

HB

176

ALASKA STATE HOUSE OF REPRESENTATIVES



Session

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State Capitol

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REPRESENTATIVE JOHN COGHILL

HB 176 Noncash Credit for Child Support

HB 176 is introduced to give credit where credit is due. This legislation recognizes that there are other means of support outside cash payments. I think it is appropriate to count value in noncash contributions that help a person support their family.

This also recognizes the dignity of self-sacrifice in providing even when cash is not available. If a person can provide firewood, fish, labor or game meat that is significant support for family needs, I think that this should be recognized as real child support.

Under current state laws this person received no credit on their child support account with Child Support Enforcement Division (CSED). While a person may be working hard to provide for their children, a cash payment is the only thing we recognize.

HB 176 would provide that a custodial parent could enter into an agreement with the noncustodial parent to provide specific things and in return get credit on their CSED account. I hope we can work out a solution to this issue. Therefore, I commend HB 176 for your discussion and perfecting.

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REPRESENTATIVE JOHN COGHILL

Sectional for HB 176 (as amended by HESS CS and Amendments)

Section 1. This section amends AS 25.27.020(b), "Duties and responsibilities of the agency", to allow the Child Support Support Division to apply noncash contributions of the noncustodial parent to his or her child support obligation if the following conditions exist:

1. the custodial parent has agreed to the arrangement.
2. outlines that noncash credit can be given for basic needs of the child(ren)
3. the noncash contribution is given directly to the child(ren)'s custodian
4. with the adoption of Amendment No. 1 the obligor would be required to present clear and convincing evidence of the noncash contribution
5. the custodial parent or guardian cannot be receiving assistance under AS 47.27 (Alaska Temporary Assistance Program) or 42 U.S.C. 612 (American Indian Welfare Reform Act)

Section 2. Section 2 amends AS 25.27.060, "Order of support", to add a provision defining support order and to allow the agency or the court to reduce the cash payment of a court or administrative support order to reflect the payment of a noncash contribution.

Section 3. Section 3 places in uncodified law language that only noncash contributions made on or after the effective date of HB 176 will be applied to a child support account.

Section 4. Section 4 is an immediate effective date clause.

History

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Mischel
4/13/04

CS FOR HOUSE BILL NO. 176()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES COGHILL, Gruenberg

A BILL

FOR AN ACT ENTITLED

1 "An Act providing that certain obligors can receive credit against their child support
2 obligation for certain types of noncash child support; and providing for an effective
3 date."

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

5 * Section 1. AS 25.27.020(b) is amended to read:

6 (b) In determining the amount of money an obligor must pay to satisfy the
7 obligor's immediate duty of support, the agency shall consider all payments of money
8 made by the obligor directly to the obligee or to the obligee's custodian before the time
9 the obligor is ordered to make payments through the agency. After the obligor is
10 ordered to make payments through the agency, the agency may not consider direct
11 payments of money made to the obligee or the obligee's custodian unless the obligor
12 provides clear and convincing evidence of the payment. Notwithstanding the
13 definition of "support order" in AS 25.27.900, the agency shall reduce the
14 amount of money an obligor must pay to satisfy the obligor's duty of support by

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1 the fair market value, as determined by agreement between the agency and the
2 obligee's parent or custodian from information developed by other state agencies
3 and by agreement with the obligor, of a noncash contribution made by the
4 obligor under the following circumstances:

5 (1) the obligee's custodian has agreed to allow the agency to give
6 the obligor credit for noncash support and has not withdrawn that agreement;

7 (2) the noncash contribution is for basic food, housing, or heat; the
8 agency, by regulation, may also give credit for other types of noncash
9 contributions that help to satisfy the basic material needs of the obligee;

10 (3) the noncash contribution is made directly to the obligee's
11 custodian or to a creditor of the obligee's custodian;

12 (4) the obligor presents clear and convincing evidence of the
13 noncash contribution and its use by the obligee or the obligee's custodian; and

14 (5) the obligee's custodian is not receiving assistance for the benefit
15 of the obligee under AS 47.27 or under 42 U.S.C. 612.

16 * Sec. 2. AS 25.27.060 is amended by adding a new subsection to read:

17 (e) Notwithstanding the requirements in (a) - (d) of this section and the
18 definition of "support order" in AS 25.27.900, in a court or administrative proceeding
19 where the support of a minor child is at issue, the court or agency, as applicable, shall
20 reduce the amount of money an obligor must pay to satisfy the obligor's duty of
21 support for a child by the fair market value, as determined by the court or agency and
22 in agreement with the obligee's parent or custodian from information developed by
23 other state agencies, of a noncash contribution made by the obligor under the
24 circumstances described under AS 25.27.020(b)(1) - (5).

25 * Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 APPLICABILITY. AS 25.27.020(b), as amended by sec. 1 of this Act, and
28 25.27.060(e), added by sec. 2 of this Act, apply to noncash contributions made on or after the
29 effective date of this Act.

