

ALASKA STATE DEPARTMENT
CUMMINGS
TUGT-1988
7/99

3281 HJUD
HB 92

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 payment 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 (A))" 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.

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

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

"(I) 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 651 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.

(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

Report Public availability.

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

(c) 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.

AVAILABILITY OF SOCIAL SECURITY NUMBERS FOR CHILD SUPPORT ENFORCEMENT PURPOSES

Effective date.
42 USC 667 note.

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(i)(6)(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(i)(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.

(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.

42 USC 1396.

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

Effective date.
42 USC 606 note.

Supra.

Ante, p. 1104.
42 USC 1396a.

COLLECTION OF PAST-DUE SUPPORT FROM FEDERAL TAX REFUNDS

42 USC 661.

SEC. 21. (a) Section 464(a) of the Social Security Act (as amended by section 12(d) of this Act) is further amended by inserting "(1)" after "Sec. 464. (a)" 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(G), 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 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. 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.

"(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.

"(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 name 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.

Ante, p. 1310.
1319.
Post, p. 1324.

Effective date.
Ante, p. 1164.

"(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(6) 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".

Ante, p. 1323
26 USC 602

(X1) Section 6402(c) of the Internal Revenue Code of 1954 is amended—

(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."

(X1) 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, 611
42 USC 607
42 USC 606
Public
availability
42 USC 601, 651
Medical
assistance
eligibility
42 USC 1396
42 USC 601
Reports
Audit
Public
availability

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—

(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;

(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;

(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

(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.

(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.

(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—

- (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;
- (iii) the amount so advanced under section 455(a) of such Act; and
- (iv) the amount so advanced with respect to section 457(b) 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 those 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—

(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

(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.

(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 to 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).

(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.

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

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.

Ante, p. 1318

42 USC 601, 651

42 USC 603.

Ante, p. 1311.

Ante, p. 1312.

42 USC 601.

42 USC 603.

42 USC 601.

42 USC 603.

42 USC 601, 651.

Effective date.

(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. 5, House agreed to conference report.

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

Aug. 16, 1984, Presidential statement.



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
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1st NATIONAL CENTER
100 CUSHMAN ST.
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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).

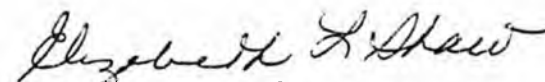
The Department of Law has no proposed amendments to the statutes which control establishment or enforcement of interstate or intrastate child support actions.

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 [6(1)] 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 a 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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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 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.

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.

1. 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

UNIVERSITY MICROFILMS

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 a 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 APDC and non-APDC. Social Security Act §466(b)(2), 42 U.S.C. §666(b)(2). Non-APDC 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.

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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 obligor so long as due process requirements are met. Social Security Act §466(b)(4)(B), 42 U.S.C. §666(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

arrearage 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 arrearages.

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 arrearage 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 RURESA. 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.

By limiting jurisdiction in the forum state exclusively to enforcement, this Act follows the example of the Uniform Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act of 1980. Under these statutes a state may have authority to enforce a custody decree but none to modify it. UCCJA §15 and comments; 28 U.S.C. §1738A(a). Modification authority, if any, is independent of enforcement authority and must be based upon specified jurisdictional grounds. UCCJA 14; 28 U.S.C. §1738A(f)7-

In addition to mistakes of fact, three other defenses are permitted under this act. Subsections (b)(2)-(4). These include two collateral attacks on the original judgment which could even be raised in the state which issued the original order if it sought to enforce it. These attacks include charges that the court which issued the original support order lacked jurisdiction (if this had not been previously litigated), or that there was fraud in the procurement of the judgment. See, Griffin v. Griffin, 327 U.S. 220 (1945); Scoles and Hoff, Conflicts of Law §24.14 (1982); Leflar, American Conflicts of Law 157 (1977); Restatement (Second), Conflicts of Law §105 (1971). Fraud in the procurement of the support order refers to fraud in the actual obtaining of the order, e.g., the defendant was lured into the jurisdiction in order to obtain personal jurisdiction. The third defense concerns the statute of limitation. See Section 12(c) for choice of law provision pertaining to statute of limitations.

If the obligor meets his burden of proof, it may be necessary to obtain additional evidence in order to resolve the dispute. Subsections (c)-(g) offer means of proving a case without requiring the obligee or other witnesses to travel to the forum state. Subsections (c)-(e) apply when income withholding is being sought in the enacting state; sections (f)-(g) apply when the enacting state is seeking withholding elsewhere. The most common method of presenting evidence, without live courtroom testimony, is by deposition or interrogatory. These sections should augment existing state rules of civil procedure which address out-of-state evidence. For example, many states have adopted the Federal Rule of Civil Procedure 32(a)(3), which permits offering a deposition as evidence at a trial if the court finds that "the witness is at a greater distance than 100 miles from the place of trial or hearing." Many of these provisions are similar to those set forth in the Uniform Child Custody Jurisdiction Act, sections 18-20; therefore state experience under this Uniform Act in adducing evidence across state lines should be instructive. For a description of these techniques see Hoff, P., Schulman, J., and Volenik, A., Interstate Child Custody Disputes and Parental Kidnapping: Policy, Practice and Law, ch. 7 (1982).

Under subsection (c), an obligee may request that the case be continued for the purpose of submitting additional evidence should the obligor fully or partially meet his burden of proof. Income withholding must commence, however, where the right to such withholding is not in dispute, but only the extent of arrearages remains in controversy. This will occur when there is proof that an arrearage sufficient to trigger income withholding exists, but the full amount of arrearages is in dispute. In this scenario, withholding to cover current support and uncontested arrearages will commence. A subsequent hearing will be held to settle the dispute and the original withholding notice to the employer will be modified, if necessary. Subsection (d) addresses methods of collecting evidence, such as interrogatories, depositions, and court appearances live or by telephone. While it may be necessary to continue the case while such evidence is being obtained, these devices are also available for use at the initial hearing. Provisions for notifying the obligee of this first hearing (sections 2, 4(b)) should encourage this result.

SECTION 6. INCOME WITHHOLDING [ORDER/NOTICE]

If the obligor does not request a hearing in the time provided, or if a hearing is held and it is determined that the obligee has or is entitled to income withholding under the local law of the jurisdiction which issued the support order, the [agency] [court] shall issue an income withholding [order/notice] under section [cite to state's regular income withholding provision for notice to obligor of withholding decision]. The [agency] shall notify the requesting agency [or person] of the date upon which withholding will begin.

SECTION 7. NOTICE TO [EMPLOYER/PAYOR] AND OTHER PROVISIONS

The provisions of sections [governing this state's income withholding notice to the employer, penalties and sanctions against noncomplying employers, employer fees, protections against employer retaliation, payment directions, ability to issue a single check, etc.] apply to income withholding based on a support order of another jurisdiction entered under this Act.

COMMENT

These sections incorporate the state's own provisions for issuing an income withholding notice or order to the employer and for other employer-related matters. The latter include

requirements of the Child Support Enforcement Amendments of 1984, such as: contents of the notice to the employer, employer fees, payment mechanisms, and liability of employers who fail to withhold wages or who take adverse job action against an employee who is subject to wage withholding. The agency in the forum state must notify the requesting agency or person of the date on which withholding will begin.

Under section 7 the state will use its regular procedures to notify the employer or other payor of income that support payments must be withheld. The employer will treat the order or notice exactly like any other withholding order or notice. In fact, because of statutory limits on the content of the notice to the employer, the employer probably will not even know the withholding is based on a sister state order. See Social Security Act §466(b)(6)(A)(ii), 42 U.S.C. §666(b)(6)(A)(ii). For that reason, states will probably choose to require payment through the state agency in cases initiated by private counsel or pro se as well as in agency cases.

The language in section 6, "entitled to income withholding under the local law of the jurisdiction which issued the support order," refers to the triggering event in the original state, i.e., whether the amount of arrearages satisfies the requirement for income withholding under the law of the state that originally issued the support order. See also section 11 (b)(2).

SECTION 8. DISTRIBUTION OF COLLECTED SUPPORT PAYMENTS

(a) The income withholding [order/notice] shall direct payment to be made to [agency]. The [agency] shall promptly transmit payments received pursuant to an income withholding [order/notice] based on a support order of another jurisdiction entered under this Act to the agency or person designated in section 3(b)(5)(c).

(b) A support order entered pursuant to section 3 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. Amounts collected by any withholding of income shall be credited against the amounts accruing or accrued for any period under any support orders issued either by this state or by a sister state.

COMMENT

Income withheld under this Act is to be paid to the income withholding agency of the forum state, which in turn will

forward it to the requesting agency or person. If the forum state uses a different entity such as a private agency or bank to collect and disburse such funds, as allowed under the Child Support Enforcement Amendments of 1984, Social Security Act §466(b)(5), 42 U.S.C. §666(b)(5), this entity should also collect and disburse funds withheld in interstate cases under this Act.

