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ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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Juneau, Alaska 99811
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December 13, 1984

MEMORANDUM

TO: Representative-Elect Katie Hurley

FROM: Heidi Borson Paine HBP
Legislative Analyst

RE: Fair Campaign Practices Legislation
Research Request 85-054

You requested information on state and federal legislation designed to prevent slanderous political campaigns. You also indicated specific interest in California fair campaign practices legislation. This memorandum presents an overview of federal and state statutes, as well as case laws which involve fair campaign practices. The conclusion of this memorandum discusses alternatives for Alaska.

To respond to this request, I contacted several national organizations including the National Conference of State Legislatures, Council of State Governments, Common Cause, and the American Bar Association. I also contacted the Federal Elections Commission and elections adminstrators in numerous states.

Federal Law

The Federal Election Campaign Act of 1971 (FECA) was the first major federal election reform law enacted since 1925. However, FECA regulation of campaign speech is limited and the law only addresses the issue of slander indirectly. Title 2, Section 441d of the United States Code requires anyone paying for a political statement in a newspaper, other publication or on any broadcasting station to state the name of the person, committee or organization paying for the communication and whether or not the candidate authorized the communication. According to Todd Johnson of the Federal Election Commission, there are no other federal laws concerning fair campaign practices.

Case Law

The First Amendment of the U.S. Constitution guarantees the right to free political expression. The Fourteenth Amendment protects this right

from abridgment by state law. Because of these constitutional guarantees, state laws regulating political campaigns, and especially campaign speech, are subject to close scrutiny by the courts. Over the past 20 years, much case law has been developed to protect First Amendment rights in state political campaigns. Two of the most important cases are New York Times v. Sullivan, 84 S.Ct. 710 (1964), and Vanasco v. Schwartz, 410 F. Supp. 87 (1975).

In New York Times v. Sullivan, the U.S. Supreme Court established the "malice standard" by which the constitutionality of state laws regulating political campaign practices is judged. In its ruling, the court stated that:

> The constitutional guarantee of freedom of speech and press prohibits a public official from recovering damages for a defamatory falsehood relating to his offical conduct unless he proves that the statement was made with "actual malice", that is, with knowledge that it was false or with reckless disregard of whether it was false or not...[1]

Furthermore, in explaining the New York Times' decision as it relates to campaign speech, the Supreme Court stated that the First Amendment "has its fullest and most urgent application in speech by candidates for public office."[2]

In Vanasco v. Schwartz, the U.S. Supreme Court ruled unconstitutional a mandatory New York Fair Campaign Code because of its "chilling effect" on free speech. The New York Fair Campaign Code prohibited the misrepresentation of a candidate's qualifications, position, or party affiliation and outlawed any attack on a candidate based on race, sex, religious affiliation, or ethnic background. The Supreme Court upheld a lower court ruling that state statutes concerning deceptive campaign speech must adhere to the malice standard established in New York Times v. Sullivan.

State Law

According to Robert Peck of the American Bar Association, few states have laws directly regulating the content of political speech because of the possibility of infringing upon First Amendment rights of free speech. He points out that political speech is the most well protected

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[1] New York Times v. Sullivan, 84 S.Ct. at 710 (1964).

[2] Romig, Candice. "Fair Campaign Practices", State Legislative Report, Vol. 8, No. 4, April 1983.

type of speech under the First Amendment of the Constitution. Mr. Peck contends that candidates in most states rely on general statutes concerning libel and slander for protection.

However, according to the National Conference of State Legislatures (NCSL), twenty states have statutes which address the use of deceptive speech in campaigns. Over half of the laws prohibit false statements made knowingly which challenge a candidate's character. For example, according to Montana Statute 13.35.234, it is unlawful to make or publish false statements about a candidate's character or morality or to knowingly misrepresent a candidate's voting record or positions on public issues. According to Jack Lowe of the Montana Department of Elections, this is the first statute in Montana which addresses false statements. He contends that the statute is rarely used because of the constitutional questions involved.

Statutes in some states prohibit specific types of statements in campaign speech. For example, Minnesota statutes prohibit erroneous statements of party support. Ohio statutes also forbid false statements such as remarks about an opposing candidate's incumbency, voting record, education, criminal and mental confinement record, and education.

I found that most state statutes concerning campaign ethics focus on literature disclosure and campaign tactics. These statutes do not directly regulate the content of political speech, but may help to prevent slanderous or unfair campaigns. For example, twenty-three states have statutes which require all political advertisements to include the name of the sponsoring person or group. Seven other states, California, Florida, Maine, Michigan, Pennsylvania, Texas and West Virginia, require that an advertisement indicate whether it has been officially endorsed by a candidate.

Other state statutes which regulate campaign practices focus on political espionage, undue influence of voters, and campaign "dirty" tricks. For example, Montana bans all political advertisements on election day in an effort to prevent unfair tactics. New York law prohibits placing agents in campaign organizations, bribing an opponent's staff, and wiretapping. Other states prohibit theft of campaign materials.

Because of the protection given campaign practices under the First Amendment, enforcing statutes which regulate campaign practices is difficult. In most states, violations of campaign practices statutes are considered misdemeanors and are punished by a fine, imprisonment or both. Some states including Alabama, California, Kansas, Kentucky, Maryland, Minnesota, Montana, North Carolina, and Wisconsin also provide that a person convicted of a campaign violation is ineligible for public office for a specified period of time. In these states, a convicted elected official must resign.

Furthermore, California and Montana have included voluntary campaign ethics codes in their statutes. These codes address malicious campaign speech and other unfair political practices. Reportedly, when only one candidate in a race choses to sign the agreement, the opponent's refusal often becomes a major campaign issue in these states.

California Law

In June of 1984, the California electorate narrowly adopted Proposition 20. This constitutional amendment provides that a person making libelous or slanderous statements against an opposing candidate shall resign the seat to which elected where judicially found that: 1) the libel or slander was a major contributing cause in the defeat of an opposing candidate; and 2) the statement was made with knowledge that it was false or with reckless disregard of whether it was false or true.[3]

As you requested, I have attached copies of California's voluntary code of campaign ethics, Proposition 20, and the two bills proposed in the 1983-1984 session of the California Legislature. Assembly Bill 331 would have added a pledge to the code of ethics requiring the release of campaign-related advertisements to opponents 48 hours before dissemination. Assembly Bill 406 would have required candidates to sign a fair campaign practices agreement to be eligible to receive public campaign funds generated through tax returns. Neither bill passed.

Alternatives for Alaska

Currently, political candidates in Alaska are protected against libelous and slanderous campaigns under AS 15.56.010 (3). This statute specifically prohibits the circulation of false information in a campaign. Knowingly circulating false information which could damage a candidate's reputation is a class A misdemeanor. Under AS 15.56.110, the election of a candidate to the State legislature or municipal office who knowingly committed a corrupt campaign practice such as circulating false information is voidable. Alaska Statutes also require paid advertisements to be so marked and require the identification of the party responsible for any campaign literature. In addition, AS 15.56.020-.035 prohibits undue influence on elections and interference with voting.

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[3]A similar measure was introduced during the 1983 session of the Illinois Legislature, but it did not get out of committee. Instead of removal from office, the penalty for libelous or slanderous statements would have been a 30-day jail term or a $500 fine or both.

These statutes are designed to help prevent unfair campaign practices. Alaska could consider additional measures for reducing the incidence of slanderous political campaigns. For example, Alaska could establish a commission or give authority to an existing agency to investigate complaints of libelous campaign literature and slanderous campaign speech. Robert Peck of the American Bar Association suggested assigning this duty to the agency which enforces the financial reporting requirements for political campaigns in Alaska, the Alaska Public Offices Commission. Alaska could also adopt a voluntary campaign ethics code. However, it appears that any proposed legislation which regulates political speech must be carefully scrutinized so as not to conflict with the constitutional rights of free speech and press.

* * * * *

I hope the information presented in this memorandum is helpful. Please contact me again if you have any additional questions.

HBP

Attachments

Article 3. Code of Fair Campaign Practices

12520. Subscription to code; form.

At the time an individual files his or her declaration of candidacy, nomination papers, or any other paper evidencing an intention to be a candidate for public office, the county clerk, shall give the individual a blank form of the Code of Fair Campaign Practices and a copy of the provisions of this chapter. The county clerk shall inform each candidate for public office that subscription to the code is voluntary.

In the case of a committee making an independent expenditure within the meaning of Section 12511, the Secretary of State shall provide a blank form and a copy of the provisions of this chapter to the individual filing, in accordance with Title 9 (commencing with Section 81000) of the Government Code, an initial campaign statement on behalf of the committee.

The text of the code shall read, as follows:

CODE OF FAIR CAMPAIGN PRACTICES

There are basic principles of decency, honesty, and fair play which every candidate for public office in the State of California has a moral obligation to observe and uphold, in order that, after vigorously contested, but fairly conducted campaigns, our citizens may exercise their constitutional right to a free and untrammeled choice and the will of the people may be fully and clearly expressed on the issues.

THEREFORE:

(1) I SHALL CONDUCT my campaign openly and publicly, discussing the issues as I see them, presenting may record and polices with sincerity and frankness, and criticizing without fear or favor the record and policies of my opponents or political parties which merit such criticism.

(2) I SHALL NOT USE OR PERMIT the use of character defamation, whispering campaigns, libel, slander, or scurrilous attacks on any candidate or his or her personal or family life.

(3) I SHALL NOT USE OR PERMIT any appeal to negative prejudice based on race, sex, religion, national origin, physical health status, or age.

(4) I SHALL NOT USE OR PERMIT any dishonest or unethical practice which tends to corrupt or undermine our American system of free elections, or which hampers or prevents the full and free expression of the will of the voters including acts intended to hinder or prevent any eligible person from registering to vote, enrolling to vote, or voting.

(5) I SHALL NOT coerce election help or campaign contributions for myself or for any other candidate from my employees.

(6) I SHALL IMMEDIATELY AND PUBLICLY REPUDIATE support deriving from any individual or group which resorts, on behalf of my candidacy or in opposition to that of my opponent, to the methods and tactics which I condemn. I shall accept responsibility to take firm action against any subordinate who violates any provision of this code or the laws governing elections.

(7) I SHALL DEFEND AND UPHOLD the right of every qualified American voter to full and equal participation in the electoral process.

I, the undersigned, candidate for election to public office in the State of California or treasurer or chairman of a committee making any independent expenditures, hereby voluntarily endorse, subscribe to, and solemnly pledge myself to conduct my campaign in accordance with the above principles and practices.

Date	Signature

(Added by Stats. 1982, c. 855, §1.)

12522. Supply of forms.

The Secretary of State shall print or cause to be printed, blank forms of the code. The Secretary of State shall supply the forms to the county clerks in quantities and at times requested by the clerks.

(Added by Stats. 1982, c. 855, §1.)

12523. Retention of forms; public inspection.

The county clerk shall accept, at all times prior to the election, all completed forms which are properly subscribed to by a candidate for public office and shall retain them for public inspection until 30 days after the election.

(Added by Stats. 1982, c. 855, §1.)

12524. Public record.

Every code subscribed to by a candidate for public office pursuant to this chapter is a public record open for public inspection.

(Added by Stats. 1982, c. 855, §1.)

12525. Voluntary.

In no event shall a candidate for public office be required to subscribe to or endorse the code.

(Added by Stats. 1982, c. 855, §1.)

12526. Operative date of chapter.

This chapter shall be operative only until January 1, 1989, and as of that date is repealed.

(Added by Stats. 1982, c. 855, §1.)

Elected Officials. Disqualification for Libelous or Slanderous Campaign Statements

Official Title and Summary Prepared by the Attorney General

ELECTED OFFICIALS. DISQUALIFICATION FOR LIBELOUS OR SLANDEROUS CAMPAIGN STATEMENTS. LEGISLATIVE CONSTITUTIONAL AMENDMENT. Adds a section to the Constitution providing that no persor who is found liable in a civil action for making libelous or slanderous statements against an opposing candidate durin an election campaign shall retain the seat to which elected where it is judicially found that: (1) the libel or slande was a major contributing cause in the defeat of an opposing candidate and (2) the statement was made with knowledg that it was false or with reckless disregard of whether it was false or true. Contains other provisions. Summary o Legislative Analyst's estimate of net state and local government fiscal impact: Adoption of this measure would hav no direct fiscal effect on the state or local governments. If, however, a successful candidate were disqualified fron assuming or holding office as a result of the measure, local governments could incur additional costs if an election ha to be held to fill the vacancy. These costs could be significant if the election did not coincide with a regularly schedule election.

Final Vote Cast by the Legislature on ACA 74 (Proposition 20)

Assembly:		Senate:	
Ayes	75	Ayes	29
Noes	0	Noes	5

Analysis by the Legislative Analyst

Background

The first amendment to the Federal Constitution guarantees the right of free speech. Article I of the State Constitution contains a similar provision. Neither Constitution, however, protects a person who makes libelous or slanderous statements. Libel and slander are broadly defined as untrue written or oral communications which have a natural tendency to injure a person's reputation, either generally or with respect to his or her occupation. Anyone so injured may file a lawsuit against the person alleged to have committed the libel or slander. Under certain circumstances, however, spoken and written communications are considered "privileged" and therefore exempt from civil liability. This is true of communications that occur in connection with legislative, judicial or other official proceedings.

Under current law, libel or slander actions are given "special precedence" (that is, priority consideration) by the court system over other civil actions. The penalty levied against a person found to have made a libelous or slanderous statement is a monetary award, payable to the injured party.

Proposal

This measure adds to the State Constitution a provision that would prevent any successful candidate for the U.S. Senate, the U.S. House of Representatives, a state electi office or a local elective office in California from holdir that office, if

- that person is found in a civil action to have made libelous or slanderous statement against an opposir candidate during the course of the election campaig
- the libelous or slanderous statement was a major co tributing cause in the defeat of the opposing canc date, and
- the statement was made with actual knowledge th it was false or with reckless disregard of whether was false or true.

The measure specifies that the vacancy in the puk office shall occur only after the trial court decision h become final. Vacancies created as a result of this measu would be filled in the manner provided by existing la

Fiscal Effect

Adoption of this measure would have no direct fis effect on the state or local governments.

If, however, a successful candidate were disqualif from assuming or holding office as a result of the measu local governments could incur additional costs if an el tion had to be held to fill the vacancy. These costs co be significant if the election did not coincide with a re larly scheduled election.

Text of Proposed Law

This amendment proposed by Assembly Constitutional Amendment 74 (Statutes of 1982, Resolution Chapter 181) expressly amends the Constitution by adding a section thereto; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE VII

SEC. 10. (a) No person who is found liable in a civil action for making libelous or slanderous statements against an opposing candidate during the course of an election campaign for any federal, statewide, Board of Equalization, or legislative office or for any county, city and county, city, district, or any other local elective office shall retain the seat to which he or she is elected, where it is established that the libel or slander was a major contributing cause in the defeat of an opposing candidate.

A libelous or slanderous statement shall be deemed to have been made by a person within the meaning of this section if that person actually made the statement or if the person actually or constructively assented to, authorized, or ratified the statement.

"Federal office," as used in this section means the office of United States Senator and Member of the House of Representatives; and to the extent that the provisions of this section do not conflict with any provision of federal law, it is intended that candidates seeking the office of United States Senator or Member of the House of Representatives comply with this section.

(b) In order to determine whether libelous or slanderous statements were a major contributing cause in the defeat of an opposing candidate, the trier of fact shall make a separate, distinct finding on that issue. If the trier of fact finds that libel or slander was a major contributing cause in the defeat of an opposing candidate and that the libelous or slanderous statement was made with knowledge that it was false or with reckless disregard of whether it was false or true, the person holding office shall be disqualified from or shall forfeit that office as provided in subdivision (d). The findings required by this section shall be in writing and shall be incorporated as part of the judgment.

(c) In a case where a person is disqualified from holding office or is required to forfeit an office under subdivisions (a) and (b), that disqualification or forfeiture shall create a vacancy in office, which vacancy shall be filled in the manner provided by law for the filling of a vacancy in that particular office.

(d) Once the judgment of liability is entered by the trial court and the time for filing a notice of appeal has expired, or all possibility of direct attack in the courts of this state has been finally exhausted, the person shall be disqualified from or shall forfeit the office involved in that election and shall have no authority to exercise the powers or perform the duties of the office.

(e) This section shall apply to libelous or slanderous statements made on or after the effective date of this section.

