

HOUSE BILL NO. 514

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES KOTT, Coghill, Harris, Hawker, McGuire, Rokeberg, Anderson, Lynn

Introduced: 2/16/04

Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to child support modification and enforcement, to the establishment of**
2 **paternity by the child support enforcement agency, and to the crimes of criminal**
3 **nonsupport and aiding the nonpayment of child support; amending Rule 90.3, Alaska**
4 **Rules of Civil Procedure; and providing for an effective date."**

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

6 * **Section 1.** AS 11.51.120(a) is amended to read:

7 (a) A person commits the crime of criminal nonsupport if, being a person
8 legally charged with the support of a child **under a valid court or administrative**
9 **support order** [UNDER 18 YEARS OF AGE], the person fails without lawful excuse
10 to provide support for the child. **Proof of the existence of a valid applicable child**
11 **support order creates a rebuttable presumption of the obligor's ability to pay the**
12 **ordered child support.**

13 * **Sec. 2.** AS 11.51.120(c) is repealed and reenacted to read:

14 (c) Except as provided in (d) of this section, criminal nonsupport is a class A

1 misdemeanor.

2 * **Sec. 3.** AS 11.51.120 is amended by adding new subsections to read:

3 (d) Criminal nonsupport is a class C felony if the support the person failed to
4 provide is monetary support required by a court or administrative order from this or
5 another jurisdiction and, at the time the person failed to provide the support,

6 (1) the aggregate amount of accrued monetary arrearage is \$10,000 or
7 more;

8 (2) no payment has been made for a period of 24 months or more; or

9 (3) the person had been previously convicted under this section or a
10 similar provision in another jurisdiction and

11 (A) the aggregate amount of accrued monetary arrearage is
12 \$5,000 or more; or

13 (B) no payment has been made for a period of six months or
14 more.

15 (e) In addition to the provisions of (c) and (d) of this section, criminal
16 nonsupport is punishable by loss or restriction of a recreational license as provided in
17 AS 12.55.139.

18 * **Sec. 4.** AS 11.51 is amended by adding a new section to read:

19 **Sec. 11.51.121. Aiding the nonpayment of child support in the first**
20 **degree.** (a) A person commits the crime of aiding the nonpayment of child support in
21 the first degree if the person violates AS 11.51.122 and the person knows the obligor

22 (1) has an aggregate amount of accrued monetary arrearage of
23 \$10,000 or more;

24 (2) has not made a payment for a period of 24 months or more; or

25 (3) had been previously convicted under AS 11.51.120 or a similar
26 provision in another jurisdiction and

27 (A) has an aggregate amount of accrued monetary arrearage of
28 \$5,000 or more; or

29 (B) has not made a payment for a period of 24 months or more.

30 (b) Aiding the nonpayment of child support in the first degree is a class C
31 felony.

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

2 (a) A person commits the crime of aiding the nonpayment of child support **in**
3 **the second degree** if the person

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

7 (2) intentionally

8 (A) withholds information about the residence or employment
9 of the obligor when that information is requested by a child support
10 enforcement agency;

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

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

25 * **Sec. 6.** AS 11.51.122(d) is amended to read:

26 (d) Aiding the nonpayment of child support **in the second degree** is a class A
27 misdemeanor.

28 * **Sec. 7.** AS 22.10.020 is amended by adding a new subsection to read:

29 (j) The superior court, in an action for divorce, separation, or child support,
30 may issue orders to aid in the enforcement of child support, including orders requiring
31 an individual who owes support under an order of support to

- 1 (1) make payments according to an approved payment plan;
- 2 (2) participate in appropriate work activities if the individual is not
- 3 incapacitated; or
- 4 (3) complete and submit an application for a permanent fund dividend
- 5 under AS 43.23.015 or provide proof to the agency or the court that the individual is
- 6 not eligible for a dividend in a given year.

7 * **Sec. 8.** AS 25.27.020(d) is amended to read:

8 (d) The agency may issue an administrative order or request a court order that

9 requires an individual in arrears under an order of support [FOR A CHILD WHO IS

10 RECEIVING ASSISTANCE UNDER AS 47.07, OR UNDER AS 47.25.310 -

11 47.25.420 OR A SUCCESSOR PROGRAM,] to make payments according to an

12 approved payment plan or, if the individual is not incapacitated, to participate in

13 appropriate work activities.

