

Introduced: 3/13/74
Referred: Health, Education & Social
Services and Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 783

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to child support proceedings; and
7 providing for an effective date."

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

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

10 CHAPTER 23. SUPPORT OF CHILDREN.

11 Sec. 25.23.010. ORDER OF SUPPORT. (a) In a court proceeding
12 where the support of a minor child is at issue, the court may order
13 either or both parents to pay the amount necessary for the support,
14 maintenance, nurture and education of the child. Upon a showing
15 of good cause the court may order the parent or parents required to
16 pay support to give reasonable security for support payments.
17 An order for child support may be modified or revoked as the court
18 considers necessary.

19 Sec. 25.23.020. ORDER TO ASSIGN WAGES FOR SUPPORT. (a) In a
20 proceeding where the court has ordered either or both parents to pay
21 for the support of a minor child, the court may on its own motion
22 or motion of a party order either parent or both parents to assign
23 to the court, or to an officer designated by the court, that
24 portion of salary or wages of either parent due them presently and
25 in the future sufficient to pay the amount ordered by the court for
26 the support, maintenance, nurture and education of the minor child.

27 (b) The order of assignment is binding upon an employer upon
28 service of a copy of the order upon the employer and until further
29 order of the court. The employer may deduct one dollar for each

1 payment made under the order.

2 (c) The assignment made under court order has priority as
3 against any attachment, execution or other assignment unless other-
4 wise ordered by the court.

5 (d) An employer who terminates an employee's employment because
6 his wages are subjected to an order under this section is guilty of
7 a misdemeanor.

8 Sec. 25.23.030. FUNCTIONS OF COURT TRUSTEE. In a proceeding
9 where the court makes an order requiring payment of child support
10 and orders payment to be paid to a court trustee, the court trustee
11 shall

12 (1) request the person making payment to appear before him
13 and explain why he is not complying with the court's order;

14 (2) act as the attorney or if not qualified as an
15 attorney, employ independent legal counsel for the minor children,
16 subject to the right of the legal guardian of the children to employ
17 independent counsel and subject to the right of the attorney general
18 to represent the children if he so desires; and

19 (3) take any action he considers necessary to enforce the
20 court's child support order, and petition the court for orders to aid
21 in the enforcement of its child support orders, but may not petition
22 the court for a modification of the amount of child support ordered.

23 Sec. 25.23.040. REDUCTION OF ARREARS TO JUDGMENT. If,
24 following the entry of a child support order, it is shown in a
25 hearing that the person owing the support has failed to comply with
26 the order, the court may order that the child support payment
27 arrearage be reduced to a judgment enforceable in the same manner
28 as all other judgments at law.

29 * Sec. 2. AS 09.50.030 is amended to read:

1 Sec. 09.50.030. JURY TRIAL. Except for contempt charged under
2 sec. 45 of this chapter, a [A] person who is charged with contempt of
3 court not committed in the presence of the court, where the act or
4 thing so charged as a contempt is of such nature as to constitute also
5 a criminal offense under a statute of the United States or a law of
6 this state, has a right to jury trial.

7 * Sec. 3. AS 09.50 is amended by adding a new section to read:

8 Sec. 09.50.045. CONTEMPT FOR VIOLATION OF SUPPORT ORDER. (a)
9 When the contempt consists of a failure to comply with a court order
10 for child support, the defendant may be imprisoned until he complies
11 but in no case may he be imprisoned for longer than 10 consecutive
12 days. The defendant may not then be imprisoned again for contempt
13 under this section for a period of 90 days following his release.

14 (b) An indigent person charged with contempt under this section
15 is entitled to representation by the public defender.

16 * Sec. 4. AS 09.50.050 is amended to read:

17 Sec. 09.50.050. IMPRISONMENT TO COMPEL PERFORMANCE OF AN ACT.
18 Except for contempt under sec. 45 of this chapter, when [WHEN] the
19 contempt consists of the omission or refusal to perform an act which
20 is yet in the power of the defendant to perform, he may be imprisoned
21 until he has performed it.