AMENDED IN SENATE SEPTEMBER 6, 1983

AMENDED IN SENATE AUGUST 26, 1983

AMENDED IN ASSEMBLY MAY 4, 1983

AMENDED IN ASSEMBLY APRIL 21, 1983

CALIFORNIA LEGISLATURE—1983–84 REGULAR SESSION

ASSEMBLY BILL No. 311

Introduced by Assemblyman Connelly

January 19, 1983

An act to amend Section 12520 of, and to add Section 12521 to, the Elections Code, relating to elections~~; and making an appropriation therefor~~.

LEGISLATIVE COUNSEL'S DIGEST

AB 311, as amended, Connelly. Elections: Code of Fair Campaign Practices.

Existing law provides for a voluntary subscription by candidates for state or local office to a Code of Fair Campaign Practices which contains specified pledges.

This bill would add a pledge to the code regarding the release of campaign-related advertisements to opponents 48 hours prior to dissemination, as specified.

This bill also specifies under which circumstances the code would apply and would require that the election official responsible for preparation of the ballot note on the sample and official ballots whether a candidate has signed the code, and would provide for penalties under specified circumstances.

This bill would impose a state-mandated local program by requiring local election officials to perform specified tasks.

~~The bill appropriates $3,000 to reimburse local agencies and school districts for their costs.~~

This bill would provide that notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of the act would remain in effect unless and until they are amended or repealed by a later enacted act.

Vote: ⅔ *majority*. Appropriation: ~~yes~~ *no*. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12520 of the Elections Code is
2 amended to read:
3 12520. At the time an individual files his or her
4 declaration of candidacy, nomination papers, or any
5 other paper evidencing an intention to be a candidate for
6 public office, the clerk, shall give the individual a blank
7 form of the Code of Fair Campaign Practices and a copy
8 of the provisions of this chapter. The clerk shall inform
9 each candidate for public office that subscription to the
10 code is voluntary. Any candidate who has not properly
11 executed and delivered the code to the appropriate
12 election official in the county of the candidate's residence
13 within five days following the filing of nomination papers
14 in the case of a primary election or within five days
15 following the primary election in the case of the general
16 election shall be deemed to have refused to sign the code.
17 In the case of a committee making an independent
18 expenditure within the meaning of Section 12511, the
19 Secretary of State shall provide a blank form and a copy
20 of the provisions of this chapter to the individual filing, in
21 accordance with Title 9 (commencing with Section
22 81000) of the Government Code, an initial campaign
23 statement on behalf of the committee.
24 The text of the code shall read, as follows:
25
26 CODE OF FAIR CAMPAIGN PRACTICES
27 There are basic principles of decency, honesty, and fair
28 play which every candidate for public office in the State
29 of California has a moral obligation to observe and
30 uphold, in order that, after vigorously contested, but

1 fairly conducted campaigns, our citizens may e
2 their constitutional right to a free and untram
3 choice and the will of the people may be fully and
4 expressed on the issues.
5 THEREFORE:
6 (1) I SHALL CONDUCT my campaign open
7 publicly, discussing the issues as I see them, pres
8 my record and policies with sincerity and frankne
9 criticizing without fear or favor the record and pol
10 my opponents or political parties which meri
11 criticism.
12 (2) I SHALL NOT USE OR PERMIT the
13 character defamation, whispering campaigns,
14 slander, or scurrilous attacks on any candidate or
15 her personal or family life.
16 (3) I SHALL NOT USE OR PERMIT any apj
17 negative prejudice based on race, sex, religion, n
18 origin, physical health status, or age.
19 (4) I SHALL NOT USE OR PERMIT any disho
20 unethical practice which tends to corrupt or unde
21 our American system of free elections, or which ha
22 or prevents the full and free expression of the will
23 voters including acts intended to hinder or preve
24 eligible person from registering to vote, enrolling t
25 or voting.
26 (5) I SHALL provide to my opponents, a
27 addresses they specify on their Code of Fair Cam
28 Practices form, and for public inspection t
29 appropriate election official in the most populous c
30 in the district in which I am seeking election or
31 Secretary of State if I am a candidate for statewide
32 48 hours prior to dissemination by me or my con
33 committee, the text of any campaign advertis
34 communication which refers to my opponent by na
35 innuendo.
36 (6) I SHALL NOT coerce election help or can
37 contributions for myself or for any other candidat
38 my employees.
39 (7) I SHALL IMMEDIATELY AND PUBI
40 REPUDIATE support deriving from any individ

AMENDED IN SENATE AUGUST 15, 1983

AMENDED IN SENATE JUNE 27, 1983

AMENDED IN ASSEMBLY MAY 11, 1983

AMENDED IN ASSEMBLY MAY 3, 1983

CALIFORNIA LEGISLATURE—1983–84 REGULAR SESSION

ASSEMBLY BILL No. 406

Introduced by Assemblymen Davis, Chacon, Elder, Farr, Harris, Hauser, Hayden, Katz, Klehs, Peace, and Vasconcellos
(Coauthors: Senators Dills, Garamendi, Leroy Greene, McCorquodale, Presley, Robbins, Torres, and Watson)

January 31, 1983

An act to amend Sections 32002 and 32004 of, and to add Sections 32001.5 and 32005 to, the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

AB 406, as amended, Davis. Elections: public campaign financing.

Under existing law, the California Election Campaign Fund Act permits individuals to designate on the applicable tax return the payment of specified various amounts, in addition to their tax liability, to the California Election Campaign Fund. The act provides for the disbursement of the moneys in that fund to qualified political parties, as specified, and prescribes the procedures and allocation of those funds by those parties to candidates for state office at statewide general elections.

This bill would create a Fair Campaign Practices Agreement, as specified, and would require candidates to sign

only upon his or her determination that a majority of a committee composed as follows concurs in each such disbursement:

(1) Chair of that party.

(2) As to the majority party of the Assembly, its Speaker: or, as to each minority party of the Assembly, that party's Minority Leader.

(3) As to the majority party of the Senate, its President pro Tempore: or, as to each minority party of the Senate, that party's Minority Leader.

(b) As to any party unrepresented by both paragraphs (2) and (3) of subdivision (a), its chair shall be the sole member of the committee provided for in subdivision (a).

(c) As to any party unrepresented by one, but not both, of the categories specified in paragraphs (2) and (3) of subdivision (a), the two members of that committee provided for by subdivision (a) shall choose a third member to serve for each calendar year.

(d) Any funds received by a committee's political party which are disbursed by the committee to candidates shall be disbursed only to candidates for state office in connection with a statewide general election who have signed the Fair Campaign Practices Agreement specified in subdivision (e).

However, this provision shall not apply to a candidate who signs the Fair Campaign Practices Agreement but is opposed by a candidate who declines to sign the Fair Campaign Practices Agreement.

(e) The text of the Fair Campaign Practices Agreement shall read as follows:

FAIR CAMPAIGN PRACTICES AGREEMENT

I. Fair Campaign Pledge

I pledge to conduct my campaign for public office openly and fairly. I also will not use or permit the use of any campaign advertisement which falsifies the facts regarding my opponents. In addition I will publicly repudiate support deriving from any individual or group who uses or permits the use of any campaign advertisement which falsifies the facts regarding my opponents.

II. Specific Agreements

I further agree to the following specific conditions:

(1) I will clearly identify myself (or my campaign committees) as the sender of all my campaign advertisements.

(2) During the campaign I agree to provide to my opponent and to ~~the newspapers of~~ *two newspapers of the widest* general circulation within the district ~~which newspapers were most recently used by the county clerk in publishing notices pursuant to Section 6588 of the Elections Code~~, the text of all campaign advertisements which name or make either direct or indirect reference to my opponent at least 24 hours before they are placed in the mail and 48 hours before they are broadcast or otherwise published.

III. Submission of Advertisements

I shall designate one individual and one delivery address to receive campaign advertisements which name or make either direct or indirect reference to my candidacy within 24 hours following my certification as the candidate of my party for the general election.

I agree to submit the text of any campaign advertisement which names or makes either direct or indirect reference to my opponent, to the individuals designated by my opponent and to the newspapers referred to above, at least 24 hours before the advertisement is placed in the mail and 48 hours before they are broadcast, or otherwise published.

In addition, I agree that the text of any campaign advertisement which names or makes either direct or indirect reference to my opponent, and which will be received in the mail, broadcast, or otherwise delivered during the last seven days of the campaign, will be furnished to my opponent and to the newspapers referred to above at least 48 hours before it is mailed

1 broadcast, or otherwise published.
2 I acknowledge that I am civilly liable for failure to
3 comply with the advance notice requirement of this
4 agreement.
5
6 Signature ________________ Signature ________________
7 Date ________________ Date ________________
8
9 (f) For purposes of the Fair Campaign Practices
10 Agreement "campaign advertisement" means a
11 communication authorized by a candidate or a
12 candidate's controlled committee, as defined in Section
13 82016 of the Government Code, for the purpose of
14 advocating the election or defeat of a qualified candidate
15 through any broadcasting station, newspaper, magazine,
16 outdoor advertising facility, direct mailing, or any other
17 type of general, public, political advertising, including,
18 but not limited to, recorded telephone messages and
19 printed materials which are publicly distributed.
20 SEC. 5. Section 32005 is added to the Elections Code,
21 to read:
22 32005. Any person who after signing the Fair
23 Campaign Practices Agreement fails to provide
24 campaign advertisements as required by the agreement
25 shall be liable in a civil action brought by the Attorney
26 General or by a person residing within the jurisdiction of
27 the candidate in question for an amount of ten thousand
28 dollars ($10,000) or three times the amount of the cost of
29 the campaign advertisement, whichever is greater.
30 SEC. 6. In the event that the Franchise Tax Board
31 redesigns the tax form so that space is available to print
32 the statement, "The state assures that no political
33 contribution collected by the Franchise Tax Board for
34 disbursement to official political parties will be
35 contributed or transferred to any candidate who has
36 failed to sign the Fair Campaign Practices Agreement"
37 on the tax form, the statement shall also be printed on the
38 tax form.

O

THE FOLLOWING PAGES MAY NOT FILM LEGIBLY BECAUSE OF THE POOR QUALITY OF THE ORIGINAL

ATTACHMENT B

STATE LEGISLATIVE EFFORTS TO REGULATE NEGATIVE CAMPAIGN ADVERTISING

OVERVIEW. Negative campaign advertising attracted unprecedented attention in 1988 as President Bush's successful campaign ads attacked the credibility of opponent Michael Dukakis. Local and state politicians continued to stage controversial campaigns in 1989, spending millions of dollars on negative ads in races for governors' seats in Virginia and New Jersey and mayors' offices in New York and Cleveland. While negative campaign advertising is not a new phenomenon, the way political consultants assess negative ads has changed. Many candidates--previously cautioned that nasty ads could result in backlash votes against them--are now counseled that negative ads command more viewer attention and switch more votes than positive ads.

And while the true merits of negative campaign advertising are arguable, there is an inarguable political reality now faced by candidates for public office: negative ads are a fact of political life. Despite complaints from some voters and legislators that "attack" ads demean the electoral process and deter voters from participating, legal scholars warn that the constitutional issues raised when regulating the free speech of candidates are difficult, if not impossible, to overcome. Even so, state legislative efforts to regulate negative campaign ads continue.

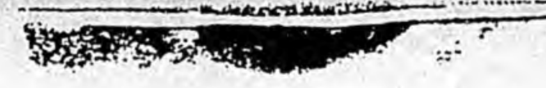
SURVEY RESULTS. The following summary and table show the results of a 50-state telephone survey conducted by the National Conference of State Legislatures in December 1989. The individuals contacted in each state were those working in state departments, agencies or commissions charged with enforcing election and campaign laws. Contacts were asked the following with regard to their states: (1) is there a fair campaign practices code, voluntary or mandatory, that applies to candidates for state office?, (2) does this code provide sanctions for violations?; (3) are there other statutory provisions that affect negative ads (other than disclaimer or disclosure provisions)?; (4) have there been any court challenges to these provisions?; and (5) have there been any legislative proposals to regulate negative campaign ads since 1985 (responses to this question are not necessarily exhaustive). Names and telephone numbers of contacts providing information are listed on the table.

Fair Campaign Practices Codes: Seven state legislatures have endorsed or adopted a fair campaign practices code (CA, IL, MT, NY, WA, WV, WY). These codes are generally signed by candidates on a voluntary basis. Code provisions typically include a clause similar to that found in Washington's code, vowing to "not participate" in "personal vilification, defamation, and other attacks on any opposing candidate or party" (WAC Sec. 390-32). The Connecticut General Assembly enacted a voluntary code in 1974, but repealed the code in 1978.

Laws Prohibiting False Campaign Statements: Laws in twenty-one states (AK, CA, CO, FL, IN, LA, MA, MI, MN, MS, MT, NV, NC, ND, OH, OR, TN, UT, WA, WV, WI) prohibit false campaign statements. In Michigan and Nevada, these prohibitions apply specifically to false incumbency designations; in California, misrepresentation of party support is the type of false statement prohibited. Seven state prohibitions (in AK, CO, IN, MN, ND, OR, TN) apply only to *written* false statements. Most states punish violations as misdemeanors. Nebraska's campaign falsity statute, enacted in 1978, was repealed in 1986.

Court Challenges: Key provisions of New York's Fair Campaign Code were struck down as unconstitutionally overbroad in *Vanasco v. Schwartz*, 401 F. Supp. 87, aff'd 423 U.S. 1041 (1975). The *Vanasco* ruling, which has become the leading opinion on campaign falsity statutes, held that any state regulation of campaign speech must be premised on the "actual malice" standard applicable to public figures according to *New York Times Co. v. Sullivan*, 376 U.S. 251 (1964). Similarly, Nebraska's campaign falsity statute (NRS Sec. 49-14,132) was ruled "constitutionally invalid as overbroad" by the Nebraska Supreme Court and was repealed in 1986. *See, Fowler v. Nebraska Accountability Commission*, 330 N.W.2d 136 (1983). Ohio's current prohibition against false statements was ruled unconstitutional by a federal district court in 1987 (*Pestrak v. Ohio Elections Commission*, 670 F.Supp. 1368 (1987)); that ruling is now on appeal. A successful 1989 challenge to the constitutionality of Louisiana's false statement prohibition is also on appeal. *See State v. Burgess*, 543 S.2d 1332 (1989).

Legislative Proposals Since 1985: While some survey contacts report increasing, bipartisan legislative interest in regulating negative campaign ads, others say such efforts in their states would be met with solid opposition. States where recent legislative proposals in this area have received bipartisan support include Alaska, Connecticut, Florida, Iowa, Maine, Minnesota, New Jersey, New York and Pennsylvania. 1990 proposals in Florida and New Jersey would require that a candidate's own voice and/or photograph be used in campaign ads that make reference to an opposing candidate.



