

HOUSE CS FOR CS FOR SENATE BILL NO. 96(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/14/09

Referred: 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' for
2 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.** The uncodified law of the State of Alaska is amended by adding a new section
10 to read:

11 DEFINITION OF "STATE"; LEGISLATIVE INTENT. (a) It is the intent of the
12 legislature that in order to bring Alaska into conformity with the nationwide Uniform
13 Interstate Family Support Act (UIFSA), as approved by the American Bar Association on

1 February 9, 1993, and as in effect on August 22, 1996, including any amendments officially
 2 adopted as of that date by the National Conference of Commissioners on Uniform State Laws,
 3 it is necessary to amend AS 25.25.101 to include "an Indian tribe" and "the United States
 4 Virgin Islands" in the definition of "state."

5 (b) The proposed changes made in AS 25.25.101(19) under sec. 3 of this Act are
 6 conforming amendments that will result in procedural changes in Alaska for enforcement and
 7 modification of child support orders from other jurisdictions. UIFSA does not determine the
 8 authority of an Indian tribe to enter, modify, or enforce a child support order. In adopting
 9 UIFSA conforming amendments, the legislature does not intend to grant or restrict tribal
 10 jurisdiction to enter, modify, or enforce child support orders, and the amendments are not
 11 intended, either directly or impliedly, to acknowledge, expand, or restrict tribal jurisdiction.

12 * **Sec. 2.** AS 11.51.122(a) is amended to read:

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

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

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

28 (3) intentionally participates in a commercial, business, employment,
 29 or other arrangement with the obligor, knowing at the time that the arrangement is
 30 made that it will allow the obligor to avoid paying all or some of the support when it is
 31 due or to avoid having a lien placed on assets for the payment of delinquent support;

1 receipt of a substantial asset for less than fair market value from an obligor after the
 2 obligor's support order has been established constitutes a rebuttable presumption that
 3 the person receiving the asset knew that the transfer would allow the obligor to avoid
 4 paying all or some of the support or to avoid having a lien placed on the asset.

5 * **Sec. 3.** AS 25.25.101(19) is amended to read:

6 (19) "state" means a state of the United States, the District of
 7 Columbia, the Commonwealth of Puerto Rico, **the United States Virgin Islands**, or
 8 any territory or insular possession subject to the jurisdiction of the United States; the
 9 term "state" includes **an Indian tribe and** a foreign jurisdiction that has enacted a law
 10 or established procedures for issuance and enforcement of support orders that are
 11 substantially similar to the procedures under this chapter or under the Uniform
 12 Reciprocal Enforcement of Support Act or the Revised Uniform Reciprocal
 13 Enforcement of Support Act;

14 * **Sec. 4.** AS 25.27.060(c) is amended to read:

15 (c) In a court or administrative proceeding where the support of a minor child
 16 is at issue, the court or agency, as applicable, may order either **parent** or both parents
 17 to pay the amount necessary for support, maintenance, nurture, and education of the
 18 child. Regardless of whether a support order for periodic payments is issued, the court
 19 or agency shall issue a medical support order, **a cash medical support order, or**
 20 **both**. The medical support order shall require health care insurance coverage for the
 21 child if health care insurance coverage is available to either parent **or both parents** for
 22 the child at a reasonable cost. The court or agency shall consider whether the child is
 23 eligible for services through the Indian Health Service or other insurance coverage
 24 before ordering either parent **or both parents** to provide health care coverage through
 25 insurance, **cash medical support**, or other means **or a combination of insurance,**
 26 **cash medical support, or other means**. The court or agency shall allocate equally the
 27 cost of health care insurance for the child between the parents unless there is good
 28 cause to allocate the costs unequally. If the obligor has the duty to make periodic
 29 payments for non-medical child support, the obligor's periodic payments shall be
 30 decreased by the amount of the other parent's portion of payments for health insurance
 31 ordered by the court or agency and actually paid by the obligor. If the obligor has a

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

13 * **Sec. 5.** AS 25.27.160(c) is amended to read:

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

16 (1) that health care insurance shall be provided for the child to whom
 17 the duty of support is owed if health care insurance is available to the alleged obligor
 18 at a reasonable cost and that the alleged obligor and the other parent shall share
 19 equally the cost of the health care insurance and the costs of reasonable health care
 20 expenses not covered by insurance;

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

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

25 (4) [(3)] that the alleged obligor may appear and show cause in a
 26 hearing held by the agency why the finding is incorrect, should not be finally ordered,
 27 and should be modified or rescinded, because

28 (A) no duty of support is owed;

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

31 (C) adequate health care is available to the child through the

1 Indian Health Service or other insurance coverage; or

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

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

10 * **Sec. 6.** AS 25.27.193 is amended to read:

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

19 * **Sec. 7.** AS 25.27.195(a) is amended to read:

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

23 * **Sec. 8.** AS 25.27.195(b) is amended to read:

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

27 * **Sec. 9.** AS 25.27.900(2) is repealed and reenacted to read:

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

30 (A) monetary support;

31 (B) cash medical support;

- 1 (C) payment of health care costs or maintenance of health
 2 insurance;
 3 (D) reimbursement of related costs;
 4 (E) payment of attorney fees and legal costs and other fees;
 5 (F) penalty, interest, and other relief as required by a support
 6 order;

7 * **Sec. 10.** AS 25.27.900(12) is amended to read:

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

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

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

14 (i) monetary support, including arrearages;

15 (ii) payment of health care costs or maintenance of
 16 health insurance;

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

18 **(iv)** reimbursement of related costs;

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

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

23 * **Sec. 11.** AS 47.07.025(b) is amended to read:

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

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

31 (2) has received payment from a third party for the costs of the

1 services; and

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

4 * **Sec. 12.** AS 47.27.200(o) is amended to read:

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

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

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

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

29 (4) when the right to receive child support has been assigned to an
30 Alaska Native family assistance program, an agreement under AS 25.27.065(a) that
31 has not been adopted as an administrative order of the child support services agency is

1 not effective during a period when the obligee is receiving assistance under an Alaska
2 Native family assistance program;

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

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

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

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

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

23 (10) if an alleged obligor is liable to an Alaska Native family
24 assistance program under (1) of this subsection, and a support order has not been
25 entered, the child support services agency may, at its own discretion, undertake an
26 action to establish paternity and a duty of support using the procedures prescribed in
27 AS 25.27 and may enforce a duty of support using the procedures prescribed in
28 AS 25.27; the agency may also institute administrative proceedings to determine the
29 paternity of a child born out of wedlock upon application of an Alaska Native family
30 assistance program; the agency may not recover costs of genetic tests required under
31 this paragraph from a person who is a recipient of assistance under an Alaska Native

1 family assistance program;

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

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

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

11 **INDIRECT COURT RULE AMENDMENT.** AS 25.27.060(c), amended by sec. 4 of
12 this Act, has the effect of changing Rule 90.3, Alaska Rules of Civil Procedure, by changing
13 standards for issuance of medical and other support orders by the court.

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

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

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

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

24 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
25 read:

26 **CONDITIONAL EFFECT.** Section 4 of this Act takes effect only if sec. 13 of this Act
27 receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution
28 of the State of Alaska.

29 * **Sec. 17.** Section 15 of this Act takes effect immediately under AS 01.10.070(c).

30 * **Sec. 18.** Except as provided in sec. 17 of this Act, this Act takes effect July 1, 2009.