similar functions.

The definition of "agency" refers to the public agency which, in accordance with the Child Support Enforcement Amendments of 1984, each state must designate to administer its income withholding system. It is assumed that in most states the IV-D agency will be the income withholding agency. Where this is not the case drafters will have to examine the Act carefully and insert the name of the IV-D agency rather than the withholding agency where the context requires.

As a rule, where the terms "court" or "agency" appear in brackets, they refer to the court or agency of the enacting state; where they appear without brackets, they refer to the court or agency of the sister state requesting the interstate income withholding. At times the terms [court] [agency] appear together. Legislative drafters in this case should choose the appropriate one for their state.

"Child," as defined in section (b)(5), includes both minor children and children above the age of majority with respect to whom a support order exists. The latter might include college students or other dependant children above the age of majority such as incompetent young adults. Some states impose liability for support of such "adult children." See, e.g., D.C. Code Ann. §21-586 (1981); Ill. Ann. Stat. ch. 40, §513 (Smith-Hurd 1983). Where another state allows post-minority support, the enacting state should make its income withholding scheme available to enforce sister state support orders pertaining to such children. This also is consistent with the Child Support Enforcement Amendments of 1984, which permits enforcement of support obligations through state IV-D agencies "on behalf of a child who is not a minor child." Social Security Act §466(e), U.S.C. §666(e).

"Obligor," as defined in section (b)(6), is the term used in this Act for the person who is required to make payments under a support order. It corresponds generally to the term "absent parent" which is used in Title IV-D of the Social Security Act.

An "obligee" as defined in section (b)(7) includes not only a person entitled to receive support payments - who might be the custodial parent or another custodian - but also an agency to which a person has assigned his or her right of support.

The term "income," (b)(8), for interstate withholding purposes, should be defined the same as in intrastate withholding cases. The state's usual definition may simply be cross-referenced. Using the forum state's definition of income should simplify administration of the interstate withholding program and ensure that policies of the forum state with respect to what income is reachable are not contravened. See, e.g., Young v. Young, 467 A.2d 33 (Pa. 1983) in which a state

law barring attachment of municipal pension benefits was held to bar equitable distribution of those benefits under a sister state divorce decree.

According to federal law, states must include wages in their income withholding system; however, they may extend withholding to include other types of income. Social Security Act §466(b)(8), 42 U.S.C. §666(b)(8). Most states which, prior to the federal Child Support Enforcement Amendments of 1984, already provided for some form of income withholding have a broad definition of income. For example, Illinois defines income as "any form of periodic payment to an individual, regardless of source, including, but not limited to: wages, salary, commission, compensation as an independent contractor, worker's compensation, disability, annuity and retirement benefits, and any other payments made by any person, private entity, federal or state government, any unit of local government, school district or any other entity created by Public Act." Ill. Rev. Stat. ch. 23 §10-16.2(4) (Smith-Hurd 1983). Many states have adopted broad, catch-all phrases in defining income, such as "earnings or other entitlements to money, without regard to source." Ariz. Rev. Stat. Ann. §§12-2454, 25-323.

The only limit on a state's definition of income are those required by other federal laws. For example, the Louisiana Supreme Court has recently held that maritime worker's benefits are exempt from garnishment for child support due to an anti-attachment provision of the federal Longshoremen's and Harbor Worker's Compensation Act. Thibodeaux v. Thibodeaux, 454 So.2d 813 (1984). Under the Retirement Equity Act of 1984, Pub. L. No. 98-397, Congress has provided that retirement benefits may be withheld to pay for child and spousal support, provided they are based upon a "qualified domestic relations order" as defined in the statute.

The definition of "income derived in this jurisdiction," subsection (b)(10), is essentially a statement of "the jurisdiction of the courts or withholding agency in the forum state. This statute is not based on personal jurisdiction over the obligor. Rather, it is based on the exercise of quasi in rem jurisdiction over the obligor's property, i.e., his income which is derived in the forum state. However, in most cases the forum state will be where the obligor works, and this state will also have personal jurisdiction over the obligor. The use of quasi in rem jurisdiction also distinguishes this procedure from procedures to establish a support obligation initially. There must be personal jurisdiction over an obligor to establish the support obligation in the first instance. The ability to establish personal jurisdiction by long-arm statute for the purpose of establishing the initial support obligation is limited. Kulko v. California Superior Court, 436 U.S. 84 (1978).