STATE LEGISLATIVE EFFORTS TO REGULATE NEGATIVE CAMPAIGN ADVERTISING

	Fair Campaign Practices Code	Sanctions for Code Violation	Laws Prohibiting False Campaign Statements	Court Challenges	Legislative Proposals Since 1985	Contact	Notes	
AL	No	No	No			Vicki Balogh Secretary of State's Office 205/261-7210		AL
AK	No		Ak. Stat. Sec 15.56.010 prohibits false campaign statements/misd (a)(b)		'90 (Rep. Finkelstein, HB 318; pending) '89 (failed) '88 (failed)	Linda Edgeworth Division of Elections 907/465-4611	Finkelstein's bill would make voluntary oath available to candidates	AK
AZ	No		No			Secretary of State's Office 606/547-8083		AZ
AR	No		No			Ginger Bailey Secretary of State's Office 501/682-5070		AR
CA	Cal. Elec. Code Sec 12500 (c)	No	Cal. Elec. Code Sec. 11707 prohibits misrepresentation of party support			Jon Rothman Fair Pol. Practices Cmsn. 916/372-5660		CA
CO	No		CRS Sec. 1-13-109 prohibits false campaign statements/misd. (b)(d)			Vikki Lindsey Secretary of State's Office 303/894-2211		CO
CT	No (Vol. code in effect '74 to '78)		No		'89 (Rep. Kiner, HB 5580; failed) '87 (interim study)	Ron Gregory, State Elections Enforcement Cmsn. 203/566-7108	Code discontinued because of issues raised in Vanasco case (see NY)	CT
DE	No		No			Virginia Lane, State Elections Cmsner's Office 302/736-4277		DE
FL	No		Fl. Stat. Ch. 104.271 (1987) prohibits false campaign statements/civil penalty (d)		'90 (Reps. Rush, Ostrau, HB1165) '90 (Rep. Bronson, HB2109)	Wayne Malaney, House Cmsn. on Ethics & Elections 904/488-5116	HB 1165 would require use of "attacking candidate's" photo, voice in ads	FL
GA	No		No			Harriet Bell, State Ethics Commission 404/493-5795		GA
HI	No		No			State Ethics Commission 808/548-6401		HI
ID	No		No			Marilyn Johnson Secretary of State's Office 208/334-2300		ID
IL	P.A. 86-873 (c)	No	No			Mark Kloever, State Board of Elections 217/782-4141		IL

a) Applies to statements that are defamatory
b) Applies to written false statements (unless otherwise noted, false statement prohibitions apply to both oral and written statements)
c) Code is voluntary
d) Applies to false statements with design or effect of influencing votes on candidates or ballot questions

	Fair Campaign Practices Code	Sanctions for Code Violation	Laws Prohibiting False Campaign Statements	Court Challenges	Legislative Proposals Since 1985	Contact	Notes
N	No		Ind. Code Sec. 3-14-3-22 prohibits false campaign statements/felony (a)(b)(d)(e)			Laura Molloy State Election Board 317/232-3939	
A	No		No		'89 (Sen. Granstall, SF 523 prohibiting false campaign statements; failed)	Janet Wilson Leg. Service Bureau 515/281-6471	Interim study conducted in 1988
(S	No		No			Rebecca Bossemeyer Secretary of State's Office 913/296-3488	
(Y	No		No			Raymond Wallace Registry of Election Finance 502/564-2226	
.A	No		LRS Title 18, Sec. 1463 prohibits false campaign statements/misd. (d)	'89 challenge on const. grounds (on appeal)		Maria McCrory, Ethics Administration Program 504/765-2308	See, State v. Burgess, 543 S. 2d 1332 (1989)
ME	No		No		'90 (Rep. Mayo: pending)	Marilyn Canavan Cmsn. on Gvt Ethics & Elec. 207/289-4178	Ethics Cmsn reports increased interest in regulating negative ads
ID	No		No			Rebecca Babinac State Adm Bd of Elec Laws 301/974-3711	
IA	No		Mass. Gen.L. Ch. 56, Sec 42 prohibits false statements/misd. (d)			Diane Meibaum State Ethics Commission 617/727-0060	Ethics Cmsn has issued advisory on fair campaigning
II	No		Mich. Comp Laws Sec. 168.944 prohibits false incumbency designations			Marcia Pack Bureau of Elections 517/373-8558	
IN	No		MN Ch. 311B.05 prohibits distribution of false campaign material/gross misd. (b)(d)		'88 (resulting in Ch. 311B.05)	Jeff Sigurdson Secretary of State's Office 612/296-2805	Ch. 311B.05 also prohibits defamatory letters to the editor/misd. (d)
IS	No		Miss. Code Ann. Sec. 23-15-875 prohibits false charges against "integrity" of candidate/misd.		-	Reese Partridge Secretary of State's Office 601/359-1350	
IO	No		No		'87 (Sen. McCarthy; failed)	Gayle Thomas Secretary of State's Office 314/751-3719	
IT	MCA Sec. 13-35-302 (c)	No	MCA Sec. 13-35-234 prohibits false campaign statements/misd. (e)(f)			Karen Crawford Secretary of State's Office 406/444-2942	

Handwritten row labels at right: IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT

a) Applies to statements that are defamatory
b) Applies to written false statements (unless otherwise noted, false statement prohibitions apply to both oral and written statements)
c) Code is voluntary
d) Applies to false statements with design or effect of influencing votes on candidates or ballot questions
e) All false statement prohibitions listed, with exception of LA, apply to persons making statements that they know to be false or should be reasonably expected to know are false
f) Court can deprive accused candidate of nomination or election

	Fair Campaign Practices Code	Sanctions for Code Violation	Laws Prohibiting False Campaign Statements	Court Challenges	Legislative Proposals Since 1985	Contact	Notes	
E	No		Prohibition of false statements (NRS Sec. 49-14,132) repealed in 1986	1983 case ruled false statement law was unconstitutional		Frank Daley, Accountability & Disclosure Commission 402/471-2522	See, Fowler v. NE Accountability Cmsn., 330 N.W. 2d 136 (1983)	NE
V	No		NRS Sec. 294A.057, .058 prohibit false incumbency designations			Robert Eliot Secretary of State's Office 702/885-5203	Legislative proposals expected during '91 session	NV
H	No		No			William Gardner Secretary of State's Office 603/271-3242		NH
J	No		No		'90 (Assem. Franks, A 3098 pending) '90 (Sen. Russo; pending)	Fred Herrman Election Law Enforcement Cmsn. 609/292-8700	A-3098 would require use of candidate's photo, voice in ads referencing other candidates	NJ
M	No		No			Chris Boyle Secretary of State's Office 505/827-3600		NM
Y	Elec. 3-106, Code Sec. 6201.1, 6201.2	No	No	1975 ruling struck down code as unconstitutional (code revised accordingly)	'88 (failed) '90 (pending)	John Ciampoli Board of Elections 518/474-6367	See, Vanasco v. Schwartz 401 F.Supp. 87, aff'd 423 U.S. 1041 (1975)	NY
IC	No		N.C. Gen. Stat Sec 163-274(8) prohibits false statements/misd. (d)			Johnnie McLean State Board of Elections 919/733-7218		NC
ID	No		ND Cent. Code Sec. 16.1-10-04 prohibits false statements/misd. (b)			Ben Meier Secretary of State 702/224-2900	Sec. 16.1-10-04 applies only to political ads, news releases	ND
OH	No		ORC Sec. 3599.091 prohibits false statements/misd. (overturned by fed. ct. 1987) (d)	1987 court ruling now under appeal		David Crouston Ohio Elections Commission 614/466-2585	See, Pestrak v. Ohio Elections Cmsn, 670 F. Supp 1368 (1987)	OH
OK	No		No			Marilyn Hughes Council on Camp. Compliance & Ethical Stds. 405/521-2391		OK
OR	No		ORS Sec 260.532 prohibits false campaign statements/civil penalty (b)(c)(f)			Jack Graham Secretary of State's Office 503/378-4144		OR
PA	No		No		'88 (failed) '89 (failed) '90 (pending)	John Contino State Ethics Commission 717/783-1610		PA
RI	No		No			Jan Armstrong State Board of Elections 401/277-2345		RI

(a) Applies to statements that are defamatory

(b) Applies to written false statements (unless otherwise noted, false statement prohibitions apply to both oral and written statements)

(c) Code is voluntary

(d) Applies to false statements with design or effect of influencing votes on candidates or ballot questions

(e) All false statement prohibitions listed, with exception of LA, apply to persons making statements that they know to be false or should be reasonably expected to know are false

(f) Court can deprive accused candidate of nomination or election

Cross References

Nomination of candidates, generally, see c. 53, § 1 et seq.
Posters, cards or handbills, posting and distribution near entrance to polling place prohibited, penalty, see c. 54, § 35.

Library References

Elections ⇐317. C.J.S. Elections §§ 329, 356.

§ 42. False statements relating to candidates or questions submitted to voters

No person shall make or publish, or cause to be made or published, any false statement in relation to any candidate for nomination or election to public office, which is designed or tends to aid or to injure or defeat such candidate.

No person shall publish or cause to be published in any letter, circular, advertisement, poster or in any other writing any false statement in relation to any question submitted to the voters, which statement is designed to affect the vote on said question.

Whoever knowingly violates any provision of this section shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months.

Added by St.1946, c. 537, § 11. Amended by St.1964, c. 147, § 2.

Historical Note

St.1964, c. 147, § 2, approved March 9, 1964, inserted the second paragraph.

Prior Laws:
St.1922, c. 269, §§ 1, 3.
St.1926, c. 101.
G.L.1932 (Ter.Ed.) c. 55, § 34A; c. 56, § 64A.

Cross References

Nomination of candidates, generally, see c. 53 § 1 et seq.

Law Review Commentaries

Avoidance of an election or referendum when the electorate has been misled. (1957) 70 Harvard L.Rev. 1077.

Law of the land; torts of the tongue. Wm. Arch. McLean (1900) 12 Green Bag 523.

Library References

Elections ⇐318, 332. C.J.S. Elections §§ 331, 353.

to the improper discharge of his campaign duties or to obtain information about the candidate or his campaign organization.

(B) No person, during the course of any campaign for nomination or election to public office or office of a political party, by means of campaign materials, including sample ballots, an advertisement on radio or television or in a newspaper or periodical, a public speech, press release, or otherwise, shall knowingly and with intent to affect the outcome of such campaign do any of the following:

(1) Use the title of an office not currently held by a candidate in a manner that implies that the candidate does currently hold that office or use the term "re-elect" when the candidate has never been elected at a primary, general, or special election to the office for which he is a candidate;

(2) Make a false statement concerning the formal schooling or training completed or attempted by a candidate; a degree, diploma, certificate, scholarship, grant, award, prize, or honor received, earned, or held by a candidate; or the period of time during which a candidate attended any school, college, community technical school, or institution;

(3) Make a false statement concerning the professional, occupational, or vocational licenses held by a candidate, or concerning any position the candidate held for which he received a salary or wages;

(4) Make a false statement that a candidate or public official has been indicted or convicted of a theft offense, extortion, or other crime involving financial corruption or moral turpitude;

(5) Make a statement that a candidate has been indicted for any crime or has been the subject of a finding by the Ohio elections commission without disclosing the outcome of any legal proceedings resulting from the indictment or finding;

(6) Make a false statement that a candidate or official has a record of treatment or confinement for mental disorder;

(7) Make a false statement that a candidate or official has been subjected to military discipline for criminal misconduct or dishonorably discharged from the armed services;

(8) Falsely identify the source of a statement, issue statements under the name of another person without authorization, or falsely state the endorsement of or opposition to a candidate by a person or publication;

(9) Make a false statement concerning the voting record of a candidate or public official;

(10) Post, publish, circulate, distribute, or otherwise disseminate a false statement, either knowing the same to be false or with reckless disregard of whether it was false or not, concerning a candidate that is designed to promote the election, nomination, or defeat of the candidate.

As used in this section, "voting record" means the recorded "yes" or "no" vote on a bill, ordinance, resolution, motion, amendment, or confirmation.

(C) Before any prosecution may commence, a complaint shall be presented to the Ohio elections commission by an affidavit of any person, made on personal knowledge and subject to the penalties for perjury, setting forth any violation of division (A) or (B) of this section. The commission shall proceed to investigate the charges made in the affidavit, and shall, whenever possible, complete the investigation of all matters before an election. The commission or a member of the commission may administer oaths, and the commission may issue and enforce subpoenas with regard to an investigation under this section in the same manner as provided in division (C) of section 3517.15 of the Revised Code. The commission shall issue copies of its findings to the committees or persons involved in its investigation.

(D)(1) If the commission finds that division (A) or (B) of this section has been violated, it shall do only one of the following:

(a) Impose a fine not to exceed one thousand dollars;

(b) Forthwith transmit a copy of its findings and the evidence to the prosecuting attorney of the appropriate county.

(2) Notwithstanding any provision of Chapters 1901., 1905., 1907., and 2931. of the Revised Code, the common pleas court has exclusive original jurisdiction over prosecutions under this section.

(3) Any person adversely affected by the action of the commission under division (D)(1)(a) of this section may appeal from such action in accordance with section 119.12 of the Revised Code.

(E) If the commission finds upon the preponderance of the evidence that the violation is a continuing one, or if it has reason to believe that recurrence of the violation is imminent, it may issue an order to cease and desist. The commission or the person who filed the affidavit, or the treasurer of the campaign committee of any candidate who filed an affidavit may bring an action for an injunction against any person violating or attempting to violate the order. Any person adversely affected by a cease and desist order of the commission may appeal as provided in section 119.12 of the Revised Code. No appeal, however, shall stay enforcement of a cease and desist order. In an action for injunction to enforce any final order of the commission brought pursuant to this section, the findings of the commission, after hearing, are prima-facie evidence of the facts found.

(F) In any action before the commission, if the allegations of the person who filed the affidavit are not proved, and the commission seeks neither civil nor criminal relief in court, the commission may find that the complaint is frivolous and order the complainant to pay costs. If so, the person filing the complaint may be required to pay such costs of the commission as would be assessed for the same service in a civil action before the court of common pleas. Such costs paid to the commission shall be deposited in the general revenue fund of the state. The commission shall provide each person under investigation, by mail or in person, prior to each meeting of the commission at which the person's presence is requested, a notice for the hearing, and shall supply to each person under investigation, prior to the person's first appearance before the commission, a statement of the legal rights and obligations of those under investigation by the commission.

(G) Whoever violates division (A) or (B) of this section is guilty of unfair campaign practices, a misdemeanor of the first degree.

HISTORY: 1986 H 555, eff. 2-26-86
1984 H 722; 1980 S 251; 1977 H 1; 1976 H 804

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Statutory Charges
Baldwin's Ohio School Law, Text 5.03(A)

government, and any county, city, district or other municipal corporation or public corporation organized for a public purpose, including a cooperative body formed between municipal or public corporations. [Formerly 260.231; 1973 c.83 §27a; 1979 c.190 §372, 1979 c.519 §35a; 1983 c.71 §9, 1983 c.392 §1; 1985 c.565 §39, 1985 c.808 §62; 1987 c.718 §3]

260.440 [Amended by 1971 c.644 §8, repealed by 1971 c.749 §82]

260.442 [Formerly 260.250, 1973 c.744 §28; 1979 c.190 §353; renumbered 260.025]

260.450 [Repealed by 1957 c.644 §28]

260.452 [Formerly 260.420; 1973 c.744 §29; repealed by c.190 §431]

260.460 [Repealed by 1957 c.644 §28]

260.462 [Formerly 260.270; 1973 c.744 §30; 1979 c.190 §386; renumbered 260.055]

260.470 [Amended by 1957 c.644 §9; 1971 c.749 §34; renumbered 260.365]

260.472 [Formerly 260.280; 1973 c.744 §31; 1979 c.190 §370; renumbered 260.415]

260.480 [Amended by 1957 c.644 §11; repealed by 1971 c.749 §82]

260.482 [Formerly 260.310; 1973 c.744 §32; 1977 c.678 §3; 1979 c.190 §384; renumbered 260.635]

260.490 [Amended by 1959 c.644 §12; repealed by 1971 c.749 §82]

260.492 [Formerly 260.320; 1973 c.744 §33; repealed by 1979 c.190 §431]

260.500 [Amended by 1957 c.644 §13; 1971 c.749 §56; renumbered 260.552]

260.502 [Formerly 260.335; repealed by 1973 c.744 §48]

260.510 [Amended by 1957 c.644 §14; repealed by 1971 c.749 §82]

260.512 [Formerly 260.340; 1973 c.744 §34; 1979 c.190 §380; renumbered 260.605]

260.520 [Amended by 1957 c.644 §15; 1971 c.749 §35; renumbered 260.375]

260.522 Identification of source of political publication. (1) Except as provided in this section, no person shall cause to be printed, posted, broadcast, mailed, circulated or otherwise published, any written matter, photograph or broadcast relating to any election or to any candidate or measure at any election, unless it states the name and address of the person responsible for the publication, including a statement that the publication was authorized by the person.

(2) A radio broadcast which complies with the requirements of the Federal Communications Act and regulations under it is not required to state the address of the person responsible for the broadcast if the person responsible for the broadcast is a candidate or political committee.

(3) The prohibition under subsection (1) of this section does not apply to:

(a) Any sign relating to a candidate if the candidate or the principal campaign committee of the candidate is responsible for the sign and the sign displays the name of the candidate; or

(b) Any written matter relating to a measure at any election prepared under the direction of the governing body of the city, county or district that referred the measure if the written matter is impartial, neither supports nor opposes passage of the measure and contains the name and address of the city, county or district.

(4) Any written matter or broadcast which has been previously published shall have the publisher and date of publication clearly identified when it is referred to in a publication listed under subsection (1) of this section.

(5) "Address" for purposes of this section means the address of a residence, office, headquarters or similar location where the person may be conveniently located. If the person is a political committee, the address shall be the address of the political committee included in the statement of organization under ORS 260.042. [Formerly 260.360; 1973 c.483 §1; 1973 c.744 §35; 1975 c.683 §13; 1979 c.190 §373; 1981 c.234 §17; 1983 c.71 §11; 1985 c.808 §63; 1989 c.503 §28; 1989 c.1054 §13]

260.530 [Repealed by 1957 c.644 §28]

260.532 False publication relating to candidate or measure. (1) No person shall cause to be written, printed, published, posted, communicated or circulated, any letter, circular, bill, placard, poster, photograph or other publication, or cause any advertisement to be placed in a publication, or singly or with others pay for any advertisement, with knowledge or with reckless disregard that the letter, circular, bill, placard, poster, photograph, publication or advertisement contains a false statement of material fact relating to any candidate, political committee or measure.

