

HOUSE BILL NO. 192

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE COGHILL

Introduced: 3/18/09

Referred: Health and Social Services, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to nonpayment of child support; relating to certain judicial and
2 administrative orders for medical support of a child; relating to periodic review and
3 adjustment of child support orders; relating to relief from administrative child support
4 orders; relating to child support arrearages; relating to medical support of a child and
5 the Alaska Native family assistance program; amending Rule 90.3, Alaska Rules of Civil
6 Procedure; and providing for an effective date."

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

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

9 (a) A person commits the crime of aiding the nonpayment of child support in
10 the second degree if the person knows that an obligor has a duty under an
11 administrative or judicial order for periodic payment of child support, **for cash**
12 **medical support,** or for the provision of health care coverage for a child under a
13 medical support order **or a cash medical support order, or both** and

1 (1) being a person with a statutory duty to disclose information to a
 2 child support enforcement agency intentionally withholds the information when it is
 3 requested by a child support enforcement agency;

4 (2) being an employer of the obligor, intentionally withholds
 5 information about the residence or employment of the obligor, the eligibility of the
 6 obligor's children for coverage under the employer's health insurance plan, or the cost
 7 of the coverage of the children under the plan, when that information is requested by a
 8 child support enforcement agency or when the employer is required by state or federal
 9 law to report the information without a request by a child support enforcement agency;
 10 or

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

19 * **Sec. 2.** AS 25.27.060(c) is amended to read:

20 (c) In a court or administrative proceeding where the support of a minor child
 21 is at issue, the court or agency, as applicable, may order either **parent** or both parents
 22 to pay the amount necessary for support, maintenance, nurture, and education of the
 23 child. Regardless of whether a support order for periodic payments is issued, the court
 24 or agency shall issue a medical support order, **a cash medical support order, or**
 25 **both**. The medical support order shall require health care insurance coverage for the
 26 child if health care insurance coverage is available to either parent **or both parents** for
 27 the child at a reasonable cost. The court or agency shall consider whether the child is
 28 eligible for services through the Indian Health Service or other insurance coverage
 29 before ordering either parent **or both parents** to provide health care coverage through
 30 insurance, **cash medical support,** or other means **or a combination of insurance,**
 31 **cash medical support, or other means.** The court or agency shall allocate equally the

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

18 * **Sec. 3.** AS 25.27.160(c) is amended to read:

19 (c) If the agency is establishing only [A] medical support [ORDER], the
 20 notice and finding of financial responsibility must state

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

26 (2) **the sum of periodic payments of cash medical support for**
 27 **which either parent or both parents are found to be responsible under this**
 28 **chapter;**

29 **(3)** the name of the alleged obligee and the obligee's custodian;

30 **(4)** [(3)] that the alleged obligor may appear and show cause in a
 31 hearing held by the agency why the finding is incorrect, should not be finally ordered,

1 and should be modified or rescinded, because

2 (A) no duty of support is owed;

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

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

7 (D) there is good cause to allocate the costs of health insurance,
8 **cash medical support**, or uninsured health care expenses unequally between
9 the parents;

10 **(5)** [(4)] that, if the person served with the notice under this subsection
11 does not request a hearing within 30 days, a copy of the medical support order will be
12 sent to the person's employer under AS 25.27.063(b) without further notice or hearing
13 for inclusion of the child in family health coverage if it is available through the
14 person's employer.

15 * **Sec. 4.** AS 25.27.193 is amended to read:

16 **Sec. 25.27.193. Periodic review or adjustment of support orders.** As
17 necessary to comply with 42 U.S.C. 666, the agency, by regulation, shall provide
18 procedures and standards for the modification, through **a three-year cycle of**
19 [PERIODIC] review or adjustment, of a support order. Regulations adopted under this
20 section must include procedures for periodic notice of the right to request review,
21 procedures for hearings, and standards for adjustments regarding future periodic
22 support payments. A modification under this section may be made without a showing
23 of a material change in circumstances.

