

**CS FOR SENATE BILL NO. 96(HSS)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE SENATE HEALTH AND SOCIAL SERVICES COMMITTEE

Offered: 3/3/09

Referred: Judiciary, Finance

Sponsor(s): SENATE HEALTH AND SOCIAL SERVICES COMMITTEE

**A BILL**

**FOR AN ACT ENTITLED**

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

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

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

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

1 medical support order **or a cash medical support order, or both** and

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

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

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

20 \* **Sec. 2.** AS 25.25.101(19) is amended to read:

21 (19) "state" means a state of the United States, the District of  
22 Columbia, the Commonwealth of Puerto Rico, **the United States Virgin Islands**, or  
23 any territory or insular possession subject to the jurisdiction of the United States; the  
24 term "state" includes **an Indian tribe and** a foreign jurisdiction that has enacted a law  
25 or established procedures for issuance and enforcement of support orders that are  
26 substantially similar to the procedures under this chapter or under the Uniform  
27 Reciprocal Enforcement of Support Act or the Revised Uniform Reciprocal  
28 Enforcement of Support Act;

29 \* **Sec. 3.** AS 25.27.060(c) is amended to read:

30 (c) In a court or administrative proceeding where the support of a minor child  
31 is at issue, the court or agency, as applicable, may order either **parent** or both parents

1 to pay the amount necessary for support, maintenance, nurture, and education of the  
 2 child. Regardless of whether a support order for periodic payments is issued, the court  
 3 or agency shall issue a medical support order, a cash medical support order, or  
 4 both. The medical support order shall require health care insurance coverage for the  
 5 child if health care insurance coverage is available to either parent or both parents for  
 6 the child at a reasonable cost. The court or agency shall consider whether the child is  
 7 eligible for services through the Indian Health Service or other insurance coverage  
 8 before ordering either parent or both parents to provide health care coverage through  
 9 insurance, cash medical support, or other means or a combination of insurance,  
 10 cash medical support, or other means. The court or agency shall allocate equally the  
 11 cost of health care insurance for the child between the parents unless there is good  
 12 cause to allocate the costs unequally. If the obligor has the duty to make periodic  
 13 payments for non-medical child support, the obligor's periodic payments shall be  
 14 decreased by the amount of the other parent's portion of payments for health insurance  
 15 ordered by the court or agency and actually paid by the obligor. If the obligor has a  
 16 duty to make periodic payments for non-medical child support, the periodic payments  
 17 shall be increased by the obligor's portion of payments for health insurance if the other  
 18 parent is ordered to and actually does obtain and pay for insurance. The court or  
 19 agency shall allocate equally between the parents the cost of reasonable health care  
 20 expenses not covered by private insurance unless there is good cause to allocate the  
 21 costs unequally. One parent shall reimburse the other parent for the first parent's share  
 22 of the uncovered expenses paid by the parent within 30 days after receipt by the first  
 23 parent of the bill for the health care, payment verification, and, if applicable, a health  
 24 insurance statement indicating what portion of the cost is uncovered. The medical  
 25 support order must meet the requirements of AS 25.27.063. Upon a showing of good  
 26 cause, the court may order the parents required to pay support to give reasonable  
 27 security for payments.

28 \* **Sec. 4.** AS 25.27.160(c) is amended to read:

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

31 (1) that health care insurance shall be provided for the child to whom

1 the duty of support is owed if health care insurance is available to the alleged obligor  
 2 at a reasonable cost and that the alleged obligor and the other parent shall share  
 3 equally the cost of the health care insurance and the costs of reasonable health care  
 4 expenses not covered by insurance;

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

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

9 (4) [(3)] that the alleged obligor may appear and show cause in a  
 10 hearing held by the agency why the finding is incorrect, should not be finally ordered,  
 11 and should be modified or rescinded, because

12 (A) no duty of support is owed;

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

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

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

20 (5) [(4)] that, if the person served with the notice under this subsection  
 21 does not request a hearing within 30 days, a copy of the medical support order will be  
 22 sent to the person's employer under AS 25.27.063(b) without further notice or hearing  
 23 for inclusion of the child in family health coverage if it is available through the  
 24 person's employer.

25 \* **Sec. 5.** AS 25.27.193 is amended to read:

26 **Sec. 25.27.193. Periodic review or adjustment of support orders.** As  
 27 necessary to comply with 42 U.S.C. 666, the agency, by regulation, shall provide  
 28 procedures and standards for the modification, through **a three-year cycle of**  
 29 **[PERIODIC]** review or adjustment, of a support order. Regulations adopted under this  
 30 section must include procedures for periodic notice of the right to request review,  
 31 procedures for hearings, and standards for adjustments regarding future periodic

1 support payments. A modification under this section may be made without a showing  
2 of a material change in circumstances.