(2) A candidate who knows of and consents to a publication or advertisement prohibited by this section with knowledge or with reckless disregard that it contains a false statement of material fact, violates this section regardless of whether the candidate has participated directly in the publication or advertisement.

(3) There is a rebuttable presumption that a candidate knows of and consents to any publication or advertisement prohibited by this section caused by a political committee over which the candidate exercises any direction and control.

(4) Any candidate or political committee aggrieved by a violation of this section shall have a right of action against the person alleged to have committed the violation. The aggrieved party may file the action in the circuit court for any county in this state in

which a defendant resides or can be found or, if the defendant is a nonresident of this state, in the circuit court for any county in which the publication occurred. To prevail in such an action, the plaintiff must show by clear and convincing evidence that the defendant violated subsection (1) of this section.

(5) A plaintiff who prevails in an action provided by subsection (4) of this section may recover compensatory damages for all injury suffered by the plaintiff by reason of the false statement of material fact. Proof of entitlement to compensatory damages must be by a preponderance of evidence. Any prevailing party is entitled to recover reasonable attorney fees at trial and on appeal.

(6) A political committee has standing to bring an action provided by subsection (4) of this section as plaintiff in its own name, if its purpose as evidenced by its preelection activities, solicitations and publications has been injured by the violation and if it has fully complied with the provisions of this chapter. In an action brought by a political committee as provided by subsection (4) of this section, the plaintiff may recover compensatory damages for all injury to the purpose of the committee by reason of the false statement of material fact. A political committee may not be sued as defendant in such an action. A recovery made by a political committee which prevails in an action under this section shall be distributed pro rata among the persons making contributions to the committee.

(7) If a judgment is rendered in an action under this section against a defendant who has been nominated to public office or elected to a public office other than state Senator or state Representative, and it is established by clear and convincing evidence that the false statement was deliberately made or caused to be made by the defendant, the finder of fact shall determine whether the false statement reversed the outcome of the election. If the finder of fact finds by clear and convincing evidence that the false statement reversed the outcome of the election, the defendant shall be deprived of the nomination or election and the nomination or office shall be declared vacant.

(8) An action under this section must be filed not later than the 30th day after the election relating to which a publication or advertisement in violation of this section was made. Proceedings on a complaint filed under this section shall have precedence over all other business on the docket. The courts shall proceed in a manner which will insure that:

(a) Final judgment on a complaint which relates to a primary or nominating election is rendered before the 30th day before the general election; and

(b) Final judgment on a complaint which relates to an election to an office is rendered before the term of that office begins.

(9) The remedy provided by this section is the exclusive remedy for a violation of this section. [Formerly 260.340; 1973 c.744 §36; 1975 c.643 §14; 1979 c.190 §374; 1979 c.667 §2; 1981 c.897 §45; 1983 c.756 §1; 1985 c.808 §63a]

260.540 [1957 c.644 §10; 1971 c.749 §27; renumbered 260.325]

260.542 Use of term "reelect." No person shall use the term "reelect" in any material, statement or publication supporting the election of a candidate unless the candidate:

(1) Was elected to the identical office with the same position number, if any, in the most recent election to fill that office;

(2) Was elected from the same district from which the candidate is seeking election or, if district boundaries have been changed since the previous election, if the majority of the population in the district from which the candidate is seeking election was in the district from which the candidate was previously elected; and

(3) Is serving and has served continuously in that office from the beginning of the term to which the candidate was elected. [Formerly 260.405; 1973 c.744 §37; 1979 c.190 §375]

260.545 Use of candidate name in way implying candidate is incumbent. No person shall use the name of a candidate in a way that implies that the candidate is the incumbent in office in any material, statement or publication supporting the election of a candidate unless the candidate is qualified to use the term "reelect" under ORS 260.542 or the candidate:

(1) Was appointed to the identical office with the same position number, if any, after the most recent election to fill that office;

(2) Was appointed from the same district from which the candidate is seeking election, or if district boundaries have changed since the previous election, if the majority of the population in the district from which the candidate is seeking election was in the district from which the candidate was appointed; and

(3) Is serving and has served continuously in that office since the date of appointment. [1987 c.826 §2]

260.552 [Formerly 260.500; 1973 c.744 §38; repealed by 1979 c.190 §431]

260.555 Prohibitions relating to circulation, filing or certification of initiative, referendum or recall petition. (1) No person attempting to obtain signatures on, or

20-14-16 is guilty of a class B misdemeanor. Each violation of this act is a separate offense. Where a person or persons violates this act, the violation shall be that of the person who directed the violation. 1983

20-14-20 to 20-14-23. Repealed. 1961, 1971

20-14-24. Prohibitions as to publishers, newspapers and other periodicals.

No publisher of a newspaper or other periodical circulating in this state shall insert, either in its advertising or reading columns, any paid matter which is designated or tends to aid, injure or defeat any candidate or any political party or organization, or any measure before the people, unless it is stated therein that it is a paid advertisement and the name of the chairman or secretary or other officers of the political or other organizations inserting the same, or the name and address of some voter who is responsible therefor, shall appear in such advertisement in the nature of a signature. No person shall pay the owner, editor, publisher or agent of any newspaper or other periodical to induce him to advocate or oppose editorially any candidate for nomination or election, and no such owner, editor, publisher or agent shall accept such payment. 1983

20-14-25. Statement of ownership of publication.

No publisher of any newspaper or other periodical published within this state shall insert, either in its advertising or reading columns, any matter whatsoever of a political nature, or any political editorial relative to a candidate for any public office, unless the publisher thereof shall file in the office of the lieutenant governor, within three months before the holding of any nominating convention or primary or general election, or within 10 days after the calling of and before the holding of any special election, a sworn statement which shall contain the names of the owners of such paper, and, if such publisher is a corporation, such statement shall be executed by some responsible officer thereof who is in a position to know the facts, and shall contain the names and addresses of the owners of the shares of stock and the bonds of such corporation. 1983

20-14-26. Declaration of interest in publication.

Every candidate, and every member of any personal campaign or party committee, who, either in his own name or in the name of any other person, owns any financial interest in any newspaper or other periodical circulating in this state, before such newspaper or periodical shall print any matter, otherwise than as is provided in Section 20-14-24, which is intended or tends to influence, directly or indirectly, any voting at any primary or election in this state, shall file in the office of the county clerk of the county in which he resides a verified declaration stating definitely the newspaper or periodical in which or over which he has such financial interest or control, and the exact nature and extent of such interest or control. The editor, manager or other person controlling the publication of any such newspaper or periodical who prints or causes to be printed any such matter prior to the filing of such verified declaration is guilty of a misdemeanor. 1983

20-14-27. Paid advertisements permitted.

No owner, publisher, editor, reporter, agent or employee of any newspaper or other periodical shall, directly or indirectly, solicit, receive or accept any payment, promise or compensation, nor shall any person pay or promise to pay or in any manner compensate any such owner, publisher, editor, reporter, agent or employee, directly or indirectly, for influencing or attempting to influence by means of any printed matter in such newspaper any voting at any election or primary through any means whatsoever, except through the matter inserted in such newspaper or periodical as "paid advertisement" and so designated as provided by law, and the compensation for inserting any such paid advertisement shall in no case exceed the regular rate charged by such newspaper or periodical for such service. 1983

20-14-28. False statements in relation to candidates forbidden.

No person shall knowingly make or publish, or cause to be made or published, any false statement in relation to any candidate, proposed constitutional amendment or other measure, which is intended or tends to affect any voting at any primary, convention or election. 1983

20-14-29. False impersonation — Double voting.

Every person is guilty of a felony who at any primary or election applies for a ballot in the name of some other person, whether it is that of a person living or dead, or of a fictitious person, or who, having voted once at a primary or election, applies at the same election for a ballot in his own name or any other name, and shall be punished by imprisonment in the state prison at hard labor for not less than one nor more than three years. Any person who aids, abets, counsels or procures the commission of such felony shall be subject to the same penalty. 1983

20-14-30. Wagering on elections forbidden.

Any candidate who before or during any primary or election campaign makes any bet or wager of anything of pecuniary value, or in any manner becomes a party to any such bet or wager, on the result of the primary or election, or on any event or contingency relating to any pending primary or election, or who provides money or other valuable thing to be used by any other person in betting or wagering upon the results of any impending primary or election, is guilty of a felony. Any person who makes any bet or wager of anything of pecuniary value on the result of any primary or election, or on any event or contingency relating thereto, is guilty of a misdemeanor, and, in addition thereto, any such act shall be a ground of challenge against his right to vote. Any person who, directly or indirectly, makes a bet or wager with any voter, depending upon the result of any impending primary or election, with the intent thereby to procure the challenge of such voter, or to prevent him from voting at such primary or election, is guilty of a misdemeanor. 1983

20-14-31. Inducing attendance at polls — Payment of workers.

It shall be unlawful for any person to pay another for any loss due to attendance at the polls or to registering; provided, that this shall not be construed to permit an employer to make any deduction from the usual salary or wages of any employee while in attendance at the polls for the purpose of voting. No person shall pay for personal service performed or to be performed on the day of a caucus, primary, convention or election, or for any purpose connected therewith tending in any way, directly or indirectly, to affect the result thereof, except for the hiring of persons

whose sole duty it is to act as challengers and watch the count of official ballots. 1983

20-14-32. Repealed. 1970

20-14-33. Promises of appointment to office forbidden.

No person shall, in order to aid or promote his nomination or election, directly or indirectly, appoint or promise to appoint any person, or secure or promise to secure, or aid in securing the appointment, nomination or election of any person, to any public or private position or employment, or to any position of honor, trust or emolument. Nothing herein contained, however, shall prevent a candidate from stating publicly his preference for, or support of, any other candidate for any office to be voted for at the same primary or election; or prevent a candidate for any office in which the person elected will be charged with the duty of participating in the election or nomination of any person as a candidate for any office from publicly stating or pledging his preference for, or support of, any person for such office or nomination. 1983

20-14-34. Inducements not to become candidate.

No person shall pay or reward, or promise to pay or reward, another in any manner or form for the purpose of inducing him to be, or to refrain from or cease being, a candidate, and no person shall solicit any payment, promise or reward from another for such purpose. 1983

20-14-35. Eleemosynary institutions may not solicit candidates.

No person shall demand, solicit, ask for or invite any payment or contribution for any religious, charitable or other cause or organization supposed to be primarily or principally for the public good from a person who seeks to be or has been nominated to any office; and no candidate shall make any such payment or contribution, if it shall be demanded or asked, during the time he is a candidate for nomination or election to any office. No payment or contribution for any purpose shall be made a condition precedent to the putting of a name on any caucus or convention ballot, or nomination paper or petition, or to the performance of any duty imposed by law on a political committee. 1983

20-14-36. Repealed. 1983

20-14-37. Exchange of convention credentials and support forbidden.

No person or persons shall invite, offer or effect the trade, transfer or exchange of any convention credential, or the vote or support of any delegate in any political convention, in exchange for any money or thing of value, or in exchange for any credential, or for the support or vote of any delegate for any person or candidate for any political office or nomination. 1980

20-14-38. Abetting violation of chapter — Penalty.

Any person who shall aid, abet or advise a violation of any provision of this chapter, except as otherwise provided, shall be guilty of a misdemeanor. 1980

20-14-39. Prosecutions — Venue.

Violations of the provisions of this chapter respecting the payment of money or making contributions or rendering services may be prosecuted in the county where such payment or contribution is made, or services rendered, or in any county wherein such mon has been paid or distributed.

20-14-40. Proceedings by private elector.

If any elector of the state shall have within I possession information that any provision of tl chapter has been violated by any candidate for wh such elector had the right to vote, or by any person campaign committee of such candidate or any me ber thereof, he may, by verified petition, apply to district judge of the district in which such violati has occurred, to the attorney general or to the gov nor for leave to bring a special proceeding to inve gate and determine whether or not there has be such violation by such candidate, or by such comm tee or member thereof, and for appointment of spec counsel to conduct such proceeding in behalf of tl state.

If it shall appear from such petition or otherwi that such candidate, or committee or member there has violated any provision of this chapter and th sufficient evidence is obtainable to show that there probable cause to believe that such proceeding m be successfully maintained, then such judge, the a torney general or the governor shall grant leave bring such proceeding, and shall appoint speci counsel to conduct the same.

If such leave is granted and such counsel is a pointed, such elector may, by a special proceedi brought in the district court in the name of the sta upon the relation of such elector, investigate and d termine whether or not such candidate, or committ or member thereof, has violated any provision of th chapter; but nothing contained herein shall be const rued as in any way limiting the effect or preventi the operation of other remedies existing in su cases.

20-14-41. Pleadings — Procedure.

In such proceeding the complaint shall be serv with the summons and shall set forth the name of tl person whose election is contested and the grounds the contest in detail, and shall not thereafter I amended except by leave of the court. The summon and complaint in the proceeding shall be filed withi five days after service thereof.

The answer to the complaint shall be served ar filed within 10 days after the service of the summon and complaint. Any allegation of new matter in tl answer shall be deemed controverted by the advers party without reply, and thereupon the proceedir shall be at issue and stand ready for trial upon fi days' notice of trial.

All such proceedings shall have precedence ov any civil cause of a different nature pending. Tl court shall always be deemed open for the tri thereof and the same shall be tried and determined a civil action, but the court shall, without a jury, d termine all issues of fact as well as issues of la

If more than one proceeding is pending or the ele tion of more than one person is investigated and co tested, the court may in its discretion order the pr ceedings consolidated and heard together, and m equitably apportion costs and disbursements.

In all such proceedings either party shall have tl right of change of venue as provided by law in civ actions, but application for such change must I made within five days after service of summons ar complaint, and the order for such change, if mad shall be made within three days after the making such application and the papers shall be transmitt forthwith. Any neglect of the moving party to procu

Historical and Statutory Notes

Sunset Act application: See Reviser's Note following § 42.17.350.

42.17.430. Certification of reports

Every report and statement required to be filed under this chapter shall identify the person preparing it, and shall be certified as complete and correct, both by the person preparing it and by the person on whose behalf it is filed.

Enacted by Laws 1973, ch. 1, § 43, eff. Jan. 1, 1973 (Initiative Measure No. 276, § 43).

Historical and Statutory Notes

Sunset Act application: See Reviser's Note following § 42.17.350.

42.17.440. Statements and reports public records

All statements and reports filed under this chapter shall be public records of the agency where they are filed, and shall be available for public inspection and copying during normal business hours at the expense of the person requesting copies, provided that the charge for such copies shall not exceed actual cost to the agency.

Enacted by Laws 1973, ch. 1, § 44, eff. Jan. 1, 1973 (Initiative Measure No. 276, § 44).

Library References

Records ⟹14.
C.J.S. Records § 35 et seq.

42.17.450. Duty to preserve statements and reports

Persons with whom statements or reports or copies of statements or reports are required to be filed under this chapter shall preserve them for not less than six years. The commission, however, shall preserve such statements or reports for not less than ten years.

Enacted by Laws 1973, ch. 1, § 45, eff. Jan. 1, 1973 (Initiative Measure No. 276, § 45).

Historical and Statutory Notes

Sunset Act application: See Reviser's Note following § 42.17.350.

Library References

Records ⟹13.
C.J.S. Records §§ 34, 40.

POLITICAL ADVERTISING

42.17.505. Definitions

The definitions set forth in this section apply throughout RCW 42.17.510 through 42.17.540.

(1) "Actual malice" means to act with knowledge of falsity or with reckless disregard as to truth or falsity.

(2) "Sponsor" means the candidate, political committee, or person paying for the advertisement. If a person acts as an agent for another or is reimbursed by another for the payment, the original source of the payment is the sponsor.

(3) "Incumbent" means a person who is in present possession of an elected office.

Enacted by Laws 1988, ch. 199, § 1.

42.17.510. Identification of sponsor—Exemptions

(1) All written political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name and address. All radio and television political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name. The use of an assumed name shall be unlawful. The party with which a candidate files shall be clearly identified in political advertising for partisan office.

(2) Political yard signs are exempt from the requirement of subsection (1) of this section that the name and address of the sponsor of political advertising be listed on the advertising. In addition, the public disclosure commission shall, by rule, exempt from the identification requirements of subsection (1) of this section forms of political advertising such as campaign buttons, balloons, pens, pencils, sky-writing, inscriptions, and other forms of advertising where identification is impractical.

(3) For the purposes of this section, "yard sign" means any outdoor sign with dimensions no greater than eight feet by four feet.

Enacted by Laws 1984, ch. 216, § 1.

Cross References

Advertising rates for political candidates, see § 65.16.095.