24 * **Sec. 5.** AS 25.27.195(a) is amended to read:

25 (a) A clerical mistake in an administrative order issued by the agency or an
26 error arising from an oversight or omission by the agency may be corrected by the
27 agency at any time [ON THE MOTION OF AN OBLIGOR].

28 * **Sec. 6.** AS 25.27.195(b) is amended to read:

29 (b) **The** [UPON THE MOTION OF AN OBLIGOR, THE] agency may, at any
30 time, vacate an administrative support order issued by the agency under AS 25.27.160
31 that was based on a default amount rather than on the obligor's actual ability to pay.

1 * **Sec. 7.** AS 25.27.900(2) is repealed and reenacted to read:

2 (2) "arrearage" means a debt that is past due and equal to at least one
3 monthly obligation under the support order for one or more of the following:

4 (A) monetary support;

5 (B) cash medical support;

6 (C) payment of health care costs or maintenance of health
7 insurance;

8 (D) reimbursement of related costs;

9 (E) payment of attorney fees and legal costs and other fees;

10 (F) penalty, interest, and other relief as required by a support
11 order;

12 * **Sec. 8.** AS 25.27.900(12) is amended to read:

13 (12) "support order" means any judgment, decree, or order that is
14 issued by a tribunal for the support and maintenance of a child or of a parent with
15 whom the child is living; "support order" includes a judgment, decree, or order

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

18 (B) for any or all of the following:

19 (i) monetary support, including arrearages;

20 (ii) payment of health care costs or maintenance of
21 health insurance;

22 **(iii) payment of cash medical support;**

23 **(iv)** [(iii)] reimbursement of related costs;

24 **(v)** [(iv)] payment of attorney fees and legal costs and
25 other fees; or

26 **(vi)** [(v)] penalty, interest, and other relief as required
27 by a tribunal;

28 * **Sec. 9.** AS 47.07.025(b) is amended to read:

29 (b) Through the child support services agency or on its own behalf, the
30 department may garnish the wages, salary, or other employment income of a person
31 who

1 (1) is required by a medical support order, **cash medical support**
 2 **order, or both,** under AS 25.27.060(c) to provide **insurance or cash** coverage of the
 3 costs of medical care to a child who is eligible for medical assistance under this
 4 chapter;

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

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

9 * **Sec. 10.** AS 47.27.200(o) is amended to read:

10 (o) The applicability of AS 25.27 in the case of a recipient under an Alaska
 11 Native family assistance program includes the following:

12 (1) an obligor is liable to the Alaska Native family assistance program
 13 in the amount of the family assistance provided by the program to a child to whom the
 14 obligor owes a duty of support except that, if a support order has been entered, the
 15 liability of the obligor for assistance provided by an Alaska Native family assistance
 16 program may not exceed the amount of support provided for in the support order, and,
 17 if a medical **support order, cash medical support order, or both,** [ORDER OF
 18 SUPPORT] has been entered, the liability of the obligor for assistance granted under
 19 AS 47.07 may not exceed the amount of support provided for in the medical **support**
 20 **order, cash medical support order, or both,** [ORDER OF SUPPORT]; the child
 21 support services agency shall send notice of accruing liability under this paragraph in
 22 the same manner as required under AS 25.27.120(c), and, if the agency fails to comply
 23 with the notice requirement of this paragraph, interest does not accrue on the liability
 24 to the Alaska Native family assistance program unless a support order or medical
 25 support order, **or cash medical support order,** as applicable, has been entered;

26 (2) the child support services agency may appear in an action
 27 authorized under AS 25.27.045 at the agency's own discretion if an obligor under
 28 AS 25.27 is liable to the Alaska Native family assistance program under (1) of this
 29 subsection;

30 (3) an Alaska Native family assistance program to which the child
 31 support services agency erroneously disburses an overpayment of child support under

1 an income withholding order is liable to the state for the amount disbursed, plus
2 interest at the rate imposed under AS 25.27.062(l)(1);

