



LAWS OF ALASKA

1985

Source

CSHB 92(Jud)

Chapter No.

40

AN ACT

Relating to child and spousal support; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 9

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: May 29, 1985
Actual Effective Date: October 1, 1985

AN ACT

Relating to child and spousal support; and providing
for an effective date.

* Section 1. AS 09.65.132 is amended to read:

Sec. 09.65.132. INCOME WITHHOLDING [ASSIGNMENT] ORDER FOR CHILD SUPPORT. (a) A judgment, court order, or order of the child support enforcement agency under AS 47.23 [(AS 47.23)] providing for the support of a minor child must [SHALL] contain an income withholding [ASSIGNMENT] order. An income withholding order under this section may not be enforced unless the obligor had notice of the order when it was made or an application for the order was served on the obligor in the manner provided for service of a summons under Rule 4, Alaska Rules of Civil Procedure.

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

(c) If support payments are in arrears in an amount at least

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1 equal to support payable for one month, the agency, on behalf of an
2 [AN] obligee or person or public agency designated to receive support
3 payments, shall [MAY] request an income withholding [ASSIGNMENT] order
4 against the obligor to take effect by filing a sworn statement with
5 the court that alleges [ALLEGING IN A SWORN STATEMENT] that the obli-
6 gor is in arrears in an amount at least equal to the support payable
7 for one month [HAS FAILED TO MAKE A SUPPORT PAYMENT IN FULL WITHIN 45
8 DAYS OF THE DATE THE PAYMENT WAS DUE AND BY FILING THAT STATEMENT WITH
9 THE COURT].

10 (d) If an application is [HAS BEEN] filed with the clerk of
11 court, notice shall be served upon the obligor by the agency in the
12 manner provided by Rule 5, Alaska Rules of Civil Procedure or any
13 other method permitted by law. The notice shall [BE SENT BY CERTIFIED
14 MAIL, RETURN RECEIPT REQUESTED, TO THE LAST KNOWN ADDRESS OF THE
15 OBLIGOR. THE NOTICE SHALL BE POSTMARKED NO LATER THAN 10 DAYS AFTER
16 THE DATE ON WHICH THE APPLICATION WAS FILED AND SHALL] inform the
17 obligor that the income withholding order [ASSIGNMENT] will take
18 effect 15 days after the date on which the notice is served [WAS
19 RECEIVED] unless the obligor requests a hearing within the 15 days
20 after the notice is served [WAS SENT]. If the obligor requests a
21 hearing, an income withholding order [ASSIGNMENT] may not take effect
22 until the conclusion of the hearing. The court shall hold a hearing
23 requested under this section within 15 days after the date the obligor
24 requests the hearing, to determine if there are any mistakes of fact
25 that make the withholding order improper, if the amount to be withheld
26 is incorrect, or if there are any other legal defenses. The court
27 shall inform the obligor, either at the hearing or within 15 days
28 after the hearing, whether or not the withholding will occur and of
29 the date on which it is to commence. It is not a defense under this

section that less than one full month's payment is due if at least one full month's payment was due on the date notice was served under this section [. IF THE OBLIGOR PAYS ALL SUPPORT PAYMENTS DUE BEFORE THE HEARING, AN INCOME ASSIGNMENT ORDER MAY NOT TAKE EFFECT].

(e) The obligee or person or public agency that requested the income withholding [ASSIGNMENT] order shall immediately send a copy of the income withholding [ASSIGNMENT] order , a copy of AS 47.23.260 and AS 09.65.132, and an explanation of the effect of the statutes by certified mail to persons who may owe money to an obligor. An income withholding [ASSIGNMENT] order made under this section is binding upon a person, employer, political subdivision, or department of the state immediately upon receipt of a copy of the income withholding [ASSIGNMENT] order. An employer shall begin withholding the specified amount from the employee's wages 14 days after the mailing date on the notice of withholding or on the first day of the next pay period, if earlier. The amount withheld shall be sent to the agency.

(f) An employer may not discharge, discipline, or refuse to employ an obligor on the basis of an income withholding order issued [ASSIGNMENT] under this section. If an employer discharges, disciplines, or refuses to employ an obligor because of an income withholding obligation, the court, after notice and hearing, may order reinstatement or restitution to the obligor, or both. A person who violates this subsection or a regulation adopted to implement it, is liable for a civil penalty of not more than \$1,000.

