

SENATE BILL NO. 46

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY SENATOR KOOKESH

Introduced: 1/21/09

Referred: Health and Social Services, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to child support awards made by a court; and repealing Rule 90.3,
2 Alaska Rules of Civil Procedure."

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

4 * **Section 1.** AS 25 is amended by adding a new chapter to read:

5 **Chapter 28. Child Support Awards by a Court.**

6 **Sec. 25.28.010. Guidelines; primary physical custody.** (a) The court shall
7 calculate a child support award in a case in which one parent is awarded primary
8 physical custody as an amount equal to the adjusted annual income of the noncustodial
9 parent multiplied by a percentage specified in (b) of this section.

10 (b) To calculate the child support award, the court shall multiply the
11 noncustodial parent's adjusted annual income by the following percentages:

- 12 (1) 20 percent for one child;
13 (2) 27 percent for two children;
14 (3) 33 percent for three children; and

1 (4) an additional three percent for each additional child.

2 (c) The court may allow the obligor parent to reduce child support payments
3 by up to 75 percent for a period in which the obligor parent has extended visitation of
4 more than 27 consecutive days. The order must specify the amount of the reduction
5 that is allowable if the extended visitation is exercised.

6 (d) The court may calculate child support based on a determination of the
7 potential income of a parent who voluntarily and unreasonably is unemployed or
8 underemployed. A determination of potential income may not be made for a parent
9 who is physically or mentally incapacitated, or who is caring for a child under two
10 years of age to whom the parents owe a joint legal responsibility. Potential income
11 shall be based on the parent's work history, qualifications, and job opportunities. The
12 court also may impute potential income for nonincome producing or low income
13 producing assets.

14 (e) In this section, "adjusted annual income" means the parent's total income
15 from all sources less

16 (1) mandatory deductions, including

17 (A) federal, state, and local income tax;

18 (B) social security tax or the equivalent contribution to an
19 alternate plan established by a public employer, and self-employment tax;

20 (C) Medicare tax;

21 (D) mandatory union dues;

22 (E) mandatory contributions to a retirement or pension plan;

23 (2) voluntary contributions to a retirement or pension plan or account
24 in which the earnings are tax-free or tax-deferred, except that the total amount of these
25 voluntary contributions plus any mandatory contributions under (1)(E) of this
26 subsection may not exceed 7.5 percent of the parent's gross wages and self-
27 employment income;

28 (3) child support and alimony payments arising from previous
29 relationships that are required by other court or administrative proceedings and
30 actually paid;

31 (4) child support for children from prior relationships living with the

1 parent, calculated by using the formula under this chapter; and

2 (5) work-related child care expenses for the child who is the subject of
3 the child support order.

4 **Sec. 25.28.020. Guidelines; shared, divided, and hybrid custody awards.**

5 (a) The court shall calculate shared, divided, and hybrid physical custody awards as
6 provided in this section.

7 (b) The court shall calculate a child support award in a case in which the
8 parents are awarded shared physical custody by

9 (1) calculating the annual amount each parent would pay to the other
10 parent under AS 25.28.010 assuming the other parent had primary custody; in this
11 calculation, the income limit in AS 25.28.030(c) and the minimum support amount in
12 AS 25.28.030(d) apply;

13 (2) multiplying the amount determined under (1) of this subsection for
14 each parent by the percentage of time the other parent has physical custody of the
15 child; however, if the court finds that the percentage of time each parent will have
16 physical custody does not accurately reflect the ratio of funds each parent will directly
17 spend on supporting the child, the court shall vary this percentage to reflect its
18 findings;

19 (3) determining which parent has the greater amount under (2) of this
20 subsection; the parent with the greater amount under (2) of this subsection is the
21 obligor parent, and the annual award is equal to the difference between the two
22 amounts under (2) of this subsection multiplied by 1.5; however, if this amount is
23 greater than the amount of support calculated under AS 25.28.010 assuming the
24 obligor parent has primary custody, the annual support is the amount calculated under
25 AS 25.28.010.

26 (c) The child support award for shared custody under (b) of this section must
27 be paid in 12 equal monthly installments, except that if

28 (1) shared custody is based on the obligor parent's having physical
29 custody for periods of 30 consecutive days or more, the total annual award may be
30 paid in equal installments over those months in which the obligor parent does not have
31 physical custody; or

1 (2) the obligor parent's income is seasonal, the court may order
2 unequal monthly support payments as provided in AS 25.28.030(g) and (h).

3 (d) The child support order must state that failure to exercise sufficient
4 physical custody to qualify for shared physical custody under (b) or (c) of this section
5 is grounds for modification of the child support order. Denial of visitation by the
6 custodial parent is not cause to increase a child support award.

