

SENATE BILL NO. 116

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/7/95

Referred: HES, JUD, FIN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to administrative establishment of paternity and establishing
2 paternity by affidavit; relating to child support enforcement; and providing for
3 an effective date."

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

5 * **Section 1.** AS 18.50.160(d) is repealed and reenacted to read:

6 (d) If the mother was married at conception, during the pregnancy, or at birth,
7 the name of the husband shall be entered on the certificate as the father of the child
8 unless

9 (1) paternity has been lawfully determined otherwise by a tribunal, in
10 which case the name of the father, if determined by a tribunal, shall be entered; or

11 (2) both the mother and the mother's husband execute affidavits
12 attesting that the husband is not the father and that another man is the father, and the
13 mother and the other man execute affidavits attesting that the other man is the father,
14 so long as the affidavits meet the requirements of (g) of this section.

1 * **Sec. 2.** AS 18.50.160(e) is repealed and reenacted to read:

2 (e) If the mother was not married at conception, during the pregnancy, or at
3 birth, the name of the father may not be entered on the certificate of birth, unless

4 (1) paternity has been lawfully determined by a tribunal, in which case
5 the name of the father, if determined by the tribunal, shall be entered;

6 (2) both the mother and the man to be named as the father have
7 executed affidavits attesting that that man is the father, so long as the affidavits meet
8 the requirements of (g) of this section; or

9 (3) as otherwise specified by statute.

10 * **Sec. 3.** AS 18.50.160 is amended by adding new subsections to read:

11 (g) An affidavit under (d) or (e) of this section must meet the following
12 requirements:

13 (1) the affidavit must be executed by all required individuals; an
14 affidavit may be executed jointly, individually, or in combination of jointly and
15 individually; and

16 (2) if an affidavit is executed by more than one individual, the
17 signature of each individual must be individually notarized.

18 (h) In this section, unless the context requires otherwise, "tribunal" means a
19 court, administrative agency, or quasi-judicial entity authorized by law to determine
20 parentage.

21 * **Sec. 4.** AS 25.27.020(a) is amended to read:

22 (a) The agency shall

23 (1) seek enforcement of child support orders [OF THE SUPERIOR
24 COURTS] of the state in other jurisdictions and shall obtain, enforce, and administer
25 the orders in this state;

26 (2) adopt regulations to carry out the purposes of this chapter, including
27 regulations that establish

28 (A) schedules for determining the amount an obligor is liable
29 to contribute toward the support of an obligee under this chapter and under
30 42 U.S.C. 651 - 669 (Title IV-D, Social Security Act);

31 (B) procedures for hearings conducted under AS 25.27.170;

1 [AND]

2 (C) subject to AS 25.27.025 and to federal law, a uniform rate
3 of interest on arrearages of support that shall be charged the obligor upon
4 notice if child support payments are 10 or more days overdue or if payment is
5 made by a check backed by insufficient funds; however, an obligor may not be
6 charged interest on late payment of a child support obligation, other than a
7 payment on arrearages, if the obligor is

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

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

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

16 **(D) procedures for establishing paternity, including**
17 **procedures for hearings;**

18 (3) administer and enforce AS 25.25 (Uniform Reciprocal Enforcement
19 of Support Act);

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

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

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

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

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

1 (9) obtain a medical support order as part of a child support order if
2 health care coverage is available to the obligor at a reasonable cost; the agency shall
3 consider whether adequate health care is available to the child through the Indian
4 Health Service or other insurance coverage before it orders an obligor to provide health
5 care coverage through insurance or other means; the medical support order must meet
6 the requirements of AS 25.27.063; [AND]

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

9 (11) establish, administratively or through court action, the
10 paternity of a child;

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

14 (13) act as the central registry for all child support orders.

15 * **Sec. 5.** AS 25.27.022 is amended to read:

16 Sec. 25.27.022. **ESTABLISHMENT AND** ENFORCEMENT REQUESTS
17 FROM OTHER STATES. (a) The agency may act, under the laws of this state, upon
18 requests from similar state agencies in other states that operate child support
19 enforcement programs under 42 U.S.C. 651 - 669 (Title IV-D Social Security Act) **to**
20 **establish paternity and** to establish and enforce against obligors within this state
21 support obligations determined in other states.

22 (b) Requests from child support enforcement agencies in other states shall be
23 made by application containing the information that this state's agency requires and
24 including written authorization from the requesting state agency and the obligee for
25 this state's agency to initiate **necessary** action [NECESSARY TO ESTABLISH,
26 ENFORCE, AND COLLECT THE SUPPORT OBLIGATION ON THEIR BEHALF].

