

SB

46

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/21/09

FURTHER: Judiciary
 Finance

*Don't fill in
 leave out*

Date of 5-Day Notice: leave blank
 (in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: _____

Health and Social Services Committee considered SENATE BILL NO. 46

SB 46 CHILD SUPPORT AWARDS

"An Act relating to child support awards made by a court; and repealing Rule 90.3, Alaska Rules of Civil Procedure."

and recommends:

- be replaced with SCS or CS SB 46 ~~CS~~ (HSS)
- adopt previous SCS or CS _____
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

SENATE BILL:	
<input type="checkbox"/>	Same Title
<input checked="" type="checkbox"/>	New Title
<hr/>	
HOUSE BILL:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

Comment on bill

NEW FISCAL NOTE(S):

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
RW	2/28/10			<input checked="" type="checkbox"/>	

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
<i>J. J. Thomas</i>	THOMAS	<input checked="" type="checkbox"/>			
<i>John Ellis</i>	ELLIS	<input checked="" type="checkbox"/>			
<i>Joe Paskian</i>	PASKIAN	<input checked="" type="checkbox"/>			
<i>Frank Dyson</i>	DYSON				
CHAIR: <i>Betty Davis</i>	DAVIS	<input checked="" type="checkbox"/>			

26-LS0279P
Mischel
3/3/10

CS FOR SENATE BILL NO. 46(HSS)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE SENATE HEALTH AND SOCIAL SERVICES COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR KOOKESH

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to child support awards; and repealing Rule 90.3, Alaska Rules of Civil**
2 **Procedure."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** AS 25 is amended by adding a new chapter to read:

5 **Chapter 28. Child Support Awards.**

6 **Sec. 25.28.010. Guidelines; primary physical custody.** (a) A tribunal shall
7 calculate a child support award in a case in which one parent is awarded primary
8 physical custody as an amount equal to the adjusted annual income of the noncustodial
9 parent multiplied by a percentage specified in (b) of this section.

10 (b) To calculate the child support award, the tribunal shall multiply the
11 noncustodial parent's adjusted annual income by the following percentages:

- 12 (1) 20 percent for one child;
- 13 (2) 27 percent for two children;
- 14 (3) 33 percent for three children; and

1 (4) an additional three percent for each additional child.

2 (c) The tribunal may allow the obligor parent to reduce child support
3 payments by up to 75 percent for a period in which the obligor parent has extended
4 visitation of more than 27 consecutive days. The order must specify the amount of the
5 reduction that is allowable if the extended visitation is exercised.

6 (d) The tribunal may calculate child support based on a determination of the
7 potential income of a parent who voluntarily and unreasonably is unemployed or
8 underemployed. A determination of potential income may not be made for a parent
9 who is physically or mentally incapacitated, or who is caring for a child under two
10 years of age to whom the parents owe a joint legal responsibility. Potential income
11 shall be based on the parent's work history, qualifications, and job opportunities. The
12 tribunal also may impute potential income for nonincome producing or low income
13 producing assets.

14 (e) In this section, "adjusted annual income" means the parent's total income
15 from all sources less

16 (1) mandatory deductions, including

17 (A) federal, state, and local income tax;

18 (B) social security tax or the equivalent contribution to an
19 alternate plan established by a public employer, and self-employment tax;

20 (C) Medicare tax;

21 (D) mandatory union dues;

22 (E) mandatory contributions to a retirement or pension plan;

23 (2) voluntary contributions to a retirement or pension plan or account
24 in which the earnings are tax-free or tax-deferred, except that the total amount of these
25 voluntary contributions plus any mandatory contributions under (1)(E) of this
26 subsection may not exceed 7.5 percent of the parent's gross wages and self-
27 employment income;

28 (3) child support and alimony payments arising from previous
29 relationships that are required by another tribunal and actually paid;

30 (4) child support for children from prior relationships living with the
31 parent, calculated by using the formula under this chapter; and

1 (5) work-related child care expenses for the child who is the subject of
2 the child support order.