22 * Sec. 5. AS 18.85.100(a) is amended to read:

23 (a) An indigent person who is being detained by a law enforce-
24 ment officer or by an officer of the court in connection with a
25 serious crime, in connection with a failure to obey a court order for
26 child support, or who is under formal charge of having committed, or
27 is being detained under a conviction of a serious crime, or is on
28 probation or parole, or is entitled to representation under the
29 Supreme Court Rules of Children's Procedure, or against whom

1 commitment proceedings for mental illness have been initiated, is
2 entitled

3 (1) to be represented by an attorney to the same extent
4 as a person having his own attorney is entitled; and

5 (2) to be provided with the necessary services and
6 facilities of this representation, including investigation and other
7 preparation.

8 * Sec. 6. AS 25.25.080 is repealed and re-enacted to read:

9 Sec. 25.25.080. JURISDICTION AND ENFORCEMENT. (a) Jurisdiction
10 for all proceedings under this chapter is in the superior court.

11 (b) All duties of support including the duty to pay arrearages
12 are enforceable by a proceeding under this chapter including a pro-
13 ceeding for civil contempt. The defense that the parties are immune
14 to suit because of their relationship as husband and wife or parent
15 and child is not available to the obligor.

16 * Sec. 7. AS 25.25.160 is repealed and re-enacted to read:

17 Sec. 25.25.160. DUTY OF COURT AND OFFICIALS OF THIS STATE AS
18 RESPONDING STATE. (a) When the court receives copies of a complaint,
19 certificate, and statutes from an initiating court, the clerk of
20 court shall docket the case, prepare a summons, and notify the
21 Department of Public Safety. The Department of Public Safety shall
22 use all means at their disposal to locate the obligor, effect
23 service of process, and obtain jurisdiction over the obligor or his
24 properties. If service is completed, then upon its return the clerk
25 of court shall notify the attorney general and deliver copies of all
26 papers filed with the court.

27 (b) If service cannot be completed, the Department of Public
28 Safety shall certify a return to the court specifying the reasons
29 why service could not be completed and specifying the manner by

1 which attempts were made to identify, locate, and serve the obligor.
2 The clerk of court shall transmit this information to the authorities
3 of the initiating state and seek additional information which will
4 enable service to be completed.

5 * Sec. 8. AS 25.25 is amended by adding new sections to read:

6 Sec. 25.25.171. HEARING AND CONTINUANCES. If the obligee is
7 not present at a hearing on the merits of the complaint and the
8 obligor denies owing the duty of support alleged in the petition or
9 offers evidence constituting a defense, the court, upon request of
10 either party, shall continue the hearing to permit evidence relative
11 to the duty to be adduced by either party by deposition or by
12 appearing in person before the court. The court may designate the
13 judge of the initiating court as a person before whom a deposition
14 may be taken.

15 Sec. 25.25.173. RULES OF EVIDENCE. In a hearing for the
16 enforcement of this chapter the court is governed by the rules of
17 evidence applicable in a civil suit in superior court. If the
18 action is based upon a support order issued by another court a
19 certified copy of the order shall be received as evidence of the
20 duty of support, subject only to any defenses available to an obligor
21 with respect to paternity or to a defendant in an action or a
22 proceeding to enforce a foreign money judgment. The determination
23 or enforcement of a duty of support owed to one obligee is unaffected
24 by any interference by another obligee with rights of custody or
25 visitation granted by a court.

26 Sec. 25.25.175. IMMUNITY FROM CRIMINAL PROSECUTION. If at a
27 hearing the obligor is called for examination as an adverse party
28 and he declines to answer upon the ground that his testimony may tend
29 to incriminate him, the court may require him to answer, in which

1 event he is immune from criminal prosecution with respect to matters
2 revealed by his testimony, except for perjury committed in this
3 testimony.