27 * **Sec. 6.** AS 25.27.040(a) is amended to read:

28 (a) The agency **may** [SHALL] appear on behalf of minor children or their
29 mother or legal custodian or the state and initiate efforts to have the paternity of
30 children born out of wedlock determined by the court. When the agency is a party **to**
31 **a court** [IN AN] action in which paternity is contested, it shall request and pay for

1 **genetic testing** [TESTS] and procedures under AS 25.20.050(f). The agency may
2 recover the costs of the tests as a cost of the **court** action, except that costs may not
3 be recovered from a person who is a recipient of aid under AS 47.25.310 - 47.25.420
4 (Aid to Families with Dependent Children).

5 * **Sec.7.** AS 25.27.040(c) is amended to read:

6 (c) When the agency is a party in **a court** [AN] action in which paternity is
7 contested, the agency shall move for a default judgment in a case that meets the
8 conditions specified in AS 25.20.050(g).

9 * **Sec. 8.** AS 25.27.075(f) is amended to read:

10 (f) The agency shall retain the information received under (a), (d), and (e) of
11 this section for a particular employee only if the agency is responsible for establishing,
12 enforcing, or collecting a support obligation of the employee **or if the employee is**
13 **a party to an administrative or judicial proceeding to determine the paternity of**
14 **a child.** If the employee does not owe a support obligation **or is not a party to a**
15 **paternity proceeding,** the agency may not create a record regarding the employee, and
16 the information contained in the notice shall be promptly destroyed.

17 * **Sec. 9.** AS 25.27.085 is amended to read:

18 Sec. 25.27.085. SUBPOENAS. The agency, with the concurrence of the
19 commissioner of revenue, may subpoena persons, books, records, and documents

20 **(1)** to determine the extent and location of assets of any obligor who
21 is more than 45 days in arrears in a child support obligation established either by court
22 or administrative order; **or**

23 **(2) to determine the paternity of a child under AS 25.27.165.**

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

25 (a) If no support order has been entered, the agency may establish **paternity**
26 **and** a duty of support utilizing the procedures prescribed in AS 25.27.160 - 25.27.220
27 and may enforce a duty of support utilizing the procedure prescribed in AS 25.27.230 -
28 25.27.270. Action under this subsection may be undertaken upon application of an
29 obligee, or at the agency's own discretion if the obligor is liable to the state under
30 AS 25.27.120(a) or (b).

31 * **Sec. 11.** AS 25.27 is amended by adding a new section to read:

1 Sec. 25.27.165. DETERMINATION OF PATERNITY IN AN
2 ADMINISTRATIVE PROCEEDING. (a) Upon application from a mother, custodian,
3 or legal custodian of a child, or from a state, the agency may institute administrative
4 proceedings to determine the paternity of a child born out of wedlock.

5 (b) In order to initiate a paternity proceeding administratively, the agency shall
6 serve a mother and putative father, as appropriate, with a notice of paternity and
7 financial responsibility. The notice shall be served personally as set out in Alaska
8 Rule of Civil Procedure 4(d) or by registered, certified, or insured mail, return receipt
9 requested, for restricted delivery only to the person to whom the notice is directed or
10 to the person authorized under federal law to receive that person's restricted delivery
11 mail. The notice must be accompanied by

12 (1) an administrative order requiring that the mother, child, and putative
13 father submit to genetic testing to be arranged by the agency;

14 (2) an administrative order requiring the putative father to provide
15 financial information, as defined by the agency in regulation, within 20 days after
16 service of the notice; all financial information provided to the agency under an order
17 under this paragraph shall be held confidential by the agency, according to any
18 applicable regulations; and

19 (3) a notice of right to informal conference, to be held within 20 days
20 after receipt of an admission of paternity or service upon the parties of genetic test
21 results.

22 (c) A person served with a notice of paternity and financial responsibility shall
23 file a response, admitting or denying paternity and providing the required financial
24 information, within 20 days after the date of service of the notice of paternity and
25 financial responsibility. If the putative father admits paternity, the agency shall issue,
26 within 20 days after the admission of paternity, a decision establishing paternity. If
27 the putative father denies paternity, the putative father shall submit to genetic testing,
28 as provided in (b) of this section, within 30 days after the date of service of the notice
29 of paternity and financial responsibility.