3 **Sec. 25.28.020. Guidelines; shared, divided, and hybrid custody awards.**

4 (a) The tribunal shall calculate shared, divided, and hybrid physical custody awards as
5 provided in this section.

6 (b) The tribunal shall calculate a child support award in a case in which the
7 parents are awarded shared physical custody by

8 (1) calculating the annual amount each parent would pay to the other
9 parent under AS 25.28.010 assuming the other parent had primary custody; in this
10 calculation, the income limit in AS 25.28.030(c) and the minimum support amount in
11 AS 25.28.030(d) apply;

12 (2) multiplying the amount determined under (1) of this subsection for
13 each parent by the percentage of time the other parent has physical custody of the
14 child; however, if the tribunal finds that the percentage of time each parent will have
15 physical custody does not accurately reflect the ratio of funds each parent will directly
16 spend on supporting the child, the tribunal shall vary this percentage to reflect its
17 findings;

18 (3) determining which parent has the greater amount under (2) of this
19 subsection; the parent with the greater amount under (2) of this subsection is the
20 obligor parent, and the annual award is equal to the difference between the two
21 amounts under (2) of this subsection multiplied by 1.5; however, if this amount is
22 greater than the amount of support calculated under AS 25.28.010 assuming the
23 obligor parent has primary custody, the annual support is the amount calculated under
24 AS 25.28.010.

25 (c) The child support award for shared custody under (b) of this section must
26 be paid in 12 equal monthly installments, except that if

27 (1) shared custody is based on the obligor parent's having physical
28 custody for periods of 30 consecutive days or more, the total annual award may be
29 paid in equal installments over those months in which the obligor parent does not have
30 physical custody; or

31 (2) the obligor parent's income is seasonal, the tribunal may order

1 unequal monthly support payments as provided in AS 25.28.030(g) and (h).

2 (d) The child support order must state that failure to exercise sufficient
3 physical custody to qualify for shared physical custody under (b) or (c) of this section
4 is grounds for modification of the child support order. Denial of visitation by the
5 custodial parent is not cause to increase a child support award.

6 (e) The tribunal shall

7 (1) calculate a child support award in a case in which the parents are
8 awarded divided custody by determining the amount each parent would pay to the
9 other parent for support of a child for whom that parent has primary physical custody
10 under AS 25.28.010, taking into account the income limit in AS 25.28.030(c) and the
11 minimum support amount in AS 25.28.030(d), and offsetting those amounts; and

12 (2) consider whether the amount determined under (1) of this
13 subsection should be varied under AS 25.28.030(b).

14 (f) The tribunal shall

15 (1) calculate a child support award in a case in which the parents are
16 awarded hybrid custody by

17 (A) applying AS 25.28.010, taking into account the income
18 limit in AS 25.28.030(c) and the minimum support amount in
19 AS 25.28.030(d), to determine support for a child in the primary physical
20 custody of each parent;

21 (B) applying (b) of this section to determine support for a child
22 in the shared physical custody of the parents;

23 (C) adjusting pro rata the percentages provided in
24 AS 25.28.010(b) based on the number of children to which each type of
25 custody applies; and

26 (D) combining the amounts to determine the net obligation; and

27 (2) consider whether the amount determined under (1) of this
28 subsection should be varied under AS 25.28.030(b).

29 **Sec. 25.28.030. Exceptions to support awards.** (a) Notwithstanding the
30 requirements in AS 25.28.010 and 25.28.020, the tribunal may vary the award for the
31 reasons stated in this section.

1 (b) The tribunal may vary the child support award as calculated under the
2 other provisions of this chapter for good cause on proof by clear and convincing
3 evidence that manifest injustice would result if the support award were not varied. The
4 tribunal shall specify in writing the reason for the variation, the amount of support that
5 would have been required but for the variation, and the estimated value of any
6 property conveyed instead of support calculated under the other provisions of this
7 chapter. Good cause may include a finding that unusual circumstances exist that
8 require variation of the award in order to award an amount of support that is just and
9 proper for the parties to contribute toward the nurture and education of their children.
10 The tribunal shall consider the custodial parent's income in this determination.