Entry of a support order for withholding purposes under this Act does not nullify any other support order which may exist - whether issued by the forum state or another state. When two or more orders exist for the support of one child by an absent parent, any amount collected will be credited against both orders. Such a situation may exist, for example, if there is both an original support order and a subsequent URESA order. Amounts withheld are to be credited against both orders.

SECTION 9. CHANGES

(a) Changes in original order: The [agency], upon receiving a certified copy of any amendment or modification to a support order entered pursuant to section 3, shall initiate, as though it was a support order of this state, necessary procedures to amend or modify the income withholding [order/notice] of this state which was based upon the entered support order. [The court shall amend or modify the income withholding [order/notice] to conform to the modified support order.]

(b) Changes in jurisdiction: If the [agency] determines that the obligor has obtained employment in another state or has a new or additional source of income in another state, it shall notify the agency which requested the income withholding of the changes within five working days of receiving that information and shall forward to that agency all information it has or can obtain with respect to the obligor's new address and the name and address of the obligor's new employer or other source of income. The [agency] shall include with the notice a certified copy of the income withholding [order/notice] in effect in this state.

COMMENT

Subsection (a) assures that in the event a support order entered in the forum state is modified in another state, the forum state will take the necessary steps to modify the amounts withheld accordingly. The last sentence, in brackets, applies in states which use the judicial system to impose income withholding. The obligation of an agency to notify a sister

state agency of any change to a support order being enforced in the sister state may be found in section 2.

Under subsection (b), an agency in the forum state must notify the requesting agency when the obligor's source of income has shifted to yet another state. This presumes that when there has merely been a shift of a source of income within the state, e.g., if the obligor gets a new job, the state agency will take necessary steps, as it would with any other in state income withholding case, to obtain withholding against the new source of income within the state. Some states have facilitated the task of identifying new income by requiring employers to notify the agency of any change in the obligor/employee's status, including the name and address of a new employer, if known. N.D. Cent. Code §§14-09-09.1(6). The proposed federal regulations implementing the 1984 Amendments require that states impose an obligation on the employer to provide this information to the state. 49 Fed. Reg. 36803 (Sept. 19, 1984) 45 C.F.R. §302.100(d)(2). States should specifically provide that income withholding orders will apply against successor employers.

SECTION 10. VOLUNTARY INCOME WITHHOLDING

Any person who is the obligor on a support order of another jurisdiction may obtain voluntary income withholding by filing with the [agency] [court] a request for such withholding and a certified copy of the support order of a sister state. The [agency] [court] shall issue an income withholding [order/notice] under section [regular voluntary income withholding section]. Payment shall be made to the [agency].

COMMENT

The Child Support Enforcement Amendments of 1984 require states to withhold income upon the absent parent's request. This section allows such voluntary withholding when the underlying support order is from another state.

SECTION 11. CHOICE OF LAW

(a) The local law of this state shall apply in all actions and proceedings concerning the issuance, enforcement and duration of income withholding [orders/notices] issued by a [court] [agency] of this state, which is based upon a support order of another jurisdiction entered pursuant to section 3, except as provided in subsections (b) and (c).

(b) The local law of the jurisdiction which issued the support order shall govern the following:

- (1) the interpretation of the support order entered under section 3, including amount, form of payment, and the duration of support;
- (2) the amount of support arrearages necessary to require the issuance of an income withholding [order/notice].
- (3) the definition of what costs, in addition to the periodic support obligation, are included as arrearages which are enforceable by income withholding, including but not limited to interest, attorney's fees, court costs, and costs of paternity testing.

(c) The [court] [agency] shall apply the statute of limitations for maintaining an action on arrearages of support payments of either the local law of this state or of the state which issued the support order entered under this Act, whichever is longer.

COMMENT

In keeping with a major principle of this Act -- that the forum state's regular income withholding laws and procedures be applied to the greatest extent possible -- most choice of law questions are resolved in favor of the local law of the forum, making it simpler for decision-makers to apply this Act.

Only three issues must be determined by the law of the state which issued the order. First are the questions of the interpretation of the original support order including questions about the amount and form of payments and the duration of the order. For example, the law of the state issuing the order would determine the meaning of the term "minor child" as used in an order, whether support may continue beyond the age of majority for a college student or whether in-kind payments would be credited against the support obligations. The law of the state which issued the original order determines the amount of support arrearages necessary to require the commencement of withholding. This should pose no problem as a request should not be made until this condition is met and a copy of the section of the state's withholding law containing this condition should be included with the request. Third, the law of the state which issued the support order determines what items are included as arrearages which may be

enforced by income withholding. These could include interest on late payments, attorneys' fees or costs of paternity determination, for example.

Under subsection (c), the forum state must use the statute of limitations of whichever state is longer. This allows maximum time for enforcement. This subsection combines two acceptable choice-of-law practices by joining them in the alternative: first, a state may "borrow" a sister state's statute of limitations period and second, a state may apply its own limitations period to enforce sister state judgments. Restatement (Second) Conflicts of Law §119(2)(1971).

This rule should not be difficult for local judges. Under general conflicts of laws principles a judge may assume that the law of the state whose support order is being considered is the same as the law of the forum until one of the parties demonstrates otherwise. Obviously, it would be in the interest of the requesting state to submit an appropriate reference to the case and statutory law of the state which issued the order when a question is raised.

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HR 92

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

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

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

Sincerely,

/s/

Bill Sheffield
Governor"

HR 93

HOUSE BILL NO. 93 by the Rules Committee by request of the Governor, entitled:

"An Act establishing a system of recreation rivers; and providing for an effective date."

was read the first time and referred to the Resources and Finance Committees.

A fiscal note was attached and appears in House Journal Supplement No. 5. The Governor's transmittal letter, dated January 18, 1985, appears below:

HB 91

"Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the creation of a system of recreation rivers.

The bill is based in part on legislation enacted last session creating the Kenai River Special Management Area. The establishment of the Kenai River Special Management Area was a significant beginning in our program to improve the quality of recreation for Alaskans and to reduce the resource damage that results from overuse.

This year I will be introducing several pieces of legislation directed at expanding and diversifying recreational opportunities in southcentral Alaska. To provide for the growing recreation demands of Alaskans, who are among the most active anglers, hikers, boaters, hunters and campers in the United States, we must take action now to designate appropriate state lands and waters for special use.

Today I am introducing two recreation bills: to establish a state recreation rivers system, including the Little Susitna River, and to designate the Willow Creek State Recreation Area. Both of these areas were recommended for special designation on the Willow Subbasin Plan adopted two years ago. On March 1, after the Susitna Area Plan is adopted, I will introduce legislation to create several more special areas as recommended in the final plan.

Section 1 of this bill amends AS 41.21.022 to allow the discharge of firearms for lawful hunting in recreation river corridors except when public safety requires otherwise.

Section 2 contains the body of the bill. New AS 41.21.308 states the purposes of the new sections in AS 41.21, which include dedication of a recreation river and adjacent state land as a unit of the state park system. New AS 41.21.310 designates the Little Susitna River corridor and adjacent state lands as a recreation river. New AS 41.21.312 delegates to the Department of Natural Resources the regulatory responsibilities for the river corridor subject to the existing powers of the Department of Fish and Game, Board of Fisheries, Board of Game, Guide Licensing and Control Board, and Department of Environmental Conservation.

Under new AS 41.21.314, the commissioner of natural resources is directed to develop and adopt a comprehensive management plan for the river corridor through a public hearing process and consultation with affected local municipalities and other interested state and local agencies. Once the plan is adopted, the commissioner is directed to adopt regulations under the Administrative Procedure Act (AS 44.02) to implement the plan. These regulations, as a minimum, must designate appropriate transportation and utility corridors for the area in cooperation with the Department of Transportation and Public Facilities; establish guidelines for the extraction of sand and gravel for public purposes and the harvest of forest

HB 92

HOUSE BILL NO. 92 by the Rules Committee by request of the Governor, entitled:

"An Act relating to child and spousal support; and providing for an effective date."

was read the first time and referred to the Health, Education & Social Services, Judiciary and Finance Committees.

A fiscal note was attached and appears in House Journal Supplement No. 5. The Governor's transmittal letter, dated January 18, 1985, appears below:

"Dear Representative Grussendorf:

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

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

Section 2 amends AS 09.65.132 to conform to federal requirements relating to income withholding orders. The use of the term "income withholding order" in substitution for "income assignment order" will provide for consistency in state and federal statutes. PL 98-378 requires that collections be deposited and distributed by a public agency designated by the state. In this case, the agency is the child support enforcement division of the Department of Revenue (referred to as the "agency"). Since the agency will be required to administer any income withheld, and will be accountable for collection and distribution, the bill also requires that all applications for income withholding orders be filed through the agency. The effectiveness of AS 09.65.132 as an enforcement tool is strengthened by requiring an automatic procedure to trigger withholding without court intervention if an obligor does

HB 92

not request a hearing, and an expedited decision if a hearing is requested. The service requirement is also amended so that no more restrictive service provision is necessary than would be required under normal motion practice in a typical lawsuit. PL 98-378 also requires that employers who discharge an employee, discipline an employee, or refuse to hire a person, because of an income withholding order, be fined; therefore the bill adds a provision making commission of any of those acts a misdemeanor punishable by a fine of not more than \$1,000. This misdemeanor is not classified; thus the imprisonment provisions of AS 12.55.135 do not apply.

