

HOUSE CS FOR SENATE BILL NO. 207(RLS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE

Offered: 4/25/00

Referred: Today's Calendar

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the establishment and enforcement of medical support orders
2 for children; amending Rule 90.3, Alaska Rules of Civil Procedure; and providing
3 for an effective date."

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

5 * **Section 1.** AS 11.51.122(a) is amended to read:

6 (a) A person commits the crime of aiding the nonpayment of child support if
7 the person

8 (1) knows that an obligor has a duty under an administrative or judicial
9 order for periodic payment of child support or for the provision of health care
10 coverage for a child under a medical support order; and

11 (2) intentionally

12 (A) withholds information about the residence or employment
13 of the obligor when that information is requested by a child support
14 enforcement agency; [OR]

(B) being an employer of the obligor, withholds information about the eligibility of the obligor's children for coverage under the employer's health insurance plan or about the cost of the coverage of the children under the plan when that information is requested by a child support enforcement agency; or

(C) participates in a commercial, business, or employment arrangement with the obligor, knowing at the time that the arrangement is made that it will allow the obligor to avoid paying all or some of the support when it is due or to avoid having a lien placed on assets for the payment of delinquent support; receipt of a substantial asset for less than fair market value from an obligor after the obligor's support order has been established constitutes a rebuttable presumption that the person receiving the asset knew that the transfer would allow the obligor to avoid paying all or some of the support or to avoid having a lien placed on the asset.

* Sec. 2. AS 11.51.122(b) is amended to read:

(b) In a prosecution under (a)(2)(B) and (C) [(a)(2)(B)] of this section, it is a defense that the

(1) defendant did not intend to assist the obligor in the nonpayment of child support or in the avoidance of a duty to provide health care coverage of a child; or

(2) obligor did not intend to avoid paying child support or to avoid providing health care coverage of a child.

* Sec. 3. AS 25.20.050(k) is amended to read:

(k) Upon the motion of the child support enforcement agency or another party in the action to establish paternity, the tribunal shall issue a temporary order for support of the child whose paternity is being determined. The order may require periodic payments of support, health care coverage, or both. The order shall be effective until the tribunal issues a final order on paternity and a permanent order for support is issued or the tribunal dismisses the action. The temporary order may only be issued if the tribunal finds clear and convincing evidence of the paternity of the putative father on the basis of the results of the genetic tests and other evidence

1 admitted in the proceeding.

2 * **Sec. 4.** AS 25.20.050(l) is amended to read:

3 (l) The tribunal shall consider a completed and signed form for acknowledging
 4 paternity that meets the requirements of AS 18.50.165(a) as a legal finding of paternity
 5 for a child born out of wedlock. For an acknowledgment signed on or after July 1,
 6 1997, the acknowledgment may only be withdrawn by the earlier of the following
 7 dates: (1) 60 days after the date that the person signed it, or (2) the date on which
 8 judicial or administrative procedures are initiated to establish child support **in the form**
 9 **of periodic payments or health care coverage** for, or to determine paternity of, the
 10 child who is the subject of the acknowledgement. After this time period has passed,
 11 the acknowledgment may only be contested in superior court on the basis of fraud,
 12 duress, or material mistake. The parent wishing to contest the acknowledgment carries
 13 the burden of proof by a preponderance of the evidence. Unless good cause is shown,
 14 the court may not stay child support or other legal responsibilities while the action to
 15 contest the acknowledgment is pending.

16 * **Sec. 5.** AS 25.24.210(e) is amended to read:

17 (e) If the petition is filed by both spouses under AS 25.24.200(a), the petition
 18 must state in detail the terms of the agreement between the spouses concerning the
 19 custody of children, child support **in terms of periodic payments and in terms of**
 20 **health care expenses**, visitation, spousal maintenance and tax consequences, if any,
 21 and fair and just division of property, including retirement benefits. Agreements on
 22 spousal maintenance and property division must fairly allocate the economic effect of
 23 dissolution and take into consideration the factors listed in AS 25.24.160(a)(2) and (4).
 24 In addition, the petition must state

