

Offered: 4/6/84
Referred: Finance

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 668 (Judiciary)

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 PURPOSE. (a) The legislature
10 finds that the effect 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, dimin-
13 ishing 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 the hardship of those families. The fact that the
21 general public bears the huge monetary cost of supporting families on
22 public assistance because of inadequate support from noncustodial parents
23 is only one of the most obvious effects of the problem of unpaid child
24 support. In addition, it is recognized that the failure of parents to
25 support their children is a major factor contributing to the broader social
26 problems of child abuse and delinquency. Even when families are able to
27 survive without public assistance, the hardship experienced by a family,
28 and particularly the children in that family, is usually substantial.

29 (c) The legislature also finds that the hardship experienced by

1 children in families who may rely on support from a noncustodial parent
2 should not be a necessary condition that must be endured by those families.
3 Statutory tools have been provided to enable the child support enforcement
4 agency to collect unpaid child support owed by a parent, including the
5 authority to order an employer to withhold and deliver part of an em-
6 ployee's earnings. This tool, however, is not usable against a self-
7 employed parent who owes child support. The legislature finds that if
8 delinquency in making child support payments could be reflected in a per-
9 son's credit history, an effective collection and deterrent tool would
10 exist -- a tool that would be effective against those self-employed parents
11 who owe child support.

12 (d) The legislature further finds that the amendments in this Act
13 will enhance efforts to enforce the requirement that parents pay the cost
14 of rearing their children and thereby enhance the quality of life for all
15 Alaskans.

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

17 (g) An income assignment under this section has priority over
18 all other attachments, executions, garnishments, or other assignments
19 unless otherwise ordered by the court. An income assignment is not
20 limited to the wages of an obligor but may include all money owed to
21 the obligor not otherwise exempt by law. Exemptions under AS 09.38 do
22 not apply to income assignments under this section; however, under
23 this section, the agency may not attach more than 50 percent of the
24 obligor's net disposable earnings. In this subsection, "net disposable
25 earnings" has the meaning given in 15 U.S.C. 1672 [50 PERCENT OF THE
26 GROSS WAGES OF THE OBLIGOR OR \$100 A WEEK, WHICHEVER IS LESS, IS
27 EXEMPT FROM EXECUTION UNDER THIS SECTION].

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

29 (a) A child born out of wedlock is legitimated and considered

1 the heir of the putative parent when [FATHER WHO] (1) the putative
2 parent subsequently marries the undisputed parent [MOTHER] of the
3 child; (2) the putative parent acknowledges, in writing, being a
4 parent [PATERNITY] of the child; or (3) the putative parent is judged
5 [TO BE THE FATHER] by a superior court, upon sufficient evidence, to
6 be a parent of the child. Acceptable evidence includes, but is not
7 limited to, evidence that the putative parent's [ALLEGED FATHER'S]
8 conduct and bearing toward the child, either by word or act, indicates
9 that the child is the child of the putative parent [ALLEGED FATHER].
10 That conduct may be construed by the court to constitute evidence of
11 parentage. When [PATERNITY. EXTRINSIC EVIDENCE MAY BE USED BY THE
12 COURT TO SHOW INTENT WHEN] indefinite, ambiguous, or uncertain terms
13 are used, the court may use extrinsic evidence to show the putative
14 parent's intent.

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

16 (d) The results of a blood test, tissue-type test, protein
17 comparison, or other scientifically accepted procedure shall be admit-
18 ted and weighed in conjunction with other evidence in determining the
19 statistical probability that the putative parent is a legal parent of
20 the child in question. However, a scientifically accepted procedure
21 that establishes a probability of parentage at 95 percent or higher
22 creates a presumption of parentage that may be rebutted only by clear
23 and convincing evidence.

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

25 Sec. 25.25.250. EFFECT OF PARTICIPATION IN PROCEEDING. Par-
26 ticipation in a proceeding under this chapter does not confer upon any
27 court jurisdiction over [OF] any of the parties to that proceeding [IN
28 IT] in any other proceeding. The superior court may not adjudicate
29 custody, visitation, or property rights in proceedings under this

1 chapter.

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

3 Sec. 47.23.065. WAIVER OF CHILD SUPPORT. (a) A custodian of a
4 child, including a custodial parent, owes a duty to that child to
5 ensure that child support is paid by a noncustodial parent who is
6 obligated to pay it. An agreement to waive past or future child
7 support, made between an obligor and a person who is entitled to
8 receive support on behalf of an obligee, is not enforceable unless

9 (1) the agreement is put in writing at the time the agree-
10 ment is made; and

11 (2) the agreement is signed at the time it is made by both
12 the obligor and the person acting for the obligee.

13 (b) When the right to receive child support has been assigned to
14 a governmental entity, an agreement under (a) of this section that has
15 not been adopted as an administrative order of the agency is not
16 effective during a period when the obligee is receiving public assis-
17 tance under AS 47.25.310 - 47.25.420.

18 (c) In a separation, dissolution, or divorce proceeding, a court
19 may not accept a waiver of support by a custodial parent without proof
20 that the custodial parent can support the needs of the child adequate-
21 ly.