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

Section 4 of the bill contains a new chapter, AS 25.26, the Interstate Income Withholding Act, which is also required by PL 98-378. This chapter draws heavily upon a Model Interstate Income Withholding Act, drafted by the Child Support Projects section of the American Bar Association and the National Conference of State Legislatures. The Model Act was prepared to assist states to meet the deadline of October 1, 1985 for implementation of the interstate withholding requirements. The Model Act enables states that enact similar provisions to order income withholding in another state in the same manner as they would impose intrastate withholding, without the necessity of filing a new action in the other state, as is necessary under the existing Uniform Reciprocal Enforcement of Support Act (AS 25.25) or other enforcement statutes.

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

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

MEMORANDUM

State of Alaska

TO: Honorable Mary A. Nordale
Commissioner
Department of Revenue

THRU: Holli Ploog, Director
Child Support Enforcement Div.

FROM: Norman C. Gorsuch
Attorney General

By: *Iris S. Barnett*
Iris Sokolow Barnett
Assistant Attorney General
Human Services Section-Juneau

DATE: March 8, 1985

FILE NO:

TELEPHONE NO: 465-3603

SUBJECT: CSHB 92 (HESS)

The Attorney General has asked me to respond to your memo of March 7, 1985, regarding whether lines 20-24 at page 4 of CSHB 92 (HESS) violate the contract clause of the Alaska or U.S. Constitution. My preliminary review of this matter indicates that this subsection of CSHB 92 does not violate either constitution's contract clause.

Art. I, § 15 of the Alaska Constitution provides, in part, that "[n]o law impairing the obligation of contracts ... shall be passed." Likewise, art. I, § 10 of the U.S. Constitution provides, in part, that "[n]o state shall ... [pass any] law impairing the obligation of contracts." It is clear that both provisions prohibit the Alaska legislature from passing laws that impinge upon contracts that have been entered. The legislature may not pass a law that alters rights and entitlements that have vested under an extant contract. See Dartmouth College v. Woodward, 17 U.S. (4 Wheat.) 518 (1819), the seminal case on this issue. See also State v. Allen, 625 P.2d 844 (Alaska 1981); Hood v. State, Workmen's Compensation Board, 574 P.2d 811, 816 n. 13 (Alaska 1978).

The fact that legislation may restrict or prohibit a person's right to enter a contract in the future does not implicate the state or federal contract clause. As the proposed legislation, at most, limits an obligor's ability to contract with an obligee in the future concerning the obligor's child support obligation, it does not involve violation of art. I, § 15 of the Alaska Constitution or art. I, § 10 of the U.S. Constitution.

ISB:ebc

CONNOR, Justice, with whom RABINOWITZ, Justice, joins, dissenting in part.

I dissent from the holding that an action for innocent misrepresentation should be permitted against the real estate broker.

When a realtor acts as a mere conduit for passing on information supplied by the seller, he should be under no duty independently to verify that information unless he has reason to believe the information to be false. See *Lyons v. Christ Episcopal Church*, 71 Ill.App.3d 257, 27 Ill.Dec 559, 389 N.E.2d 623, 625 (1979). Allowing an innocent misrepresentation action against the broker in such circumstances is quite close to imposing strict liability. There is no reason to make the broker the "insurer" of the seller's representation.

Although we recognized a cause of action based on innocent misrepresentation in *Cousineau v. Walker*, 613 P.2d 608 (Alaska 1980), that case is distinguishable from a case between a buyer and a broker. Sellers who make representations about their property should be held to the accuracy of the representations, as they are normally in the best position to know the facts. But a broker often has little personal knowledge of the property which he offers for sale. I see no reason to make the broker the guarantor of representations emanating from the seller. I would hold that innocent misrepresentation is not available as a cause of action by the buyer against the broker. Thus, I would reverse the judgment of the superior court. I agree with the balance of the majority opinion.



in we affirmed a judgment in favor of a small "subdivider" in a damage action founded upon the subdivider's innocent failure to disclose undetected permafrost conditions in lots sold to the plaintiffs.

Subdividers are subject to, and protected by, the Alaska Land Sales Practices Act, AS 34.55. Under the act, a subdivider is liable for material misrepresentations or omissions affecting the land, "unless in the case of an untruth or omis-

Laureen BAILEY, Appellant and
Cross-Appellee,

v.

Dennis J. HAAS, Appellee and
Cross-Appellant.

Nos. 6177, 6688.

Supreme Court of Alaska.

Dec. 3, 1982.

Cross appeals were taken from a decision of the Superior Court, Third Judicial District, Kenai, James A. Hanson, J., which was entered in an action brought pursuant to the Uniform Reciprocal Enforcement of Support Act. The Supreme Court, Connor, J., held that: (1) failure of petition to include a prayer for arrearages did not justify dismissal of the claim where respondent had notice of the claim for arrearages at the very latest by time motion for an order of support was filed, and (2) request for arrearages in child support need not be reduced to judgment by petitioning state prior to recovering such arrearages in an Uniform Reciprocal Enforcement of Support Act action.

Reversed and remanded.

1. Parent and Child \Leftrightarrow 3.4(2)

Failure of petition to initiate support proceedings under Uniform Reciprocal Enforcement of Support Act to include a prayer for arrearages did not justify dismissal of the claim where respondent had notice of the claim for arrearages at the very latest by time motion for an order of support was filed. AS 25.25.010-25.25.270.

sion it is proved that . . . the person offering or disposing of subdivided land did not know and in the exercise of reasonable care could not have known of the untruth or omission." AS 34.55.030(a). Thus, a "subdivider" is not liable for innocent misrepresentations. Such liability is barred by the statute. This protection, however, is not available to the defendants in the case at bar, since they are not "subdividers."

Appellant and
Lee,

Appellee and
ant.

§88.

Alaska.

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2. Parent and Child ⇔3.4(1)

Request for arrearages in child support need not be reduced to judgment by petitioning state prior to recovering such arrearages in an Uniform Reciprocal Enforcement of Support Act action. AS 25.25.010-25.25.270.

3. Parent and Child ⇔3.4(2)

Civil rule providing that court shall award a fee commensurate with amount and value of legal services rendered in actions where money judgment is not an accurate criteria for determining the fee was applicable to child support proceedings under Uniform Reciprocal Enforcement of Support Act rather than set schedule. Rules Civ.Proc., Rule 82(a)(1, 2); AS 25.25.010-25.25.270.

4. Parent and Child ⇔3.3(7)

Father failed to show an abuse of discovery in action brought for child support and therefore was not entitled to an award of attorney fees. Rules Civ.Proc., Rule 95(a).

Donald W. Edwards, Asst. Atty. Gen., Anchorage, and Wilson L. Condon, Atty. Gen., Juneau, for appellant and cross-appellee.

Phil N. Nash, Kenai, for appellee and cross-appellant.

Before BURKE, C.J., and RABINOWITZ, CONNOR, MATTHEWS and COMPTON, JJ.

OPINION

CONNOR, Justice.

This appeal arises from an action brought pursuant to the Uniform Reciprocal Enforcement of Support Act¹ (hereinafter URESA) for child support. The superior court entered judgment in favor of plaintiff Laureen Bailey, ordering defendant Dennis Haas to pay child support of \$150 per month. Bailey appeals the superior court's

1. AS 25.25.010-.270.

dismissal of her petition for past due child support and the denial of costs and attorney's fees. Haas cross-appeals the court's denial of his attorney's fees.

I. Dismissal Of Arrears

On June 9, 1980, a petition to initiate support proceedings under URESA was filed by the State of Michigan on behalf of Michigan resident Laureen Bailey. The petition was filed in Kenai Superior Court naming Dennis Haas, a resident of Alaska, as respondent. A motion for an order of support was filed in Kenai Superior Court on October 3, 1980, requesting \$240 per month in ongoing support and \$10,255.78 in arrears. At a child support hearing on January 16, 1981, the superior court dismissed the action for arrearages because the petition did not specifically pray for such a judgment and because it considered Michigan to be in a better position to ask for judgment within that state. We hold that the superior court erred in its dismissal on both grounds.

[1] First, the petition's failure to include a prayer for arrearages did not justify dismissal of the claim. The function of a pleading is to give notice of the type of claim asserted. *The Morrow v. New Moon Homes, Inc.*, 548 P.2d 279, 295 (Alaska 1976). The body of the petition stated that Haas had contributed nothing toward the support for his daughter. Further, the motion for an order of support specifically requested arrearages. Therefore, Haas had notice of the claim for arrearages at the very latest by October 3, 1980, when the motion was filed.

