

Introduced: 4/2/84
Referred: State Affairs and
Judiciary

1 IN THE SENATE BY THE STATE AFFAIRS COMMITTEE
2 SENATE BILL NO. 540
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 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, 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 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. Exemptions under AS 09.38 do
10 not apply to income assignments under this section; however, under
11 this section, the agency may not attach more than 50 percent of the
12 obligor's net disposable earnings. In this subsection, "net disposable
13 earnings" has the meaning given in 15 U.S.C. 1672 [50 PERCENT OF THE
14 GROSS WAGES OF THE OBLIGOR OR \$100 A WEEK, WHICHEVER IS LESS, IS
15 EXEMPT FROM EXECUTION UNDER THIS SECTION].

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

17 (a) A child born out of wedlock is legitimated and considered
18 the heir of the putative parent when [FATHER WHO] (1) the putative
19 parent subsequently marries the undisputed parent [MOTHER] of the
20 child; (2) the putative parent acknowledges, in writing, being a
21 parent [PATERNITY] of the child; or (3) the putative parent is judged
22 [TO BE THE FATHER] by a superior court, upon sufficient evidence, to
23 be a parent of the child. Acceptable evidence includes, but is not
24 limited to, evidence that the putative parent's [ALLEGED FATHER'S]
25 conduct and bearing toward the child, either by word or act, indicates
26 that the child is the child of the putative parent [ALLEGED FATHER].
27 That conduct may be construed by the court to constitute evidence of
28 parentage. When [PATERNITY. EXTRINSIC EVIDENCE MAY BE USED BY THE
29 COURT TO SHOW INTENT WHEN] indefinite, ambiguous, or uncertain terms

1 are used, the court may use extrinsic evidence to show the putative
2 parent's intent.

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, or other scientifically accepted procedure must be admit-
6 ted and weighed in conjunction with other evidence in determining the
7 statistical probability that the putative parent is a legal parent of
8 the child in question. However, a scientifically accepted procedure
9 that establishes a probability of parentage at 95 percent or higher
10 creates a presumption of parentage that may be rebutted only by clear
11 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 over [OF] any of the parties to that proceeding [IN
16 IT] in any other proceeding. The superior court may not adjudicate
17 custody, visitation, or property rights in proceedings under this
18 chapter.

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

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

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

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

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

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

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

11 (c) The determination or enforcement of a duty of support is
12 unaffected by any interference by the custodian of the child with
13 rights of custody or visitation granted by a court. When the agency
14 appears on behalf of a child in an action seeking to establish or
15 enforce support, the court may not adjudicate custody, visitation, or
16 property rights in the same action.

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

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

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

24 Sec. 47.23.225. SUPPORT PAYMENT OBLIGATIONS AS JUDGMENTS. A
25 court order ordering a noncustodial parent obligor to make periodic
26 child support payments to the custodian of a child establishes a
27 judgment in favor of the custodian when each payment becomes due. The
28 custodian of the child, or the agency on behalf of that person, may
29 take legal action under AS 47.23.226 to collect the judgment due. A

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

4 Sec. 47.23.226. ACTION TO COLLECT CHILD SUPPORT. To commence an
5 action to collect the payment due, the custodian of a child, or the
6 agency on behalf of that person, shall serve on the obligor at the
7 obligor's last known address (1) an affidavit that states that one or
8 more payments of child support are 30 or more days past due and that
9 specifies the amounts past due and the dates they became due; and (2)
10 notice to the obligor of the obligor's right to respond. The child's
11 custodian, or the agency on behalf of the custodian, shall file with
12 the court a copy of the affidavit served on the obligor, and proof of
13 service of the affidavit and the notice of the obligor's right to
14 respond. The obligor shall respond no later than 10 days after re-
15 ceiving a hand-delivered notice and affidavit, or 15 days after the
16 date of mailing of a notice and affidavit. The obligor shall respond
17 by filing an affidavit with the court. If the obligor's affidavit
18 states that the obligor has paid any of the amounts claimed to be
19 delinquent, describes in detail the method of payment, and makes an
20 offer of proof of that payment, then the obligor is entitled to a
21 hearing limited to the issue of whether the obligor has made the
22 payments required by the court order. After the hearing, if any, the
23 court shall enter a judgment for the amount of money that is unpaid.
24 If the obligor does not file an affidavit or is not entitled to a
25 hearing, the judgment may be enforced as to the unpaid amount stated
26 in the affidavit in the same manner as any other judgment.

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

1 Sec. 47.23.228. COURT COSTS. The court may order an obligor to
2 pay all court costs involved in a proceeding resulting in a court
3 order described in AS 47.23.225, and in a proceeding under AS 47.23.-
4 226.

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

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

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