The key jurisdictional question for income withholding purposes is whether the forum state has jurisdiction over the payor of income, usually an employer. Only with such jurisdiction can the forum state compel the payor to comply with income withholding. In the majority of cases in which the obligor is employed by the payor, the payor will have its principal place of business in the forum state or will be reachable by the state's long-arm statute because it is doing business in the state. The payor's transaction of business in the forum state, i.e., the obligor works there, should satisfy the "minimum contacts" requirement. International Shoe Co. v. Washington, 360 U.S. 310 (1945). In short, the forum state will usually be where the obligor works.* Preference for the obligor's state of employment will promote fairness by minimizing the obligor's expenses if he wishes to contest withholding. The one exception to this rule might be when the requesting state itself could obtain jurisdiction over the payor. In such instances, use of the state's regular withholding scheme may be preferred, without reverting to this interstate Act. When a state can use its own long-arm statute to reach a payor it may be assumed that it would do so rather than use an interstate income withholding request.

There may be other instances where the forum state is not where the obligor works or resides, such as when income withholding is being sought against pension benefits. The forum state may have little or no direct contacts with the obligor. The Supreme Court, in Shaffer v. Heitner, 433 U.S. 186 (1977), cast doubt on the availability of quasi in rem jurisdiction where the defendant does not have "minimum contacts" with the state where the property is located. However, the Court in Shaffer observed that this holding did not apply to the enforcement of a judgment. In the Court's words:

Once it has been determined by a court of competent jurisdiction that the defendant is a debtor to the plaintiff, there would seem to be no unfairness in allowing an action to realize on the debt in a State where the defendant has property, whether or not that state would have jurisdiction to determine the existence of the debt on an original matter. Id. at 210 n. 36.

Since Shaffer was decided, only two courts have ruled whether or not it applies to enforcement of child support.

*The proposed regulations which implement the 1984 Child Support Enforcement Amendments require that the requesting state agency seek withholding in the state where the obligor is employed. 49 Fed. Reg. 36803 (Sept. 19, 1984) to be codified at 45 C.F.R. 303.100(g)(3). Legislative drafters should consult the final regulations on this point.

Both courts held that, based upon the enforcement of an existing judgment exception, Shaffer did not apply. Huggins v. Diehard, 134 Ariz. 98, 654 P.2d 32 (Ariz. App. 1982); Rich v. Rich, 93 Misc. 2d 409, 402 N.Y.S. 2d 767 (N.Y. Sup. Ct. 1978). Although in many cases a support order is not deemed a judgment, policy considerations of Shaffer suggest that it be treated as one in this context. The Court's purpose in not recognizing quasi in rem jurisdiction without the defendant's minimum contacts to the forum state is that it believed a defendant should not be forced to choose between default and defending an unliquidated claim in a state in which he has no contacts. The Court reasoned that it would be unfair to make a defendant litigate the validity of a claim in an alien forum. Child support orders are liquidated claims; the original order, litigated in a state with personal jurisdiction over both parties, sets the exact amount of support. The defendant had his day in court and now, like any other defendant debtor, has limited defenses to an enforcement actions, such as satisfaction of the judgment.

Subsection (c) provides that income withholding may be used in addition to any other remedies that might be available under state law to enforce a sister state support order. These might include remedies available through URESA or the Uniform Enforcement of Foreign Judgments Act. Monies collected under other procedures will be duly credited in determining the amount to be withheld under the withholding procedures. See Section 8(b). The withholding procedure should not be delayed because other remedies are available or vice versa. Since the Child Support Enforcement Amendments of 1984 mandate the use of withholding, however, this Act must be utilized in IV-D cases upon the accumulation of arrearages sufficient to trigger withholding.

SECTION 2. INITIATION OF INCOME WITHHOLDING AND COOPERATION WITH OTHER JURISDICTIONS

On behalf of any client for whom the [agency] is already providing services, or on application of a resident of this state, an obligee or obligor of a support order issued by this state, or an agency to whom the obligee has assigned support rights, the [agency] shall promptly request the agency of another jurisdiction in which the obligor of a support order derives income to enter the order for the purpose of obtaining income withholding against such income. The [agency] shall compile and transmit promptly to the agency of the other jurisdiction all documentation required to enter a support order for this purpose. The [agency] also shall transmit

immediately to the agency of the other jurisdiction a certified copy of any subsequent modifications of the support order. If the [agency] receives notice that the obligor is contesting income withholding in another jurisdiction, it shall immediately notify the individual obligee of the date, time, and place of the hearings and of the obligee's right to attend.

