

BY REP. GRUENBERG BY REQUEST

1 IN THE HOUSE

2

HOUSE BILL NO. 472

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the Child Support Guideline
7 Review Commission and to child support guidelines;
8 and providing for an effective date."

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

10 * Section 1. AS 24.20 is amended by adding a new section to read:

11 Sec. 24.20.085. CHILD SUPPORT GUIDELINE REVIEW COMMISSION. (a)

12 Every four years a Child Support Guideline Review Commission is estab-
13 lished as a special commission of the legislature. Each commission
14 consists of 11 members as follows:

15 (1) two legislators, one from each house appointed by the
16 presiding officer of that house;

17 (2) a representative of the executive branch of state
18 government appointed by the governor;

19 (3) a representative of the judicial branch of state gov-
20 ernment appointed by the chief justice of the supreme court;

21 (4) three persons with expertise in family law, economics,
22 or family issues appointed jointly by the speaker of the house and the
23 president of the senate;

24 (5) two persons who are receiving child support on behalf
25 of their children and two persons who are paying child support, ap-
26 pointed jointly by the speaker of the house and the president of the
27 senate.

28 (b) Members shall be appointed by May 1 of the year the commis-
29 sion is established. The commission is terminated on December 31 of

1 that same year. Members serve at the pleasure of the appointing
2 authority and a vacancy occurring on the commission shall be filled in
3 the same manner as the original appointment.

4 (c) Members of each commission who are not state employees or
5 legislators are entitled to per diem and travel expenses authorized by
6 law for members of boards and commissions under AS 39.20.180. Legis-
7 lative members are entitled to receive the regular legislative per
8 diem and travel allowance for days spent on commission business, and
9 members who are state employees, are entitled to receive the regular
10 state employees per diem and travel allowance for days spent on com-
11 mission business. The commission elects a chair and vice-chair. The
12 staff of the Legislative Affairs Agency serves as staff for the com-
13 mission.

14 (d) Each commission shall make a formal request to the legisla-
15 tive council for funds it considers necessary for per diem, travel,
16 and other expenses necessary to carry out the functions of the commis-
17 sion. Funds appropriated to the commission shall be disbursed and
18 accounted for under procedures required by the Legislative Affairs
19 Agency. Expenditure documents are subject to the approval of the
20 commission chair.

21 (e) Each commission shall review all state and federal statutes,
22 regulations, and court rules that deal with child support for the
23 purpose of determining whether specific changes should be made to
24 state statutes, regulations, or court rules. The commission shall
25 submit a report of its recommendations to the legislature by Decem-
26 ber 31 of the year the commission is established.

27 * Sec. 2. INTENT. Rule 90.3, Alaska Rules of Civil Procedure, and the
28 commentary accompanying the rule cover an area of substantive law and are
29 subject to amendment only by the legislature.

1 * Sec. 3. Rule 90.3, Alaska Rules of Civil Procedure, is adopted and
2 amended to read:

3 RULE 90.3. Child Support Awards. (a) Guidelines - Sole or
4 Primary Physical Custody. A child support award in a case in which
5 one parent is awarded sole or primary physical custody as defined by
6 paragraph (f) will be calculated as an amount equal to the adjusted
7 annual income of the non-custodial parent multiplied by a percentage
8 specified in subparagraph (a)(2).

9 (1) Adjusted annual income as used in this rule means the
10 parent's total income from all sources minus:

11 (A) mandatory deductions such as federal income tax,
12 social security tax, mandatory retirement deductions and man-
13 datory union dues; and

14 (B) child support and alimony payments arising from
15 prior relationships which are required by other court or adminis-
16 trative proceedings and actually paid [; AND

17 (C) WORK RELATED CHILD CARE EXPENSES FOR THE CHILDREN
18 WHO ARE THE SUBJECT OF THE CHILD SUPPORT ORDER].