United States Supreme Court

Freedom of speech and association, ban on political party primary endorsements, see Eu v. San Francisco County Democratic Central Committee, 1989, 109 S.Ct. 1013, 103 L.Ed.2d 271.

42.17.520. Picture of candidate

At least one picture of the candidate used in any political advertising shall have been taken within the last five years and shall be no smaller than the largest picture of the same candidate used in the same advertisement.

Enacted by Laws 1984, ch. 216, § 2.

42.17.530. False political advertising

(1) It is a violation of this chapter for a person to sponsor with actual malice:

(a) Political advertising that contains a false statement of material fact;

(b) Political advertising that falsely represents that a candidate is the incumbent for the office sought when in fact the candidate is not the incumbent;

(c) Political advertising that makes either directly or indirectly, a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement.

(2) Any violation of this section shall be proven by clear and convincing evidence.

Enacted by Laws 1984, ch. 216, § 3. Amended by Laws 1988, ch. 199, § 2.

42.17.540. Responsibility for compliance

(1) Except as provided in subsection (2) of this section, the responsibility for compliance with RCW 42.17.510 through 42.17.530 shall rest with the sponsor of the political advertising and not with the broadcasting station or other medium.

HB
43

Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE FRAN ULMER

MEMORANDUM
March 27, 1991

TO: Rep. Dave Donley, Chair
House Judiciary Committee

FROM: Rep. Fran Ulmer

RE: HB 43, relating to child support arrearages

I would like to request a hearing before the House Judiciary Committee for HB 43, relating to child support arrearages. This bill requires that when past due child support is collected for families who have been receiving public assistance, those arrearages will be paid first to the family, and secondly to the state for reimbursement of the public assistance. Although this bill is a technical change to the way in which the state handles payment of child support arrearages, it will help families remain financially independent. This legislation was recommended by the Family Support Task Force and is supported by the Alaska Children's Commission, the Alaska Family Support Group and by Alaska Dads and Moms.

Thank you for your consideration of this request.

District 4B — Juneau
P.O. Box V • Juneau, Alaska 99811-3100 • (907) 465-4947

Recycled Paper

Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE FRAN ULMER

MEMORANDUM
April 10. 1991

TO: Rep. Dave Donley, Chair
House Judiciary Committee

FROM: Rep. Fran Ulmer

RE: HB 43, relating to child support arrearages

I would like to request a hearing for HB 43, relating to child support arrearages, before the House Judiciary Committee at the committee's earliest convenience. This bill has wide support among both custodial and non-custodial parent organizations, the Alaska Children's Commission, as well as the administration. I urge you to bring this before the Judiciary Committee for review.

Thank you for your consideration of this request.

District 4B — Juneau
P.O. Box V • Juneau, Alaska 99811-3100 • (907) 465-4947

Recycled Paper

Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE FRAN ULMER

MEMORANDUM
April 21, 1991

TO: Rep. Dave Donley, Chair
House Judiciary Committee

FROM: Rep. Fran Ulmer

RE: HB 43, relating to child support arrearages

One of the responsibilities of the Child Support Enforcement Division of the Department of Revenue is to collect past due child support. When a custodial parent applies for public assistance, he or she must assign the rights to uncollected, past due support to the state for reimbursement of the assistance received. When the delinquent child support is collected, the state is reimbursed first for the assistance paid to the family. After the state is fully repaid, the balance of the past-due child support is paid to the family. [Note: Although the state is reimbursed for arrearages first, that reimbursement does not affect payment of current monthly child support to the family.]

The effect of HB 43 is to reverse this order of payment regarding arrearages. Under the bill, past-due child support will be paid **first to the family** and **secondly to the state** for reimbursement of assistance received by the family. The purpose of this change is to make this "family-first" priority a clear policy of the state and to ensure that child support is received when it is most needed. Under the current order of payment, families sometimes wait years for their share of past-due child support. In some cases, the children are grown and on their own by the time the delinquent payments are received--long after they were most needed by the family. HB 43 ensures that families will receive payments first.

There are several changes I would like to suggest the committee make to HB 43. I have recently learned of a case pending in the State of Washington whose outcome may have significant bearing on Alaska's child support arrearage collection system (Jensen v Washington Dept. of Social & Health Services). That case attempts to rectify in Washington certain inequities which occur in Alaska's arrearage collection system as well.

Briefly, in Alaska and Washington, when a parent assigns rights to child support arrearages to the state as reimbursement for AFDC payments, the state then holds that parent liable for the full amount of the assistance provided. Assume, for example, a family receives public

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Recycled Paper

assistance benefits in the amount of $10,000 and the state collects all the child support due during that period of time, which is $3,000. The family terminates from public assistance and an additional $4000 worth of support accrues. The family then goes on public assistance for a second time. The state will use the "gap period of arrears" of $4000 to reimburse unpaid AFDC benefits from either the first or second welfare period. (See attached chart.)

This practice creates a grave inequity between those families receiving assistance who have outstanding child-support arrears, and those families who have no child-support arrearages to be collected. No other AFDC recipient is required to repay the assistance provided. Federal law is silent on this issue; federal regulations are contradictory. If the legal challenge in Washington is upheld, Alaska will have solid grounds for redressing this inequity. Counsel from the Legal Affairs Agency advises me, however, that we may well have litigation on this issue regardless of how we choose to handle it.

I strongly recommend that we amend HB 43 to indicate the Legislature's intention that AFDC payments shall be reimbursed from child support arrearages up to the total amount of child support ordered for those months in which the family received assistance, or the total amount of the assistance provided during that period, **whichever is lesser.** I also suggest we add the proviso "to the extent allowed by federal law" to address prospectively the failure of the Washington litigants to overturn this practice in Washington. I have prepared a committee substitute which incorporates these changes for your review.

Passage of HB 43 will require additional personnel in the Child Support Enforcement Division to calculate the amounts of child support owed to both the family (the "obligee") and to the state. Clients tend to go on and off of public assistance over a period of months and years; each time a client returns to the public assistance rolls, the debts to the state and the family must be recalculated.

In addition, payment of "families first" will result in a loss of revenue to the state in the amount of approximately $2,400.0. This loss will require an additional appropriation to the AFDC program ($1,961.0) and to the Child Support Enforcement program ($462.5). Although these numbers appear large, the loss is only temporary; the funds eventually may be recovered by the state.

HB 43 was recommended by the Family Support Task Force and is supported by the Alaska Family Support Group, Alaska Dads and Moms, and the Alaska Commission on Children and Youth.

HB 43, Child Support Arrearages

Sample Case

		Child Support Owed	AFDC Paid
Period 1: [on AFDC]		$3000	$10,000
Period 2: [off AFDC]		$4000	0
Period 3: [on AFDC]		$1500	$5000
	Total	**$8500**	**$15,000**

Under current law: State will retain **all** child support arrearages from periods #1,2 and 3 **($8500)** as reimbursement for AFDC benefits.

Family would receive no arrearages.

Under CSHB 43: State would retain child support arrearages **only from periods #1 and #3 ($4500)** as reimbursement for AFDC benefits.

Family would receive $4000 in arrearages before state retained $4500 for AFDC reimbursement.

CSHB 43, CHILD SUPPORT ARREARAGES

Sectional Analysis

Section 1. **(d)** Provides that past-due child support payments collected by the state shall be paid **first** to the custodial parent (the "obligee") and **secondly** to the state for reimbursement of public assistance paid to the family. This reverses the current order of payment.

(e) To the extent permitted by federal law, after the past-due child support owed to the family has been paid, the state may retain past-due child support payments equal to the total amount of child support owed during the period in which the family received AFDC benefits, or the total amount of assistance paid, whichever is lesser.

(f) The state shall pay past-due child support recovered through off-set of the obligor's federal tax refund **first** to the state for unreimbursed assistance and **secondly** to the family, as required by federal regulation.

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 21, 1991

FURTHER REFERRALS: Judiciary, Finance

Date of Committee Action: 3-26-91

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered: HB 43

HOUSE BILL NO. 43 — CHILD SUPPORT ARREARAGES

"An Act relating to the distribution of child support arrearages collected by the child support enforcement agency."

RECOMMENDATIONS:

be replaced with ______________ [ ] the same title [ ] a new title

- [ ] have attached amendments(s)
- [√] do pass
- [ ] do not pass
- [ ] no recommendations
- [ ] individual recommendations
- [ ] additional referral to the ______________ Committee

ADOPTS: ______________ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[√] fiscal impact D.O.R.

[ ] zero fiscal note ______________

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) ______________

[ ] zero fiscal note(s) ______________

SIGNING DO PASS:	SIGNING OTHER RECOMMENDATIONS: Check appropriate column:	Do Not Pass	No Rec	Amend
[signature] (LINCOLN)				
[signature] (CARNEY)				
J. G. Gonzales (GONZALES)				
Bettye Davis (DAVIS)				
Chris Davis (DAVIS)	Mark Hanley (HANLEY)		X	
	Mary Miller		X	

[signature]

CO-Chairman's Signature

HB 43, CHILD SUPPORT ARREARAGES

Sectional Analysis

Section 1. **(d)** Provides that past-due child support payments collected by the state shall be paid **first** to the custodial parent (the "obligee") and **secondly** to the state for reimbursement of public assistance paid to the family. This reverses the current order of payment.

(e) After the past-due child support owed to the family has been paid, the state may retain past-due child support payments equal to the total amount of unreimbursed assistance.

(f) The state shall pay past-due child support recovered through off-set of the obligor's federal tax refund **first** to the state for unreimbursed assistance and **secondly** to the family, as required by federal regulation.

Sectional Analysis

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

P.O. BOX S
JUNEAU, ALASKA 99811-0400
PHONE: (907) 465-2300
TELEFAX: (907) 465-2389

February 25, 1991

Mr. Steve Strube
P.O. Box 521155
Big Lake, AK 99652

Dear Mr. Strube:

In the chaos of moving into this job I apparently overlooked a memo from Governor Hickel dated January 8, 1991 advising me of the formation of an advisory team for the Department of Revenue.

Apparently this appointment was also not communicated to at least some of you, since my telephone calls to several people on the list resulted in their expression of surprise at the appointment.

Regardless, you have been assigned to the advisory team for the Department of Revenue and I welcome the opportunity to receive your input and expertise.

Since 75 % of the team resides in the Anchorage/MatSu area I have asked Jim Magowan to serve as Chairman. He will coordinate a meeting in the near future. After you have had the chance to identify issues on which you wish to counsel the Department of Revenue, he will schedule a meeting with me.

Your positive input and solutions to perceived problems of the Department of Revenue will be welcomed.

Very truly yours,

Lee E. Fisher
Commissioner

LEF:mll

cc: Lt. Governor Jack Coghill
James Rockwell, Special Assistant
to the Governor

04-D2LH

MARCH 23, 1991

REP. LINCOLN, CO-CHAIR
HOUSE H.E.S.S. COMMITTEE
PO BOX V
JUNEAU, AK 99811
RE: HB 43

DEAR REP. LINCOLN AND COMMITTEE MEMBERS,

PASSAGE OF THIS BILL WILL PUT ABOUT TWO MILLION DOLLARS INTO THE HANDS OF CUSTODIAL FAMILIES, AND CHILDREN, THAT WOULD OTHERWISE BE EARNED BY GOVERNMENT TO REIMBURSE ACCRUED AFDC DEBTS.

THE ALASKA FAMILY SUPPORT GROUP, INC. STRONGLY SUPPORTS THIS BILL BECAUSE WE BELIEVE CHILDREN SHOULD BE PAID BEFORE GOVERNMENT.

ATTACHMENT 1 & 2 SHOWS THESE ISSUES ARE RECOMMENDATIONS # 35 & # 36 OF THE FAMILY SUPPORT TASK FORCE LAST SESSION.

SINCERELY,
Steven P. Strube, President

P.S. PLEASE DI

AK Fam. Support Grp Stmnt

P.O. Box 521155 ... ax (907) 892-7760

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 27, 1991 FURTHER REFERRALS: Finance

Date of Committee Action: 4-29-91

The JUDICIARY Committee considered: HB 43

HOUSE BILL NO. 43 CHILD SUPPORT ARREARAGES

"An Act relating to the distribution of child support arrearages collected by the child support enforcement agency."

RECOMMENDATIONS:
be replaced with CS HB 43 (Jud) [ ] the same title [X] a new title

[ ] have attached amendments(s)
[ ] do pass
[ ] do not pass
[X] no recommendations
[ ] individual recommendations
[ ] additional referral to the ______ Committee

ADOPTS: ______ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[X] fiscal impact Revenue
[ ] zero fiscal note ______

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) ______
[ ] zero fiscal note(s) ______

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
		Terry Martin		✓	
[signature]	✓	Mark Hanley		X	
Hy Ellis	✓	Kevin "Pat" Parnell		✓	
		Dave Donley		X	

[signature: Dave Donley]
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CSHB43 (JUD)

Revision Date: April 26, 1991
Title: Act relating to distribution of child support arrearages collected by the CSEA
Sponsor: Representative Ulmer.
Requestor: House Judiciary

Department Affected: Department of Revenue
BRU: Social Services
Component: Child Support Enforcement

COMPONENT SERIAL NO. | 1 | 1 | 1 |

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	466.4	525.6	549.2	615.1	642.8	716.7
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	36.7	38.0	40.0	40.0	40.0	40.0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	38.5	13.4	0	14.8	0	16.3
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	541.6	577.0	589.2	669.9	682.8	773.0
CAPITAL	0	0	0	0	0	0
REVENUE	(716.8)	(1608.9)	(1725.8)	(1771.6)	(1742.2)	(1742.2)

FUNDING: (Thousands of Dollars)

	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
GENERAL FUND	184.2	196.2	200.3	227.8	232.2	262.8
FEDERAL FUNDS	357.4	380.8	388.9	442.1	450.6	510.2
OTHER	0	0	0	0	0	0
TOTAL	541.6	577.0	589.2	669.9	682.8	773.0

POSITIONS:

	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
FULL-TIME	11	12	12	13	13	14
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: 0

ANALYSIS: See attached analysis.

Prepared By: Ardith Lynch
Phone: 263-6277
Division: Child Support Enforcement Division
Date: April 26, 1991

Approved by Commissioner: Lee E. Fisher
Agency: Department of Revenue
Date: 4/29/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

This legislation reverses the current order of collection of child support arrearages in those cases where child support was unpaid before, during, and after a custodial relative's receipt of AFDC grants. These cases create two debts. Current policy is to collect the State's debt first. * This means that money owed to the State of Alaska from assigned support due (but unpaid) during a child's period of receipt of AFDC benefits, and other cost recoveries, is collected by CSED before it collects any unpaid support that accrues after a custodial relative leaves the AFDC rolls.

By reversing the priority of debt collected, paying any excess over current support due to the family for post-AFDC unpaid support before paying the State for assigned (AFDC) unpaid support, the State relinquishes (in the first year) $1,961,000 in collections and $462,500 in prepaid Federal Incentives that are remitted to the General Fund to help pay the State's AFDC General Fund match and finance the child support program.

However, child support collections and timely support payments to the family will increase if CSED receives prompt notification when an obligor becomes employed. Increased State revenues from collection of assigned support will result. Currently, CSED's match with records of the Department of Labor, Employment Security Division, serves as the primary means for identifying a delinquent parent's employer. By the time CSED receives the data, four to six months have elapsed. This time lag allows many obligors to delay enforcement of their child support, and permits obligors who work in seasonal employment to avoid payment of their child support. The employer reporting provisions of HB 43 will allow CSED to require companies who employ a large number of obligors to report new hires to CSED. Fewer than 100 companies employed 20 or more obligors in CSED's caseload during the last three years. Prompt notification to CSED will increase the agency's ability to collect support when the obligor parent is employed and earning regular wages.

This fiscal note reflects the lost revenues to the State from the change in arrearage payment priority, which are partially offset by revenues from increased child support collections based on employer reporting. Collection has been expanding at a rate between 12% and 15% a year. This fiscal note adjusts the rate of revenue loss accordingly in the four following fiscal

---

* When a support collection is made by CSED, Ongoing Support - the support obligation that is due in the current month - is always paid to custodial parents who are not receiving AFDC, before any arrearage payment is made.

years from FY92, and holds incentive losses constant. These revenues are reflected in future-year budgets as Program Receipts; their loss will require additional appropriations in the AFDC program and the Child Support Enforcement program.