COMMENT

This section describes the responsibility of the income withholding agency in the enacting state to request income withholding in another state. It is different from the remaining sections which detail the responsibilities of the enacting state upon receiving a request (i.e., acting as the forum state) from another state to obtain and enforce income withholding. Under the Child Support Enforcement Amendments of 1984, both the forum and requesting state may receive incentive payments for child support collected on an interstate basis. Social Security Act §458(d), 42 U.S.C. §658(d).

The income withholding agency is required to request interstate withholding on behalf of its current IV-D clients, as well as for state residents who apply for this service through the IV-D agency. This corresponds to the federal requirement for intrastate cases which requires that income withholding services be made available to IV-D agency clients, both AFDC and non-AFDC. Social Security Act §466(b)(2), 42 U.S.C. §666(b)(2). Non-AFDC families may specifically apply to the IV-D agency to take advantage of the withholding remedy, although many states recognize a private right of action to seek this relief. See, e.g., Cal. Civ. Code. Ann. §4701(b)(1); Tex. Fam. Code Ann. §14.091. In addition, under this section, the agency must also initiate this process for a person who resides out-of-state, when the underlying support order was issued by the agency's state. This will likely occur when the obligee has moved out of state and all the relevant documents, including payment records, are still in possession of the enacting state or when the obligee moved out of state and was receiving payments directly from the obligor, without ever utilizing agency services of a new state. In any event, the obligee could also elect to go to the agency where she or he now resides for purposes of initiating an interstate request for income withholding.

This section also requires the agency to transmit all documentation required by the forum state in order to enter the support order. This means that the agency will have to first determine the forum state's documentation requirements.

This section also requires the requesting state to transmit to the forum state any modifications to the support order, including any termination of the support order. Section 9(a) is the counterpart to this provision, requiring a forum state to amend income withholding in light of any modifications received.

Finally, this section requires the agency to immediately notify the individual obligee when a hearing is scheduled, indicating a challenge to the withholding request. Under Section 4(b), the forum state agency must alert the requesting agency of any pending challenge. Notice to the obligee assures that this individual will be kept aware of case developments and, more importantly, afforded an opportunity to appear at the hearing, either in person, or by telephone (Section 5 (d)) if the individual cares to appear.

SECTION 3. RESPONSIBILITIES FOR ENTERING A SUPPORT ORDER OF ANOTHER JURISDICTION FOR PURPOSES OF INCOME WITHHOLDING

(a) Upon receiving a support order of another jurisdiction with the documentation specified in subsection (b) from an agency of another jurisdiction [an obligee, an obligor, or an attorney for either], the [agency] [shall enter this order]. [shall file these documents with the clerk of the court in which withholding is being sought. [Alternatively, the obligor or obligee may file the documents specified in subsection (b) with the clerk of the court in which income withholding is being sought.] The clerk of the court shall accept the documents filed and such acceptance shall constitute entry of the support order under this Act.]

(b) The following documentation is required for the entry of a support order of another jurisdiction:

- (1) a certified copy of the support order with all modifications;
- (2) a certified copy of an income withholding [order/notice], if any, still in effect;
- (3) a copy of the portion of the income withholding statute of the jurisdiction which issued the support order which states the requirements for obtaining income withholding under the law of that jurisdiction;
- (4) a sworn statement of the obligee or certified statement of the agency of the arrearages and the assignment of support rights, if any;

(5) a statement of:

- (a) the name, address, and social security number of the obligor, if known;
- (b) the name and address of the obligor's employer or of any other source of income of the obligor derived in this state against which income withholding is sought;
- (c) The name and address of the agency or person to whom support payments collected by income withholding shall be transmitted.