19 (2) The percentage by which the noncustodial parent's
20 adjusted income must be multiplied in order to calculate the child
21 support award is:

22 (A) 20% (.20) for one child;

23 (B) 27% (.27) for two children;

24 (C) 33% (.33) for three children; and

25 (D) an extra 3% (.03) for each additional child.

26 (3) The court may allow the obligor parent to reduce child
27 support payments up to 50% for any period in which that parent has
28 extended visitation of over 27 consecutive days. The order must
29 specify the amount of the reduction which is allowable if the extended

1 visitation is exercised.

2 (b) Shared Physical Custody. A child support award in a case in
3 which the parents are awarded shared physical custody as defined by
4 paragraph (f) will be calculated by:

5 (1) Calculating the annual amount each parent would pay to
6 the other parent under paragraph (a) assuming the other parent had
7 primary custody.

8 (2) Multiplying this amount for each parent by the percent-
9 age of time the other parent will have physical custody of the chil-
10 dren. However, if the court finds that the percentage of time each
11 parent will have physical custody will not accurately reflect the
12 ratio of funds each parent will directly spend on supporting the
13 children, the court shall vary this percentage to reflect its find-
14 ings.

15 (3) The parent with the larger figure calculated in the
16 preceding subparagraph is the obligor parent and the annual award is
17 equal to the difference between the two figures multiplied by 1.5.
18 However, if this figure is higher than the amount of support which
19 would be calculated under paragraph (a) assuming sole or primary
20 custody, the annual support is the amount calculated under paragraph
21 (a).

22 (4) The child support award is to be paid in 12 equal
23 monthly installments unless shared custody is based on the obligor
24 parent having physical custody for periods of 30 consecutive days or
25 more. In that case, the total annual award will be paid in equal
26 installments over those months in which the obligor parent does not
27 have physical custody. The order must provide that if this physical
28 custody is not exercised, the obligor parent must pay additional child
29 support in an amount equal to what must be paid in months in which the

1 obligor parent is not entitled to physical custody.

2 (c) Exceptions.

3 (1) The court may vary the child support award as calcu-
4 lated under the other provisions of this rule for good cause upon
5 proof by clear and convincing evidence that manifest injustice would
6 result if the support award were not varied. The court must specify
7 in writing the reason for the variation, the amount of support which
8 would have been required but for the variation, and the estimated
9 value of any property conveyed instead of support calculated under the
10 other provisions of this rule. Good cause may include a finding:

11 (A) that unusual circumstances, such as especially
12 large family size, significant income of a child, health or other
13 extraordinary expenses, or unusually low expenses, exist which
14 require variation of the award in order to award an amount of
15 support which is just and proper for the parties to contribute
16 toward the nurture and education of their children. The court
17 shall consider the custodial parent's income in this determina-
18 tion; or

19 (B) a finding that the parent with the child support
20 obligation has a gross income which is below the poverty level as
21 set forth in the Federal Register. However, a parent who would
22 be required to pay child support pursuant to paragraph (a) or (b)
23 must be ordered to pay a minimum child support amount of no less
24 than \$50.00 per month except as provided in paragraphs (a)(3) and
25 (b).

26 (2) Paragraphs (a) and (b) do not apply to the extent that
27 the parent has an adjusted annual income of over \$60,000. In such a
28 case, the court may make an additional award only if it is just and
29 proper, taking into account the needs of the children, the standard of

1 living of the children and the extent to which that standard should be
2 reflective of the supporting parent's ability to pay.

3 (d) Health Insurance - Credits. The court shall address cover-
4 age of the children's health care needs and require health insurance
5 if insurance is available to either parent at a reasonable cost. In
6 calculating a child support award, credit will be given for medical
7 and dental insurance, or educational payments for the children which
8 are required by the court or administrative order and actually paid.

9 (e) Child Support Affidavit and Documentation. Each parent in a
10 court proceeding at which child support is involved must file a plead-
11 ing under oath which states the parent's adjusted annual income and
12 the components of this income as provided in subparagraph (a)(1).
13 This statement must be accompanied by documentation verifying the
14 income.

