

Introduced: 2/13/84
Referred: Judiciary and
Finance

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 667

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

9 * Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) The legislature
10 finds that the impact on the general public of the failure of parents to
11 support their children is vast and far reaching. The harmful effects of
12 unpaid child support touch not only the poor but reach far beyond to dimin-
13 ish the overall quality of life for all Alaskans. The purpose of the
14 amendments in this Act is to enhance the efforts of those persons who seek
15 to enforce the payment of child support obligations by noncustodial parents
16 having the duty of support.

17 (b) The legislature also finds that a disproportionately high per-
18 centage of lower-income, single-parent families are headed by women. The
19 difficulties in obtaining child support from noncustodial parents contrib-
20 utes significantly to those families' hardship. The fact that the general
21 public bears the huge monetary cost of supporting families on public assis-
22 tance because of inadequate support from noncustodial parents is only one
23 of the most obvious effects of the problem of unpaid child support. In
24 addition, it is recognized that the failure of parents to support their
25 children is a major contributory factor to the broader social problems of
26 child abuse and delinquency. Even where families are able to survive
27 without public assistance, the hardship experienced by the family, and, in
28 particular, the children in that family, is usually substantial.

29 (c) The legislature further finds that the amendments in this Act

1 will enhance efforts to enforce the requirement that parents pay the cost
2 of rearing their children and thereby enhance the quality of life for all
3 Alaskans.

4 * Sec. 2. AS 09.65.132(g) is amended to read:

5 (g) An income assignment under this section has priority over
6 all other attachments, executions, garnishments, or other assignments
7 unless otherwise ordered by the court. An income assignment is not
8 limited to the wages of an obligor but may include all money owed to
9 the obligor not otherwise exempt by law. The exemptions from exe-
10 cution by judgment debtors under AS 09.35.080(a) and the restrictions
11 from execution by judgment debtors under AS 09.35.080(b)(1) do not
12 apply to income assignments under this section; however, under this
13 section, the agency may not attach more than 50 percent of the obli-
14 gor's net disposable earnings, as defined in 15 U.S.C. sec. 1672 [50
15 PERCENT OF THE GROSS WAGES OF THE OBLIGOR OR \$100 A WEEK, WHICHEVER IS
16 LESS, IS EXEMPT FROM EXECUTION UNDER THIS SECTION].

17 * Sec. 3. AS 25.20.050(a) is amended to read:

18 AS 25.20.050. LEGITIMATION BY SUBSEQUENT MARRIAGE, ACKNOWLEDGE-
19 MENT IN WRITING, OR ADJUDICATION. (a) A child born out of wedlock is
20 legitimated and considered the heir of the alleged parent [FATHER]
21 when [WHO] (1) the alleged parent subsequently marries the undisputed
22 parent [MOTHER] of the child; (2) the alleged parent acknowledges, in
23 writing, parentage [PATERNITY] of the child; or (3) the alleged
24 parent is judged to be the parent [FATHER] by a superior court, upon
25 sufficient evidence. Acceptable evidence includes, but is not limited
26 to, evidence that the alleged parent's [FATHER'S] conduct and bearing
27 toward the child, either by word or act, indicates that the child is
28 the child of the alleged parent [FATHER]. That conduct may be con-
29 strued by the court to constitute evidence of parentage [PATERNITY].

1 Extrinsic evidence may be used by the court to show intent when indef-
2 inite, ambiguous, or uncertain terms are used.

3 * Sec. 4. AS 25.20.050 is amended by adding a new subsection to read:

4 (d) The results of a blood test, tissue-type test, protein
5 comparison, and other scientifically accepted procedures must be
6 admitted and weighed in conjunction with other evidence in determining
7 the statistical probability that the individual alleged to be the
8 parent is the legal parent of the child in question. However, a
9 scientifically accepted procedure establishing a probability of par-
10 entage at 95 percent or higher creates a presumption of parentage that
11 may be rebutted only by clear and convincing evidence.

12 * Sec. 5. AS 25.25.250 is amended to read:

13 Sec. 25.25.250. EFFECT OF PARTICIPATION IN PROCEEDING. Par-
14 ticipation in a proceeding under this chapter does not confer upon any
15 court jurisdiction of any of the parties in it in any other proceed-
16 ing. The superior court may not adjudicate custody, visitation, or
17 property rights in proceedings under this chapter

18 * Sec. 6. AS 47.23 is amended by adding a new section to read:

19 Sec. 47.23.065 WAIVER OF CHILD SUPPORT. (a) A custodian of a
20 child, including a custodial parent, owes a duty to that child to
21 ensure that child support is paid by the noncustodial parent who is
22 obligated to pay it. An agreement to waive past or future child
23 support, made between a person who owes a duty of support (the obli-
24 gor) and a person who is entitled to receive support on a child's
25 behalf (the obligee), is not enforceable unless (1) the agreement is
26 put in writing at the time the agreement is made, and (2) the agree-
27 ment is signed by both the obligor and the obligee at the time the
28 agreement is made.