30 (d) Upon receipt of genetic test results, the agency shall serve on the putative
31 father notice of the test results and of the date for the informal conference. Service

1 of the notice shall be made by first class mail. If the genetic test results are negative
2 under the standard set in AS 25.20.050(d), the agency shall issue a finding of
3 nonpaternity within 20 days after the agency's receipt of the test results. If the genetic
4 test results are positive under the standard set in AS 25.20.050(d), the agency shall
5 issue an informal conference decision within 20 days after the agency's receipt of the
6 test results.

7 (e) If the agency issues a decision establishing paternity under (d) of this
8 section, the putative father is entitled to a formal hearing if a written request for
9 hearing is served on the agency by certified mail, return receipt requested, within 30
10 days after the date of service of the agency's decision.

11 (f) If a request for a formal hearing is made under (e) of this section, an
12 execution under AS 25.27.062 and 25.27.230 - 25.27.270 may not be stayed unless the
13 putative father posts security or a bond in the amount of child support that would have
14 been due under the informal conference decision pending the decision on the formal
15 hearing. If no request for a formal hearing is made under (e) of this section, the
16 informal conference decision establishing paternity is final.

17 (g) If a request for a formal hearing is made under (e) of this section, the
18 hearing officer shall consider the evidence applying the standards set in
19 AS 25.20.050(d).

20 (h) If a putative father who requests a formal hearing under (e) of this section
21 fails to appear at the formal hearing, the hearing officer shall enter a final decision
22 establishing paternity.

23 (i) The agency may recover any costs it pays for genetic tests required by this
24 section, except that costs may not be recovered from a person who is a recipient of aid
25 under AS 47.25.310 - 47.25.420 (Aid to Families with Dependent Children).

26 (j) After a child's paternity has been established under the law, the agency
27 may not issue a decision or finding under this section that changes the child's
28 paternity.

29 * **Sec. 12.** AS 25.27.180(a) is amended to read:

30 (a) Within 20 days **after** [OF] the date of the hearing, the hearing officer shall
31 adopt findings and a decision determining whether **paternity is established and**

1 whether a duty of support exists and, if a duty of support is found, the amount of
2 periodic payments or sum for which the alleged obligor is found to be responsible.

3 * **Sec. 13.** AS 25.27.180(c) is amended to read:

4 (c) A decision regarding support rendered under (a) of this section is
5 modified to the extent that a subsequent order, judgment, or decree of a superior court
6 is inconsistent with the decision entered under (a) of this section.

7 * **Sec. 14.** AS 25.27.210(a) is amended to read:

8 (a) Judicial review by the superior court of a final administrative [AN
9 AGENCY] decision establishing paternity and establishing or modifying a duty of
10 support or amounts of support due may be obtained by filing a notice of appeal in
11 accordance with the applicable rules of court governing appeals in civil matters. A
12 notice of appeal shall be filed within 30 days after [OF] of the decision.

13 * **Sec. 15.** AS 25.27.210(c) is amended to read:

14 (c) The complete record includes

- 15 (1) the notice and finding of financial responsibility or the notice of
16 paternity and financial responsibility;
17 (2) the request for a hearing;
18 (3) the decision of the hearing officer;
19 (4) the exhibits admitted or rejected;
20 (5) the written evidence;
21 (6) all other documents in the case, including decisions of the agency.

22 * **Sec. 16.** AS 25.27.230(a) is amended to read:

23 (a) At the expiration of 30 days after [FROM EITHER] (1) the date of
24 distribution of an income withholding order under as 25.27.062, [OR] (2) the date of
25 service of a notice and finding of financial responsibility under AS 25.27.160, or (3)
26 the date of service of a decision establishing paternity under AS 25.27.165(c) or
27 (d), the agency may assert a lien upon the real or personal property of the obligor, in
28 the amount of the obligor's liability.

29 * **Sec. 17.** AS 25.27.250(a) is amended to read:

30 (a) At the expiration of [EITHER] (1) 15 days after [FROM] the date of
31 service of an income withholding order under AS 25.27.062 or notice under

1 AS 25.27.150, or (2) 30 days after [FROM] the date of service of a notice and finding
2 of financial responsibility under AS 25.27.160, or (3) 30 days after service of a
3 decision establishing paternity under AS 25.27.165(c) or (d), the agency may issue
4 to any person, political subdivision, or department of the state an order to withhold and
5 deliver property.

6 * **Sec. 18.** TRANSITION: REGULATIONS. The Department of Revenue, child support
7 enforcement agency, may immediately proceed to adopt regulations to implement the changes
8 made by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act),
9 but not before January 1, 1996.

10 * **Sec. 19.** Section 18 of this Act takes effect immediately under AS 01.10.070(c).

11 * **Sec. 20.** Except as provided in sec. 19 of this Act, this Act takes effect January 1, 1996.