(g) An income withholding order [ASSIGNMENT] under this section has priority over all other attachments, executions, garnishments, or other legal process brought under state law against the same money [ASSIGNMENTS] unless otherwise ordered by the court. An income withholding order [ASSIGNMENT] is not limited to the wages of an obligor

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1 but may include all money owed to the obligor not otherwise exempt by
2 law. Exemptions under AS 09.38 do not apply to income assignments
3 under this section [; HOWEVER, 50 PERCENT OF THE OBLIGOR'S NET DISPOS-
4 ABLE EARNINGS IS EXEMPT FROM EXECUTION UNDER THIS SECTION. IN THIS
5 SUBSECTION, "NET DISPOSABLE EARNINGS" HAS THE MEANING GIVEN IN 15
6 U.S.C. 1672].

7 (h) The court may order payment of [AN OBLIGOR TO PAY] all court
8 [COURTS] costs that resulted from [INVOLVED IN] an income withholding
9 [ASSIGNMENT] proceeding under this section.

10 * Sec. 2. AS 09.65.132 is amended by adding new subsections to read:

11 (i) An employer shall, to the extent permitted under 15 U.S.C.
12 1673(b), withhold the current support obligation from an obligor's
13 wages. An employer shall withhold additional income, to the extent
14 permitted under 15 U.S.C. 1673(b), from an obligor's wages for any
15 support arrearage.

16 (j) An employer may combine into a single payment to the agency
17 amounts withheld from more than one obligor if the employer specifies
18 the portion of the payment attributable to each obligor.

19 (k) At the time an obligor terminates employment with an em-
20 ployer then in receipt of an unsatisfied income withholding order
21 regarding the obligor, the employer shall immediately inform the
22 agency of the obligor's name and last known address and the name and
23 address of all other known employers of the obligor.

24 (l) A petition by the obligor to the court to terminate or
25 reduce the withholding of income may be granted upon good cause shown.

26 * Sec. 3. AS 25.24.160 is amended to read:

27 Sec. 25.24.160. JUDGMENT. In a judgment in an action for di-
28 vorce or action declaring a marriage void or at any time after judg-
29 ment, the court may provide

1 (1) [Repealed]

2 (2)] for the payment by either or both parties of an amount
3 of money or goods, in gross or installments that may include cost-of-
4 living adjustments, as may be just and proper for the parties to
5 contribute toward the nurture and education of their children, and the
6 court may order the parties to arrange with their employers for an
7 automatic payroll deduction each month or each pay period, if the
8 period is other than monthly, of the amount of the installment; if the
9 employer agrees, the installment shall be forwarded by the employer to
10 the clerk of the superior court which entered the judgment or to the
11 court trustee, and the amount of the installment is exempt from execu-
12 tion;

13 (2) [(3)] for the recovery by one party from the other of
14 an amount of money for maintenance, in gross or in installments, as
15 may be just and necessary without regard to which of the parties is in
16 fault;

17 (3) [(4)] for the delivery to either party of that party's
18 personal property in the possession or control of the other party at
19 the time of giving the judgment;

20 [(5) Repealed]

21 (4) [(6)] for the division between the parties of their
22 property, whether joint or separate, acquired only during coverture,
23 in the manner as may be just, and without regard to which of the
24 parties is in fault; however, the court, in making the division, may
25 invade the property of either spouse acquired before marriage when the
26 balancing of the equities between the parties requires it; and to
27 accomplish this end the judgment may require that one or both of the
28 parties assign, deliver, or convey any of their real or personal
29 property to the other party;

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1 (5) [(7)] to change the name of one of the parties.

2 * Sec. 4. AS 47.23.020(a) is amended to read:

3 (a) The agency shall

4 (1) seek enforcement of [OBTAIN, ENFORCE, AND ADMINISTER]
5 child support orders of the superior courts of the state in other
6 jurisdictions and shall obtain, enforce, and administer the orders in
7 this state;

8 (2) adopt regulations to carry out the purposes of this
9 chapter, including regulations that [WHICH] establish

10 (A) schedules for determining the amount an obligor is
11 liable to contribute toward the support of an obligee under this
12 chapter and under 42 U.S.C. 651 - 665 (Title IV-D, Social Secur-
13 ity Act);

14 (B) procedures for hearings conducted under AS 47.23.-
15 170; and

16 (C) subject to AS 47.23.025 and to federal law, a
17 uniform [SCHEDULE OF PENALTIES AND A] rate of interest on arrear-
18 ages of support that shall be charged the obligor upon notice if
19 child support payments are 10 or more days overdue or if payment
20 is made by a check backed by insufficient funds;

21 (3) administer and enforce the Uniform Reciprocal Enforce-
22 ment of Support Act (AS 25.25);

23 (4) establish, enforce, and administer child support obli-
24 gations administratively in accordance with this chapter;

25 (5) administer the state plan required under 42 U.S.C.
26 651 - 665 (Title IV-D, Social Security Act) as amended;