11 (c) The calculation for primary physical custody under AS 25.28.010 does not
12 apply to the extent that the parent has an adjusted annual income of more than
13 \$105,000. The tribunal may make an additional award only if it is just and proper,
14 ~~taking into account~~ the needs of the child, the standard of living of the child, and the
15 extent to which that standard should reflect the supporting parent's ability to pay.

16 (d) Except as provided in AS 25.28.010(c) and 25.28.020, the minimum child
17 support amount that may be ordered is \$50 a month or \$600 a year.

18 (e) In addition to ordering a parent to pay child support as calculated under
19 this chapter, the tribunal may, in appropriate circumstances and when the parents are
20 minors as described in (f) of this section, order one or more grandparents of a child to
21 pay child support to an appropriate person in an amount determined by the tribunal to
22 serve the best interests of the child; however, the amount may not exceed the lesser of

23 (1) a proportionate share of the amount required to provide care in a
24 supervised setting to the grandchild, as determined by the tribunal; or

25 (2) the amount that would have been awarded if the child's parents had
26 the incomes of the child's grandparents and AS 25.28.010 and 25.28.020 were applied.

27 (f) An order under (e) of this section may be issued only with respect to a
28 child whose parents are both minors, and the order terminates when either parent
29 becomes 18 years of age. The tribunal shall specify in writing the reasons it considers
30 it to be appropriate to order a grandparent to pay child support under this subsection
31 and the factors considered in setting the amount of the child support award. In this

1 subsection, "grandparent" means the natural or adoptive parent of the minor parent.

2 (g) If the noncustodial parent's income is seasonal, the tribunal may order that
3 the annual support amount be paid in unequal monthly payments, with higher
4 payments during the months the parent expects to receive higher income and lower
5 payments in other months; the tribunal may not make an unequal payment order unless

6 (1) the tribunal finds that the burden of budgeting for periods of
7 unequal income should be placed on the obligee rather than the obligor; and

8 (2) the obligee agrees.

9 (h) An order of the tribunal for unequal payments under (g) of this section
10 must specify the annual support amount, the average monthly support amount, and the
11 amount due for each month. The order must provide that variations from the average
12 monthly amount begin with monthly payments in excess of the average monthly
13 amount so that a deficit situation cannot occur. Until the excess payments begin, the
14 tribunal shall order payment of the average monthly amount.

15 **Sec. 25.28.040. Health care expenses.** (a) The tribunal shall include in the
16 order coverage of the child's health care needs and require health insurance for the
17 child if insurance is available to either parent or both parents at a reasonable cost. The
18 tribunal shall consider whether the child is eligible for services through the Indian
19 Health Service, any other entity, or other insurance coverage before ordering either
20 parent or both parents to provide health care coverage through insurance, cash medical
21 support, or other means. A court shall find that health insurance is available only if the
22 ~~dependent child has reasonable geographic access to the covered services or the~~
23 insurance includes the coverage of transportation needed for the services.

24 ~~(b) The tribunal shall allocate equally the cost of insurance and cash medical~~
25 support between the parents unless the tribunal orders otherwise for good cause. An
26 obligor's child support obligation shall be decreased by the amount of the obligee's
27 portion of health insurance payments and cash medical support ordered by the tribunal
28 and actually paid by the obligor. The tribunal shall increase a child support award by
29 the obligor's portion of health insurance if the obligee is ordered to, and actually does,
30 ~~obtain and pay for insurance.~~

31 (c) The cost of insurance is the cost attributable to the child for whom support

1 is paid. If the cost to the employee of covering the employee alone is the same as the
 2 cost to the employee of covering the employee and dependents, then there is no
 3 additional cost to the employee for adding the child and no portion of the cost of
 4 coverage may be allocated to the child. If dependent coverage can be added for a
 5 single cost, rather than for each dependent, and the dependent coverage covers
 6 dependents in addition to the child subject to the order, the cost of the dependent
 7 coverage shall be allocated equally among the dependents covered. If there is reason
 8 to believe that there is an incremental cost to the employee for insuring dependents but
 9 evidence of that incremental cost is unavailable, the cost of insurance is determined by
 10 dividing the total cost of coverage by the number of family members covered and
 11 multiplying that amount by the number of children subject to the order.