14 * **Sec. 9.** AS 25.27.020 is amended by adding new subsections to read:

15 (f) The agency may employ investigators who may exercise the power of

16 peace officers when those powers are specifically granted by the agency to that

17 investigator. Peace officer powers granted by the agency under this subsection may be

18 exercised only when necessary for the enforcement of child support laws and

19 regulations. An investigator granted and who is exercising peace officer powers under

20 this subsection may carry a firearm only if the investigator

21 (1) has completed at some time a peace officer training academy

22 program approved by the commissioner of public safety; and

23 (2) has met annual firearm certification requirements that are

24 equivalent to those required by the Department of Public Safety.

25 (g) The agency may compromise a child support obligation, including interest

26 payments, owed to the state under AS 25.27.130, without the assistance of agency

27 counsel, if to do so is in the best interest of the state and is determined to be

28 necessary by the commissioner of revenue. If a debt is compromised under this

29 subsection, the agency shall file a notice of the compromise with the appropriate

30 agency, employer, or court through which the compromised order of support was

31 being enforced.

1 * **Sec. 10.** AS 25.27.040(b) is amended to read:

2 (b) The agency may not attempt to establish paternity in any case

3 **(1) involving incest or forcible rape, unless the mother of the child,**
 4 **or the mother's parent or legal guardian if the mother is a minor or incompetent,**
 5 **requests the establishment of paternity; in this paragraph, "forcible rape" means**
 6 **sexual assault in the first degree under AS 11.41.410 or a conviction under a law**
 7 **or ordinance from another jurisdiction with similar elements; "forcible rape"**
 8 **includes adjudications of delinquency for acts with elements similar to**
 9 **AS 11.41.410;**

10 **(2) when legal proceedings for adoption are pending; [,] or**

11 **(3) when it would not be in the best interests of the children or the**
 12 state.

13 * **Sec. 11.** AS 25.27.080(b) is amended to read:

14 (b) The agency on behalf of the custodian or the state shall take all necessary
 15 action permitted by law to enforce child support orders [SO ENTERED], including
 16 petitioning the court for orders to aid in the enforcement of child support.

17 * **Sec. 12.** AS 25.27.190(e) is amended to read:

18 (e) Modification or termination of future periodic support payments may be
 19 ordered upon a showing of good cause and material change in circumstances. The
 20 adoption or enactment of guidelines or a significant amendment to guidelines for
 21 determining child support is a material change in circumstances, if the guidelines are
 22 relevant to the petition. **As necessary to comply with 42 U.S.C. 666, a periodic**
 23 **modification of child support may be made without a showing of a material**
 24 **change in circumstances if the child support order being modified on the periodic**
 25 **basis has not been modified or adjusted during the three years preceding the**
 26 **periodic modification.**

27 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to
 28 read:

29 INDIRECT COURT RULE AMENDMENT. Section 12 of this Act has the effect of
 30 changing Rule 90.3, Alaska Rules of Civil Procedure, by changing the grounds for modifying
 31 a support order.

1 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 TWO-THIRDS VOTE NOT REQUIRED. Because Rule 90.3, Alaska Rules of Civil
4 Procedure, was adopted under the Alaska Supreme Court's interpretive authority exercised
5 under art. IV, sec. 1, Constitution of the State of Alaska, sec. 12 of this Act takes effect for
6 purposes of Rule 90.3, Alaska Rules of Civil Procedure, without needing to meet the two-
7 thirds vote requirement normally applicable to changing court rules under art. IV, sec. 15,
8 Constitution of the State of Alaska.

9 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section
10 read:

11 APPLICABILITY. (a) The provisions of AS 11.51.120(d)(1) and (d)(3)(A), enacted
12 by sec. 3 of this Act, and the provisions of AS 11.51.121(a)(1) and (a)(3)(A), enacted by sec.
13 4 of this Act, apply to monetary arrearages that have accrued before the effective date of this
14 Act, but only if the person fails to provide monetary support in violation of AS 11.51.120, as
15 amended by secs. 1, 2, and 3 of this Act, on or after the effective date of this Act or the person
16 aids in the nonpayment of child support in the first degree under AS 11.51.121, as enacted by
17 sec. 4 of this Act, on or after the effective date of this Act, as applicable.

18 (b) The provisions of AS 11.51.120(d)(2) and (d)(3)(B), enacted by sec. 3 of this Act,
19 and the provisions of AS 11.51.121(a)(2) and (a)(3)(B), enacted by sec. 4 of this Act, apply to
20 nonpayment of child support in violation of AS 11.51.120, as amended by secs. 1, 2, and 3 of
21 this Act, on or after the effective date of this Act or to aiding the nonpayment of child support
22 in the first degree under AS 11.51.121, as enacted by sec. 4 of this Act, on or after the
23 effective date of this Act, as applicable.

24 * **Sec. 16.** This Act takes effect July 1, 2004.