27 (6) disburse child support payments collected by the agency
28 to the obligee together with interest charged under (2)(C) of this
29 subsection; [AND]

1 (7) establish and enforce through the superior courts of
2 the state child support orders from other jurisdictions pertaining to
3 obligors within the state;

4 (8) enforce and administer spousal support orders if a
5 spousal support obligation has been established with respect to the
6 spouse and if the support obligation established with respect to the
7 child of that spouse is also being administered; and

8 (9) obtain a medical support order as part of a child sup-
9 port order if health care coverage is available to the obligor at a
10 reasonable cost [DEPOSIT PENALTIES CHARGED UNDER (2)(C) OF THIS
11 SUBSECTION IN THE GENERAL FUND].

12 * Sec. 5. AS 47.23 is amended by adding a new section to read:

13 Sec. 47.23.022. ENFORCEMENT REQUESTS FROM OTHER STATES. (a)
14 The agency may act, under the laws of this state, upon requests from
15 similar state agencies in other states that operate child support
16 enforcement programs under 42 U.S.C. 651 - 665 (Title IV-D Social
17 Security Act) to establish and enforce against obligors within this
18 state support obligations determined in other states.

19 (b) Requests from child support enforcement agencies in other
20 states shall be made by application containing the information that
21 this state's agency requires and including written authorization from
22 the requesting state agency and the obligee for this state's agency to
23 initiate action necessary to establish, enforce, and collect the
24 support obligation on their behalf.

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

26 Sec. 47.23.025. RATES OF [PENALTY AND] INTEREST. [A PENALTY
27 IMPOSED UNDER AS 47.23.020(a)(2)(C) MAY NOT BE AT A RATE THAT EXCEEDS
28 THE RATE OF INTEREST IMPOSED ON DELINQUENT TAXES UNDER AS 43.05.225.]
29 The rate of interest imposed under AS 47.23.020(a)(2)(C) shall equal

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1 the rate imposed under AS 43.05.225 or a lesser rate that is the
2 maximum rate of interest permitted to be imposed under federal law.

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

4 Sec. 47.23.045. DETERMINATION OF SUPPORT OBLIGATION. The agency
5 may appear in an action seeking an award of support on [IN] behalf of
6 a child owed a duty of support, or to enforce a spousal support order
7 if a spousal support obligation has been established and if a support
8 obligation, established with respect to a child of that spouse, is
9 also being administered, and may also appear in an action seeking
10 modification of a support order, decree or judgment already entered.
11 Action under this section may be undertaken upon application of an
12 obligee, or at the agency's own discretion if the obligor is liable to
13 the state under AS 47.23.120(a) or (b).

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

15 (c) In a court proceeding where the support of a minor child is
16 at issue, the court may order either or both parents to pay the amount
17 necessary for support, maintenance; nurture, and education of the
18 child. The court shall issue a medical support order as part of a
19 child support order if health care coverage is available to the obli-
20 gor at a reasonable cost. Upon a showing of good cause the court may
21 order the parents required to pay support to give reasonable security
22 for payments. An order for prospective child support may be modified
23 or revoked as the court considers necessary.

24 * Sec. 9. AS 47.23 is amended by adding a new section to read:

25 Sec. 47.23.075. EMPLOYMENT INFORMATION. (a) An employer of an
26 obligor or a labor union of which an obligor is a member shall provide
27 to the agency information requested regarding the obligor's employ-
28 ment, wages or salary, and location.

29 (b) An employer of an obligor or a labor union of which an

1 obligor is a member that knowingly violates this section is liable for
2 a civil penalty of not more than \$1,000.

3 * Sec. 10. AS 47.23.150(a) is amended to read:

4 (a) Action to enforce a support order administratively under
5 AS 47.23.230 - 47.23.270 is initiated by the agency serving a notice
6 on the obligor of the obligor's liability under the support order.
7 [NOTICE UNDER THIS SUBSECTION SHALL BE SERVED PERSONALLY OR BY REGIS-
8 TERED, CERTIFIED, OR INSURED MAIL, RETURN RECEIPT REQUESTED, FOR
9 RESTRICTED DELIVERY ONLY TO THE PERSON TO WHOM THE NOTICE IS DIRECTED
10 OR TO THE PERSON AUTHORIZED UNDER FEDERAL REGULATION TO RECEIVE THAT
11 PERSON'S RESTRICTED DELIVERY MAIL.]