12 (d) The tribunal shall allocate equally between the parties the cost of
 13 reasonable health care expenses not covered by insurance unless the tribunal orders
 14 otherwise for good cause. A party shall reimburse the other party for the party's share
 15 of the uncovered health care expenses within 30 days after receipt of the bill for the
 16 health care, payment verification, and, if applicable, a health insurance statement
 17 indicating what portion of the cost is uncovered. The tribunal shall allocate the
 18 reasonable, uncovered health care expenses exceeding \$5,000 in a calendar year based
 19 on the parties' relative financial circumstances when the expenses occur.

20 (e) A court shall find that the cost of cash medical support or private health
 21 insurance is reasonable under this section if the cost to the responsible parent does not
 22 exceed five percent of the responsible parent's gross income. In calculating the
 23 percentage for purposes of health insurance coverage, the cost is the cost of adding the
 24 dependent child to the existing insurance coverage or the difference between self-only
 25 and family coverage.

26 (f) In this section,

27 (1) "cash medical support" means an amount ordered to be paid toward
 28 the cost of health insurance provided by a public entity or by another parent through
 29 employment or otherwise, or for other medical costs not covered by insurance;

30 (2) "health care expenses" includes medical, dental, vision, and mental
 31 health counseling expenses.

1 **Sec. 25.28.050. Child support affidavit and documentation.** (a) Subject to
2 the confidentiality requirements of Rule 90.1(f), Alaska Rules of Civil Procedure, each
3 parent in a proceeding of a tribunal at which child support is involved shall file a
4 statement under oath that states the parent's adjusted annual income and the
5 components of adjusted annual income as described in AS 25.28.010(e). This
6 statement must be filed with a party's initial pleading in superior court, including the
7 dissolution petition, divorce complaint or answer, motion to modify, and any response
8 to a motion to modify, and must be accompanied by documentation verifying the
9 income. The documents must be redacted to delete social security numbers and to
10 provide only partial financial account information as provided in Rule 90.1(f), Alaska
11 Rules of Civil Procedure. The statement must state whether the parent has access to
12 health insurance for the children and, if so, the additional cost to the parent of the
13 children's health insurance.

14 (b) While there is an ongoing monthly support obligation, each party shall
15 provide to the other party, within 30 days after a written request, documents such as
16 tax returns and pay stubs showing the party's income for the prior calendar year. The
17 party making the request shall provide documentation of the party's annual income for
18 the same period at the time the request is made. A request under this section may not
19 be made more than once a year. This section does not preclude discovery under the
20 Alaska Rules of Civil Procedure.

21 (c) Unless the information has already been provided to the tribunal under
22 Rule 90.1(f), Alaska Rules of Civil Procedure, a statement under (a) of this section
23 must be accompanied by a confidential information sheet as described in Rule 90.1,
24 Alaska Rules of Civil Procedure. Once a complete confidential information sheet has
25 been submitted to the tribunal listing names, dates of birth, and social security
26 numbers as required, the parties shall omit or redact social security numbers from
27 documents subsequently filed in the action unless otherwise ordered by the tribunal.

28 (d) The tribunal may withhold or assess costs or attorney fees for a violation
29 of this section as the circumstances and discouragement of like conduct in the future
30 may require. Costs and attorney fees may be imposed on offending attorneys or
31 parties.

1 **Sec. 25.28.060. Travel expenses.** After determining an award of child support
2 under this chapter, the court shall allocate between the parties reasonable travel
3 expenses that are necessary to exercise visitation as may be just and proper for the
4 parties to contribute.