[2] The superior court's second ground of dismissal seems to be based on the assumption that a request for arrearages must be reduced to judgment by the petitioning state. There is no such requirement. It is clear that in URESA actions, Alaska law applies.² Under Alaska law,

2. AS 25.25.060.

arrearages are recoverable in UKESA actions.³

Thus, the superior court's dismissal of the claim for arrears was in error.

II. Costs And Attorney's Fees

[3] Laureen Bailey appeals the superior court's denial of her costs and attorney's fees. The court cited *Johnson v. Johnson*, 564 P.2d 71 (Alaska 1977), cert. denied, 434 U.S. 1048, 98 S.Ct. 896, 54 L.Ed.2d 800 (1978), as preventing the application of Alaska Civil Rule 82, the attorney's fees provision. We hold that *Johnson*, which involved divorce proceedings, does not apply in child support proceedings under URESA. We note, however, that Rule 82(a)(2)⁴, rather than the set schedule of Rule 82(a)(1), should apply here as the money judgment is not an accurate criterion for determining the award. We further caution that this poses a delicate problem in child support proceedings, as too large a fee may impair the ability of the defendant to fulfill support obligations.

[4] Haas cross-appeals the superior court's denial of his motion for attorney's fees. Haas alleges an abuse of the discovery process which should result in an award of fees pursuant to Civil Rule 95(a). This appeal is without merit. Haas has failed to show an abuse of discovery, and he has not shown an abuse of the superior court's discretion.

Accordingly, we REVERSE the superior court's decision and REMAND for a hearing on arrearages and Bailey's costs and fees.



3. See AS 25.25.010(6) and AS 25.25.080.

4. Civil Rule 82(a)(2) states:

"(2) In actions where the money judgment is not an accurate criteria [sic] for determining

James R. LEONARD, Appellant,

v.

STATE of Alaska, Appellee.

No. 5989.

Court of Appeals of Alaska.

Nov. 12, 1982.

Defendant was convicted in the District Court, Third Judicial District, Henry C. Keene, Jr., J., of two counts of misconduct involving weapons in second degree and two counts of criminal mischief in third degree, and he appealed. The Court of Appeals, Singleton, J., held that: (1) after defendant himself volunteered information concerning his initial agreement to take polygraph test, trial court did not abuse its discretion in permitting prosecution to establish that defendant was in fact unwilling to take test; (2) convictions for two counts of each crime, based upon firing at cabin and at truck, did not subject defendant to double jeopardy; and (3) concurrent rather than consecutive sentences were appropriate.

Affirmed.

1. Criminal Law ⇨ 388

Results of polygraph examinations should not be received in evidence over objection, and, even if there has been no objection, trial court should ordinarily reject such evidence.

2. Criminal Law ⇨ 388

Rationale prohibiting introduction of polygraph evidence also precludes references to witness' willingness or unwillingness to take polygraph.

3. Criminal Law ⇨ 396(1)

Where trial court properly entered protective order precluding any reference to

the fee to be allowed to the prevailing side, the court shall award a fee commensurate with the amount and value of legal services rendered."

ALASKA WOMEN'S LOBBY

POST OFFICE BOX 10-1571, ANCHORAGE, ALASKA 99510

March 6, 1985

The Alaska Women's Lobby strongly supports CSHB 92 (HESS), An Act relating to child and spousal support, which will significantly enhance the collection of support payments for Alaskan children from absent parents.

We stress the importance of prompt passage of this legislation. The Federal Child Support Enforcement Amendments were signed into law last August. The various states have been given until October 1, 1985 to comply with these amendments or risk jeopardizing federal funding.

The law is designed to strengthen child support enforcement techniques and to assure that assistance in obtaining support from parents will be available to all families. It also focuses attention on interstate enforcement of support orders.

The Alaska Women's Lobby supports the proposed HESS Committee amendment allowing for the inclusion of an automatic cost-of-living increase. A recent, nationwide, study aimed at finding ways to improve the economic status of single parent families found that many absent parents can afford to pay far more in child support than is now being ordered by most state courts. This amendment would provide a way for the support payments to increase due to changes in circumstances without a separate court order.

Problems of delinquency in child support payments are much discussed and wide-spread. A review done at the request of the U.S. Senate Budget Committee revealed that absent parents paid only 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.

In this light the Alaska Women's Lobby also supports the proposed change in the service of notice from certified or registered mail to first class mail. Testimony by custodial parents before the House HESS Committee clearly showed that the more restrictive service requirement often sets

up a barrier to collection when the delinquent parent refuses or neglects to claim the notice from the postmaster.

The more restrictive service which is required of the Child Support Enforcement Agency is not required when notice is served through a private attorney. Thus the ability of low income custodial parents who must turn to the agency to effect collection of past due support payments is hampered while those who can afford to pursue support collection privately have a better chance of securing the withholding order.

The Women's Lobby advocates equal protection for those low income parents and urges the passage of this legislation with the inclusion of this change.

Sherrie Goll

Sherrie Goll

for The Alaska Women's Lobby

MEMORANDUM

State of Alaska

TO: Honorable Mary A. Nordale
Commissioner
Department of Revenue

DATE: March 8, 1985

THRU: Holli Ploog, Director
Child Support Enforcement Div.

FILE NO:

TELEPHONE NO: 465-3603

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: CSHB 92 (HESS)

By: *Iris S. Barnett*
Iris Sokolow Barnett
Assistant Attorney General
Human Services Section-Juneau

The Attorney General has asked me to respond to your memo of March 7, 1985, regarding whether lines 20-24 at page 4 of CSHB 92 (HESS) violate the contract clause of the Alaska or U.S. Constitution. My preliminary review of this matter indicates that this subsection of CSHB 92 does not violate either constitution's contract clause.

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The fact that legislation may restrict or prohibit a person's right to enter a contract in the future does not implicate the state or federal contract clause. As the proposed legislation, at most, limits an obligor's ability to contract with an obligee in the future concerning the obligor's child support obligation, it does not involve violation of art. I, § 15 of the Alaska Constitution or art. I, § 10 of the U.S. Constitution.

ISB:ebc

PAYMENT HISTORY AUDIT

Case Number 1 JU-82-967	Date of Request 12-31-84
Case Name Juan Van Pool vs David Lee Van Pool	

Date	Amount Due	Date Proc.	Amount Paid	Amount Credit
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		2-6 2-24	100 - 100 -	
3		3-29 3-28	100 - 100 -	
		3-15	100 -	
4		4-20	100 -	
		4-17 4-30	100 - 100 -	
5		5-14	100 -	
		5-7 5-25	100 - 100 -	
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7		7-10	300 -	
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<p>I hereby certify that this is a true and correct copy of the official record of the Child Support Enforcement Agency at my custody and control. Certified to this</p> <p><u>31st</u> day of <u>December</u>, 19<u>84</u></p> <p><u>Jessie Glover</u></p> <p>Child Support Enforcement Agency Department of Revenue</p>				
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Juneau Field Office
Child Support Enforcement Division

	Amount DUE	Amount PAID	Credits
Total Page	9,000 -	2,731.29	3,300 -

1 IN THE SUPREIOR COURT FOR THE STATE OF ALASKA

2 FIRST JUDICIAL DISTRICT AT JUNEAU

3 SUSAN VAN POOL,
4 Plaintiff.

5 vs.

6 DAVID LEE VAN POOL,
7 Defendant.

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NO. 180-82-967 CIVIL

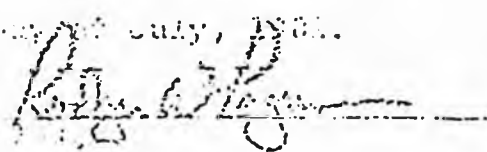
3 DECREE OF DIVORCE

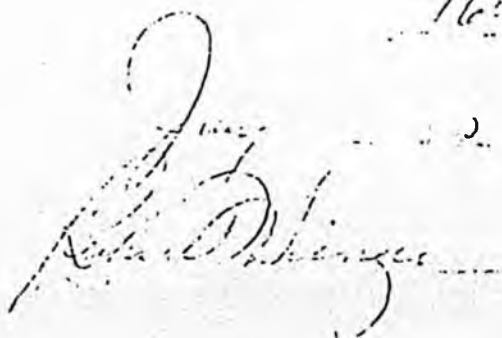
4 This matter came on regularly for hearing this date, the
5 plaintiff appearing personally and with her attorney, Shirley F.
6 Kohls, the defendant not appearing and his Admission of Service
7 of Summons and Copy of Complaint, Petition and Driver of Title
8 for Pleading and Trial having been entered, and the Court having
9 heard the testimony and having made and entered herein its
10 Findings of Fact and Conclusions of Law, and being fully advised
11 in the premises, it is now

12 ORDERED, ADJUDGED AND DECREED that the plaintiff be, and she
13 is hereby, granted an absolute divorce from the defendant, and
14 the bonds of matrimony heretofore existing between the plaintiff
15 and the defendant be, and they are hereby, dissolved.

16 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Property
17 Settlement and Custody agreement entered into between the parties
18 on June 16, 1982 be, and it is hereby, the order of this Court.

