

SENATE CS FOR CS FOR HOUSE BILL NO. 514(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 5/7/04

Referred: Rules

Sponsor(s): REPRESENTATIVES KOTT, Harris, Hawker, McGuire, Rokeberg, Anderson, Lynn, Dahlstrom, Gruenberg

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 18 YEARS OF AGE,] the person
9 knowingly fails, without lawful excuse, to provide support for the child.

10 * **Sec. 2.** AS 11.51.120(c) is repealed and reenacted to read:

11 (c) Except as provided in (d) of this section, criminal nonsupport is a class A
12 misdemeanor.

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

14 (d) Criminal nonsupport is a class C felony if the support the person failed to

1 provide is monetary support required by a court or administrative order from this or
 2 another jurisdiction and, at the time the person knowingly failed, without lawful
 3 excuse, to provide the support,

4 (1) the aggregate amount of accrued monetary child support arrearage
 5 is \$20,000 or more;

6 (2) no child support payment has been made for a period of 24
 7 consecutive months or more; or

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

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

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

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

17 (f) In this section,

18 (1) "child" means a person

19 (A) under 18 years of age; or

20 (B) 18 years of age or older for whom a person is ordered to
 21 pay support under a valid court or administrative order;

22 (2) "child support" means support for a child;

23 (3) "without lawful excuse" means having the financial ability to
 24 provide support or having the capacity to acquire that ability through the exercise of
 25 reasonable efforts.

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

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

30 (1) has an aggregate amount of accrued monetary child support
 31 arrearage of \$20,000 or more;

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

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

5 (A) has an aggregate amount of accrued monetary child support
6 arrearage of \$5,000 or more; or

7 (B) has not made a child support payment for a period of 24
8 consecutive months or more.

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

11 (c) In addition to the penalties under (b) of this section, aiding the nonpayment
12 of child support in the first degree is punishable by loss or restriction of a recreational
13 license as provided in AS 12.55.139.

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

15 (a) A person commits the crime of aiding the nonpayment of child support **in**
16 **the second degree** if the person [(1)] knows that an obligor has a duty under an
17 administrative or judicial order for periodic payment of child support or for the
18 provision of health care coverage for a child under a medical support order [;] and

19 **(1) being a person with a statutory duty to disclose information to**
20 **a child support enforcement agency** [(2)] intentionally [(A)] withholds **the**
21 information [ABOUT THE RESIDENCE OR EMPLOYMENT OF THE OBLIGOR]
22 when **it** [THAT INFORMATION] is requested by a child support enforcement
23 agency;

24 **(2) [(B)] being an employer of the obligor, intentionally** withholds
25 information about **the residence or employment of the obligor,** the eligibility of the
26 obligor's children for coverage under the employer's health insurance plan, or
27 [ABOUT] the cost of the coverage of the children under the plan, when that
28 information is requested by a child support enforcement agency **or when the**
29 **employer is required by state or federal law to report the information without a**
30 **request by a child support enforcement agency;** or

31 **(3) intentionally** [(C)] participates in a commercial, business, [OR]

1 employment, or other arrangement with the obligor, knowing at the time that the
 2 arrangement is made that it will allow the obligor to avoid paying all or some of the
 3 support when it is due or to avoid having a lien placed on assets for the payment of
 4 delinquent support; receipt of a substantial asset for less than fair market value from
 5 an obligor after the obligor's support order has been established constitutes a
 6 rebuttable presumption that the person receiving the asset knew that the transfer would
 7 allow the obligor to avoid paying all or some of the support or to avoid having a lien
 8 placed on the asset.

9 * **Sec. 6.** AS 11.51.122(b) is amended to read:

10 (b) In a prosecution under (a)(2) and (3) [(a)(2)(B) AND (C)] of this section,
 11 it is a defense that the

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

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

17 * **Sec. 7.** AS 11.51.122(d) is amended to read:

18 (d) Aiding the nonpayment of child support in the second degree is a class A
 19 misdemeanor.

20 * **Sec. 8.** AS 11.51.122 is amended by adding new subsections to read:

21 (e) In addition to the penalties under (d) of this section, aiding the nonpayment
 22 of child support in the second degree is punishable by loss or restriction of a
 23 recreational license as provided in AS 12.55.139.

24 (f) In this section, "child" and "child support" have the meaning given in
 25 AS 11.51.120.

26 * **Sec. 9.** AS 12.55.139 is amended to read:

27 **Sec. 12.55.139. Penalties for criminal nonsupport.** In addition to other
 28 penalties imposed for the offense of criminal nonsupport under AS 11.51.120, the
 29 court may suspend, restrict, or revoke, for the period during which the arrearage
 30 continues to exist [FOR A PERIOD NOT TO EXCEED SIX MONTHS], a
 31 recreational license as defined in AS 09.50.020(c), if the defendant is a natural person.

1 * **Sec. 10.** AS 12.55.139 is amended by adding a new subsection to read:

2 (b) In addition to other penalties imposed for the offense of aiding the
3 nonpayment of child support in the first degree under AS 11.51.121 and for the
4 offense of aiding the nonpayment of child support in the second degree under
5 AS 11.51.122, the court may suspend, restrict, or revoke, for a period not to exceed
6 one year, a recreational license as defined in AS 09.50.020(c), if the defendant is a
7 natural person.