The legislation will require increased operational staffing at CSED. To pay arrearages to the family first, CSED must greatly accelerate the rate at which subrogated debt calculations are completed. Presently, payments exceeding the current support due can be retained to the State until the accumulated amount nears the amount of the estimated subrogated debt. The legislation will necessitate a sub-debt calculation as soon as a child leaves the AFDC rolls, and each time the child leaves, in order to guarantee the correct distribution of debt between the State and the custodial relative. (A given child can go on and off the AFDC rolls, and can change custodial relationships, many times. Each of these movements, for each child, must be tracked before a correct sub-debt can be calculated.) CSED presently has one accounting technician assigned to calculate sub-debts; approximately 45 sub-debts can be researched and accurately completed each month. The number of sub-debts that will be required to be completed each month in FY 92 under the proposed legislation is 250. The Division has already automated the sub-debt process to the maximum degree possible. Additional staff will be <u>essential</u> to implementing the change. This fiscal note reflects the cost of additional accounting technicians who will be assigned full-time to sub-debt research and calculation: three in FY 92, increasing to four in FY 93 and FY 94, five in FY 95 and FY 96, and six in FY 97, to meet the estimated increase in CSED's caseload involving past public assistance payments. Each position in FY 92 will cost $36,100, with associated equipment costs for computer terminals, telephones, and furniture for one person in FY 92 at $12,800. Increases in equipment costs in the years after FY 92 are projected to increase at a rate of 5%.

The bill will also require additional personnel to enter reports from employers and issue appropriate withholding orders to collect child support. However, revenues from increased collections will exceed the personal services costs. (CSED receives 66% federal funding, in addition to federal incentive payments.) These positions will collect an additional three million dollars in child support in 1992. To minimize costs, these additional staff will utilize existing equipment in swing-shift arrangements. This fiscal note reflects five child support enforcement officers and three clerk positions, with a 3.75% shift differential. Increases in Personal Services costs in the outlying years beyond FY92 are projected at a conservative rate of 4.5 percent. In addition, the change in the debt priority will require CSED to forgo immediate collection of additional miscellaneous cost recoveries amounting to $36,700 in FY 92 for expenditures such as blood-testing.

FN: WPPADMIN-214

AAI:aki

THE FOLLOWING PAGES MAY
NOT FILM LEGIBLY BECAUSE OF
THE POOR QUALITY OF THE ORIGINAL

Attach #2

Pay Family Arrearages First If AFDC Fully Funded

RECOMMENDATION 35:

TO THE EXTENT ALLOWED BY FEDERAL LAW, AND PROVIDED THAT THE LEGISLATURE APPROPRIATES ADEQUATE FUNDS, CSED SHOULD DISTRIBUTE AMOUNTS IN EXCESS OF THE CURRENT MONTH'S CHILD SUPPORT OBLIGATION TO PAYMENT OF ARREARAGES IN THE FOLLOWING ORDER:

(1) First, to the obligee, who is not receiving public assistance, support arrearages accrued after the obligee stopped receiving public assistance;
(2) Second, to the State for unreimbursed public assistance; and
(3) Third, to the obligee, support arrearages which accrued before the obligee received public assistance, and which exceed the amount of public assistance paid to the family.

RECOMMENDATION 36:

THE LEGISLATURE SHOULD APPROPRIATE FUNDS TO MAKE UP THE ESTIMATED $1.6 MILLION SHORTFALL CAUSED BY RECOMMENDATION 35.

Issue

How should child support arrearages collected by the Child Support Enforcement Division in cases involving former AFDC recipients be distributed by the State?

FSA Requirement

Section 122 of the Family Support Act requires that states distribute child support payments and arrearages they collect within time limits to be set forth in federal regulations.

Rationale

On August 4, the federal government issued final regulations establishing the time limits for distribution of child support payments and arrearages, as required under Section 122 of the Family Support Act. Those regulations indicate that the states have discretion to distribute a portion of child support arrearages to the family before satisfying state liens for prior AFDC payments. Before the new regulations were issued, it did not appear that the states had this discretion.

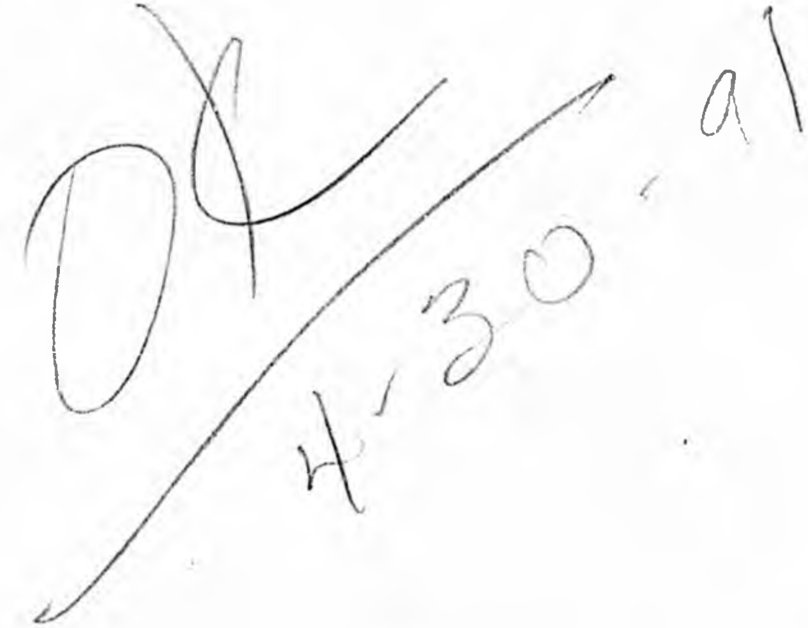
House Judiciary Committee

APRIL 30, 1991

Dear Members:

Please review the final Draft of CSHB 43 (JUD) which was reported out of committee yesterday, so Final Action can be approved at today's Hearing.

Thank you.



7-LS0400\M
Lauterbach
4/30/91

CS FOR HOUSE BILL NO. 43 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES ULMER, Brown, Carney, B.Davis

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to distribution of child support collected by the child support enforcement**
2 **agency; requiring certain employers to provide information to the agency; requiring the**
3 **Department of Health and Social Services to give notice of assignments to recipients of**
4 **aid to families with dependent children; and providing for an effective date."**

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 * **Section 1.** AS 25.27.075 is repealed and reenacted to read:
7 Sec. 25.27.075. EMPLOYMENT INFORMATION. (a) Upon notice by the agency and
8 except as provided in (b) of this section, an employer doing business in the state shall report to
9 the agency the
10 (1) hiring of a person who resides or works in this state to whom the employer
11 anticipates paying earnings; and
12 (2) rehiring or return to work of an employee who was laid off, furloughed,
13 separated, granted a leave without pay, or terminated from employment.
14 (b) An employer is not required to report the hiring of a person who the employer

1 anticipates
2 (1) will be employed for less than one month's duration; or
3 (2) will be employed sporadically so that the employee will be paid for less than
4 350 hours during a continuous six-month period.
5 (c) An employer required to report under (a) of this section may make the report by
6 mailing the employee's copy of the W-4 form or by other means authorized by the agency that
7 will result in timely reporting.
8 (d) An employer required to report under (a) of this section shall submit reports within
9 seven days of hiring, rehiring, or return to work of an employee. The report must contain
10 (1) the employee's name, address, social security number, and date of birth; and
11 (2) the employer's name, address, and employment security reference number or
12 unified business identifier number.
13 (e) The agency shall retain the information received under (a) - (d) of this section for a
14 particular employee only if the agency is responsible for establishing, enforcing, or collecting a
15 support obligation of the employee. If the employee does not owe a support obligation, the
16 agency may not create a record regarding the employee, and the information contained in the
17 notice shall be promptly destroyed.
18 (f) An employer of the obligor or a labor union of which an obligor is a member shall
19 provide to the agency information requested regarding the obligor's employment, wages or salary,
20 and location. The information required under this subsection is in addition to the information
21 required under (a) of this section, if any.
22 (g) In addition to civil liability under AS 25.27.260, if applicable, or any other law, an
23 employer of an obligor or a labor union of which an obligor is a member that knowingly violates
24 this section is liable for a civil penalty of not more than $1,000.
25 * Sec. 2. AS 25.27.130 is amended by adding new subsections to read:
26 (d) Except as provided in (f) of this section, if the obligee is not receiving assistance
27 under AS 47.25.310 - 47.25.420 at the time the state recovers money in an action under this
28 section, the recovery of any amount for which the obligor is liable shall be distributed to the
29 obligee for support payments that have become due and unpaid since the termination of
30 assistance under AS 47.25.310 - 47.25.420 under a support order in favor of the obligee.
31 (e) After payment to the obligee under (d) of this section, the state may retain an amount

1 not to exceed the total unreimbursed assistance paid on behalf of the obligee under
2 AS 47.25.310 - 47.25.420.
3 (f) Notwithstanding (d) of this section, the state shall, if required under federal law or
4 regulations, distribute amounts recovered through offset of the obligor's federal tax refund as past
5 due support with first distribution to the state for unpaid support assigned to the state under
6 AS 47.25.345.
7 * **Sec. 3.** AS 47.25.340 is amended by adding a new subsection to read:
8 (b) During the application process, the department shall give to the applicant written
9 notice of the assignment of support rights that will be considered to have occurred under
10 AS 47.25.345. The notice must
11 (1) be plainly written;
12 (2) include a statement that informs the applicant that the assignment under
13 AS 47.25.345 includes an assignment of support rights that may have accrued during any time
14 that the family was not receiving assistance and that, under the assignment, the state may retain
15 support that it collects on behalf of the applicant to reimburse the state for assistance received
16 by the applicant during previous periods of assistance, if any.
17 * **Sec. 4.** This Act takes effect January 1, 1992.

CSHB 43, CHILD SUPPORT ARREARAGES

Sectional Analysis

Section 1. States the legislature's intent that the Child Support Enforcement Agency shall use the full latitude available under applicable federal laws and regulations to return as much money as possible to the family first when it collects child support payments in order for the family to remain self-supporting.

Section 2. **(d)** Provides that past-due child support payments collected by the state shall be paid **first** to the custodial parent (the "obligee") and **secondly** to the state for reimbursement of public assistance paid to the family. This reverses the current order of payment. In addition, it requires that public assistance payments shall be reimbursed up to the maximum amount of the child support collected during the period of assistance, or the amount of the assistance paid, **whichever is lesser.**

(e) The state shall pay past-due child support recovered through off-set of the obligor's federal tax refund **first** to the state for unreimbursed assistance and **secondly** to the family, as required by federal regulation.

Section 3. **(a)** Requires the Child Support Enforcement Agency to amend the state plan to reflect the payment priorities of Section 2 of the bill.

(b) Requires the Child Support Enforcement Agency to report to the legislature if a provision of this bill, or a state plan amendment to implement the bill is disapproved by the federal Office of Child Support Enforcement.

RECEIVED APR 29 1991

STATE OF ALASKA

DEPARTMENT OF REVENUE

CHILD SUPPORT ENFORCEMENT DIVISION

WALTER J. HICKEL, GOVERNOR

FAIRBANKS FIELD OFFICE
675 7TH AVENUE, STATION G
FAIRBANKS, ALASKA 99701
PHONE (907) 451-2830
FAX (907) 451-2959

April 25, 1991

Representative Dave Donley, Chairman
House Judiciary Committee
State Legislature
P.O. Box V
Juneau, AK 99811

Re: HB 43

Dear Representative Donley:

Thank you for the opportunity to testify on behalf of the Child Support Enforcement Division (CSED) on House Bill 43. Several additional questions arose at the April 22 hearing, which I will attempt to answer in this letter.

Mandatory wage withholding: Since 1985, orders enforced by CSED have been subject to income withholding when unpaid child support (arrears) equal one month's support obligation. The federal Family Support Act of 1988 requires immediate income withholding on orders issued or modified after October 31, 1990, which are enforced by the agency, even if support payments are not in arrears. The federal law further requires immediate income withholding on all orders issued after January 1, 1994, even if they are not enforced by CSED. Section 101(c) of the Family Support Act (copy attached) requires a study of the administrative feasibility, cost implications, and other effects of requiring immediate income withholding on all child support awards, to be completed by October 1991. The federal Office of Child Support Enforcement reports that the study is scheduled to begin this summer.

Unpaid child support: CSED is currently enforcing almost 19,000 cases with child support orders. Less than 3,500 of these cases are current on their child support payments. Approximately 16,000 cases have an arrearage balance which totals $203 million. Unpaid child support orders enforced by CSED as of March 31, 1991, break down as follows:

Total CSED caseload with child support orders		19,000
Cases with arrears		16,000
Amount of Arrears:	TOTAL	$203,000,000
AFDC (7000 cases)		$ 96,000,000
Non-AFDC (9000 cases)		$107,000,000

CSED appreciates the committee's concern regarding the nonpayment of child support. HB 43 recognizes the importance of support payments to children each and every month. CSED pays the current month's support to non-AFDC custodial parents whenever support is collected. The priority of arrearage payment becomes an issue only when support was not paid before, during, and after a public assistance grant. If support is paid in full each and every month, there will be no unpaid child support arrears to collect or distribute, and children will receive the benefit of timely support payments.

Very truly yours,

Ardith Lynch
Deputy Director
CSED

Attachments: as stated

FN:1115002

TITLE IV—RELATED AFDC AMENDMENTS

Sec. 401. Benefits for two-parent families.
Sec. 402. Changes in earned income disregards.
Sec. 403. Households headed by minor parents.
Sec. 404. Periodic reevaluation of need and payment standards.
Sec. 405 CBO study on implementation of national minimum payment standard.
Sec. 406. Study of new national approaches to welfare benefits for low-income families with children.

TITLE V—DEMONSTRATION PROJECTS

Sec. 501. Family support demonstration projects.
Sec. 502. Demonstration projects to test the effect of early childhood development programs.
Sec. 503. Demonstration projects to test alternative definitions of unemployment.
Sec. 504. Demonstration projects to address child access problems.
Sec. 505. Demonstration projects to expand the number of job opportunities available to certain low-income individuals.
Sec 506. Demonstration projects to provide counseling and services to high-risk teenagers.
Sec. 507. Eighteen-month extension of Minnesota prepaid medicaid demonstration project.

TITLE VI—MISCELLANEOUS PROVISIONS

Sec. 601. Inclusion of American Samoa as a State under title IV.
Sec. 602. Increase in amount available for payment to Puerto Rico, the Virgin Islands, and Guam.
Sec. 603. Assistant Secretary for Family Support.
Sec. 604. Responsibilities of the State.
Sec. 605. Establishment of preeligibility fraud detection measures.
Sec. 606. Uniform reporting requirements.
Sec. 607. State reports on expenditure and use of social services funds.
Sec 608. Miscellaneous technical corrections to Medicare Catastrophic Coverage Act of 1988.
Sec. 609. Extension of quality control penalty moratorium.

TITLE VII—FUNDING PROVISIONS

Sec. 701. Temporary extension of provisions relating to collection of nontax debts owed to Federal agencies.
Sec. 702. Limitation on use of reimbursement arrangements to avoid 2-percent floor.
Sec. 703 Modifications to dependent care credit and exclusion for dependent care assistance.
Sec. 704. Taxpayer identification number required for dependents who have attained age 2.

TITLE I—CHILD SUPPORT AND ESTABLISHMENT OF PATERNITY

Subtitle A—Child Support

SEC. 101. IMMEDIATE INCOME WITHHOLDING.

666.

(a) IN GENERAL.—Section 466(b)(3) of the Social Security Act is amended to read as follows:

date.

"(3)(A) The wages of an absent parent shall be subject to such withholding, regardless of whether support payments by such parent are in arrears, in the case of a support order being enforced under this part that is issued or modified on or after the first day of the 25th month beginning after the date of the enactment of this paragraph, on the effective date of the order; except that such wages shall not be subject to such withholding under this subparagraph in any case where (i) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or (ii) a written agreement is reached between both parties which provides for an alternative arrangement.

"(B) The wages of an absent parent shall become subject to such withholding, in the case of wages not subject to withholding under subparagraph (A), on the date on which the payments which the absent parent has failed to make under a support order are at least equal to the support payable for one month or, if earlier, and without regard to whether there is an arrearage, the earliest of—

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

"(ii) the date as of which the custodial parent requests that such withholding begin, if the State determines, in accordance with such procedures and standards as it may establish, that the request should be approved, or

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

(b) APPLICATION TO ALL CHILD SUPPORT ORDERS.—Section 466(a)(8) of such Act is amended—

42 USC 666.

(1) by inserting "(A)" before "Procedures";

(2) by striking "which are issued or modified in the State" and inserting in lieu thereof "not described in subparagraph (B)"; and

(3) by adding at the end the following new subparagraph:

Effective date.

"(B) Procedures under which all child support orders which are initially issued in the State on or after January 1, 1994, and are not being enforced under this part will include the following requirements:

"(i) The wages of an absent parent shall be subject to withholding, regardless of whether support payments by such parent are in arrears, on the effective date of the order; except that such wages shall not be subject to withholding under this clause in any case where (I) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or (II) a written agreement is reached between both parties which provides for an alternative arrangement.