19 Done in open Court this 16th day of July, 1983.

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

SUSAN VAN POOL,)
)
Plaintiff,)
)
vs.)
)
DAVID LEE VAN POOL,)
)
Defendant.)

No. 1JU-82-967 CIVIL

PROPERTY SETTLEMENT AND CUSTODY AGREEMENT

THIS AGREEMENT made this 16th day of June, 1982
between SUSAN VAN POOL of Juneau, Alaska, hereinafter referred
to as the "wife", and DAVID LEE VAN POOL of Juneau, Alaska,
hereinafter referred to as the "husband",

WITNESSETH:

WHEREAS, the parties were married at Rockford, Illinois,
on March 18, 1977,

WHEREAS, serious differences have arisen between the
parties hereto rendering it impossible for them longer to
live together as husband and wife;

WHEREAS, the wife has filed suit for divorce in the
Superior Court for the State of Alaska; and

WHEREAS, each of the parties herein desires to settle
and adjust all marital interests and all rights and claims
in and to the property of the other now and hereafter acquired,

NOW, THEREFORE, in consideration of the promises and
the mutual covenants and agreements hereafter contained, the
parties do mutually agree as follows:

1. That each of the said parties is fully and completely
informed of the financial and personal status of the other
and each of the parties has given full and mature thought to
the making of this agreement, and all of the obligations

1 contained therein, and that each of said parties understands
2 that the agreements and obligations assumed by the other are
3 assumed with the express understanding and agreement that
4 they are in full satisfaction of all obligations which each
5 of said parties now has or might hereafter or otherwise have
6 toward the other.

7 2. The wife shall have the care, custody and control
8 of the minor children of the parties, namely:

9 Patrick Lee Van Pool, born July 11, 1977, and
10 Kimberly Rebecca Van Pool, born October 16, 1979,

11 and the husband may have reasonable rights of visitation,
12 provided he gives 24-hours notice.

13 3. The husband agrees to pay to the wife the sum of
14 \$150.00 per month per child beginning July 1, 1982 and
15 continuing on the first day of each month thereafter, for
16 the support, care and education of said children until they
17 reach the age of majority or are sooner self-supporting.

18 4. The husband quitclaims, conveys and releases to
19 the wife the following property:

20 1965 Magnolia trailer home with trunk and household
21 furniture and furnishings therein and the husband
22 agrees to pay the remaining balance owed to the Bank of
the North in the sum of approximately \$200.

23 1980 Buick and the husband agrees to use every effort
24 to obtain a release from his father Roscoe H. Van Pool
25 to the wife, all of his right, title and interest in
said automobile and the wife will make the remaining
payments owed to the B. N. Bank after receiving
said release.

26 5. The wife conveys and releases to the husband the
27 following:

28 all of his right, title and interest in tools and
29 equipment connected with his business, entitled Cold
Lagget Inter, Inc.

30 6. The parties agree that the wife may take the
31 children of the parties as a Federal income tax deduction.
32

1 7. The parties do certain debts which they will pay
2 as follows:

3 The husband will pay the Federal income tax owed for
4 the years 1971 and 1981 in the sum of approximately
5 \$5,000 or whatever balance is owed; Jansau-Douglas
6 Telephone Company, Petrolana and all debts connected
7 with his business, Gold Marine Laboratories.

8 The wife will pay Sears, P. I. Cable, Chunnel Sanitation,
9 Alaska Electric Lines & Power, Douglas Oil Heat and any
10 other utility bills connected with the trailer.

11 8. Each party agrees to pay their own attorney fees
12 and costs in this action.

13 9. Each party will execute promptly any and all
14 documents of any and every kind or character for the other
15 which may be necessary or proper to carry out the terms
16 hereof.

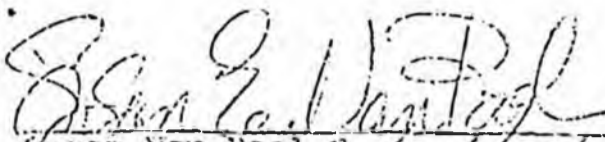
17 10. It is understood and agreed that the terms and
18 provisions of this Property Settlement and Custody Agreement
19 shall be incorporated in any final decree of divorce which may
20 hereafter be entered and enforceable by contempt proceedings,
21 if necessary.

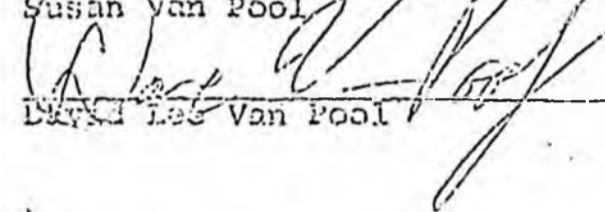
22 11. It is the intent of the parties that this agreement
23 shall be the final agreement of all of the right, title and
24 interest in and to any property acquired before or during
25 the marriage, and any property acquired by either of the
26 parties subsequent to the date of this agreement. It is
27 further the intent of this agreement that each of the parties
28 shall be in full control of his or her separate property and
29 responsible for his or her separate debts. It is further
30 agreed that each of the parties does hereby release and
31 discharge each other from any and all claims and demands of
32 every nature which they have against the other, except
those provided herein.

IN WITNESS WHEREOF, the parties have set their hands

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this 16th day of June, 1982.



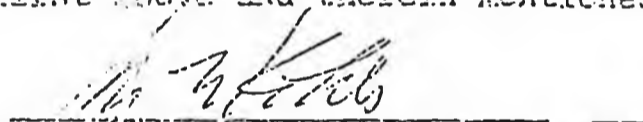
Susan Van Pool


David Lee Van Pool

S T A T E O F A L A S K A)
) ss.
F I R S T J U D I C I A L D I S T R I C T)

On this 15th day of June, 1982, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared SUSAN VAN POOL, known to me and known to me to be the person named in and who executed the within and foregoing instrument, and acknowledged to me that the same was signed freely and voluntarily for the uses and purposes therein mentioned.

In Witness Whereof, I have hereunto affixed my signature and official notarial seal at Juneau, Alaska, the day, month and year in this certificate first above and therein mentioned.

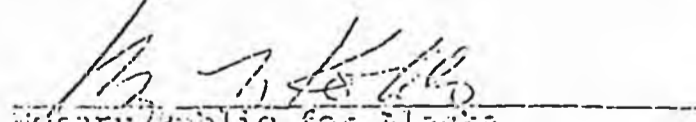


Notary Public for Alaska
My Commission Expires: 3/12/86

S T A T E O F A L A S K A)
) ss.
F I R S T J U D I C I A L D I S T R I C T)

On this 16th day of June, 1982, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared DAVID LEE VAN POOL, known to me and known to me to be the person named in and who executed the within and foregoing instrument, and acknowledged to me that the same was signed freely and voluntarily for the uses and purposes therein mentioned.

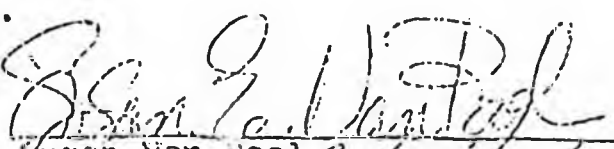
In Witness Whereof, I have hereunto affixed my signature and official notarial seal at Juneau, Alaska, the day, month and year in this certificate first above and therein mentioned.

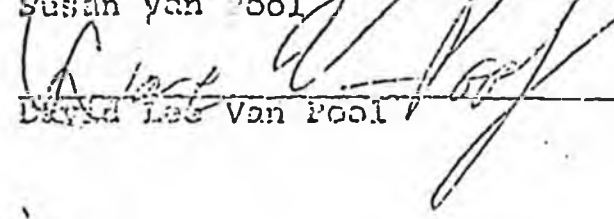


Notary Public for Alaska
My Commission Expires: 3/12/82

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this 16th day of June, 1982.



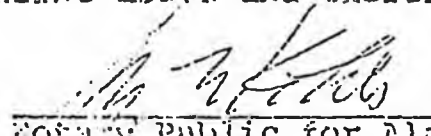
Susan Van Pool


David Lee Van Pool

S T A T E O F A L A S K A)
) ss.
F I R S T J U D I C I A L D I S T R I C T)

On this 16th day of June, 1982, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared SUSAN VAN POOL, known to me and known to me to be the person named in and who executed the within and foregoing instrument, and acknowledged to me that the same was signed freely and voluntarily for the uses and purposes therein mentioned.

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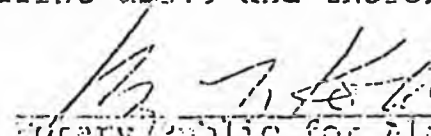


Notary Public for Alaska
My Commission Expires: 3/10/86

S T A T E O F A L A S K A)
) ss.
F I R S T J U D I C I A L D I S T R I C T)

On this 16th day of June, 1982, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared DAVID LEE VAN POOL, known to me and known to me to be the person named in and who executed the within and foregoing instrument, and acknowledged to me that the same was signed freely and voluntarily for the uses and purposes therein mentioned.