(c) If the documentation received by the [agency] under subsection (a) does not conform to the requirements of subsection (b), the [agency] shall remedy any defect which it can without the assistance of the requesting agency [or person]. If the [agency] is unable to make such corrections, the requesting agency [or person] shall immediately be notified of the necessary additions or corrections. In neither case shall the documentation be returned. The [agency and court] shall accept the documentation required by subsections (a) and (b) even if it is not in the usual form required by state or local rules, so long as the substantive requirements of these subsections are met.

(d) A support order entered under subsection (a) shall be enforceable by income withholding against income derived in this state in the manner and with the effect as set forth in sections 4-11 of this Act and [cite to this state's regular income withholding provisions]. Entry of the order shall not confer jurisdiction on the [courts/agencies] of this state for any purpose other than income withholding.

COMMENT

Subsection (a) describes the responsibilities of the forum state's agency. Upon receiving the request for income withholding and accompanying documentation set forth in subsection (b), the agency will enter the support order by the procedure set forth in subsection (a). Entry of a sister state support order under this Act is the cornerstone of this interstate withholding procedure. Once the order is entered, it is enforceable by the forum state's own income withholding law, with some specific minor modifications to accommodate interstate needs. Subsection (b). It is assumed that states will have enacted an income withholding law or modified their existing one to conform to the Child Support Enforcement Amendments of 1984 by October 1, 1985 or shortly thereafter.

See Social Security Act §466(b), 42 U.S.C. §666(b). It should be noted that this Act may be used only for enforcement of support orders by income withholding. To use other remedies which may be available under state law it will be necessary to use URESA, the Uniform Enforcement of Foreign Judgments Act, a suit on the judgment of another state or some other method of enforcement.

As a general rule, full faith and credit is granted to judgments of a sister state by allowing a suit on the judgment in the forum state. This obviously is a cumbersome process. The Uniform Enforcement of Foreign Judgments Act seeks to circumvent this problem by providing a simpler procedure for registration and enforcement of foreign judgments which would otherwise be entitled to full faith and credit.

Under the traditional view, however, child support orders which are non-final and modifiable are not entitled to full faith and credit. Sistare v. Sistare, 218 U.S. 1 (1910); Restatement (Second) Conflict of Laws §109 (1971). A more contemporary view rejects this notion and would entitle support orders to full faith and credit, regardless of their modifiability. See, Barber v. Barber, 323 U.S. 77 (1944) (Jackson, concurring); Light v. Light, 12 Ill. 2d 502, 147 N.E.2d 34 (1958). Even if the traditional view prevails, a state may recognize a sister state support order under the principle of comity even though not constitutionally compelled to do so. This statute is designed to do precisely that for the specific purpose of allowing income withholding to enforce sister state support orders. It should be noted that under the definition of support order in section 1(b)(1) administrative orders for support as well as judicial orders may be entered and enforced under this Act.

Two kinds of optional language are included in subsection (a). The first choice of language depends on whether the state has chosen to operate its intrastate income withholding system through an administrative agency or through the courts. Model language is provided for both options. Both options are consistent with the 1984 Child Support Enforcement Amendments.

In addition, subsection (a) provides optional language to allow for private party access, whether pro se or through private counsel, to the forum state's income withholding system to enforce a sister state support order. This would be especially logical in states which already permit private parties to initiate income withholding on an intrastate basis. See, e.g., Minn. Stat. Ann. §518.611.1. This option is permissible under the 1984 Amendments but is not required.

If a state uses an administrative enforcement mechanism and does not make it available through private counsel, subsection (a) would read:

"Upon receiving a support order ... from an agency of another jurisdiction, the [agency] shall enter this order."

If private parties are to be allowed access to the administrative remedy, this section would read:

"Upon receiving a support order ... from an agency of another jurisdiction, an obligee, an obligor or an attorney for either, the [agency] shall enter this order."

If the withholding system is operated through the courts and the state chooses to allow private party access subsection (a) would read:

"Upon receiving a support order ... from an agency of another jurisdiction, an obligee, an obligor or an attorney for either, the [agency] shall file these documents with the clerk of the court in which withholding is being sought. Alternatively, the obligor or obligee or the attorney for either may file the documents specified in section (b) with the clerk of the court in which income withholding is being sought. The clerk of the court shall accept the documents filed and such acceptance shall constitute entry of the support order under this Act."