7 (e) The court shall

8 (1) calculate a child support award in a case in which the parents are
9 awarded divided custody by determining the amount each parent would pay to the
10 other parent for support of a child for whom that parent has primary physical custody
11 under AS 25.28.010, taking into account the income limit in AS 25.28.030(c) and the
12 minimum support amount in AS 25.28.030(d), and offsetting those amounts; and

13 (2) consider whether the amount determined under (1) of this
14 subsection should be varied under AS 25.28.030(b).

15 (f) The court shall

16 (1) calculate a child support award in a case in which the parents are
17 awarded hybrid custody by

18 (A) applying AS 25.28.010, taking into account the income
19 limit in AS 25.28.030(c) and the minimum support amount in
20 AS 25.28.030(d), to determine support for a child in the primary physical
21 custody of each parent;

22 (B) applying (b) of this section to determine support for a child
23 in the shared physical custody of the parents;

24 (C) adjusting pro rata the percentages provided in
25 AS 25.28.010(b) based on the number of children to which each type of
26 custody applies; and

27 (D) combining the amounts to determine the net obligation; and

28 (2) consider whether the amount determined under (1) of this
29 subsection should be varied under AS 25.28.030(b).

30 **Sec. 25.28.030. Exceptions to support awards.** (a) Notwithstanding the
31 requirements in AS 25.28.010 and 25.28.020, the court may vary the award for the

1 reasons stated in this section.

2 (b) The court may vary the child support award as calculated under the other
3 provisions of this chapter for good cause on proof by clear and convincing evidence
4 that manifest injustice would result if the support award were not varied. The court
5 shall specify in writing the reason for the variation, the amount of support that would
6 have been required but for the variation, and the estimated value of any property
7 conveyed instead of support calculated under the other provisions of this chapter.
8 Good cause may include a finding that unusual circumstances exist that require
9 variation of the award in order to award an amount of support that is just and proper
10 for the parties to contribute toward the nurture and education of their children. The
11 court shall consider the custodial parent's income in this determination.

12 (c) The calculation for primary physical custody under AS 25.28.010 does not
13 apply to the extent that the parent has an adjusted annual income over \$100,000. The
14 court may make an additional award only if it is just and proper, taking into account
15 the needs of the child, the standard of living of the child, and the extent to which that
16 standard should reflect the supporting parent's ability to pay.

17 (d) Except as provided in AS 25.28.010(c) and 25.28.020, the minimum child
18 support amount that may be ordered is \$50 a month or \$600 a year.

19 (e) In addition to ordering a parent to pay child support as calculated under
20 this chapter, the court may, in appropriate circumstances and when the parents are
21 minors as described in (f) of this section, order one or more grandparents of a child to
22 pay child support to an appropriate person in an amount determined by the court to
23 serve the best interests of the child; however, the amount may not exceed the lesser of

24 (1) a proportionate share of the amount required to provide care in a
25 supervised setting to the grandchild, as determined by the court; or

26 (2) the amount that would have been awarded if the child's parents had
27 the incomes of the child's grandparents and AS 25.28.010 and 25.28.020 were applied.

28 (f) An order under (e) of this section may be issued only with respect to a
29 child whose parents are both minors, and the order terminates when either parent
30 becomes 18 years of age. The court shall specify in writing the reasons it considers it
31 to be appropriate to order a grandparent to pay child support under this subsection and

1 the factors considered in setting the amount of the child support award. In this
2 subsection, "grandparent" means the natural or adoptive parent of the minor parent.

3 (g) If the noncustodial parent's income is seasonal, the court may order that
4 the annual support amount be paid in unequal monthly payments, with higher
5 payments during the months the parent expects to receive higher income and lower
6 payments in other months; the court may not make an unequal payment order unless

7 (1) the court finds that the burden of budgeting for periods of unequal
8 income should be placed on the obligee rather than the obligor; and

9 (2) the obligee agrees.

10 (h) A court order for unequal payments under (g) of this section must specify
11 the annual support amount, the average monthly support amount, and the amount due
12 for each month. The order must provide that variations from the average monthly
13 amount begin with monthly payments in excess of the average monthly amount so that
14 a deficit situation cannot occur. Until the excess payments begin, the court shall order
15 payment of the average monthly amount.

16 **Sec. 25.28.040. Health care expenses.** (a) The court shall include in the order
17 coverage of the child's health care needs and require health insurance for the child if
18 insurance is available to either parent at a reasonable cost. The court shall consider
19 whether the child is eligible for services through the Indian Health Service, any other
20 entity, or other insurance coverage before ordering the obligor to provide health care
21 coverage through insurance or other means. The court shall allocate equally the cost of
22 insurance between the parties unless the court orders otherwise for good cause. An
23 obligor's child support obligation shall be decreased by the amount of the obligee's
24 portion of health insurance payments ordered by the court and actually paid by the
25 obligor.