In Witness Whereof, I have hereunto affixed my signature and official notarial seal at Juneau, Alaska, the day, month and year in this certificate first above and therein mentioned.



Notary Public for Alaska
My Commission Expires: 3/10/86

Some imperfect indicators of the size of the population of children needing child support.

Source: 1980 U.S. Census for Alaska

Table 21, General Population Characteristics

	Number	Percent
Total children under the age of 18	130,745	100 %
Living independently as householder or spouse ..	384	.003%
Living in married couple families	102,138	78.1%
Remainder	28,223	21.6%

This remainder group of 28,223 children is both under-inclusive and over-inclusive of those who are theoretically due child support. Under-inclusive because it ommits those living in married couple households whose parents have remarried. Over-inclusive because it includes children whose parents have died.

The 28,223 children are distributed thus:

Total	28,223	100%
Living with female householder, no husband present	13,792	49%
" with male householder, no wife present	4,476	16%
" with other relatives	6,671	24%
" with non-relatives	2,462	9%
In institutional or group quarters	822	3%

Alaska Child Support Enforcement Division, 1980 ^{Active} caseload: 6,770

Averaging slightly less than 2 children per case, this means that 12,000 to 13,000 children were on the agency's caseload.

The average amount due per month per case was \$153.

Per child this works out to about \$77.

38.5% of this amount was actually collected.

At the end of 1983 the amount due per case had risen to \$167 (\$84 per child) per month and the collection rate had risen to 58%.

Source: CSED Performance Report, FY83

Testimony of Judy Brakel
3/8/85

Alaska State Legislature



House of Representatives House Judiciary Committee

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

Contents - HB 92
March 28, 1985

CSHB 92 (JUD)

Letter of Intent

3/26/85 draft CSHB 92 (JUD)

Edwards amendment, page 1, line 14, 3/26/85

3/25/85 draft CSHB 92 (JUD)

Clocks in amendments 3/21/85

draft Letter of Intent

CSHB 92 (HESS)

HB 92

Fiscal Note - CSHB 92 HESS - 2/25/85 - Child Support Enforcement

Position paper & fiscal note - 1/30/85 - Public Assistance

Sectional Analysis - CSHB 92 (HESS)

Memorandum to HESS re bill changes from Nancy Bennett,
2/13/85

Proposed amendment

2/5/85 letter from AG Elizabeth Shaw re due process

Sectional summary of Child Support Enforcement Amendments of 1984

Summary by area of improvement

Civil Rule 5 Service & Filing of Pleadings and Other Papers with Balchen

Report by US General Accounting Office: US Child Support: Needed

Efforts Underway to Increase Collections from Absent Parents, 10/30/84

Routing Slip from Vice Herberhoft dated 1/17/85 with listing of needed

Alaska Law modifications and suggestions

Public Law 98-378 - 8/16/84, 98 Stat 1305

1/31/85 letter from AG Elizabeth Shaw re enforcement of
interstate/intrastate actions and enclosing copies

Revised Uniform Reciprocal Enforcement of Support Act (1968) drafted by
the National Conference of Commissioners on Uniform State Laws

Model Interstate Income Withholding Act

House Journal 1/18/85

Bailey v Haas, 3/12/82

Memorandum from AG Iris Barnett on CSHB 92 re lines 20-24,
p. 4

Letter from Alaska Women's Lobby

Indicator of size of population of children needing child
support

3/22/85 Edwards memo re (SSB 92) - Civil Rule 77



10606 Wilkins Avenue
Los Angeles, California 90024
(213) 475-5352
James A. Cook
President

A Nonprofit Association concerned with
the joint custody of children and related issues of divorce,
including research, information dissemination
and legal and counseling practices

January 11, 1985

Chairman and Committee Members
House Judiciary Committee
State of Alaska
Juneau, Alaska 99811

JAN 16 1985

Dear Chairman and Committee Members;

A legislative review of child support enforcement procedures, by state, is required by the recent federal enactment of Public Law 98-378 which amended title IV-D of the Social Security Act.

During Congressional analysis of the support issue there was widespread recognition that adequacy and effectiveness of support payment could be encouraged by legal procedures other than merely increasingly punitive enforcement.

Those additional measures dealt primarily with an assurance of equitability and equal rights for each member of a family, upon divorce or during periods of separate maintenance. The public's expectation of equity in human relations, following divorce, is a natural progression of the past thirty years of federal and state implementation of equal rights.

Procedural and Constitutional restraints inhibited Congress from legislating, in PL 98-378, those additional family law matters reserved for the states.

However, recognition of those other influences and family law improvements to increase the likelihood of support payment, while reducing the tax burden, prompted Congress to add "sense of the Congress" encouragement, and the suggestion of State Commissions where necessary, to assure that states enact statutes to make support payment more probable and avoidance less likely.

Enclosed, for state legislative review and enactment where applicable, are copies of our material submitted to Congress that dealt with those influential actions which could diminish state and federal tax burdens of enforcement.

Among the enclosures, you are particularly referred to:

1. An itemization of amendment proposals, with justifications in brief and priority-ranked by our knowledge of the likelihood of each to make support payment more probable while resolving the complaints of individuals who resist the inequity of the present enforcement system.

2. Wage assignment provisions earmarked by those additional clauses and actions that make wage assignment more humane and palatable.

- We urge your enactment of the enclosures, where applicable, as a means of developing more broadly-based public acceptance of your legislative task and to overcome a temporary impression that federal and state support enforcement is favoring only one narrow class of recipient to the disadvantage of obligors and the general tax-paying public.

Sincerely,

A handwritten signature in cursive script, appearing to read "James A. Cook". The signature is written in dark ink and is positioned above the printed name.

James A. Cook

P.S. Please distribute this letter and enclosures to other committee members.

Chairman
JAMES A. COOK
President
ALAN Z. LEBOW
Executive Vice President
ROBERT A. HIRSCHFELD

Secretary
PETER T. CYR

Treasurer
THOMAS H. WING

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Dentist
Maine

Michael Dient
Publications Specialist
Texas

Warren Farrell, PhD
Author "The Liberated Man"
California

Robert E. Fay, MD
Pediatrician
New York

Bruce C. Gerling
Mechanical Engineer
New York

Fredric Hayward
Social Reformer
California

Robert A. Hirschfeld
Editor/Publisher
Arizona

Jack Isaacson
Management Analyst
Virginia

Allan Z. Lebow
Fathers' Organization Administrator
Michigan

Walter Lipow, DDS
Dentist
New York

Paul M. Robinson, Jr.
Computer Specialist
Virginia

John A. Rossler
AAMCO Franchiser/Owner
New York

Thomas Lee Thompson, LCSW
Psychotherapist
Maryland

Kent S. Wilcox
Director, Consumer Services
Michigan

Tom Williamson
Director, Marketing
New York

Thomas H. Wing
General Contractor
Washington

Richard Woods
Director, Economic Analysis
Iowa



NATIONAL CONGRESS FOR MEN

Testimony

regarding child support enforcement legislation

submitted to the

Senate Finance Committee
January 24-26, 1984

by

James A. Cook

Chairman, National Congress for Men
and

President, The Joint Custody Association

10606 Wilkins Avenue
Los Angeles, California 90024

(213) 474-4859 475-5352

there is no court order whatsoever that anyone, including the father, is responsible for paying child support.

Furthermore, a large segment of the child support problem is comprised of unmarried, never-married mothers. According to the child support enforcement program "the largest single factor accounting for the increase in AFDC rolls has been the increase in the number of families in which the parents were never married." (Approximately 1.1 million families; 641,000 Black and 406,000 Caucasian)

Generally, the punitive child support enforcement techniques now being proposed are largely ineffectual for such groups and, instead, the proposals tend to impose the most stringently upon the very segment of society which we should be striving to improve and maintain.

The disproportionate impact of punitive legislation

In the name of immediate action, predicated on large, all-inclusive statistics, and to satisfy political demand, the current legislative proposals impose the hardest on the desperate, marginally-employed, economically-struggling father who did honor his relationship with marriage, who has a residence, has been or is 'paying something', is salaried, who pays taxes, who has remarried an income-earning and tax-paying spouse, who seeks to save and bank money, has property and falls within all those conventional activities that are identifiable by the parent locator system.

Yet, the proposed legislation conveys an important anti-social message to such parents: you are unlikely to be entrapped if, instead, you don't marry, you live-off the cash economy, have no taxable income, retain no savings, own no property, live with someone also not earning traceable money, and avoid the conventional banking, telephone, postal, vehicle registration and organizational memberships that knit together a responsible society.

Throughout the broad middle-ground of those 'sometimes paying, sometimes not paying' parents is the disenfranchised, discouraged and exploited parent who has a lingering or intense interest in their children....it's a segment made

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**



Chairman
JAMES A. COOK
President
ALAN Z. LEBOW
Executive Vice President
ROBERT A. HIRSCHFELD
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Testimony

regarding child support enforcement legislation
submitted to the

Senate Finance Committee
January 24-26, 1984

by

James A. Cook

Chairman, National Congress for Men
and
President, The Joint Custody Association

10606 Wilkins Avenue
Los Angeles, California 90024

(213) 474-4859 475-5352

I am James A. Cook.