If the state does not wish to allow private party access to the court-based interstate withholding procedure, subsection (a) would read:

"Upon receiving a support order ... from an agency of another jurisdiction, the agency shall file these documents with the clerk of the court in which withholding is being sought. The clerk of the court shall accept the documents filed and such acceptance shall constitute entry of the support order under this Act."

The list of documents required is largely self-explanatory. Subsection (b)(2) applies only when payments were already being withheld from the obligor's income under an income withholding order or notice, still in effect, previously issued in another state. As used throughout this Act, the term "order/notice" refers to the document submitted to the payor requiring him to withhold support payments from the obligor's income. States

have different names for this document. It may also be called, for example, "employer's notice" or an "order of wage withholding." The enacting state should, where order/notice appears in brackets throughout this Act, substitute whatever term it uses. Throughout this Act the term "income withholding" is used. It should be noted that some states may use different, interchangeable terms, such as wage withholding, wage assignment, income assignment, or the like. Again, the enacting state may substitute its usual intrastate term.

Subsection (b)(3) is included because the triggering event in the state which originally issued the support order, i.e., amount of arrearages necessary to mandate income withholding, will determine when income withholding should commence.

Subsection (b)(4), which requires a statement of arrearages and assignment of support rights, can be met in one of two ways. Either the obligee can submit a sworn statement or affidavit or the requesting agency may certify the arrearages and any assignment of support rights. Agency certification will probably be used in states where public agencies or clearinghouses collect and disburse support payments. In such instances a certified copy of the payment record as of the date of the first arrearage or a certified statement of the arrearages will suffice.

Subsection (b)(5) places a burden on the requesting state to provide the name, address and social security number of the obligor and the names and addresses of obligor's employers and other sources of income derived in the forum state. Requesting states may use the Federal Parent Locator Service (FPLS) to obtain this information. Under the Child Support Enforcement Amendments of 1984, access to the FPLS has been liberalized. A state no longer need exhaust its own locator resources before requesting assistance from the FPLS. Social Security Act §453(f), 42 U.S.C. §653(f). A state may also request assistance from the forum state through that state's parent locator system. Furthermore, as noted in the comments to section 3(c), the forum state's location services may be used if it turns out that the information sent was incorrect.

Subsection (c) requires the forum state agency to take steps to correct faulty or incomplete documentation, without returning it to the requesting agency, when possible. This should avoid unnecessary delays and advance Congress' intent of expeditious handling of income withholding cases. In addition to providing for correction of errors, this subsection requires the agency and court to accept or process documents which are correct in substance but not form.

Examples of cases in which improper documentation is submitted which the state may correct or accept as provided include the following:

1. The forum state requires information to be submitted on a special form or in a special format; the requesting agency does not use this form but nonetheless provides all the required information. The forum state should accept the documents as provided or fill out the correct forms and attach the sworn originals.
2. Incorrect information on the obligor's address or source of income is sent by the requesting state. The forum state, through its normal locate procedures, should attempt to provide this data. This does not place any additional burdens on the forum state which is already required to help sister states in this regard. 42 U.S.C. §654(9); 45 C.F.R. 303.7.

Subsection (d) is the central section of this Act. Once a support order is "entered" in the agency or court through the procedures described in this section, it essentially becomes an order of the forum state for the sole and limited purpose of obtaining income withholding. This subsection makes it clear that the entered order does not confer jurisdiction on the court or agency for any other purpose such as resolution of disputes over custody or visitation or modification of the original support order, whether prospectively or retroactively. See discussion of modification issues in Section 5.

SECTION 4. NOTICE

(a) On the date a support order is entered pursuant to section 3, the [agency] [court] shall serve upon the obligor, in accordance with section [cite to notice provision for income withholding], notice of a proposed income withholding. That notice shall contain the same information required in section [cite to regular notice section]. The notice shall also advise the obligor that the income withholding was requested on the basis of a support order of another jurisdiction. The date of serving notice on the obligor shall be the equivalent of [the state's own triggering event] for the purpose of measuring time for holding a hearing and rendering a decision.

(b) If the obligor seeks a hearing to contest the proposed income withholding the [agency] shall immediately notify the requesting agency [obligee, obligor or an attorney for either] of the date, time and place of the hearing and of the obligee's right to attend the hearing.