12 * Sec. 11. AS 47.23.226 is amended to read:

13 Sec. 47.23.226. COLLECTION OF [ACTION TO COLLECT] CHILD SUPPORT.
14 To [COMMENCE AN ACTION TO] collect the payment due, the custodian of a
15 child, or the agency on behalf of that person, shall file with the
16 court (1) a motion [PETITION] requesting establishment of a judgment;
17 (2) an affidavit that states that one or more payments of child sup-
18 port are 30 or more days past due and that specifies the amounts past
19 due and the dates they became past due; and (3) notice of the ob-
20 ligor's right to respond. Service on the obligor shall be in the
21 manner provided in AS 47.23.265 [BY THE RULE OF CIVIL PROCEDURE FOR
22 SERVICE OF SUMMONS IN A CIVIL ACTION]. The child's custodian, or the
23 agency on behalf of the custodian, shall file with the court proof of
24 service of the petition, affidavit, and notice. The obligor shall
25 respond no later than 15 days after service by filing an affidavit
26 with the court. If the obligor's affidavit states that the obligor
27 has paid any of the amounts claimed to be delinquent, describes in
28 detail the method of payment or offers any other defense to the peti-
29 tion, then the obligor is entitled to a hearing. After the hearing,

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1 if any, the court shall enter a judgment for the amount of money owed.
2 If the obligor does not file an affidavit under this section, the
3 court shall enter a default judgment against the obligor.

4 * Sec. 12. AS 47.23.250(i) is amended to read:

5 (i) Exemptions under AS 09.38 do not apply to proceedings to
6 enforce the payment of child support under AS 47.23.230 - 47.23.270;
7 however, [50 PERCENT OF THE OBLIGOR'S] net disposable earnings are
8 [IS] exempt from execution as provided in 15 U.S.C. 1673(b) [UNDER
9 AS 47.23.230 - 47.23.270]. In this subsection, "net disposable earn-
10 ings" has the meaning given in 15 U.S.C. 1672.

11 * Sec. 13. AS 47.23.255 is amended to read:

12 Sec. 47.23.255. INCOME WITHHOLDING [ASSIGNMENT] ORDERS. (a)
13 The agency shall pay to the obligee all money recovered by the agency
14 from the obligor under an income withholding [ASSIGNMENT] order except
15 for court costs and money assigned to the agency under AS 47.23.120 -
16 47.23.130 [THAT ARE RECOVERED FROM THE OBLIGOR].

17 (b) Notwithstanding AS 47.23.250, an income withholding [ASSIGN-
18 MENT] order contained in a decision of the agency that has not been
19 set aside by the superior court under AS 47.23.220 shall be enforced
20 under the procedure established in AS 09.65.132.

21 * Sec. 14. AS 47.23.260 is amended to read:

22 Sec. 47.23.260. CIVIL LIABILITY UPON FAILURE TO COMPLY WITH AN
23 ORDER OR LIEN. If any person, political subdivision, or department of
24 the state (1) fails to make an answer to an order to withhold and
25 deliver within the time prescribed in AS 47.23.250; (2) fails or
26 refuses to deliver property in accordance with an order issued under
27 AS 47.23.250; (3) pays over, releases, sells, transfers, or conveys
28 real property subject to a lien filed under AS 47.23.230 to or for the
29 benefit of the obligor or any other person; (4) fails or refuses to

1 surrender upon demand property attached; (5) fails or refuses to honor
2 an assignment of wages or an income withholding [ASSIGNMENT] order
3 under AS 09.65.132 presented by the agency, the person, political
4 subdivision, or department of the state is liable to the agency in an
5 amount equal to 100 percent of the amount constituting the basis of
6 the lien, order to withhold and deliver, attachment, or withholding
7 [ASSIGNMENT] of wages or income, together with costs, interest, and
8 reasonable attorney fees.

9 * Sec. 15. AS 47.23.265(a) is amended to read:

10 (a) Except as otherwise provided under this chapter, when a
11 notice, paper, or other document is required by this chapter to be
12 given or served upon a person by the agency, the notice, paper, or
13 other document may be served as required by Rule 5, Alaska Rules of
14 Civil Procedure or any other method permitted by law [SENT BY REGIS-
15 TERED OR CERTIFIED MAIL TO THE LAST KNOWN ADDRESS OF THAT PERSON.
16 SERVICE BY MAIL UNDER THIS CHAPTER IS EFFECTED WHEN THE NOTICE, PAPER,
17 OR OTHER DOCUMENT IS PROPERLY ADDRESSED REGISTERED OR CERTIFIED, AND
18 MAILED].

19 * Sec. 16. AS 47.23 is amended by adding a new section to read:

20 Sec. 47.23.278. PAYMENTS NOT DISBURSED. Support payments col-
21 lected and held by the agency for seven years without disbursement shall
22 be returned to the obligor.

23 * Sec. 17. This Act takes effect October 1, 1985.
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