3 \* **Sec. 6.** AS 25.27.195(a) is amended to read:

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

7 \* **Sec. 7.** AS 25.27.195(b) is amended to read:

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

11 \* **Sec. 8.** AS 25.27.900(2) is repealed and reenacted to read:

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

14 (A) monetary support;

15 (B) cash medical support;

16 (C) payment of health care costs or maintenance of health  
17 insurance;

18 (D) reimbursement of related costs;

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

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

22 \* **Sec. 9.** AS 25.27.900(12) is amended to read:

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

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

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

29 (i) monetary support, including arrearages;

30 (ii) payment of health care costs or maintenance of  
31 health insurance;

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

2 (iv) reimbursement of related costs;

3 (v) [(iv)] payment of attorney fees and legal costs and  
4 other fees; or

5 (vi) [(v)] penalty, interest, and other relief as required  
6 by a tribunal;

7 \* **Sec. 10.** AS 47.07.025(b) is amended to read:

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

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

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

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

19 \* **Sec. 11.** AS 47.27.200(o) is amended to read:

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

22 (1) an obligor is liable to the Alaska Native family assistance program  
23 in the amount of the family assistance provided by the program to a child to whom the  
24 obligor owes a duty of support except that, if a support order has been entered, the  
25 liability of the obligor for assistance provided by an Alaska Native family assistance  
26 program may not exceed the amount of support provided for in the support order, and,  
27 if a medical **support order, cash medical support order, or both,** [ORDER OF  
28 SUPPORT] has been entered, the liability of the obligor for assistance granted under  
29 AS 47.07 may not exceed the amount of support provided for in the medical **support**  
30 **order, cash medical support order, or both** [ORDER OF SUPPORT]; the child  
31 support services agency shall send notice of accruing liability under this paragraph in

1 the same manner as required under AS 25.27.120(c), and, if the agency fails to comply  
2 with the notice requirement of this paragraph, interest does not accrue on the liability  
3 to the Alaska Native family assistance program unless a support order or medical  
4 support order, or cash medical support order, as applicable, has been entered;

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

9 (3) an Alaska Native family assistance program to which the child  
10 support services agency erroneously disburses an overpayment of child support under  
11 an income withholding order is liable to the state for the amount disbursed, plus  
12 interest at the rate imposed under AS 25.27.062(d)(1);

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

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

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

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

28 (8) except as provided in AS 25.27.130(f), if an obligee under  
29 AS 25.27 is not receiving assistance under AS 47.07 or this chapter at the time the  
30 state recovers money in an action under AS 25.27.130(d) or (1) of this subsection, the  
31 recovery of any amount for which the obligor is liable shall be distributed to the

1 obligee for support payments, including medical support payments, that had become  
 2 due and unpaid since the termination of assistance under AS 47.07 or this chapter  
 3 under a support order in favor of the obligee;

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

7 (10) if an alleged obligor is liable to an Alaska Native family  
 8 assistance program under (1) of this subsection, and a support order has not been  
 9 entered, the child support services agency may, at its own discretion, undertake an  
 10 action to establish paternity and a duty of support using the procedures prescribed in  
 11 AS 25.27 and may enforce a duty of support using the procedures prescribed in  
 12 AS 25.27; the agency may also institute administrative proceedings to determine the  
 13 paternity of a child born out of wedlock upon application of an Alaska Native family  
 14 assistance program; the agency may not recover costs of genetic tests required under  
 15 this paragraph from a person who is a recipient of assistance under an Alaska Native  
 16 family assistance program;

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

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

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

26 **INDIRECT COURT RULE AMENDMENT.** AS 25.27.060(c), amended by sec. 3 of  
 27 this Act, has the effect of changing Rule 90.3, Alaska Rules of Civil Procedure, by changing  
 28 standards for issuance of medical and other support orders by the court.

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

31 **APPLICABILITY.** This Act applies to actions filed on or after the effective date of

1 this section and to motions filed on or after the effective date in proceedings filed before, on,  
2 or after the effective date of this section.

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

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

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

10         CONDITIONAL EFFECT. Section 3 of this Act takes effect only if sec. 12 of this Act  
11 receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution  
12 of the State of Alaska.

13 \* **Sec. 16.** Section 14 of this Act takes effect immediately under AS 01.10.070(c).

14 \* **Sec. 17.** Except as provided in sec. 16 of this Act, this Act takes effect July 1, 2009.