- 25 (1) the respective occupations of the petitioners;
- 26 (2) the income, assets, and liabilities of the respective petitioners at the
- 27 time of filing the petition;
- 28 (3) the date and place of the marriage;
- 29 (4) the name, date of birth, and current marital, educational, and
- 30 custodial status of each child born of the marriage or adopted by the petitioners who
- 31 is under the age of 19;

- 1 (5) whether the wife is pregnant;
- 2 (6) whether either petitioner requires medical care or treatment;
- 3 (7) whether any of the following has been issued or filed during the
- 4 marriage by or regarding either spouse as defendant, participant, or respondent:
- 5 (A) a criminal charge of a crime involving domestic violence;
- 6 (B) a protective order under AS 18.66.100 - 18.66.180;
- 7 (C) injunctive relief under former AS 25.35.010 or 25.35.020;
- 8 or
- 9 (D) a protective order issued in another jurisdiction and filed
- 10 with the court in this state under AS 18.66.140;
- 11 (8) whether either petitioner has received the advice of legal counsel
- 12 regarding a divorce or dissolution;
- 13 (9) other facts and circumstances that the petitioners believe should be
- 14 considered;
- 15 (10) that the petition constitutes the entire agreement between the
- 16 petitioners; and
- 17 (11) any other relief sought by the petitioners.

18 * **Sec. 6.** AS 25.27.020(a) is amended to read:

19 (a) The agency shall

20 (1) seek enforcement of child support orders of the state in other

21 jurisdictions and shall obtain, enforce, and administer the orders in this state;

22 (2) adopt regulations to carry out the purposes of this chapter and

23 AS 25.25, including regulations that establish

24 (A) procedures for hearings conducted under AS 25.27.170 and

25 for administrative enforcement of support orders;

26 (B) subject to AS 25.27.025 and to federal law, a uniform rate

27 of interest on arrearages of support that shall be charged the obligor upon

28 notice if child support payments are 10 or more days overdue or if payment is

29 made by a check backed by insufficient funds; however, an obligor may not be

30 charged interest on late payment of a child support obligation, other than a

31 payment on arrearages, if the obligor is

(i) employed and income is being withheld from the obligor's wages under an income withholding order;

(ii) receiving unemployment compensation and child support obligations are being withheld from the obligor's unemployment payments under AS 23.20.401; or

(iii) receiving compensation for disabilities under AS 23.30 and child support obligations are being withheld from the obligor's compensation payments;

(C) procedures for establishing and disestablishing paternity under AS 25.27.165 and 25.27.166, including procedures for hearings; and

(D) procedures under which the agency shall enter into contracts or agreements with financial institutions, including brokerage houses, insurance companies, and other companies providing individual investment, transaction, or deposit accounts, doing business in the state to develop and operate an automated data match system as required by 42 U.S.C. 666(a)(17); the agency may pay a reasonable fee to a financial institution for conducting a data match under a contract or agreement under this subparagraph; the fee may not exceed the actual costs incurred by the financial institution for conducting the data match;

(3) administer and enforce AS 25.25 (Uniform Interstate Family Support Act);

(4) establish, enforce, and administer child support obligations administratively under this chapter;

(5) administer the state plan required under 42 U.S.C. 651 - 669 (Title IV-D, Social Security Act) as amended;

(6) disburse support payments collected by the agency to the obligee, together with interest charged under (2)(B) of this subsection;

(7) establish and enforce administratively under this chapter, or through the superior courts of the state, child support orders from other jurisdictions pertaining to obligors within the state;

(8) enforce and administer spousal support orders if a spousal support

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

(9) obtain a medical support order that meets [AS PART OF A CHILD SUPPORT ORDER IF HEALTH CARE COVERAGE IS AVAILABLE TO THE OBLIGOR AT A REASONABLE COST; THE AGENCY SHALL CONSIDER WHETHER ADEQUATE HEALTH CARE IS AVAILABLE TO THE CHILD THROUGH THE INDIAN HEALTH SERVICE OR OTHER INSURANCE COVERAGE BEFORE IT ORDERS AN OBLIGOR TO PROVIDE HEALTH CARE COVERAGE THROUGH INSURANCE OR OTHER MEANS; THE MEDICAL SUPPORT ORDER MUST MEET] the requirements of AS 25.27.060(c) and 25.27.063;

(10) act on behalf of the Department of Health and Social Services in the enforcement of AS 47.07.025(b);

(11) establish or disestablish, administratively under AS 25.27.165 - 25.27.166 or through court action, the paternity of a child;

(12) promptly provide to the Bureau of Vital Statistics, in a format approved by the bureau, any final agency decision administratively establishing or disestablishing the paternity of a child born in this state; and

(13) act as the central registry for all child support orders and exchange information as required by federal law.