30 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

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REPRESENTATIVE JOHN COGHILL

Date: April 9, 2004
To: Jean Mischel, Legal Counsel
From: Rynnieva Moss, Legislative Aide *Rynnieva Moss*
Re: Requested changes to CSHB 176/Version D

Diane Wentlandt from the AG's office called this morning and had some suggestions for improving HB 176. She mentioned the change made in the draft CS dealing with exemption of ATAP and tribal ATAP cases. Other recommendations are as follows:

1. Page 1, Line 14: delete the word "immediate"

She said "immediate" would indicate ongoing and eliminate the possibility of applying non-cash contributions to arrears.

2. Make a separate statute for application of non-cash contributions that would cover court ordered child support orders. The way it is written in Section one under AS 25.27.020(b) it only applies to cases that have no court order, but rather are CSED orders based on agreement of the parties.
3. Line 4 & 5 will probably create an equal protection challenge. Instead of limiting it to cases with a child support order of not more than \$50 a month the language should be deleted. On this same note John Mallonee would like to see the department's responsibility to determine fair market value changed to make the value be that agreed on by the parents.

4. Lines 11 and 12 require the non-cash contribution to be made directly to the custodian. Diane said this would prevent the noncustodial parent from directly paying a fuel oil bill or an electric bill. Some language should be added to allow payment to be made directly to the obligee's custodian or indirectly to a creditor of the obligee's custodian.
5. The word "consumption" on line 14 is troubling to Diane. The easiest solution would be to delete "or consumption".
6. Finally, Diane pointed out to me that CSED already has some regulations on the books for in-kind contributions. I looked at the statutory authority and personally think CSED is skating on thin ice as to the subject of these regulations having statutory authority to exist. In my dealings with CSED they have never mentioned in-kind payments or payments in lieu of child support.

15 AAC 125.470. Credit for in-kind payments and payments in lieu of child support

(a) The agency will give credit for in-kind contributions against an obligor's child support obligation if

- (1) a tribunal of competent jurisdiction has ordered the in-kind contribution in lieu of the payment of child support; or
- (2) the obligation is established by a support order, the parties agree in writing to allow credit for the in-kind contribution, and the parties agree in writing to the dollar value of the in-kind contribution.

(b) The agency will give credit for an in-kind contribution under (a)(2) of this section only once. After the first request and credit, the agency will inform the parents that additional credits will not be given for in-kind contributions under (a)(2) of this section. The agency will not give credit for an in-kind contribution under (a)(2) of this section for any period of time during which the child received public assistance or was in state-sponsored foster care or placement.

(c) To receive credit for an in-kind contribution under (a)(2) of this section, the obligor must provide clear and convincing evidence of the in-kind contribution and the dollar value of that contribution.

(d) A request for credit for an in-kind contribution must be made in writing and must be accompanied by the evidence required under (c) of this section. Upon receipt of a request for credit under this section, the agency will mail a notice of the request to the nonrequesting party. The nonrequesting party may submit a response to the request for credit. The response must be postmarked or received by the agency within 30 days after the date the notice under this subsection is mailed.

(e) The agency will issue an administrative review decision granting or denying the request for credit under this section as soon as practicable after the time for response under (d) of this section. As necessary to determine the existence and dollar value of an in-kind contribution, the agency may request additional information from the parents or from any other source. An administrative appeal is not available from the administrative review decision issued under this subsection, but the decision is final for the purpose of appeal to the superior court.

(f) The agency will not include a provision for in-kind contributions in an administrative support order.

(g) If one of the parents identified in a support order described in (a)(1) of this section has applied for agency services or is receiving public assistance on behalf of the child, the agency will initiate a modification review under 15 AAC 125.316(b).

(h) When the agency enforces an order issued by another state, the agency will apply the law of that state to determine any credit for in-kind contributions.

History: Eff. 6/15/2001, Register 158

Authority: AS 25.25.604

Sec. 25.25.604. Choice of law.

(a) The law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order.

(b) In a proceeding for arrearages, the statute of limitation under the laws of this state or of the issuing state, whichever is longer, applies.

AS 25.27.020

Sec. 25.27.020. Duties and responsibilities of the agency.

(a) The agency shall

(1) seek enforcement of child support orders of the state in other jurisdictions and shall obtain, enforce, and administer the orders in this state;

(2) adopt regulations to carry out the purposes of this chapter and AS 25.25, including regulations that establish

AS 25.27.140

Sec. 25.27.140. Authority and procedures to administratively establish and enforce support obligation.

(a) If a support order has not been entered, the agency may establish paternity and a duty of support, which may include periodic payments of support, a medical support order, or both, utilizing the procedures prescribed in AS 25.27.160 - 25.27.220 and may enforce a duty of support utilizing the procedure prescribed in AS 25.27.230 - 25.27.270. Action under this subsection may be undertaken upon application of an obligee, or at the agency's own discretion if the obligor is liable to the state under AS 25.27.120 (a) or (b).

(b) If a support order has been entered, the agency may enforce the support order utilizing the procedures prescribed in AS 25.27.062, 25.27.150, and 25.27.230 - 25.27.270.

(c) Unless the agency is establishing only a medical support order, a decision of the agency determining a duty of support shall include an income withholding order as provided under AS 25.27.062.

I don't see anything in the regs that would prevent us from doing this. Please incorporate the AG's recommendations in a new CS amending version D. HB 176 is scheduled to be heard Tuesday, April 13th at 2:00 p.m..

Thanks for your help.