15 (f) Definitions. A parent has shared physical custody of chil-
16 dren for purposes of this rule if the children reside with that parent
17 for a period specified in writing of at least 30 percent of the year,
18 regardless of the status of legal custody. A parent has sole or
19 primary physical custody of children for purposes of this rule when
20 the other parent has physical custody of the children less than 30
21 percent of the year.

22 (g) Travel Expenses. After determining an award of child sup-
23 port under this rule, the court may allocate reasonable travel ex-
24 penses which are necessary to exercise visitation between the parties
25 as may be just and proper for them to contribute.

26 (h) Modification.

27 (1) A final child support award may be modified if allowed
28 by federal law or upon a showing of a material change of circumstances
29 as provided by state law. A material change of circumstances will be

1 presumed if support as calculated under this rule is more than 15
2 percent greater or less than the outstanding support order.

3 (2) Child support arrearages may not be modified retroac-
4 tively. A modification which is effective on or after the date that a
5 motion for modification is served on the opposing party is not con-
6 sidered a retroactive modification.

7 (i) Child Care Expenses. The reasonable work-related child care
8 expenses of both parents for children under 12 years of age who are
9 the subject of a child support order must be considered in calculating
10 the amount of child support.

11 * Sec. 4. AS 25.24.140(a) is amended to read:

12 (a) During the pendency of the action, the court may provide by
13 order

14 (1) that one spouse pay an amount of money as may be neces-
15 sary to enable the other spouse to prosecute or defend the action;

16 (2) for the care, custody, and maintenance of the minor
17 children of the marriage during the pendency of the action; an award
18 of temporary child support under this paragraph must comply with the
19 guidelines for determining support in Rule 90.3, Alaska Rules of Civil
20 Procedure;

21 (3) for the freedom of one spouse from the control of the
22 other spouse during the pendency of the action.

23 * Sec. 5. AS 25.24.160(a) is amended to read:

24 (a) In a judgment in an action for divorce or action declaring a
25 marriage void or at any time after judgment, the court may provide

26 (1) under the guidelines in Rule 90.3, Alaska Rules of
27 Civil Procedure, for the payment by either or both parties of an
28 amount of money or goods, in gross or installments that may include
29 cost-of-living adjustments, as may be just and proper for the parties

1 to contribute toward the nurture and education of their children, and
2 the court may order the parties to arrange with their employers for an
3 automatic payroll deduction each month or each pay period, if the
4 period is other than monthly, of the amount of the installment; if the
5 employer agrees, the installment shall be forwarded by the employer to
6 the clerk of the superior court which entered the judgment or to the
7 court trustee, and the amount of the installment is exempt from exe-
8 cution;

9 (2) for the recovery by one party from the other of an
10 amount of money for maintenance, in gross or in installments, as may
11 be just and necessary without regard to which of the parties is in
12 fault;

13 (3) for the delivery to either party of that party's per-
14 sonal property in the possession or control of the other party at the
15 time of giving the judgment;

16 (4) for the division between the parties of their property,
17 whether joint or separate, acquired only during coverture, in the
18 manner as may be just, and without regard to which of the parties is
19 in fault; however, the court, in making the division, may invade the
20 property of either spouse acquired before marriage when the balancing
21 of the equities between the parties requires it; and to accomplish
22 this end the judgment may require that one or both of the parties
23 assign, deliver, or convey any of their real or personal property to
24 the other party;

25 (5) for the change of name of either of the parties.

26 * Sec. 6. AS 25.24.170(a) is amended to read:

27 (a) Subject to AS 25.20.110 and Rule 90.3, Alaska Rules of Civil
28 Procedure, any time after judgment the court, upon the motion of
29 either party, may set aside, alter, or modify so much of the judgment

1 as may provide for alimony, for the appointment of trustees for the
2 care and custody of the minor children or for their nurture and educa-
3 tion, or for the maintenance of either party to the action.