"(ii) The requirements of subsection (b)(1) (which shall apply in the case of each absent parent against whom a support order is or has been issued or modified in the State, without regard to whether the order is being enforced under the State plan).

"(iii) The requirements of paragraphs (2), (5), (6), (7), (8), (9), and (10) of subsection (b), where applicable.

"(iv) Withholding from income of amounts payable as support must be carried out in full compliance with all procedural due process requirements of the State.".

Reports.
42 USC 666 note.

(c) STUDY ON MAKING IMMEDIATE INCOME WITHHOLDING MANDATORY IN ALL CASES.—The Secretary of Health and Human Services shall conduct a study of the administrative feasibility, cost implications, and other effects of requiring immediate income withholding with respect to all child support awards in a State and shall report on the results of such study not later than 3 years after the date of the enactment of this Act.

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

P.O. BOX S
JUNEAU, ALASKA 99811-0400
PHONE: (907) 465-2300
TELEFAX: (907) 465-2389

February 25, 1991

Mr. Steve Strube
P.O. Box 521155
Big Lake, AK 99652

Dear Mr. Strube:

In the chaos of moving into this job I apparently overlooked a memo from Governor Hickel dated January 8, 1991 advising me of the formation of an advisory team for the Department of Revenue.

Apparently this appointment was also not communicated to at least some of you, since my telephone calls to several people on the list resulted in their expression of surprise at the appointment.

Regardless, you have been assigned to the advisory team for the Department of Revenue and I welcome the opportunity to receive your input and expertise.

Since 75 % of the team resides in the Anchorage/MatSu area I have asked Jim Magowan to serve as Chairman. He will coordinate a meeting in the near future. After you have had the chance to identify issues on which you wish to counsel the Department of Revenue, he will schedule a meeting with me.

Your positive input and solutions to perceived problems of the Department of Revenue will be welcomed.

Very truly yours,

Lee E. Fisher
Commissioner

LEF:mll

cc: Lt. Governor Jack Coghill
James Rockwell, Special Assistant
to the Governor

04-D2LH

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 43

Revision Date: 3/20/91
Title: An act relating to distribution of child support arrearages collected by the CSEA
Sponsor: Representative Ulmer
Requestor: House HESS

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

COMPONENT SERIAL NO. | | | | |

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	108.3	151.4	158.2	206.5	215.8	270.5
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	36.7	38.0	40.0	40.0	40.0	40.0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	38.5	13.4	0	14.8	0	16.3
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	183.5	202.8	198.2	261.3	255.8	326.8
CAPITAL	0	0	0	0	0	0
REVENUE	(2423.5)	(2717.7)	(2967.7)	(3162.5)	(3300.0)	(3300.0)

FUNDING: (Thousands of Dollars)

	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
GENERAL FUND	62.4	68.9	67.4	88.8	87.0	111.1
FEDERAL FUNDS	121.1	133.9	130.8	172.5	168.8	215.7
OTHER	0	0	0	0	0	0
TOTAL	183.5	202.8	198.2	261.3	255.8	326.8

POSITIONS:

	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
FULL-TIME	3	4	4	5	5	6
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact:

ANALYSIS: Attach a separate page for analysis.

Prepared By: Ardith Lynch
Phone: 263-6277
Division: Child Support Enforcement Division
Date: March 20, 1991

Approved by Commissioner: Lee E. Fisher [signature]
Agency: Department of Revenue
Date: 3-22-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

<2,423.5> revenue

This legislation requires a fundamental change in State revenue policy. It reverses the current order of collection of child support arrearages in those cases where child support was unpaid before, during, <u>and</u> after a custodial relative's receipt of AFDC grants. These cases create two debts. Current policy is to collect the State's debt first.* This means that money owed to the State of Alaska from assigned support due (but unpaid) during a child's period of receipt of AFDC benefits, and other cost recoveries, is collected by CSED before it collects any unpaid support that accrues <u>after</u> a custodial relative leaves the AFDC rolls.

By reversing the priority of debt collected, paying any excess over current support due to the family for post-AFDC unpaid support <u>before</u> paying the State for assigned (AFDC) unpaid support, the State relinquishes (in the first year) $1,961,000 in collections and $462,500 in prepaid Federal Incentives that are remitted to the General Fund to help pay the State's AFDC General Fund match and finance the child support program. Collection has been expanding at a rate between 12% and 15% a year in this subset of cases (3,116 post-AFDC cases out of 18,131 total AFDC cases). This fiscal note adjusts the rate of revenue loss accordingly in the three following fiscal years from FY92, and holds Incentive losses constant. These revenues are reflected in future-year budgets as Program Receipts; their loss will require additional appropriations in the AFDC program ($1,961,000) and the Child Support Enforcement program ($462,500) in the first year.

In addition to revenue losses, the legislation will require increased operational staffing at CSED to greatly accelerate the rate at which subrogated debt calculations must be completed. Presently, payments exceeding the current support due can be retained to the State until the accumulated amount nears the amount of the estimated subrogated debt. The legislation will necessitate a sub-debt calculation as soon as a child leaves the AFDC rolls, and each time the child leaves, in order to guarantee the correct distribution of debt between the State and the custodial relative. (A given child can go on and off the AFDC rolls, and can change custodial relationships, many times. Each of these movements, for

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Increases in Personal Services costs in the outlying years beyond FY92 are projected at a conservative rate of 4.5 percent, and then are held constant based on turnover assumptions. Increases in equipment costs in the years after FY 92 are projected to increase at a rate of 5%.

FN: WPPADMIN-214

AAL:akj

STATE OF ALASKA

DEPARTMENT OF REVENUE

CHILD SUPPORT ENFORCEMENT DIVISION

WALTER J. HICKEL, GOVERNOR

FAIRBANKS FIELD OFFICE
675 7TH AVENUE, STATION G
FAIRBANKS, ALASKA 99701
PHONE (907) 451-2830
FAX (907) 451-2959

April 25, 1991

Representative Dave Donley, Chairman
House Judiciary Committee
State Legislature
P.O. Box V
Juneau, AK 99811

Re: HB 43

Dear Representative Donley:

Thank you for the opportunity to testify on behalf of the Child Support Enforcement Division (CSED) on House Bill 43. Several additional questions arose at the April 22 hearing, which I will attempt to answer in this letter.

<u>Mandatory wage withholding</u>: Since 1985, orders enforced by CSED have been subject to income withholding when unpaid child support (arrears) equal one month's support obligation. The federal Family Support Act of 1988 requires immediate income withholding on orders issued or modified after October 31, 1990, which are enforced by the agency, even if support payments are not in arrears. The federal law further requires immediate income withholding on all orders issued after January 1, 1994, even if they are not enforced by CSED. Section 101(c) of the Family Support Act (copy attached) requires a study of the administrative feasibility, cost implications, and other effects of requiring immediate income withholding on all child support awards, to be completed by October 1991. The federal Office of Child Support Enforcement reports that the study is scheduled to begin this summer.

<u>Unpaid child support</u>: CSED is currently enforcing almost 19,000 cases with child support orders. Less than 3,500 of these cases are current on their child support payments. Approximately 16,000 cases have an arrearage balance which totals $203 million. Unpaid child support orders enforced by CSED as of March 31, 1991, break down as follows:

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AFDC (7000 cases)		$ 96,000,000
Non-AFDC (9000 cases)		$107,000,000

CSED appreciates the committee's concern regarding the nonpayment of child support. HB 43 recognizes the importance of support payments to children each and every month. CSED pays the current month's support to non-AFDC custodial parents whenever support is collected. The priority of arrearage payment becomes an issue only when support was not paid before, during, and after a public assistance grant. If support is paid in full each and every month, there will be no unpaid child support arrears to collect or distribute, and children will receive the benefit of timely support payments.

Very truly yours,

Ardith Lynch
Deputy Director
CSED

Attachments: as stated

FN:1115002

APR-25-91 THU 14:07 DOR/FDIO P.04

TITLE IV—RELATED AFDC AMENDMENTS

Sec. 401. Benefits for two-parent families.
Sec. 402. Changes in earned income disregards.
Sec. 403. Households headed by minor parents.
Sec. 404. Periodic reevaluation of need and payment standards.
Sec. 405. CBO study on implementation of national minimum payment standard.
Sec. 406. Study of new national approaches to welfare benefits for low-income families with children.

TITLE V—DEMONSTRATION PROJECTS

Sec. 501. Family support demonstration projects.
Sec. 502. Demonstration projects to test the effect of early childhood development programs.
Sec. 503. Demonstration projects to test alternative definitions of unemployment.
Sec. 504. Demonstration projects to address child access problems.
Sec. 505. Demonstration projects to expand the number of job opportunities available to certain low-income individuals.
Sec. 506. Demonstration projects to provide counseling and services to high-risk teenagers.
Sec. 507. Eighteen-month extension of Minnesota prepaid medicaid demonstration project.

TITLE VI—MISCELLANEOUS PROVISIONS

Sec. 601. Inclusion of American Samoa as a State under title IV.
Sec. 602. Increase in amount available for payment to Puerto Rico, the Virgin Islands, and Guam.
Sec. 603. Assistant Secretary for Family Support.
Sec. 604. Responsibilities of the State.
Sec. 605. Establishment of preeligibility fraud detection measures.
Sec. 606. Uniform reporting requirements.
Sec. 607. State reports on expenditure and use of social services funds.
Sec. 608. Miscellaneous technical corrections to Medicare Catastrophic Coverage Act of 1988.
Sec. 609. Extension of quality control penalty moratorium.

TITLE VII—FUNDING PROVISIONS

Sec. 701. Temporary extension of provisions relating to collection of nontax debts owed to Federal agencies.
Sec. 702. Limitation on use of reimbursement arrangements to avoid 2-percent floor.
Sec. 703. Modifications to dependent care credit and exclusion for dependent care assistance.
Sec. 704. Taxpayer identification number required for dependents who have attained age 2.

TITLE I—CHILD SUPPORT AND ESTABLISHMENT OF PATERNITY

Subtitle A—Child Support

SEC. 101. IMMEDIATE INCOME WITHHOLDING.

(a) IN GENERAL.—Section 466(b)(3) of the Social Security Act is amended to read as follows:

"(3)(A) The wages of an absent parent shall be subject to such withholding, regardless of whether support payments by such parent are in arrears, in the case of a support order being enforced under this part that is issued or modified on or after the first day of the 25th month beginning after the date of the enactment of this paragraph, on the effective date of the order; except that such wages shall not be subject to such withholding under this subparagraph in any case where (i) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or (ii) a written agreement is reached between both parties which provides for an alternative arrangement.

"(B) The wages of an absent parent shall become subject to such withholding, in the case of wages not subject to withholding under subparagraph (A), on the date on which the payments which the absent parent has failed to make under a support order are at least equal to the support payable for one month or, if earlier, and without regard to whether there is an arrearage, the earliest of—

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

"(ii) the date as of which the custodial parent requests that such withholding begin, if the State determines, in accordance with such procedures and standards as it may establish, that the request should be approved, or

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

(b) APPLICATION TO ALL CHILD SUPPORT ORDERS.—Section 466(a)(8) of such Act is amended—

42 USC 666.

(1) by inserting "(A)" before "Procedures";

(2) by striking "which are issued or modified in the State" and inserting in lieu thereof "not described in subparagraph (B)"; and

(3) by adding at the end the following new subparagraph:

Effective date.

"(B) Procedures under which all child support orders which are initially issued in the State on or after January 1, 1994, and are not being enforced under this part will include the following requirements:

"(i) The wages of an absent parent shall be subject to withholding, regardless of whether support payments by such parent are in arrears, on the effective date of the order; except that such wages shall not be subject to withholding under this clause in any case where (I) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or (II) a written agreement is reached between both parties which provides for an alternative arrangement.

"(ii) The requirements of subsection (b)(1) (which shall apply in the case of each absent parent against whom a support order is or has been issued or modified in the State, without regard to whether the order is being enforced under the State plan).

"(iii) The requirements of paragraphs (2), (5), (6), (7), (8), (9), and (10) of subsection (b), where applicable.

"(iv) Withholding from income of amounts payable as support must be carried out in full compliance with all procedural due process requirements of the State.".

Reports. 42 USC 666 note.

(c) STUDY ON MAKING IMMEDIATE INCOME WITHHOLDING MANDATORY IN ALL CASES.—The Secretary of Health and Human Services shall conduct a study of the administrative feasibility, cost implications, and other effects of requiring immediate income withholding with respect to all child support awards in a State and shall report on the results of such study not later than 3 years after the date of the enactment of this Act.

STATE OF ALASKA
DEPARTMENT OF REVENUE
CHILD SUPPORT ENFORCEMENT DIVISION

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JUL 30 1990

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

NATALIE JENSEN, SHARYN WOODRUFF, and CAROLYN OLSON, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

RICHARD THOMPSON, Secretary, State of Washington Department of Social and Health Services,

Defendant.

NO. C90-5313

COMPLAINT
CLASS ACTION

I. PRELIMINARY STATEMENT

1.1 Plaintiffs are present and former public assistance recipients. They bring this class action to challenge defendant's failure to follow federal law in distributing child support that defendant collects after a family stops receiving public assistance (AFDC/FIP). Plaintiffs' rights arise under Titles IV-A and IV-D of

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the Social Security Act and federal regulations, which require the defendant to collect and distribute support for former assistance recipients to increase the family's self-sufficiency, decrease its need to return to public assistance, and ensure that needy children receive support from their parents.

1.2 As a condition of receiving public assistance for their children, plaintiffs must assign to the State of Washington the right to collect child support that was owed before the family went on assistance and that accrues while the family is receiving assistance. In return, the State is required to undertake collection efforts and to distribute the amounts collected among the family, the State, and the federal government.

1.3 The assignment of support rights terminates when a family goes off assistance. However, the defendant illegally claims ownership of all child support due and unpaid as of the date the family stops receiving assistance up to the full value of assistance the family has ever received. Defendant further illegally deems as a matter of policy, whenever a family reapplies for assistance after a period of not receiving assistance, that it is entitled to retain support arrears which have accrued since the family stopped receiving assistance to reimburse itself for all assistance previously furnished.

1.4 Defendant also illegally fails to provide notice which informs families who are reapplying for assistance that if they go back on assistance the defendant will claim all support arrears which have accrued since the family last received assistance to repay itself for any benefits the family received in the past.

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1 II. JURISDICTION

2 2.1 This action arises under 42 USC §1983 (Civil Rights Act)
3 and the Fifth and Fourteenth Amendments to the Constitution of the
4 United States.

5 2.2 Jurisdiction is conferred upon this court by 28 USC §1331
6 and 28 USC §1343(a)(3). Plaintiffs' action for declaratory and
7 injunctive relief is authorized by 28 USC §2201 and §2202.

8 III. PARTIES

9 3.1 Plaintiff, NATALIE JENSEN, is the mother of four
10 children, ages 11, 9, 2 and 11 months, and resides in Clark County,
11 Washington.

12 3.2 Plaintiff, SHARYN WOODRUFF, is the mother of two
13 children, ages 17 and 15, and resides in Clark County, Washington.

14 3.3 Plaintiff, CAROLYN OLSON, is the mother of two children,
15 ages 19 & 15, and resides in Clark County, Washington.

16 3.4 Defendant, RICHARD THOMPSON, is the Secretary of the
17 Washington State Department of Social and Health Services, which
18 through its Office of Support Enforcement (OSE), is the State
19 agency responsible for administering Titles IV-A and IV-D of the
20 Social Security Act, 42 USC §601 *et seq.* and 42 USC §651 *et seq.*
21 Defendant is responsible for establishing, enforcing, collecting,
22 and distributing child support that public assistance recipients
23 assign to the State during the period the family is on assistance.
24 Defendant is also responsible for administering the support
25 enforcement program that is required when a family stops receiving
26 assistance.

27

28

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IV. CLASS ACTION ALLEGATIONS

4.1 Plaintiffs pursue their claims on behalf of themselves and all others similarly situated pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure, as representatives of the class defined to include as follows: All persons who (a) now are, or in the future will be, former recipients of public assistance, and who (b) had or will have child support obligations owing to them that accrued during a period between when they stopped receiving public assistance and before they reapplied or will reapply for public assistance.