COMMENT

On the day the original support order is entered under this procedure, notice of the proposed withholding must be sent to the obligor. The forum state will use its regular notice procedures to notify the obligor of the intent to withhold income. The significance of specifying when advance notice should be sent to the obligor is that, under the new federal law, within 45 days of such notice the state must determine whether income withholding will take place if the obligor contests it.

Because locating communicating between states takes an indeterminate amount of time, a gap will inevitably occur between the happening of the triggering event in the requesting state and the sending of notice in the forum state. Accordingly, the Act requires the requesting states to "promptly" request (section 2) and the forum state to "promptly" enter (section 3) support orders without specifying an exact time frame for so doing. However, once the order is entered the notice must be sent at once.

The notice should be served according to usual state practice and contain the same information required in an intrastate income withholding notice. According to section 466(b)(4)(B) of the Social Security Act, as amended by the Child Support Enforcement Amendments of 1984, such notice must alert the absent parent to the proposed withholding and to the procedures to follow if he or she wishes to contest such withholding on the grounds that it is not proper due to a mistake of fact.

This notice should state a method and a time period within which the parent must contact the court or agency in order to contest withholding and should state that failure to do so will result in the implementation of withholding. The only added requirement of this Act is that the notice indicate that the proposed withholding is based upon a sister state support order.

The 1984 Amendments generally require that advance notice of the proposed withholding be sent to the obligor, as described in the previous paragraph. However, the law provides an exception for those states which were operating an income withholding system prior to the date of enactment of the 1984 Amendments. They are not required to provide advance notice as described in the Amendments to obligors so long as due process requirements are met. Social Security Act §466(b)(4)(B), 42 U.S.C. §566(b)(4)(B).

States which fall within this exception should modify their withholding systems to provide some form of notice of withholding and an opportunity to contest before money is actually withheld in interstate cases in order to meet equitable and due process concerns. (Often some notice will have been given in intrastate cases when the original support order is made.)

In addition, states which use automatic, immediate withholding as the payment method in every support case, without first requiring any arrearages, will not generally provide for any special notice or contest procedures dealing with withholding. In those cases, the parties are personally before the court at the time a withholding order is imposed and can resolve any disputes regarding withholding at that time. These states will have to enact special notice and hearing procedures as described in the Amendments for interstate withholding cases in order to ensure adequate due process protection for these obligors.

Finally, this section initiates the running of the 45 days a state has to notify the obligor of the proposed withholding, hold a hearing if one is requested, and inform the obligor of whether or not withholding will occur. Section 466(b)(4)(A) Social Security Act, as amended. To further expedite the handling of these cases, this Act places an obligation on the requesting state to promptly take steps to initiate the interstate income withholding process (see Section 2), and upon the forum state to promptly enter sister state orders. See Section 3(a).

SECTION 5. INCOME WITHHOLDING HEARING

(a) At any hearing contesting proposed income withholding based on a support order entered under section 3, the entered order, accompanying sworn or certified statement, and a certified copy of an income withholding [order/notice], if any, still in effect shall constitute prima facie proof, without further proof or foundation, that the support order is valid, that the amount of current support payments and arrearages is as stated, and that the obligee would be entitled to income withholding under the law of the jurisdiction which issued the support order.

(b) Once a prima facie case has been established, the obligor may raise only the following:

- (1) that withholding is not proper because of a mistake of fact that is not res judicata concerning such matters as an error in the amount of current support owed or

arrearsage that had accrued, mistaken identity of the obligor; or error in the amount of income to be withheld;

- (2) that the court or agency which issued the support order entered under this Act lacked personal jurisdiction over the obligor;
- (3) that the support order entered under this Act was obtained by fraud; or
- (4) that the statute of limitations under section 11(c) precludes enforcement of all or part of the arrearsages.

The burden shall be on the obligor to establish these defenses.

(c) If the obligor presents evidence which constitutes a full or partial defense, the [court] [agency] shall, on the request of the obligee, continue the case to permit further evidence relative to the defense to be adduced by either party, provided, however, that if the obligor acknowledges liability sufficient to entitle the obligee to income withholding, the [agency] [court] shall require income withholding for the payment of current support payments under the support order and of so much of any arrearsage as is not in dispute, while continuing the case with respect to those matters still in dispute. The [court] [agency] shall determine those matters still in dispute as soon as possible, and if appropriate shall modify the withholding order to conform to that resolution.

