

Original sponsor: Croft

Offered: 5/30/76  
For Today's Supplementary  
Calendar

1 IN THE SENATE

BY THE RULES COMMITTEE

2 HOUSE CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 659 (Rules)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to child support enforcement; amending  
7 Rule 67 of the Rules of Civil Procedure; and providing  
8 for an effective date."

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

10 \* Section 1. AS 47 is amended by adding a new chapter to read:

11 CHAPTER 23. CHILD SUPPORT ENFORCEMENT AGENCY.

12 Sec. 47.23.010. CREATION OF CHILD SUPPORT ENFORCEMENT AGENCY.

13 There is created in the Department of Health and Social Services the  
14 child support enforcement agency.

15 Sec. 47.23.020. DUTIES OF THE AGENCY. The agency shall

16 (1) administer and enforce child support orders of the  
17 superior courts of the state;

18 (2) administer and enforce the Uniform Reciprocal Enforcement  
19 of Support Act (AS 25.25).

20 Sec. 47.23.030. ESTABLISHMENT OF FUND. There is established in  
21 the state general fund a continuing, revolving, reserve account to  
22 receive collections and make the authorized disbursements of the agency.

23 Sec. 47.23.040. DETERMINATION OF PATERNITY. The agency may  
24 initiate efforts to have the paternity of children born out of wedlock  
25 determined by the court only on voluntary application by the mother or  
26 other legal custodian. The agency shall appear on behalf of the mother  
27 or legal custodian. The court may enter any appropriate filiation  
28 order.

29 Sec. 47.23.050. LEGAL ASSISTANCE. The Department of Health and

1 Social Services shall contract with the Department of Law to provide  
2 needed legal services.

3 Sec. 47.23.060. ORDER OF SUPPORT. (a) An order of support estab-  
4 lishes a relationship by which the custodian of the child is the admin-  
5 istrator for the purposes of administering child support on behalf of  
6 the child. The court shall carefully consider the need for support, the  
7 ability of both parents to meet such support obligations, the extent to  
8 which the parents supported the child before divorce, and the economic  
9 ability of the parents to pay after separation and divorce. The court  
10 shall also consider the effect on the support obligation of a change in  
11 custodian. The need of the child for support shall be considered  
12 regardless of the sex of the parent awarded custody of the child.

13 (b) It is the duty of the person awarded support on behalf of the  
14 child to keep support current on behalf of the child and to notify the  
15 agency in a timely fashion of arrearages. If that person does not  
16 notify the agency of a need for support collection services within six  
17 months of the support coming due, the agency may not attempt to collect  
18 that support.

19 (c) In a court proceeding where the support of a minor child is at  
20 issue, the court may order either or both parents to pay the amount  
21 necessary for support, maintenance, nurture and education of the child.  
22 Upon a showing of good cause the court may order the parents required to  
23 pay support to give reasonable security for payments. An order for  
24 prospective child support may be modified or revoked as the court  
25 considers necessary.

26 Sec. 47.23.070. ORDER TO ASSIGN WAGES FOR SUPPORT. (a) In a  
27 proceeding in which the court has ordered either or both parents to pay  
28 for the support of a minor child, the court may, on its own motion or  
29 motion of a party or the agency on behalf of a party, after notice and

1 an opportunity for hearing, order either parent or both parents to  
2 assign to the custodian of the child that portion of salary or wages of  
3 either parent due them currently and in the future sufficient to pay the  
4 amount ordered by the court for the support, maintenance, nurture and  
5 education of the minor child.

6 (b) The order of assignment is binding upon an employer upon  
7 service of a copy of the order upon the employer and until further order  
8 of the court. The employer may deduct \$1 for each payment made under  
9 the order.

10 (c) The assignment made under court order has priority as against  
11 an attachment, execution or other assignment unless otherwise ordered by  
12 the court.

13 (d) An employer may not terminate an employee's employment because  
14 his wages are subject to an order under this section.