26 (b) The court shall increase a child support award by the obligor's portion of
27 health insurance if the obligee is ordered to, and actually does, obtain and pay for
28 insurance. The cost of insurance is the cost attributable to the child for whom support
29 is paid. If the cost to the employee of covering the employee alone is the same as the
30 cost to the employee of covering the employee and dependents, then there is no
31 additional cost to the employee for adding the child and no portion of the cost of

1 coverage may be allocated to the child. If dependent coverage can be added for a
2 single cost, rather than for each dependent, and the dependent coverage covers
3 dependents in addition to the child subject to the order, the cost of the dependent
4 coverage shall be allocated equally among the dependents covered. If there is reason
5 to believe that there is an incremental cost to the employee for insuring dependents but
6 evidence of that incremental cost is unavailable, the cost of insurance is determined by
7 dividing the total cost of coverage by the number of family members covered and
8 multiplying that amount by the number of children subject to the order.

9 (c) The court shall allocate equally between the parties the cost of reasonable
10 health care expenses not covered by insurance unless the court orders otherwise for
11 good cause. A party shall reimburse the other party for the party's share of the
12 uncovered health care expenses within 30 days after receipt of the bill for the health
13 care, payment verification, and, if applicable, a health insurance statement indicating
14 what portion of the cost is uncovered. The court shall allocate the reasonable,
15 uncovered health care expenses exceeding \$5,000 in a calendar year based on the
16 parties' relative financial circumstances when the expenses occur.

17 (d) In this section, "health care expenses" means medical, dental, vision, and
18 mental health counseling expenses.

19 **Sec. 25.28.050. Child support affidavit and documentation.** (a) Subject to
20 the confidentiality requirements of Rule 90.1(f), Alaska Rules of Civil Procedure, each
21 parent in a court proceeding at which child support is involved shall file a statement
22 under oath that states the parent's adjusted annual income and the components of
23 adjusted annual income as described in AS 25.28.010(e). This statement must be filed
24 with a party's initial pleading, including the dissolution petition, divorce complaint or
25 answer, motion to modify, and any response to a motion to modify, and must be
26 accompanied by documentation verifying the income. The documents must be
27 redacted to delete social security numbers and to provide only partial financial account
28 information as provided in Rule 90.1(f), Alaska Rules of Civil Procedure. The
29 statement must state whether the parent has access to health insurance for the children
30 and, if so, the additional cost to the parent of the children's health insurance.

31 (b) While there is an ongoing monthly support obligation, each party shall

1 provide to the other party, within 30 days after a written request, documents such as
2 tax returns and pay stubs showing the party's income for the prior calendar year. The
3 party making the request shall provide documentation of the party's annual income for
4 the same period at the time the request is made. A request under this section may not
5 be made more than once a year. This section does not preclude discovery under the
6 Alaska Rules of Civil Procedure.

7 (c) Unless the information has already been provided to the court under Rule
8 90.1(f), Alaska Rules of Civil Procedure, a statement under (a) of this section must be
9 accompanied by a confidential information sheet as described in Rule 90.1, Alaska
10 Rules of Civil Procedure. Once a complete confidential information sheet has been
11 submitted to the court listing names, dates of birth, and social security numbers as
12 required, the parties shall omit or redact social security numbers from documents
13 subsequently filed in the action unless otherwise ordered by the court.

14 (d) The court may withhold or assess costs or attorney fees for a violation of
15 this section as the circumstances and discouragement of like conduct in the future may
16 require. Costs and attorney fees may be imposed on offending attorneys or parties.

17 **Sec. 25.28.060. Travel expenses.** After determining an award of child support
18 under this chapter, the court shall allocate between the parties reasonable travel
19 expenses that are necessary to exercise visitation as may be just and proper for the
20 parties to contribute.

21 **Sec. 25.28.070. Modification; defense against arrearages.** (a) A court may
22 modify a final child support award on a showing of a material change of
23 circumstances as provided by state law. A material change of circumstances shall be
24 presumed if support as calculated under this chapter is more than 15 percent greater or
25 less than the outstanding support order. For purposes of this subsection, support
26 includes health insurance payments made under AS 25.28.040.

27 (b) A court may not modify a child support arrearage retroactively, except as
28 authorized by AS 25.27.166(d). A modification that is effective on or after the date
29 that a motion for modification, or a notice of petition for modification by the child
30 support services agency, is served on the opposing party is not considered a retroactive
31 modification.