4 * Sec. 7. AS 25.24.200(a) is amended to read:

5 (a) A husband and wife together may petition the superior court
6 for the dissolution of their marriage under AS 25.24.200 - 25.24.260
7 if the following conditions exist at the time of filing the petition:

8 (1) incompatibility of temperament has caused the irreme-
9 diable breakdown of the marriage;

10 (2) if there are minor children of the marriage or the wife
11 is pregnant, the spouses have agreed on which spouse or third party
12 shall be awarded custody of each minor child of the marriage and the
13 extent of visitation, including visitation by grandparents and other
14 persons, and support to be provided on the children's behalf that
15 complies with the guidelines in Rule 90.3, Alaska Rules of Civil
16 Procedure, whether the payments are to be made through the child
17 support enforcement agency and the tax consequences of that agreement;

18 (3) the spouses have agreed as to the distribution of all
19 jointly owned real and personal property and the payment of spousal
20 support, if any, and the tax consequences resulting from these pay-
21 ments; and

22 (4) the spouses have agreed as to the payment of all unpaid
23 obligations incurred by either or both of them, and as to payment of
24 obligations incurred jointly in the future.

25 * Sec. 8. AS 47.23.060 is amended by adding a new subsection to read:

26 (e) An award of child support under this section must comply
27 with the guidelines for determining support in Rule 90.3, Alaska Rules
28 of Civil Procedure.

29 * Sec. 9. AS 47.23.170(d) is amended to read:

1 (d) The hearing officer shall determine the amount of periodic
2 payments necessary to satisfy the past, present, and future liability
3 of the alleged obligor under AS 47.23.130, if any, and under any duty
4 of support that can be imposed [IMPOSABLE] under the law. The child
5 support enforcement agency and a hearing officer who determines an
6 award of child support under this chapter in a case in which the right
7 to support has been assigned to the state shall comply with the guide-
8 lines in Rule 90.3, Alaska Rules of Civil Procedure. The amount of
9 periodic payments determined under this subsection is not limited by
10 the amount of any public assistance payment made to or for the benefit
11 of the child.

12 * Sec. 10. AS 47.23.200 is amended to read:

13 Sec. 47.23.200. ADMINISTRATIVE ESTABLISHMENT OF SUPPORT OBLIGA-
14 TIONS; USE OF STANDARDS IN DETERMINATION OF SUPPORT PAYMENTS. In
15 making its findings under AS 47.23.160 and in establishing and modify-
16 ing amounts of periodic support payments under AS 47.23.180 and 47.-
17 23.190, the agency shall comply with [CONSIDER] the guidelines in Rule
18 90.3, Alaska Rules of Civil Procedure [STANDARDS ADOPTED BY REGULATION
19 UNDER AS 47.23.020 AND ANY STANDARDS FOR DETERMINATION OF SUPPORT
20 PAYMENTS USED BY THE SUPERIOR COURT OF THE DISTRICT OF RESIDENCE OF
21 THE OBLIGOR].

22 * Sec. 11. The first Child Support Guideline Review Commission, created
23 in sec. 1 of this Act, shall be established by May 1, 1992.

24 * Sec. 12. By May 1, 1992, the Alaska Judicial Council shall complete a
25 comprehensive economic study of the costs of raising children in the state
26 and submit a report with its findings to the legislature and the Child
27 Support Guideline Review Commission. The council may contract for services
28 and receive the assistance of other state agencies in order to fulfill its
29 duties under this section.

- 1 * Sec. 13. AS 47.23.020(a)(2)(A) is repealed.
- 2 * Sec. 14. Section 3 of this Act takes effect January 15, 1991.
- 3 * Sec. 15. Except as provided in sec. 14 of this Act, this Act takes
- 4 effect immediately under AS 01.10.070(c).