(d) In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses in another state, including the parties and any of the children, by deposition, by written discovery, by photographic discovery such as videotaped depositions or by personal appearance before the [court] [agency] by telephone or photographic means. The [court] [agency] on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

(e) A [court] [agency] of this state may request the appropriate court or agency of another state to hold a hearing to adduce evidence, to permit a deposition to be taken before the court or agency, to order a party to produce or give evidence under other procedures of that state and to forward to

the [court] [agency] of this state certified copies of the evidence adduced in compliance with the request.

(f) Upon request of a court or agency of another state the [courts] [agencies] of this state which are competent to hear support matters may order a person in this state to appear at a hearing or deposition before the [court] [agency] to adduce evidence or to produce or give evidence under other procedures available in this state. A certified copy of the evidence adduced, such as a transcript or videotape, shall be forwarded by [the clerk of the court] [agency] to the requesting court or agency.

(g) A person within this state may voluntarily testify by statement or affidavit in this state for use in a proceeding to obtain income withholding outside this state.

COMMENT

This section addresses the hearing an obligor may request if he wishes to contest the income withholding. Under subsection (a) the entered support order, the existing income withholding order, if any, and the sworn or certified statement of the appropriate arrearage (see section 3(a)(4)) may be admitted into evidence without any further proof or foundation required and constitute prima facie proof that, absent a valid defense under subsection (b), the obligee is entitled to income withholding under the law of the jurisdiction which issued the support order. This means that the amount of current support and arrearage is as stated and that the triggering event, i.e., amount of arrears required to commence withholding, of the jurisdiction which rendered the support order has been met.

Once a prima facie case is established, subsection (b) shifts the burden of proof to the obligor. The obligor's defenses are limited. They include those defenses permitted by the Child Support Enforcement Amendments of 1984. According to the Act's legislative history, these defenses are restricted to "mistakes of fact," see Subsection (b)(4), which include "errors in the amount of current support owed, errors in the amount of arrearage that had accrued, or mistaken identity of the alleged obligor." The obligor cannot "contest the proposed withholding on other grounds, such as the inappropriateness of the amount of support ordered to be paid, changed financial circumstances of the obligor, or lack of visitation." H.R. Rep. No. 98-527, 98th Cong., 1st Sess. 33 (1983). Such claims, though important, must be pursued through a separate legal action in the state which has jurisdiction over the original support order.

Limitation of defenses to mistakes of fact distinguishes this Act from URESA and RURESAs. Courts have interpreted the latter uniform acts to allow them to consider current support needs and to enter orders for higher or lower support amounts. Balestrine v. Jordan, 275 S.C. 442, 272 S.E.2d 438 (1980); Jarmillo v. Jarmillo, 27 Wash. App. 391, 618 P.2d 528 (1980); McKenna v. McKenna, 253 Ga. 6, 315 S.E. 2d 885 (Ga. 1984). Modification of the support order in the forum state is not permitted under this Act.

In drafting this section, the Advisory Group discussed in great detail the issue of modification of the support amount, both retroactively and prospectively. On policy grounds and for practical considerations, it was determined that modification should not be allowed in the forum state. The policy reasons are as follows:

- (1) Experience under URESA has shown that the responding (forum) state frequently has no relationship to the obligee and dependent child, and they usually are not able to appear in person and often are not notified of hearings, resulting in modification orders which are unreasonably low.
- (2) Modification claims needlessly delay enforcement actions on existing arrearages. It was the intent of Congress in the 1984 Amendments to establish an expeditious system for enforcing support orders as written through an automatic wage withholding system, relying on a separate proceeding to consider modification of the order.
- (3) The obligor's right to seek modification remains intact. He or she may obtain modification in the state which has jurisdiction over the support order and have this modification recognized in the forum state, with any financial adjustments necessary made against future withholding. See Sections 2 and 9(a) regarding modification.
- (4) Where support orders are retroactively modifiable in the original state, immediate withholding should be permitted in the forum state. If the obligor has his arrearages reduced in the original state, the forum state will be notified and withholding adjusted accordingly. See Sections 2, 9(a). As the withholding requirement is applied to new support obligations, the accumulation of large arrearages should not occur in most cases. As a practical matter, courts will seldom retroactively reduce small arrearages.