* **Sec. 7.** AS 25.27.060(c) is amended to read:

(c) In a court or administrative proceeding where the support of a minor child is at issue, the court or agency, as applicable, may order either or both parents to pay the amount necessary for support, maintenance, nurture, and education of the child. Regardless of whether a support order for periodic payments is issued, the [THE] court or agency shall issue a medical support order. The medical support order shall require health care insurance coverage for the child [AS PART OF A CHILD SUPPORT ORDER] if health care insurance coverage is available to either parent for the child [THE OBLIGOR] at a reasonable cost. The court or agency shall consider whether the child is eligible for services through the Indian Health Service or other insurance coverage before ordering either parent [THE OBLIGOR] to

provide health care coverage through insurance or other means. The court or agency shall allocate equally the cost of health care insurance for the child between the parents unless there is good cause to allocate the costs unequally. If the obligor has the duty to make periodic payments for non-medical child support, the obligor's periodic payments shall be decreased by the amount of the other parent's portion of payments for health insurance ordered by the court or agency and actually paid by the obligor. If the obligor has a duty to make periodic payments for non-medical child support, the periodic payments shall be increased by the obligor's portion of payments for health insurance if the other parent is ordered to and actually does obtain and pay for insurance. The court or agency shall allocate equally between the parents the cost of reasonable health care expenses not covered by private insurance unless there is good cause to allocate the costs unequally. One parent shall reimburse the other parent for the first parent's share of the uncovered expenses paid by the parent within 30 days after receipt by the first parent of the bill for the health care, payment verification, and, if applicable, a health insurance statement indicating what portion of the cost is uncovered. The medical support order must meet the requirements of AS 25.27.063. Upon a showing of good cause, the court may order the parents required to pay support to give reasonable security for payments.

* **Sec. 8.** AS 25.27.062(a) is amended to read:

(a) Unless the court or agency is establishing only a medical support order, a [A] judgment, court order, or order of the agency under this chapter providing for support must contain an income withholding order. Except as provided in (m) of this section, the income withholding order must provide for immediate income withholding if the support order is

(1) being enforced by the agency and was issued or modified on or after July 8, 1994; or

(2) not being enforced by the agency and was issued on or after July 8, 1994.

* **Sec. 9.** AS 25.27.063(b) is amended to read:

(b) If a parent [AN OBLIGOR] who is required to provide health care

coverage under a medical support order is eligible for family health coverage through an employer, the court or agency issuing the medical support order shall send a copy of the medical support order to the employer. If the agency has notice that the **parent** [OBLIGOR] has changed or will be changing employment and is or will be eligible for family health coverage through the new employer, the agency shall send a copy of the medical support order to the new employer.

* **Sec. 10.** AS 25.27.140(a) is amended to read:

(a) If a [NO] support order has **not** been entered, the agency may establish paternity and a duty of support, **which may include periodic payments of support, a medical support order, or both,** utilizing the procedures prescribed in AS 25.27.160 - 25.27.220 and may enforce a duty of support utilizing the procedure prescribed in AS 25.27.230 - 25.27.270. Action under this subsection may be undertaken upon application of an obligee, or at the agency's own discretion if the obligor is liable to the state under AS 25.27.120(a) or (b).

* **Sec. 11.** AS 25.27.140(c) is amended to read:

(c) **Unless the agency is establishing only a medical support order, a** [A] decision of the agency determining a duty of support shall include an income withholding order as provided under AS 25.27.062.