3 (4) when the right to receive child support has been assigned to an
4 Alaska Native family assistance program, an agreement under AS 25.27.065(a) that
5 has not been adopted as an administrative order of the child support services agency is
6 not effective during a period when the obligee is receiving assistance under an Alaska
7 Native family assistance program;

8 (5) the child support services agency, on behalf of an Alaska Native
9 family assistance program, shall take all necessary action permitted by law to enforce
10 child support orders entered under AS 25.27, including petitioning the court for orders
11 to aid in the enforcement of child support;

12 (6) if an obligor under AS 25.27 is liable to an Alaska Native family
13 assistance program under (1) of this subsection, the state is subrogated to the rights of
14 the obligee to take actions authorized under AS 25.27.130(a);

15 (7) notwithstanding AS 25.27.130(c), the recovery of an amount for
16 which an obligor under AS 25.27 is liable that exceeds the total assistance granted
17 under AS 47.07 and this chapter shall be paid to the obligee;

18 (8) except as provided in AS 25.27.130(f), if an obligee under
19 AS 25.27 is not receiving assistance under AS 47.07 or this chapter at the time the
20 state recovers money in an action under AS 25.27.130(d) or (1) of this subsection, the
21 recovery of any amount for which the obligor is liable shall be distributed to the
22 obligee for support payments, including medical support payments, that had become
23 due and unpaid since the termination of assistance under AS 47.07 or this chapter
24 under a support order in favor of the obligee;

25 (9) after payment to the obligee under (8) of this subsection, the state
26 may retain an amount not to exceed the total unreimbursed assistance paid on behalf
27 of the obligee under AS 47.07 or this chapter;

28 (10) if an alleged obligor is liable to an Alaska Native family
29 assistance program under (1) of this subsection, and a support order has not been
30 entered, the child support services agency may, at its own discretion, undertake an
31 action to establish paternity and a duty of support using the procedures prescribed in

1 AS 25.27 and may enforce a duty of support using the procedures prescribed in
 2 AS 25.27; the agency may also institute administrative proceedings to determine the
 3 paternity of a child born out of wedlock upon application of an Alaska Native family
 4 assistance program; the agency may not recover costs of genetic tests required under
 5 this paragraph from a person who is a recipient of assistance under an Alaska Native
 6 family assistance program;

7 (11) when a hearing officer makes a determination under
 8 AS 25.27.170(d), the hearing officer shall, in addition to the factors described in
 9 AS 25.27.170(e), consider the amount of the alleged obligor's liability to an Alaska
 10 Native family assistance program under (1) of this subsection;

11 (12) notwithstanding AS 25.27.255(a), the child support services
 12 agency may not pay to an obligee any money that has been assigned to an Alaska
 13 Native family assistance program.

14 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to
 15 read:

16 **INDIRECT COURT RULE AMENDMENT.** AS 25.27.060(c), amended by sec. 2 of
 17 this Act, has the effect of changing Rule 90.3, Alaska Rules of Civil Procedure, by changing
 18 standards for issuance of medical and other support orders by the court.

19 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
 20 read:

21 **APPLICABILITY.** This Act applies to actions filed on or after the effective date of
 22 this section and to motions filed on or after the effective date in proceedings filed before, on,
 23 or after the effective date of this section.

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

26 **TRANSITION: REGULATIONS.** The Department of Revenue may proceed to adopt
 27 regulations necessary to implement this Act. The regulations take effect under AS 44.62
 28 (Administrative Procedure Act), but not before July 1, 2009.

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

31 **CONDITIONAL EFFECT.** Section 2 of this Act takes effect only if sec. 11 of this Act

1 receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution
2 of the State of Alaska.

3 * **Sec. 15.** Section 13 of this Act takes effect immediately under AS 01.10.070(c).

4 * **Sec. 16.** Except as provided in sec. 15 of this Act, this Act takes effect July 1, 2009.