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

23 (c) The determination or enforcement of a duty of support is
24 unaffected by any interference by the custodian of the child with
25 rights of custody or visitation granted by a court. When the agency
26 appears on behalf of a child in an action seeking to establish or
27 enforce support, the court may not adjudicate custody, visitation, or
28 property rights in the same action.

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

1 Sec. 47.23.085. SUBPOENAS. The agency, with the concurrence of
2 the commissioner of revenue, may subpoena persons, books, records, and
3 documents to determine the extent and location of assets of any obli-
4 gor who is more than 45 days in arrears in a child support obligation
5 established either by court or administrative order.

6 * Sec. 9. AS 47.23 is amended by adding new sections to read:

7 Sec. 47.23.225. SUPPORT PAYMENT OBLIGATIONS AS JUDGMENTS. A
8 court order ordering a noncustodial parent obligor to make periodic
9 child support payments to the custodian of a child establishes a
10 judgment in favor of the custodian when each payment becomes due. The
11 custodian of the child, or the agency on behalf of that person, may
12 take legal action under AS 47.23.226 to collect the judgment due. A
13 party seeking to execute on unpaid support payments may execute on the
14 total sum of unpaid support due, and is not limited to executing on
15 each unpaid payment separately.

16 Sec. 47.23.226. ACTION TO COLLECT CHILD SUPPORT. To commence an
17 action to collect the payment due, the custodian of a child, or the
18 agency on behalf of that person, shall serve on the obligor at the
19 obligor's last known address (1) an affidavit that states that one or
20 more payments of child support are 30 or more days past due and that
21 specifies the amounts past due and the dates they became due; and (2)
22 notice to the obligor of the obligor's right to respond. The child's
23 custodian, or the agency on behalf of the custodian, shall file with
24 the court a copy of the affidavit served on the obligor, and proof of
25 service of the affidavit and the notice of the obligor's right to
26 respond. The obligor shall respond no later than 10 days after re-
27 ceiving a hand-delivered notice and affidavit, or 15 days after the
28 date of mailing of a notice and affidavit. The obligor shall respond
29 by filing an affidavit with the court. If the obligor's affidavit

1 states that the obligor has paid any of the amounts claimed to be
2 delinquent, describes in detail the method of payment, and makes an
3 offer of proof of that payment, then the obligor is entitled to a
4 hearing limited to the issue of whether the obligor has made the
5 payments required by the court order. After the hearing, if any, the
6 court shall enter a judgment for the amount of money that is unpaid.
7 If the obligor does not file an affidavit or is not entitled to a
8 hearing, the judgment may be enforced as to the unpaid amount stated
9 in the affidavit in the same manner as any other judgment.

10 Sec. 47.23.227. NATURE OF REMEDIES. AS 47.23.225 and 47.23.226
11 provide remedies in addition to and not as a substitute for any other
12 remedies available to the parties.

13 Sec. 47.23.228. COURT COSTS. The court may order an obligor to
14 pay all court costs involved in a proceeding resulting in a court
15 order described in AS 47.23.225, and in a proceeding under AS 47.23.-
16 226.

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

18 (i) Exemptions under AS 09.38 do not apply to proceedings to en-
19 force the payment of child support under AS 47.23.230 - 47.23.270;
20 however, under this section, the agency may not attach more than 50
21 percent of the obligor's net disposable earnings. In this subsection,
22 "net disposable earnings" has the meaning given in 15 U.S.C. 1672 [50
23 PERCENT OF THE GROSS WAGES OF THE OBLIGOR OR \$100 A WEEK, WHICHEVER IS
24 LESS, IS EXEMPT FROM EXECUTION UNDER AS 47.23.230 - 47.23.270].

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

26 Sec. 47.23.265. SERVICE; NOTIFICATION OF CHANGE OF ADDRESS. (a)
27 When a notice, paper, or other document is required by this chapter to
28 be given or served upon a person, the notice, paper, or other document
29 may be sent by registered or certified mail to the last known address

1 of that person. Service by mail under this chapter is effected when
2 the notice, paper, or other document is properly addressed, registered
3 or certified, and mailed.

4 (b) A person required by court order to make child support
5 payments through the agency shall keep the agency informed of the
6 person's current address.

7 * Sec. 12. AS 47.23 is amended by adding a new section to read:

8 Sec. 47.23.273. REPORTING OF PAYMENT INFORMATION CONCERNING
9 DELINQUENT OBLIGORS. (a) The agency may provide to credit bureaus or
10 lending institutions of any kind information about delinquent child
11 support owed by obligors. The information so provided must consist
12 solely of the payment history of the obligor for a period not to
13 exceed 10 years before the date the information is provided.

14 (b) Upon an obligor's payment of delinquent child support, the
15 agency shall immediately notify all credit bureaus and lending insti-
16 tutions that were furnished information about the obligor under (a) of
17 this section that the obligor is no longer delinquent.

18 * Sec. 13. This Act takes effect immediately in accordance with AS 01.-
19 10.070(c).