1 (c) The court may find that a parent and a parent's assignee are precluded from
2 collecting arrearages for support of a child that accumulated during a time period
3 exceeding nine months for which the parent agreed or acquiesced to the obligor
4 exercising primary custody of the child. A finding that preclusion is a defense must be
5 based on clear and convincing evidence.

6 **Sec. 25.28.080. Third-party custody.** (a) When the state, or another third
7 party entitled to child support, has custody of all children of a parent, the parent's
8 support obligation to the third party is an amount equal to the adjusted annual income
9 of the parent multiplied by the percentage specified in AS 25.28.010(b). If the third
10 party has custody of some but not all children, the parent's support obligation to the
11 third party is an amount equal to the adjusted annual income of the parent, multiplied
12 by the percentage specified in AS 25.28.010(b) for the total number of the parent's
13 children, multiplied by the number of the parent's children in third-party custody,
14 divided by the total number of the parent's children. For purposes of this subsection,
15 the number of the parent's children includes only children of the parent who live with
16 the parent, are substantially supported by the parent, or are in custody of the third
17 party entitled to support.

18 (b) If, in addition to a support obligation to a third party, one or both parents
19 retain primary or shared physical custody of at least one of their children, the support
20 obligation between the parents is calculated under the other provisions of this chapter,
21 without consideration of the third-party custodian or any children in the custody of the
22 third-party custodian, except that the percentage in AS 25.28.010(b) must be adjusted
23 pro rata for the number of children in the primary custody of a parent, or shared
24 custody of the parents, compared to the total number of children. After that calculation
25 is completed, any support owed may be offset with support owed to a third-party
26 custodian under (a) of this section in order to minimize transactions.

27 **Sec. 25.28.090. Support order forms.** All orders for payment or modification
28 of child support shall be entered on a form developed by the administrative director of
29 the court. A party may lodge a duplicate of the court form produced by a laser printer
30 or similar device. A device may also print, in a contrasting typestyle equivalent to that
31 produced by a typewriter, text that otherwise would have been entered by a typewriter

1 or word processor. A party or attorney who lodges a duplicate certifies by lodging the
2 duplicate that it is identical to the current version of the court form.

3 **Sec. 25.28.100. Dependent tax deduction.** The court may allocate the
4 dependent tax deduction for each child between the parties as is just and proper and in
5 the child's best interests. The allocation must be consistent with AS 25.24.152 and
6 federal law.

7 **Sec. 25.28.300. Definitions.** In this chapter,

8 (1) "divided custody" means that one parent has primary physical
9 custody of one or more children of the relationship and the other parent has primary
10 custody of one or more other children of the relationship, and the parents do not share
11 physical custody of any of their children;

12 (2) "hybrid custody" means that at least one parent has primary
13 physical custody of one or more children of the relationship, and the parents have
14 shared physical custody of at least one child of the relationship;

15 (3) "primary physical custody" or "primary custody" means that a child
16 resides with the other parent for a period, specified in the custody order, of less than
17 30 percent of the year;

18 (4) "shared physical custody" or "shared custody" means that a child
19 resides with one parent for a period, specified in writing in the custody order, of at
20 least 30 percent but not more than 70 percent of the year, regardless of the status of
21 legal custody.

22 * **Sec. 2.** AS 47.10.120(a) is amended to read:

23 (a) When a child in need of aid is committed under this chapter, the court or
24 the child support services agency created in AS 25.27.010 shall, after giving the parent
25 a reasonable opportunity to be heard, require that the parent pay to the department in a
26 manner that the court or the child support services agency directs a sum to cover in
27 full or in part the maintenance and care of the child. The support obligation shall be
28 calculated under AS 25.28 [RULE 90.3(i) OF THE ALASKA RULES OF CIVIL
29 PROCEDURE].

30 * **Sec. 3.** AS 47.12.230(a) is amended to read:

31 (a) When a delinquent minor is committed under this chapter, the court or the

1 child support services agency created in AS 25.27.010 shall, after giving the parent a
2 reasonable opportunity to be heard, require that the parent pay to the department in a
3 manner that the court or the child support services agency directs a sum to cover in
4 full or in part the maintenance and care of the minor. The support obligation shall be
5 calculated under AS 25.28 [RULE 90.3(i) OF THE ALASKA RULES OF CIVIL
6 PROCEDURE].

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

9 REPEAL OF COURT RULE. Rule 90.3, Alaska Rules of Civil Procedure, is repealed.

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

12 NON-APPLICABILITY OF TWO-THIRDS VOTE REQUIREMENT. Because the
13 rule repealed in sec. 4 of this Act is a substantive rule rather than a rule of practice or
14 procedure, the repeal of the rule takes effect even if sec. 4 of this Act does not receive the
15 two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of
16 Alaska.