4 Sec. 25.25.177. PATERNITY. If the obligor asserts as a defense
5 that he is not the father of the child for whom support is sought
6 and the court finds that the defense is not frivolous, then if both
7 of the parties are present at the hearing, or the court finds that
8 the presence of either or both of the parties is not necessary, the
9 court may adjudicate the paternity issue. Otherwise the court may
10 continue the action until the paternity issue has been adjudicated.

11 * Sec. 9. AS 25.25.170 is repealed.

12 * Sec. 10. AS 25.25.180 is amended to read:

13 Sec. 25.25.180. ORDER OF SUPPORT. Provisions of chapter 23 of
14 this title apply to proceedings under this chapter. If the court
15 of the responding state finds a duty of support, it may order the
16 defendant to furnish support or reimbursement therefore and subject
17 the property of the defendant to the order. Support orders made
18 under this chapter must require that payments be made to a trustee
19 of the court.

20 * Sec. 11. AS 25.25.210 is repealed and re-enacted to read:

21 Sec. 25.25.210. ADDITIONAL DUTIES WHEN ALASKA RESPONDING COURT.
22 When acting as a responding court, the court shall through a court
23 trustee or the clerk of the court carry out the functions listed
24 in AS 25.23.030. The court through a court trustee or the clerk of
25 the court shall also correspond with the initiating state and advise
26 it of the reasons for the defendant's failure to comply with the
27 court's order and what is being done to secure his compliance. In
28 addition the court through a court trustee or the clerk of the
29 court shall

1 (1) upon the receipt of a payment made by the defendant
2 under an order of the court or otherwise, transmit the payment
3 immediately to the court of the initiating state; and

4 (2) upon request, furnish to the court of the initiating
5 state a certified statement of all payments made by the defendant.

6 * Sec. 12. AS 25.25 is amended by adding new sections to read:

7 Sec. 25.25.300. REGISTRATION OF SUPPORT ORDERS OF OTHER STATES.

8 (a) If a duty of support is based upon a support order of another
9 state, the obligee may register the order with the court in this
10 state. Registration is effected by delivery of

11 (1) three certified copies of the order including any
12 modification;

13 (2) a copy of the reciprocal enforcement of support
14 statutes of the state in which the order was entered; and

15 (3) a certified statement of the obligee stating the
16 obligee's mailing address, the last known residence and mailing
17 address of the obligor, the amount of support presently due under the
18 order, a description and location of any property of the obligor which
19 may be subject to execution, and a list of states in which the order
20 is registered.

21 (b) The clerk of court shall maintain a registry of support
22 orders from other states. Upon receipt of a proper registration,
23 the clerk shall send notice by registered or certified mail of the
24 registration and a copy of the support order to the obligor at his
25 last known address. The notice shall include notice that the
26 obligor has 25 days from the date of mailing in which to petition
27 the court to vacate the registration or for other relief. The
28 validity of the order and the registration may not be contested after
29 that time.

1 Sec. 25.25.310. EFFECT OF REGISTRATION: ENFORCEMENT PROCEDURE.

2 A registered support order of another state is enforceable in this
3 state in the same manner as an order under chapter 23 of this title,
4 including provisions relating to enforcement by the court trustee.

5 Sec. 25.25.320. GROUNDS FOR CHALLENGING A REGISTERED ORDER.

6 (a) A motion to vacate or annul an order registered under sec. 300
7 of this chapter may be based only on the grounds for challenging a
8 foreign money judgment under AS 09.30.120.

9 (b) If it is shown that an appeal from the order is pending or
10 will be taken, or that a stay of execution has been granted, the
11 court shall stay enforcement of the order until the appeal is con-
12 cluded, the time for appeal has expired, or the order is vacated,
13 provided that the obligor has furnished adequate security for payment
14 of the support order as rendered by the other state.

15 * Sec. 13. This Act takes effect on July 1, 1974.