8 * **Sec. 11.** AS 22.10.020 is amended by adding a new subsection to read:

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

12 (1) make payments according to an approved payment plan;

13 (2) participate in appropriate work activities if the individual is not
14 incapacitated; or

15 (3) complete and submit an application for a permanent fund dividend
16 under AS 43.23.015 or provide proof to the agency or the court that the individual is
17 not eligible for a dividend in a given year.

18 * **Sec. 12.** AS 25.27.020(d) is amended to read:

19 (d) The agency may issue an administrative order or request a court order that
20 requires an individual in arrears under an order of support for a child who is receiving
21 assistance under AS 47.07, or under AS 47.25.310 - 47.25.420 or a successor program,
22 **or for a child whose parent, guardian, or designee of the parent or guardian has**
23 **applied for aid from the agency under AS 25.27.100,** to make payments according
24 to an approved payment plan or, if the individual is not incapacitated, to participate in
25 appropriate work activities.

26 * **Sec. 13.** AS 25.27.020 is amended by adding new subsections to read:

27 (f) The agency shall, by regulation, establish procedures and standards for the
28 forgiveness of an arrearage owed to the state under AS 25.27.120. The agency may
29 forgive arrears under this section, with the approval of the commissioner and without
30 the approval of the Department of Law, if

31 (1) the obligor

1 (A) has or obtains employment for which income withholding
 2 is initiated under AS 25.27.250 within 60 days after the date the obligor is
 3 approved for the forgiveness program;

4 (B) enrolls in and successfully completes an employment
 5 training program approved by the agency and obtains employment for which
 6 income withholding is initiated under AS 25.27.250 within 30 days after
 7 completion of the employment training program; or

8 (C) enters into an agreement with the agency for alternative
 9 payment procedures if the agency determines that there are unusual
 10 circumstances justifying a waiver of income withholding;

11 (2) the obligor is in compliance with additional requirements and
 12 limitations imposed by the agency by regulation to assure that forgiveness of the
 13 arrearage is in the best interest of the child and of the state; and

14 (3) the obligor makes monthly payments pursuant to a payment
 15 agreement approved by the agency; if the obligor misses more than two monthly
 16 payments in a calendar year or more than two consecutive payments without approval
 17 of the agency for good cause, the obligor is not eligible to continue in the arrears
 18 forgiveness program under this section.

19 (g) During each year in which an obligor complies with the requirements for
 20 the forgiveness of an arrearage under (f) of this section and any regulations adopted by
 21 the agency under that subsection, the agency may forgive up to 20 percent of the total
 22 arrearage owed to the state under AS 25.27.120, including any interest owed on that
 23 debt. For purposes of determining the amount of the forgiveness, the arrears shall be
 24 calculated as of the date the obligor is approved for participation in the forgiveness
 25 program.

26 (h) The agency may establish by regulation requirements and limitations on
 27 eligibility in addition to those stated in (f) and (g) of this section.

28 * **Sec. 14.** AS 25.27.040(b) is amended to read:

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

30 (1) involving incest or forcible rape, **unless the mother of the child is**
 31 **legally competent and requests the establishment of paternity; in this paragraph,**

1 **"forcible rape" means sexual assault in the first degree under AS 11.41.410 or a**
 2 **conviction under a law or ordinance from another jurisdiction with similar**
 3 **elements; "forcible rape" includes adjudications of delinquency for acts with**
 4 **elements similar to AS 11.41.410;**

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

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

8 * **Sec. 15.** AS 25.27.080(b) is amended to read:

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

12 * **Sec. 16.** AS 25.27.190(e) is amended to read:

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

22 * **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to
 23 read:

24 INDIRECT COURT RULE AMENDMENT. Section 16 of this Act has the effect of
 25 changing Rule 90.3, Alaska Rules of Civil Procedure, by changing the grounds for modifying
 26 a support order.

27 * **Sec. 18.** The uncodified law of the State of Alaska is amended by adding a new section to
 28 read:

29 TWO-THIRDS VOTE NOT REQUIRED. Because Rule 90.3, Alaska Rules of Civil
 30 Procedure, was adopted under the Alaska Supreme Court's interpretive authority exercised
 31 under art. IV, sec. 1, Constitution of the State of Alaska, sec. 16 of this Act takes effect for

1 purposes of Rule 90.3, Alaska Rules of Civil Procedure, without needing to meet the two-
2 thirds vote requirement normally applicable to changing court rules under art. IV, sec. 15,
3 Constitution of the State of Alaska.

4 * **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 APPLICABILITY. (a) The provisions of AS 11.51.120(d)(1) and (d)(3)(A), enacted
7 by sec. 3 of this Act, and the provisions of AS 11.51.121(a)(1) and (a)(3)(A), enacted by sec.
8 4 of this Act, apply to monetary arrearages that have accrued before the effective date of this
9 Act, but only if the person fails to provide monetary support in violation of AS 11.51.120, as
10 amended by secs. 1, 2, and 3 of this Act, on or after the effective date of this Act or the person
11 aids in the nonpayment of child support in the first degree under AS 11.51.121, as enacted by
12 sec. 4 of this Act, on or after the effective date of this Act, as applicable.

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

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

21 TRANSITION. The forgiveness program authorized under AS 25.27.020(f) and (g),
22 as enacted in sec. 13 of this Act, may not be implemented until the agency has adopted
23 regulations setting standards and procedures for the program. Regulations under this section
24 must be adopted within nine months after the effective date of this section.

25 * **Sec. 21.** This Act takes effect July 1, 2004.