* **Sec. 12.** AS 25.27.160(b) is amended to read:

(b) **Except as provided in (c) of this section, the** [THE] notice and finding of financial responsibility served under (a) of this section must state

(1) the sum or periodic payments for which the alleged obligor is found to be responsible under this chapter;

(2) the name of the alleged obligee and the obligee's custodian;

(3) that the alleged obligor may appear and show cause in a hearing held by the agency why the finding is incorrect, should not be finally ordered, and should be modified or rescinded, because

(A) no duty of support is owed; or

(B) the amount of support found to be owed is incorrect;

(4) that, if the person served with the notice and finding of financial responsibility does not request a hearing within 30 days, the property and income of

the person will be subject to execution under AS 25.27.062 and 25.27.230 - 25.27.270 in the amounts stated in the finding without further notice or hearing.

* **Sec. 13.** AS 25.27.160 is amended by adding a new subsection to read:

(c) If the agency is establishing only a medical support order, the notice and finding of financial responsibility must state

(1) that health care insurance shall be provided for the child to whom the duty of support is owed if health care insurance is available to the alleged obligor at a reasonable cost and that the alleged obligor and the other parent shall share equally the cost of the health care insurance and the costs of reasonable health care expenses not covered by insurance;

(2) the name of the alleged obligee and the obligee's custodian;

(3) that the alleged obligor may appear and show cause in a hearing held by the agency why the finding is incorrect, should not be finally ordered, and should be modified or rescinded, because

(A) no duty of support is owed;

(B) health care insurance for the child is not available to the alleged obligor at a reasonable cost;

(C) adequate health care is available to the child through the Indian Health Service or other insurance coverage; or

(D) there is good cause to allocate the costs of health insurance or uninsured health care expenses unequally between the parents;

(4) that, if the person served with the notice under this subsection does not request a hearing within 30 days, a copy of the medical support order will be sent to the person's employer under AS 25.27.063(b) without further notice or hearing for inclusion of the child in family health coverage if it is available through the person's employer.

* **Sec. 14.** AS 25.27.170(d) is amended to read:

(d) **Except as provided in (g) of this section, the** [THE] hearing officer shall determine the amount of periodic payments necessary to satisfy the past, present, and future liability of the alleged obligor under AS 25.27.120, if any, and under any duty of support imposable under the law. The amount of periodic payments determined

1 under this subsection is not limited by the amount of any public assistance payment
2 made to or for the benefit of the child.

3 * **Sec. 15.** AS 25.27.170(f) is amended to read:

4 (f) **Except as provided in (g) of this section, if** [IF] the alleged obligor
5 requesting the hearing fails to appear at the hearing, the hearing officer shall enter a
6 decision declaring the property and income of the alleged obligor subject to execution
7 under AS 25.27.062 and 25.27.230 - 25.27.270 in the amounts stated in the notice and
8 finding of financial responsibility.

9 * **Sec. 16.** AS 25.27.170 is amended by adding a new subsection to read:

10 (g) If the agency is establishing only a medical support order, the hearing
11 officer shall enter a decision about the parents' respective responsibilities for the child's
12 health care expenses that complies with the requirements of AS 25.27.060(c).

13 * **Sec. 17.** AS 25.27.180(a) is amended to read:

14 (a) Within 20 days after the date of the hearing, the hearing officer shall adopt
15 findings and a decision determining whether paternity is established and whether a
16 duty of support exists, and, if a duty of support is found, **the decision must specify**
17 **(1) unless a medical support order only is being established,** the
18 amount of periodic payments or sum for which the alleged obligor is found to be
19 responsible; **and**

20 **(2) the parents' respective responsibilities for the costs of the child's**
21 **health care; this medical support order must be in compliance with**
22 **AS 25.27.060(c).**

23 * **Sec. 18.** AS 25.27.244(s)(6) is amended to read:

24 (6) "substantial compliance" regarding a support order or payment
25 schedule means that, with respect to **periodic payments required under** a support
26 order or a negotiated payment schedule under (g) of this section, whichever is
27 applicable, the obligor has

28 (A) no arrearage;

29 (B) an arrearage in an amount that is not more than four times
30 the monthly obligation under the support order or payment schedule; or

31 (C) been determined by a court to be making the best efforts

1 possible under the obligor's circumstances to have no arrearages under any
 2 support order **that requires periodic payments** or **under a** negotiated payment
 3 schedule relating to child support.