I will be speaking for, and on behalf of child support. I will suggest proposals that will make the payment of child support more likely to occur, including concepts that will make an enforcement system more recognizeably just, humane and equitable.

I speak from my observation of activity within two separate organizations:

- * The Joint Custody Association (of which I am the initiator and President), an organization of 1,500 individuals, about 30% of whom are professionals engaged in assuring statutes as well as case precedents that establish joint custody as a first-step preference for the children of divorce before resorting to severing a child into sole custody isolation.
- * The National Congress for Men (of which I was the initial President and am now the Chairman), a linking network organization that serves as a focal point for the 285 men's, fathers' rights and divorce reform organizations with which we are in touch nationwide. We are not in competition with women nor demanding power over women as a mechanism of social change. We believe the problems confronted by men, in relationship with women, are rectifiable by continually attuning the political, judicial and social system toward that which is equitable and decent.

Separating and identifying the problem

In order to apply equitability, and logic, to that portion of the child support problem that is amenable to improvement, it is necessary to separate the problem of unpaid child support into manageable segments.

Much has been said about so-called unpaid child support in an effort to acquire political backing for punitive enforcement measures.

Before enacting such proposals, however, it is important to recognize that, for approximately 41% of the women with children under 21 years of age,

there is no court order whatsoever that anyone, including the father, is responsible for paying child support.

Furthermore, a large segment of the child support problem is comprised of unmarried, never-married mothers. According to the child support enforcement program "the largest single factor accounting for the increase in AFDC rolls has been the increase in the number of families in which the parents were never married." (Approximately 1.1 million families; 641,000 Black and 406,000 Caucasian)

Generally, the punitive child support enforcement techniques now being proposed are largely ineffectual for such groups and, instead, the proposals tend to impose the most stringently upon the very segment of society which we should be striving to improve and maintain.

The disproportionate impact of punitive legislation

In the name of immediate action, predicated on large, all-inclusive statistics, and to satisfy political demand, the current legislative proposals impose the hardest on the desperate, marginally-employed, economically-struggling father who did honor his relationship with marriage, who has a residence, has been or is 'paying something', is salaried, who pays taxes, who has remarried an income-earning and tax-paying spouse, who seeks to save and bank money, has property and falls within all those conventional activities that are identifiable by the parent locator system.

Yet, the proposed legislation conveys an important anti-social message to such parents: you are unlikely to be entrapped if, instead, you don't marry, you live-off the cash economy, have no taxable income, retain no savings, own no property, live with someone also not earning traceable money, and avoid the conventional banking, telephone, postal, vehicle registration and organizational memberships that knit together a responsible society.

Throughout the broad middle-ground of those 'sometimes paying, sometimes not paying' parents is the disenfranchised, discouraged and exploited parent who has a lingering or intense interest in their children....it's a segment made

up primarily of those individuals who did not necessarily initiate divorce and are resentful of the consequences.

Social movement, change and solution

Furthermore, two great social movements are going on, albeit seemingly on divergent paths, but suggesting solutions to the child support dilemma.

On the one hand is the increasing interest and respectability in proclaiming oneself a father and participating in that responsibility through first-person, on-the-spot activity with ones child. This is one of the most socially-advantageous reassertions in America during the past decade. Such interest in fatherhood is not new in America; it is merely being restated, emphatically, as an honorable goal.

However, concurrently we have been experiencing during the same decade a striving for independence by women seeking other options and an avoidance...at least temporarily...of commitment.

In answer to this dichotomy, society is working-out a solution not reflected in the legislative bills you are considering but is reflected in scattered instances of state statute law. It is one of several solutions that is compiling the best statistical record of payment and satisfaction of child support payment of all the alternatives: that of a preference for joint custody before recourse to winner-take-all sole custody. Furthermore, the concept also satisfies the demand for equality of all parties that has identified much social legislation and judicial decisions of the past two decades.

Unfortunately, the proposed legislation appears to many as a throwback to a previous era: a single-issue, one-way-only, punitive, peevish and vindictive legislation that tends to put the sexes in opposition. Instead, we urge balanced enforcement.

Balanced, rational solutions

The proposed legislation does not reflect logic in prioritizing the most productive means of encouraging payment of child support and of removing a tax-supported bureaucracy from this process.

Our proposals are prioritized to parallel those measures which are already demonstrating the best success at voluntarily achieving child support payment.

1. For instance, the various state commissions should be directed to examine the potential in performance of child support payment to be found in state statute availability of a preference for joint custody before recourse to sole parent custody.

Every substantial survey study done thus far is demonstrating that the delinquency rate of child support payment is the lowest in joint custody situations: averaging only 6% - 7% delinquency, while also satisfying the demand for equality that characterizes other social legislation in America.

2. Furthermore, state commissions should similarly be directed to make available the modification of prior custody decrees to joint custody. Child support relitigation is the second largest volume of family law litigation in America today. However, joint custody cases are demonstrating as much as a 50% reduction in the volume of relitigation...a potential cost savings for our court systems as well as implying a relative level of satisfaction by such parents. Even in those cases wherein joint custody was decreed over the objections of one parent, the relitigation rate is less than that experienced by sole custody parents.

3. To decrease the unrealistic expectation of widely divergent child support amounts as a result of litigation, state commissions should be encouraged to consider statewide support schedules, formulas, tables and norms so that, in advance of divorce, the parents' expectation are more realistic, and to encourage the recourse of the following proposal.

4. Currently, the second most successful method of assuring payment of child support is that of the voluntary written agreement. The child support and alimony Census

report indicates that 78% of the amount due is paid, and that the average payment is higher than that ordinarily made nationwide, when agreements are voluntary. Hence, as an adjunct to statewide tables, state commissions should be encouraged to facilitate private or public mediation also encompassing decisions about child support.

5. Generalities are rare in topics of so much individual personal anguish and reaction as that of custody and support. But, the one generality that has emerged from the practice of District Attorney collectors in California is that, the longer a child is permitted to live-with the noncustodial parent before being excluded, and the more extensive that contact following birth and into the younger years, the more likely the excluded parent is to pay child support.

Hence, we request federal acknowledgment of making available so-called "visitation enforcement":

1. Assure availability of continuing visitation despite an out-of-state removal of children.
2. Assure the availability of specified parenting-time (visitation) with as much vigor of enforcement as that applied to the collection of child support.
3. Make the federal parent locator system available to noncustodial parents (as well as custodial parents) to determine the location of a child for whom support is sought.
4. Assure equitable, non-sexist enforcement of the Federal Parental Kidnapping Act by making it as applicable against custodial as against non-custodial parents.

Wage assignment guidelines

Following establishment of the prerequisites cited above for participation in the federal program, thereupon assure that if wage assignment statutes are required for the remaining delinquencies that such statutes reflect the following considerations:

1. An option by the obligor to select wage assignment payment to a private bank or similar fiduciary rather than solely through the governmental collection and dispersal system

2. Limited time periods of increasing length for subsequent delinquencies. Debt is not a crime for punishment in perpetuity, or throughout a child's minority, predicated on merely one or two delinquencies.
3. Opportunities through court action by the obligor to 'wipe the slate clean' of wage assignment so that wage assignment does not become an 'albatross' to be carried from one potential employer to another by the unemployed competing in the job market.
4. Judicial discretion to waive arrearages when fact-finding judges detect rational justification for aiding parents to focus on the present and future.
5. Establishment of hardship trust funds to more rapidly reimburse the approximately one-fifth of the parents now found to have had tax refunds wrongly confiscated and wages improperly garnished.

Concurrently with this testimony we are also submitting more detailed wording and explanation of these and allied proposals

We welcome the opportunity to construct a program that takes into consideration those methods which have been most successful at voluntarily inducing child support thus far, and we caution against the creation of an enforcement program that is disproportionate in its effect upon the most nearly stable segment of society merely because they are more available for entrapment.

**23 AMENDMENT PROPOSALS
TO ENSURE THE SUPPORT
OF CHILDREN OF DIVORCE**

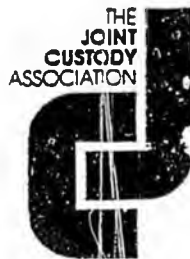
relevant to
child support enforcement legislation
and related Congressional legislation.

Submitted by:



NATIONAL CONGRESS FOR MEN

with endorsement of:



James A. Cook
Chairman, National Congress for Men
and
President, The Joint Custody Assn.

10606 Wilkins Avenue
Los Angeles, California 90024

(213) 475-5352

October 31, 1983

Making payment palatable, not punitive.

RANKING PRIORITY AMENDMENT CRITERIA

1 Rebuttable presumption for joint custody.

Joint custody pays,
Reduce sole custody martyrdom

Require states, as a prerequisite for participation in federal program:

that the frequent and continuing access by children of divorce with both parents after the parents have dissolved their marriage will be encouraged by means of a rebuttable presumption for joint custody unless the parents have agreed to sole custody to one of the parents or that joint custody is found harmful to a particular child of a specific marriage.