4.2 There are more than 71,000 families who receive Title IV-A public assistance benefits in Washington State on a monthly basis. OSE's average annual caseload for 1988 was 217,277. Of these, 86,938 were classified as current AFDC recipients, 60,183 were classified as cases in which the state was collecting AFDC arrears only, and 70,156 were classified as non-AFDC cases. Non-AFDC cases often include past AFDC recipients. These figures are based upon the annual caseload statistics defendant reported to the federal government in fiscal year 1988, the most recent calendar year for which data is available. (Tables 37, 39, 40, and 41, Thirteenth Annual Report to Congress, Vol. II.). The number of "AFDC arrears only" and "non-AFDC" cases in which a child support collection was made in 1988 were 24,968 (Tables 45 and 46). Upon information and belief, the number of families in these categories for FY's 1989 and 1990 has increased.

4.3 The number of current recipients of public assistance who had unpaid child support obligations that accrued after they previously went off assistance is unknown, but upon information and

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belief, number in the thousands. The number of former recipients of public assistance who had unpaid child support obligations that accrued between when they went off assistance and before they returned to assistance is unknown, but upon information and belief, number in the thousands. The class is so numerous that joinder of all members is impracticable.

4.4 There are questions of law or fact common to the class.

4.5 The questions of law which are common to the class include the following:

a) Whether, when a family stops receiving public assistance, the value of the defendant's assigned support rights is fixed at the amount of the support owed, even if the amount of assistance furnished to the family exceeds the amount of the support owed.

b) Whether the defendant's practice of claiming that it owns and can keep child support arrears that accrued during the period between when a family stops receiving assistance and before the family reapplies for assistance to reimburse itself for assistance previously paid out violates the Social Security Act, federal regulations, and the Fifth and Fourteenth Amendments to the federal constitution.

c) Whether the defendant's failure to give adequate notice which informs public assistance applicants who have received assistance in the past, that defendant intends to claim the child support arrears which have accrued since they last received assistance to reimburse itself for any past benefits the family has received violates the Fourteenth Amendment to the federal constitution.

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4.6 The claims of the named representative plaintiffs are typical of the claims of the class members.

4.7 The named plaintiffs will fairly and adequately represent the interests of the class. The named plaintiffs have a sharply drawn, personally vital controversy with the defendant which dictates that they fully and vigorously prosecute this action. At stake for the plaintiffs and the entire class is their right to receive unpaid child support that accrued during periods of non-receipt of public assistance. Plaintiffs are represented by counsel employed by Evergreen Legal Services who are experienced in class action litigation concerning public programs. Plaintiffs know of no conflict between the plaintiffs and any member of the class.

4.8 Certification of the class is proper under Civil Rule 23(b)(2). Defendant has acted or refused to act on grounds generally applicable to the class, which makes final declaratory and injunctive relief with respect to the class as a whole appropriate.

V. TITLES IV-A AND IV-D OF THE SOCIAL SECURITY ACT AND REGULATORY SCHEME

5.1 Defendant participates in two interrelated Social Security Act programs which benefit children: a public assistance program under Title IV-A, 42 U.S.C. § 601 et seq. and a child support enforcement program under Title IV-D, 42 U.S.C. § 651 et seq.

5.2 The IV-A program was established to "encourage the care of dependent children in their own homes..., to help maintain and strengthen family life and to help such parents and relatives to attain or retain capability for the maximum self support and

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personal independence consistent with the maintenance of continuing parental care and protection...." 42 USC §601.

5.3 The IV-A program provides cash grants to dependent children with caretaker relatives who, although legally responsible, are not financially able to provide adequate care and support for the child without public assistance. To qualify for public assistance benefits, a family's income must fall below state established limits, and countable resources may not exceed limits established by federal law.

5.4 The financial assistance received by a family eligible for public assistance is not a loan to that family. There is no expectation or requirement that the family will, upon attaining self-sufficiency, repay the public assistance that has been furnished.

5.5 Defendant's child support enforcement program is administered through the cooperation of the federal and state governments pursuant to Title IV-D (Child Support and Establishment of Paternity) of the Social Security Act, 42 U.S.C. § 651 et. seq. As a condition of receiving federal financial participation for its public assistance program under Title IV-A, the defendant is required to participate in and abide by the rules of Title IV-D .

5.6 As a condition of participation in the IV-D program, defendant is required to submit to the U.S. Department of Health and Human Services a state plan for provision of IV-D services, in which it must promise to comply with the requirements of Title IV-A (public assistance) and IV-D (support enforcement) of the Social Security Act, and federal regulations implementing those requirements, 42 U.S.C. §654, 45 CFR §301.10. Federal funds pay part of

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the state's cost of administering the program if the State meets the federal requirements. 42 U.S.C. §655.

5.7 Defendant has been required to provide support enforcement services to non-AFDC families since 1975. The importance of providing services to non-AFDC families was underscored in the Child Support Enforcement Amendments of 1984 (CSEA)(P.L. 98-378) when Congress expanded the Title IV-D statement of purpose to specifically guarantee child support services to non-AFDC children. The purpose of the non-assistance support enforcement program is to ensure that children receive needed court ordered support from absent parents and to reduce the likelihood that a family will need to seek public assistance.

5.8 Defendant is required to provide non-assistance support enforcement services to parents who have never received public assistance under the provisions of 42 USC §654(6), and to provide non-assistance support enforcement services to former recipients of IV-A benefits under the provisions of 42 USC §654(6) and 42 USC §657(c).

5.9 The State is also required to designate a single state agency responsible for collecting and distributing child support pursuant to Title IV-D of the Social Security Act. 42 USC §654. In Washington, the IV-D agency is the DSHS Office of Support Enforcement (OSE).

5.10 As a condition of eligibility for IV-A assistance, an applicant or recipient of benefits is required by 42 U.S.C. §602(a)(26)(A) to:

> assign the State any rights to support from any other person such applicant may have (i) in his own behalf or in behalf of any other family member for whom the applicant is apply-

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ing for or receiving aid, and (ii) which have accrued at the time such assignment is executed.

5.11 In Washington State, when IV-A benefits are sought for a child, the custodial parent is required to execute an assignment and power of attorney in favor of the defendant. In addition, the receipt of IV-A benefits operates as an automatic assignment to the State of the right to collect support. RCW 74.20.330, 74.20A.030; WAC 388-14-200, 388-24-108.

5.12 The amount of the support obligation assigned under 42 U.S.C. §602(a)(26)(A) is either the amount specified in a court order or, in the absence of a court order, an amount administratively established by the State. 42 U.S.C. §656.

5.13 The support assigned under 42 USC §602(a)(26)(A), if collected during the time the family is receiving AFDC, is not automatically retained by the State. Instead, it is distributed among the State, the federal government, and the family in accordance with the provisions of 42 USC §657(b) and 45 CFR §302.51(b).

5.14 When a family stops receiving benefits, the assignment terminates as to future support. Accruals of future support belong to the family. 42 U.S.C. §657(c); 45 C.F.R. §302.51(f); R.C.W. 26.23.035. Defendant has no right to accruals of future support even when the total amount of assistance furnished by the State exceeds the total amount of the support obligation owed by the delinquent parent.

5.15 When a family goes off assistance, the State retains a right to try to collect the support obligation that accrued during the months the family received assistance to offset the benefits

provided to the family. If the State collects amounts which represent support owed before the family went on assistance, it may apply the amounts so collected towards the difference between the assistance the family received in a subsequent month and the support owed for that same month. In no event may the State's recovery exceed the lesser of 1) public assistance paid out or 2) child support due and unpaid as of the date the family terminated public assistance.

VI. FACTUAL ALLEGATIONS

PLAINTIFF JENSEN

6.1 Plaintiff, NATALIE JENSEN, resides with Danieal Roberts. Danieal Roberts is NATALIE JENSEN'S former husband. They have reconciled but are not remarried. They now have four children, ages 11, 9, 2 and 11 months.

6.2 NATALIE JENSEN and her oldest children, Jessica and Crystal, received AFDC from DSHS for approximately two and one-half years, from March 1982 to August 1984.

6.3 NATALIE JENSEN and Danieal Roberts were divorced in June, 1982. Mr. Roberts was ordered to pay $250.00 total per month in child support for Jessica and Crystal beginning May 21, 1982.

6.4 When NATALIE JENSEN began receiving AFDC in March 1982, she signed an assignment of support rights, as required by 42 USC §602 (a)(26)(A). (A copy of the assignment form is attached as Exhibit A.)

6.5 The divorce decree, which ordered Mr. Roberts to pay $250.00 per month in child support, set the amount of Mr. Roberts' child support obligation as of May 1982. 42 USC §656; 45 CFR §302.50. As long as NATALIE JENSEN's family remained on AFDC, the

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$250.00 coming due each month under the decree was available to the State under the child support assignment to reimburse it for public assistance paid out.

6.6 NATALIE JENSEN also received assistance for two months before the divorce decree was entered. The amount of support the defendant could collect for these months, March and April 1982, was the amount, if any, that was administratively established by the defendant up to the AFDC paid out for those two months. 42 USC §656; 45 CFR §302.50.

6.7 The total amount of AFDC that NATALIE JENSEN and her children received from March 1982 through August 1984 exceeded $13,500.00.

6.8 The total amount of the support obligation due under the decree from May 1982 through August 1984 was $7,000.00. NATALIE JENSEN does not challenge defendant's entitlement to that support.

6.9 When NATALIE JENSEN stopped receiving assistance in August 1984, defendant was not entitled to claim future child support obligations to repay the balance of assistance received by the Jensen family from March 1982 to August 1984, even though the monthly amount of assistance that was furnished during this period exceeded the monthly amount of support owed by Mr. Roberts. The maximum amount defendant was entitled to claim under the AFDC assignment as of September 1984 was child support due and unpaid (approximately $7,000.00), not the total of AFDC paid out (approximately $13,750.00).

6.10 When NATALIE JENSEN and her children went off assistance in September, 1984, the child support installments coming due under

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the divorce decree after August, 1984, became solely the family's property.

6.11 Between September 1984 and June 1988, the support that became due under the decree was approximately $11,500.00.

6.12 After NATALIE JENSEN stopped receiving public assistance in 1984, she supported herself and her family from her own earnings. However, in June 1988, NATALIE JENSEN reapplied for public assistance because of the birth of her third child, a temporary disability associated with her pregnancy, and Mr. Roberts' absence from the house.

6.13 As a condition of receiving public assistance, NATALIE JENSEN executed a new child support assignment. Neither the assignment form NATALIE JENSEN signed nor any other communication with the defendant advised her that if she returned to public assistance, the defendant would claim as its property her rights to unpaid support arrears from September 1984 to June 1988 ($11,500.00) to reimburse itself for the earlier period that she received public assistance (March 1982 through August 1984). If NATALIE JENSEN had been so notified, she would not have reapplied for public assistance. (A copy of the assignment form is attached as Exhibit B).

6.14 NATALIE JENSEN and the three children (Jessica, Crystal, and Monica) received a total of $1,734.00 in public assistance for a three month period from July 1988 through September 1988. NATALIE JENSEN went off public assistance as soon as she was able to return to work. NATALIE JENSEN and her children have not received public assistance since then.

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6.15 The amount of the child support owed under the divorce decree for the three months NATALIE JENSEN and the children received assistance (July, August, and September 1988) is $750.00 ($250.00 x 3). NATALIE JENSEN does not challenge defendant's entitlement to that support.

6.16 Defendant claims, because NATALIE JENSEN returned to assistance, that it is entitled to retain support arrears that accrued from September 1984 to June 1988 to reimburse itself for assistance the Jensen family received from March 1982 to August 1984.

6.17 According to defendant, the total amount of unreimbursed assistance benefits that NATALIE JENSEN and her children have received is over $15,000.00. Consequently, when NATALIE JENSEN stopped receiving assistance in October 1988, defendant claimed it was entitled to over $15,000.00 of the total unpaid support obligation.

PLAINTIFF WOODRUFF

6.18 Plaintiff SHARYN WOODRUFF lives with her two minor children ages 17 & 15.

6.19 SHARYN WOODRUFF and one of her children received AFDC from DSHS at different intervals between 1976 and 1986.

6.20 SHARYN WOODRUFF and her former husband, Nicholas Thompson, were divorced in 1977. The divorce decree ordered Mr. Thompson to pay $150.00 per month in child support.

6.21 When SHARYN WOODRUFF first began receiving assistance in 1976 and at required occasions after that date, she signed an assignment of support rights as required by 42 U.S.C. §602

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(a)(26)(A). (A copy of the assignment form signed in 1984 is attached as Exhibit C.)

6.22 The divorce decree, which ordered Mr. Thompson to pay $150.00 per month in child support beginning February 1977, established the amount of Mr. Thompson's child support obligation. 42 USC §656, 45 C.F.R. §302.50. As long as SHARYN WOODRUFF's family received AFDC, the $150.00 coming due each month under the decree was available to the State under the child support assignment to partially offset the public assistance being paid.

6.23 The monthly amount of public assistance that SHARYN WOODRUFF and her child received between 1976 and 1986 exceeded the monthly amount of Nicholas Thompson's support obligation during that same period.

6.24 When SHARYN WOODRUFF terminated AFDC, defendant was not entitled to retain future accruals of support to reimburse itself for assistance previously paid, even though the monthly amounts of assistance Ms. Woodruff received in AFDC exceeded the monthly amount of Mr. Thompson's support obligation. SHARYN WOODRUFF did not believe that the assistance her family received from 1976 to 1986 was considered to be a loan which she was obligated to repay.

6.25 During the periods SHARYN WOODRUFF was not receiving AFDC some child support was paid by Mr. Thompson. His payments were received and distributed by defendant's Office of Support Enforcement. Payments representing current support were forwarded to SHARYN WOODRUFF as is required by 42 U.S.C.§657(c). Child support arrearages nevertheless accumulated during the months SHARYN WOODRUFF was not receiving assistance because Mr. Thompson's payments were sporadic and in amounts less than $150.00 per month.

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6.26 As of October 1988, SHARYN WOODRUFF's share of child support arrears, according to OSE records, was over $5,000.00.

6.27 When not receiving AFDC SHARYN WOODRUFF supported herself and her children with a combination of earnings, child support and her disabled child's SSI. In October 1988 SHARYN WOODRUFF reapplied for AFDC because of medical problems and Mr. Thompson's inadequate child support payments.

6.28 When SHARYN WOODRUFF reapplied for AFDC in 1988 she executed a new child support assignment. The assignment form she signed did not inform her that if she returned to AFDC, defendant would claim her child support arrears to repay AFDC previously paid out. (A copy of the assignment form is attached as Exhibit D). No other communication informed her of this either.

6.29 SHARYN WOODRUFF and her children received a total of $2,712.00 in AFDC for a 6 month period from November 1988 - April 1989. SHARYN WOODRUFF terminated AFDC in April 1989. SHARYN WOODRUFF and her children have not received AFDC since then.

6.30 The amount of the child support obligation that accrued during the 6 month period SHARYN WOODRUFF and her children received AFDC in 1988-89 is $900.00 ($150.00 x 6). She does not challenge defendant's entitlement to that support.

6.31 Defendant claims that it can retain support arrears that accrued during the period before SHARYN WOODRUFF returned to assistance in November 1988 to reimburse itself for any assistance previously paid. Therefore, when SHARYN WOODRUFF stopped receiving assistance in April 1989, defendant claimed ownership of all the unpaid child support owed by Nicholas Thompson.

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PLAINTIFF OLSON

6.32 Plaintiff CAROLYN OLSON lives with her two children, Malona and Ryan, ages 19 & 15.

6.33 CAROLYN OLSON and her children received AFDC from DSHS during different periods between 1976 and 1980.

6.34 CAROLYN OLSON and the father of Malona, Mickey Gostischef, were divorced in 1972. The divorce decree ordered Mr. Gostischef to pay $75.00 per month in child support for Malona.

6.35 CAROLYN OLSON and the father of Ryan, Stephen Matthews Lessard, were divorced in 1981. The divorce decree ordered Mr. Lessard to pay $170.00 per month in child support for Ryan.

6.36 When CAROLYN OLSON began receiving assistance in 1976 and at required occasions after that date, she signed an assignment of support rights as required by 42 U.S.C. §602 (a)(26)(A). (A copy of the assignment form signed in 1978 is attached as Exhibit E.)

6.37 The divorce decree which ordered Mr. Gostischef to pay child support established the amount of Mr. Gostischef's child support obligation. 42 USC §656; 45 C.F.R. §302.50. As long as CAROLYN OLSON's family received AFDC, the money coming due each month under the decree was available to the State under the child support assignments to partially offset the public assistance being paid.

6.38 The divorce decree which ordered Mr. Lessard to pay child support established the amount of Mr. Lessard's child support obligation as of June 1981. The amount of support the defendant could collect from Mr. Lessard for the months CAROLYN OLSON received assistance before the divorce decree was entered was the

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