4 * **Sec. 19.** AS 25.27.246(n)(5) is amended to read:

5 (5) "substantial compliance" regarding a support order or payment
 6 schedule means that, with respect to **periodic payments required under** a support
 7 order or a negotiated payment schedule under (f) of this section, whichever is
 8 applicable, the obligor has

9 (A) no arrearage;

10 (B) an arrearage in an amount that is not more than four times
 11 the monthly obligation under the support order or payment schedule; or

12 (C) been determined by a court to be making the best efforts
 13 possible under the obligor's circumstances to have no arrearages under any
 14 support order **that requires periodic payments** or **under a** negotiated payment
 15 schedule relating to child support.

16 * **Sec. 20.** AS 25.27.900(5) is amended to read:

17 (5) "duty of support" includes a duty of support imposed or imposable
 18 by law, by a court order, decree, or judgment, or by a finding or decision rendered
 19 under this chapter whether interlocutory or final, whether incidental to a proceeding
 20 for divorce, legal separation, separate maintenance, or otherwise, and includes the duty
 21 to pay arrearages of support past due and unpaid together with penalties and interest
 22 on arrearages imposed under AS 25.27.020(a)(2)(B) **and the duty to provide health**
 23 **care coverage in compliance with AS 25.27.060(c) and 25.27.063;**

24 * **Sec. 21.** AS 25.27.900(11) is amended to read:

25 (11) "support order" means any judgment, decree, or order that is
 26 issued by a tribunal for the support and maintenance of a child or of a parent with
 27 whom the child is living; "support order" includes a judgment, decree, or order

28 (A) on behalf of a child who has reached the age of majority
 29 if the judgment, decree, or order was lawfully issued; and

30 (B) for **any or all of the following:**

31 (i) monetary support, including arrearages;

- 1 (ii) payment of health care costs or maintenance of
 2 health insurance;
 3 (iii) reimbursement of related costs;
 4 (iv) payment of attorney fees and legal costs and other
 5 fees; or [AND]
 6 (v) penalty, interest, and other relief as required by a
 7 tribunal;

8 * **Sec. 22.** AS 47.07.025(b) is amended to read:

9 (b) Through the child support enforcement agency or on its own behalf, the
 10 department may garnish the wages, salary, or other employment income of a person
 11 who

12 (1) is required by a medical support order under AS 25.27.060(c)
 13 [AS 25.27.063] to provide coverage of the costs of medical care to a child who is
 14 eligible for medical assistance under this chapter;

15 (2) has received payment from a third party for the costs of the
 16 services; and

17 (3) has not used the payments to reimburse, as appropriate, the other
 18 parent or custodian of the child, the provider of the services, or the department.

19 * **Sec. 23.** AS 25.27.063(a) is repealed.

20 * **Sec. 24.** The uncodified law of the State of Alaska is amended by adding a new section
 21 to read:

22 **INDIRECT AMENDMENT OF COURT RULE.** This Act amends Rule 90.3, Alaska
 23 Rules of Civil Procedure, by specifying that a medical support order may be issued even when
 24 a support order for periodic monetary payments is not issued and by setting the requirements
 25 for medical support orders.

26 * **Sec. 25.** The uncodified law of the State of Alaska is amended by adding a new section
 27 to read:

28 **NO TWO-THIRDS VOTE REQUIRED.** Notwithstanding Article IV, sec. 15,
 29 Constitution of the State of Alaska, the amendments made by this Act that have the effect of
 30 amending Rule 90.3, Alaska Rules of Civil Procedure, take effect upon a majority vote of the
 31 members of each house because Rule 90.3, Alaska Rules of Civil Procedure, is adopted under

- 1 the Alaska Supreme Court's interpretative authority under Article IV, sec. 1, Constitution of
- 2 the State of Alaska.
- 3 * **Sec. 26.** This Act takes effect immediately under AS 01.10.070(c).