



LAWS OF ALASKA

1976

Source

Chapter No.

HCS SSSB 659 (Rules)

251

AN ACT

Relating to child support enforcement; amending Rule 67 of the Rules of Civil Procedure; and providing for an effective date.

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

* Section 1. AS 47 is amended by adding a new chapter to read:

CHAPTER 23. CHILD SUPPORT ENFORCEMENT AGENCY.

Sec. 47.23.010. CREATION OF CHILD SUPPORT ENFORCEMENT AGENCY. There is created in the Department of Health and Social Services the child support enforcement agency.

Sec. 47.23.020. DUTIES OF THE AGENCY. The agency shall

(1) administer and enforce child support orders of the superior courts of the state;

(2) administer and enforce the Uniform Reciprocal Enforcement of Support Act (AS 25.25).

Sec. 47.23.030. ESTABLISHMENT OF FUND. There is established in the state general fund a continuing, revolving, reserve account to receive collections and make the authorized disbursements of the agency.

Sec. 47.23.040. DETERMINATION OF PATERNITY. The agency may initiate efforts to have the paternity of children born out of wedlock determined by the court only on voluntary application by the mother or other legal custodian. The agency shall appear on behalf of the mother or legal custodian. The court may enter any appropriate filiation order.

Sec. 47.23.050. LEGAL ASSISTANCE. The Department of Health and Social Services shall contract with the Department of Law to provide needed legal services.

Sec. 47.23.060. ORDER OF SUPPORT. (a) An order of support establishes a relationship by which the custodian of the child is the administrator for the purposes of administering child support on behalf of the child. The court shall carefully consider the need for support, the ability of both parents to meet such support obligations, the extent to which the parents supported the child before divorce, and the economic ability of the parents to pay after separation and divorce. The court shall also consider the effect on the support obligation of a change in custodian. The need of the child for support shall be considered regardless of the sex of the parent awarded custody of the child.

(b) It is the duty of the person awarded support on behalf of the child to keep support current on behalf of the child and to notify the agency in a timely fashion of arrearages. If that person does not notify the agency of a need for support collection services within six months of the support coming due, the agency may not attempt to collect that support.

(c) In a court proceeding where the support of a minor child is at issue, the court may order either or both parents to pay the amount necessary for support, maintenance, nurture and education of the child. Upon a showing of good cause the court may order the parents required to pay support to give reasonable security for payments. An order for prospective child support may be modified or revoked as the court considers necessary.

Sec. 47.23.070. ORDER TO ASSIGN WAGES FOR SUPPORT.

(a) In a proceeding in which the court has ordered either or both parents to pay for the support of a minor child, the court may, on its own motion or motion of a party or the agency on behalf of a party, after notice and an opportunity for hearing, order either parent or both parents to assign to the custodian of the child that portion of salary or wages of either parent due them currently and in the future sufficient to pay the amount ordered by the court for the support, maintenance, nurture and education of the minor child.

(b) The order of assignment is binding upon an employer upon service of a copy of the order upon the employer and until further order of the court. The employer may deduct \$1 for each payment made under the order.

(c) The assignment made under court order has priority as against an attachment, execution or other assignment unless otherwise ordered by the court.

(d) An employer may not terminate an employee's employment because his wages are subject to an order under this section.

Sec. 47.23.080. ENFORCEMENT OF SUPPORT ORDERS. In a court order requiring payment of child support, absent a showing of good cause, the court shall order the payments

made to the agency. However, the court shall accept reasonable agreements as to method of payment. The agency shall take all necessary action to enforce those child support orders, including (1) petitioning the court for orders to aid in the enforcement of child support; and (2) appearing on behalf of the custodian and enforcing any child support order entered. The determination or enforcement of a duty of support may, in the discretion of the court, be affected by bad faith interference by the custodian with rights of custody and visitation granted by a court.

Sec. 47.23.090. REDUCING ARREARS TO JUDGMENT. The agency, on behalf of the person awarded support for the benefit of the child, may enforce support orders through execution. If the agency applies to the court for an order reducing the outstanding arrears to judgment in accordance with the Rules of Civil Procedure. At the hearing the obligor may present evidence

- (1) that the arrears are not owed;
- (2) that he or she is unable to pay; or
- (3) that the court should consider modifying custody or support if that is in the best interests of the child.

Sec. 47.23.100. ALL PERSONS MAY USE AGENCY. The agency shall provide aid to any person due child support under the laws of this state. If the obligee is indigent or otherwise unable to pay for these services, the agency shall act without charge to the obligee. If the agency determines that the obligee is financially able to pay, costs shall be assessed according to regulations adopted by the department and be paid into the fund established in AS 47.23.035.

Sec. 47.23.110. DEFINITIONS. In this chapter

- (1) "agency" means the child support enforcement agency;
- (2) "department" means the Department of Health and Social Services.

* Sec. 2. AS 25.25.080 is repealed and re-enacted to read:

Sec. 25.25.080. JURISDICTION AND ENFORCEMENT. (a) Jurisdiction for all proceedings under this chapter is in the superior court.

(b) All duties of support, including the duty to pay arrears, are enforceable by a proceeding under this chapter, including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

* Sec. 3. AS 25.25.100 is amended to read:

Sec. 25.25.100. OFFICIALS TO REPRESENT PLAINTIFF. The child support enforcement agency shall represent the plaintiff in a proceeding under this chapter.

* Sec. 4. AS 25.25 is amended by adding new sections to read:

Sec. 25.25.171. HEARING AND CONTINUANCES. If the obligee is not present at a hearing on the merits of the complaint and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense, the court, upon request of either party, shall continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

Sec. 25.25.173. RULES OF EVIDENCE. In a hearing for the enforcement of this chapter, the court is governed by the rules of evidence applicable in a civil suit in superior court. If the action is based upon a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity or to a defendant in an action or a proceeding to enforce a foreign money judgment. Any such order may be modified by the courts of this state.

Sec. 25.25.175. PATERNITY. If the obligor asserts as a defense that he is not the father of the child for whom support is sought and the court finds that the defense is not frivolous, then if both of the parties are present at the hearing, or the court finds that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise, the court may continue the action until the paternity issue has been adjudicated. Nothing in this section is intended to diminish the standard of proof for establishing paternity.

* Sec. 5. AS 09.55.210(5) is repealed.

* Sec. 6. Section 1 of this Act has the effect of amending Rule 67, Rules of Civil Procedure, by identifying situations where child support payments need not be made to the agency. The section containing the change in court rule must be approved by an affirmative vote of two-thirds of the membership to which the house is entitled.

* Sec. 7. This Act takes effect July 1, 1976.