Joint custody success in child support payment:

- * Only 6%-7% default on child support by joint custody parents, as compared with 72% default by sole custody parents in most extensive, recent study thus far.
- * Another study: Only 7% of joint custodians relitigating support; but 21% of sole custodians doing so. Only 13% of joint custodians reporting conflict on support, but 34% of sole custodians conflicted. (Center for Policy Research, Denver Custody - Mediation Project.)
- * Individual child support dollar payment level running 30% higher than sole custody cases in initial year of joint decrees studied.
- * 85% - 90% of joint custody families report "highly satisfactory" acceptance of joint custody for themselves, and as demonstrated by the children in same study.
- * Costs to parents, and to court system, reduced: 50% reduction in relitigation of joint custody cases as compared with sole custody.

A feasible Congressional and state action: See House Conc. Res. 6; also, 28 states have joint custody statutes, 13 of those already have required presumption/preference clause to satisfy amendment.

2 Facilitate modification into joint custody.

Joint custody is valid
"change of circumstances"

Require, as a prerequisite for participation in the federal program:

that each state recognize the establishment of joint custody by legislated statute or precedent decree as amounting to a "change in circumstances" warranting hearing and approval for modifying prior divorce/custody decrees into joint custody.

- * The support-payment advantages demonstrated by joint custody are thereby available to parents of prior decrees, to the economic advantage of the state, taxpayers and the children involved.

3 Establish child support base level tables. Basic support schedules

Require, as a prerequisite for participation in federal program:

that each state establish base child support sliding-scale dollar level tables, (keyed to (a) foster parent dollar support levels, and/or (b) AFDC basic support levels, and/or (c) Bureau of Consumer Economics, Department of Agriculture tables for costs of raising a child) thereby removing the inequity of individually litigated child support decrees having no relationship to the costs of raising a child. Assure a base minimum for the child, permitting each parent, thereupon, to spend directly upon the child those additional dollar amounts that reflect the income level of each parent.

* Increase the incentive for each parent to spend funds directly upon the child.

4 Assure availability of visitation for out-of-state removals of children.

No 'taxation without representation'

Require, as a prerequisite for participation in the federal program:

that each state assure, by statute, the continued availability of visitation for a child with both parents, despite a move out-of-state of a custodial parent, by requiring that a child removed out-of-state for more than 90 days must satisfy one of the two following criteria:

1. Agreement by the parents on how visitation for the child will continue on a frequent and continuing basis, or
2. Court hearing to assure continued visitation, despite an out-of-state move, at which the following may be considered:
 - a. Adjustment of child support to compensate for additional costs of transportation for out-of-state children.

* Assured visitation, despite out-of-state moves, is the statute law in 11 states.

5 Voluntary agreement achieves better compliance than arbitrary decisions

Agreements before decrements

Require, as a prerequisite for participation in federal program:

that, in those jurisdictions having access to either a private or a publicly-funded mediation or conciliation service, that the parents contesting child support levels or payment will first be directed to resolve the issues and compliance with the aid of a mediator or counselor before proceeding to a formal court of law.

* Parents have demonstrated a substantially better likelihood of compliance with custody, visitation, and support decisions when each has expressed significant input into the agreement or decisions, as compared with the lack of performance in response to arbitrary decrees wherein justifications were expressed solely to a magistrate in order to achieve that magistrate's punitive action upon the alternate parent.

- 6 Specified percentage of 'parenting time' rather than ambiguous 'reasonable visitation.'

Specificity, not leveraged ambiguity

Require, as a prerequisite for participation in federal program:

that, in cases wherein the parents have not selected nor been decreed joint custody, 'parenting time' allocated to the non-custodial parent will be specified.

Furthermore, in those decrees wherein such 'parenting time' allocated to the non-custodial parent is less than 28.5% of the weekly time (Saturday & Sunday), the court shall indicate the reasons for curtailment of 'parenting time.'

* Curtail the potential for mischief and uncertainty through vague custody decrees which, heretofore, have relegated to the custodial parent the sole power of decision to determine what is 'reasonable' or 'liberal' visitation.

- 7 Enforceable visitation.

No see, no pay

Require, as a prerequisite for participation in the federal program:

that states assure and enforce the continuance and availability of visitation by the children with non-custodial parents with the same vigor as applied to the enforcement and collection of child support from non-custodial parents.

- 8 Sole custody "best interests" criteria. Most capable, sole custodian

Sole custody based on an important, relevant, problem-resolving criterion,

if the economic assurance of child support is a crucial, priority,

Require, as a prerequisite by a state for participation in the federal program:

that, in those cases wherein joint custody does not prevail, and if the parents have not otherwise agreed which parent should have sole custody, decree sole custody for that parent most capable of assuming the economic responsibility as in the child's "best interests".

* An obvious solution to the support problem in sole custody cases.

- 9 Both parents responsible for financial support of child.

Sex equality in support

Require, as a prerequisite for participation in the federal program:

that both parents are financially responsible for the economic support of their child and that performance of this obligation can be evaluated periodically after decree, as well as merely prior to divorce decree.

* Most states already have statutes requiring both parents to be financially responsible but, in practice, have made this inquiry only prior to decree rather than periodically and subsequently.. ..which has resulted in custodial parents being advised by their attorneys not to work or demonstrate any source of income until after the decree has been issued.

10 Procedural ease for distress circumstances.

Review process
for income losses

Upon a drop in income by the support-paying parent, guaranteed access to an inexpensive administrative/judicial review to readjust dollar support payment levels.

Require, as a prerequisite for participation in the federal program:

that an inexpensive administrative/judicial review mechanism be established for the evaluation and readjustment of support for support-paying parents experiencing an income loss, salary reduction, or are incapacitated and unable to meet previous dollar-level commitments. Make the system as easily available as that proposed for recipient parents seeking an increase in child support.

* Triple-jeopardy is currently experienced by support-paying parents suffering an income loss or reversal with no equivalent risk for a support-receiving parent.

1. Delinquencies mount-up rapidly, and no equivalent income can be recouped for the loss-period. Child support reductions are not currently reduceable retroactive to the moment when the loss occurred.
2. The costs of legal representation to seek a redress are an additional financial burden at a time when new expenses can not be assumed.
3. There is no guarantee of achieving a reduction in dollar support amounts when an income-loss occurs under the present system, despite the added cost of hiring legal representation.

11 Accountability in dispersal of child support. Verifiable disbursements

Problem now: Contempt-prone for payment obligation; contempt-free for disbursement abuse.

Require, as a prerequisite for participation in the federal program:

that the same power of subpoena, investigation, and examination of records to ascertain the income of a non-custodial support-paying parent also be utilized, including penalties, to require that a custodial parent provide a verifiable accounting of support expenditures by both parents.

- * Accountability for child support payment records is statute law in at least two states.
- * Lack of accountability is as preposterous as if the federal welfare system handed out cash instead of food stamps; thereby implying we don't care how you spend it as long as you have an excuse to qualify for cash welfare.

12 Four tax law modification/changes to increase acceptability of child support

Tax break: support improvement
Chop tax ripoff artists

Require, as a prerequisite for participation in the federal program, that both federal and state governments make the following tax law changes:

4 Amendments in tax law:

1. Dependency deduction for the support-paying parent.
2. "Head of household" status for the support-paying parent (who must make the support payments as well as maintain a household for the child to reside in, or visit when the child is with the support-paying parent.)
3. Tax-deduction of child support (by a paying parent) as is now available for alimony.
Why?
 - a. Conventionally married families can deduct many of the expenses disbursed for a child; why not the same for the divorced support-paying parent?
 - b. If there is a clamor for assured payment of child support (yet permitting tax-deduction for alimony paid to individuals capable of earning income) it is rational to extend this same deduction to divorced, support-paying parents.
4. Assure pass-through to parent paying support for those subterfuge tax-deduction and capitalization of child support monies by recipient parents.
(At present, support-paying parent receives no tax deduction or credit for the end-use of child support payments. Conversely, the recipient parent...without reporting receipt of funds...can shunt that income into such end-use tax-deductible items as interest on housing purchases (which is further tax deductible by the recipient) and other payments typified as "medical", transportation that the recipient may have as tax deductible, certain child care costs, etc.)

Recipients don't report income, yet reap tax deductibility and increasing equity with no guarantees for child, and at the expense of other tax-paying Americans.

13 Due process notice.

Stop phony process-serving

Require legitimate service of notice.

Require, as a prerequisite for participation in the federal program:

that service of delinquency notice is by adequate "due process", not merely return receipt mail or publication notice. A parent falsely accusing the support-obligated parent shall assume costs of rectification for false accusation.

- * Unjustified harassment, including annoyance of employers, must be stopped. System must not be a gratuitous mechanism for annoyance of parent or employer.
- * Falsely-accusing parents have no responsibility for their acts under the current legislative proposals.