15 Sec. 47.23.080. ENFORCEMENT OF SUPPORT ORDERS. In a court order  
16 requiring payment of child support, absent a showing of good cause, the  
17 court shall order the payments made to the agency. However, the court  
18 shall accept reasonable agreements as to method of payment. The agency  
19 shall take all necessary action to enforce those child support orders,  
20 including (1) petitioning the court for orders to aid in the enforcement  
21 of child support; and (2) appearing on behalf of the custodian and  
22 enforcing any child support order entered. The determination or enforce-  
23 ment of a duty of support may, in the discretion of the court, be  
24 affected by bad faith interference by the custodian with rights of  
25 custody and visitation granted by a court.

26 Sec. 47.23.090. REDUCING ARREARS TO JUDGMENT. The agency, on  
27 behalf of the person awarded support for the benefit of the child, may  
28 enforce support orders through execution. If the agency applies to the  
29 court for an order reducing the outstanding arrears to judgment in

1 accordance with the Rules of Civil Procedure. At the hearing the  
2 obligor may present evidence

3 (1) that the arrears are not owed;

4 (2) that he or she is unable to pay; or

5 (3) that the court should consider modifying custody or  
6 support if that is in the best interests of the child.

7 Sec. 47.23.100. ALL PERSONS MAY USE AGENCY. The agency shall  
8 provide aid to any person due child support under the laws of this  
9 state. If the obligee is indigent or otherwise unable to pay for these  
10 services, the agency shall act without charge to the obligee. If the  
11 agency determines that the obligee is financially able to pay, costs  
12 shall be assessed according to regulations adopted by the department and  
13 be paid into the fund established in AS 47.23.035.

14 Sec. 47.23.110. DEFINITIONS. In this chapter

15 (1) "agency" means the child support enforcement agency;

16 (2) "department" means the Department of Health and Social  
17 Services.

18 \* Sec. 2. AS 25.25.080 is repealed and re-enacted to read:

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

21 (b) All duties of support, including the duty to pay arrears, are  
22 enforceable by a proceeding under this chapter, including a proceeding  
23 for civil contempt. The defense that the parties are immune to suit  
24 because of their relationship as husband and wife or parent and child is  
25 not available to the obligor.

26 \* Sec. 3. AS 25.25.100 is amended to read:

27 Sec. 25.25.100. OFFICIALS TO REPRESENT PLAINTIFF. The child  
28 support enforcement agency [ATTORNEY GENERAL, UPON THE REQUEST OF THE  
29 DEPARTMENT OF HEALTH AND WELFARE OR OF THE COURT,] shall represent the

1 plaintiff in a proceeding under this chapter.

2 \* Sec. 4. AS 25.25 is amended by adding new sections to read:

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

11 Sec. 25.25.173. RULES OF EVIDENCE. In a hearing for the enforce-  
12 ment of this chapter, the court is governed by the rules of evidence  
13 applicable in a civil suit in superior court. If the action is based  
14 upon a support order issued by another court, a certified copy of the  
15 order shall be received as evidence of the duty of support, subject only  
16 to any defenses available to an obligor with respect to paternity or to  
17 a defendant in an action or a proceeding to enforce a foreign money  
18 judgment. Any such order may be modified by the courts of this state.

19 Sec. 25.25.175. PATERNITY. If the obligor asserts as a defense  
20 that he is not the father of the child for whom support is sought and  
21 the court finds that the defense is not frivolous, then if both of the  
22 parties are present at the hearing, or the court finds that the presence  
23 of either or both of the parties is not necessary, the court may adjudi-  
24 cate the paternity issue. Otherwise, the court may continue the action  
25 until the paternity issue has been adjudicated. Nothing in this section  
26 is intended to diminish the standard of proof for establishing pater-  
27 nity.

28 \* Sec. 5. AS 09.55.210(5) is repealed.

29 \* Sec. 6. Section 1 of this Act has the effect of amending Rule 67, Rules

1 of Civil Procedure, by identifying situations where child support payments  
2 need not be made to the agency. The section containing the change in court  
3 rule must be approved by an affirmative vote of two-thirds of the membership  
4 to which the house is entitled.

5 \* Sec. 7. This Act takes effect July 1, 1976.  
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