29 (b) When the right to receive child support has been assigned to

1 a governmental entity, no agreement to waive past or future child
2 support between an obligor and an obligee that has not been adopted as
3 an administrative order of the agency, is effective with respect to
4 any period during which the obligee is receiving public assistance
5 granted under AS 47.25.310 -- 47.25.420.

6 (c) In a dissolution or divorce, a court may not accept a waiver
7 of support by a custodial parent without proof that the custodial
8 parent can adequately support the needs of the child.

9 * Sec. 7. AS 47.23.080(c) is amended to read:

10 (c) The determination or enforcement of a duty of support is
11 unaffected by any interference by the custodian of the child with
12 rights of custody or visitation granted by a court. When the agency
13 appears in an action seeking to establish or enforce support on behalf
14 of a child, no custody, visitation, or property rights may be adju-
15 dicated.

16 * Sec. 8. AS 47.23 is amended by adding a new section to read:

17 Sec. 47.23.085. SUBPOENAS. The agency, with the concurrence of
18 the commissioner of revenue, may subpoena persons, books, records, or
19 documents in order to determine the extent and location of assets of
20 any obligor who is more than 45 days in arrears in his or her child
21 support obligation established either by court or administrative
22 order.

23 * Sec. 9. AS 47.23 is amended by adding a new section to read:

24 Sec. 47.23.225 SUPPORT PAYMENT OBLIGATIONS AS JUDGMENTS. (a) A
25 court order in which a noncustodial parent (the obligor) is ordered to
26 make periodic child support payments to the custodian of the child
27 (the obligee) establishes a judgment in favor of the obligee when each
28 payment becomes due. The obligee, or the agency on behalf of the
29 obligee, may take action to collect the judgment due. A party seeking

1 to execute on unpaid support payments may execute on the total sum of
2 unpaid support due, and is not limited to executing on each unpaid
3 payment separately.

4 (b) To commence an action to collect the payment due, the obli-
5 gee, or the agency on behalf of the obligee, shall serve on the obli-
6 gor, at the obligor's last known address, (1) an affidavit that states
7 that one or more payments of child support are 30 or more days past
8 due and that sets out the amounts past due and the dates they became
9 due; and (2) notice to the obligor of his or her right to respond.
10 The obligee, or the agency on behalf of the obligee, shall file with
11 the court a copy of the affidavit served on the obligor, and proof of
12 service of the affidavit and the notice of the obligor's right to
13 respond. The obligor has 10 days after receiving the notice and
14 affidavit, if hand-delivered, or 15 days after the date of mailing the
15 notice and affidavit, if mailed, in which to respond. The obligor's
16 response must consist of filing an affidavit with the court. If the
17 obligor's affidavit states that he or she has paid any of the amounts
18 claimed to be delinquent and describes in detail the method of payment
19 and makes an offer of proof of that payment, the obligor is entitled
20 to a hearing limited to the issue of whether he or she has made the
21 payments required by the court order. After the hearing, if any, the
22 court shall enter a judgment for the amount of money that is unpaid.
23 If the obligor does not file an affidavit or is not entitled to a
24 hearing, the judgment may be enforced as to the unpaid amount in the
25 same manner as any other judgment.

26 (c) This section operates as an addition to and not a substitute
27 for any other remedies available to the parties. The court system is
28 encouraged to develop forms for the use of individuals who wish to use
29 the procedure set out in this section.

1 (d) The court may order an obligor to pay all court costs in-
2 volved in a proceeding under this section.

3 * Sec. 10. AS 47.23.250(i) is amended to read:

4 (i) The exemptions from execution by judgment debtors under
5 AS 09.35.080(a) and the restrictions from execution by judgment debt-
6 ors under AS 09.35.080(b)(1) do not apply to proceedings to enforce
7 the payment of child support under AS 47.23.230 -- 47.23.270; however,
8 under this section, the agency may not attach more than 50 percent of
9 the obligor's net disposable earnings, as defined in 15 U.S.C. sec.
10 1672 [50 PERCENT OF THE GROSS WAGES OF THE OBLIGOR OR \$100 A WEEK,
11 WHICHEVER IS LESS, IS EXEMPT FROM EXECUTION UNDER AS 47.23.230 --
12 47.23.270].

13 * Sec. 11. AS 47.23 is amended by adding a new section to read:

14 Sec. 47.23.265 SERVICE; NOTIFICATION OF CHANGE OF ADDRESS. (a)
15 When a notice, paper, or other document is required by this chapter to
16 be given or served upon a person, the notice, paper, or other document
17 may be sent by registered or certified mail to the last known address
18 of that person. Service by mail under this chapter is effected when
19 the notice, paper, or other document is properly addressed, registered
20 or certified, and mailed.

21 (b) A person required by court order to make child support
22 payments through the agency shall keep the agency informed of his or
23 her current address.

24 * Sec. 12. This Act takes effect immediately in accordance with AS 01.-
25 10.070(c).