5 **Sec. 25.28.070. Modification; defense against arrearages.** (a) A tribunal may
6 modify a final child support award on a showing of a material change of
7 circumstances as provided by state law. A material change of circumstances shall be
8 presumed if support as calculated under this chapter is more than 15 percent greater or
9 less than the outstanding support order. An award may be modified to require cash
10 medical support regardless of whether insurance is available to either parent if neither
11 parent has purchased health insurance. In this subsection, support includes health
12 insurance payments or cash-medical support made under AS 25.28.040.

13 (b) A court may not modify a child support arrearage retroactively, except as
14 authorized by AS 25.27.166(d). A modification that is effective on or after the date
15 that a motion for modification, or a notice of petition for modification by the child
16 support services agency, is served on the opposing party is not considered a retroactive
17 modification.

18 (c) The tribunal may find that a parent and a parent's assignee are precluded
19 from collecting arrearages for support of a child that accumulated during a time period
20 exceeding nine months for which the parent agreed or acquiesced to the obligor
21 exercising primary custody of the child. A finding that preclusion is a defense must be
22 based on clear and convincing evidence.

23 **Sec. 25.28.080. Third-party custody.** (a) When the state, or another third
24 party entitled to child support, has custody of all children of a parent, the parent's
25 support obligation to the third party is an amount equal to the adjusted annual income
26 of the parent multiplied by the percentage specified in AS 25.28.010(b). If the third
27 party has custody of some but not all children, the parent's support obligation to the
28 third party is an amount equal to the adjusted annual income of the parent, multiplied
29 by the percentage specified in AS 25.28.010(b) for the total number of the parent's
30 children, multiplied by the number of the parent's children in third-party custody,
31 divided by the total number of the parent's children. In this subsection, the number of

1 the parent's children includes only children of the parent who live with the parent, are
2 substantially supported by the parent, or are in custody of the third party entitled to
3 support.

4 (b) If, in addition to a support obligation to a third party, one or both parents
5 retain primary or shared physical custody of at least one of their children, the support
6 obligation between the parents is calculated under the other provisions of this chapter,
7 without consideration of the third-party custodian or any children in the custody of the
8 third-party custodian, except that the percentage in AS 25.28.010(b) must be adjusted
9 pro rata for the number of children in the primary custody of a parent, or shared
10 custody of the parents, compared to the total number of children. After that calculation
11 is completed, any support owed may be offset with support owed to a third-party
12 custodian under (a) of this section in order to minimize transactions.

13 **Sec. 25.28.090. Support order forms.** All orders for payment or modification
14 of child support shall be entered on a form developed by the administrative director of
15 the tribunal. A party may lodge a duplicate of the tribunal form produced by a laser
16 printer or similar device. A device may also print, in a contrasting typestyle equivalent
17 to that produced by a typewriter, text that otherwise would have been entered by a
18 typewriter or word processor. A party or attorney who lodges a duplicate certifies by
19 lodging the duplicate that it is identical to the current version of the court form.

20 **Sec. 25.28.100. Dependent tax deduction.** The court may allocate the
21 dependent tax deduction for each child between the parties as is just and proper and in
22 the child's best interests. The allocation must be consistent with AS 25.24.152 and
23 federal law.

24 **Sec. 25.28.300. Definitions.** In this chapter,

25 (1) "child support" and "child support obligation" have the meaning
26 given "duty of support" in AS 25.27.900;

27 (2) "divided custody" means that one parent has primary physical
28 custody of one or more children of the relationship and the other parent has primary
29 custody of one or more other children of the relationship, and the parents do not share
30 physical custody of any of their children;

31 (3) "hybrid custody" means that at least one parent has primary

1 physical custody of one or more children of the relationship, and the parents have
2 shared physical custody of at least one child of the relationship;

3 (4) "primary physical custody" or "primary custody" means that a child
4 resides with the other parent for a period, specified in the custody order, of less than
5 30 percent of the year;

6 (5) "shared physical custody" or "shared custody" means that a child
7 resides with one parent for a period, specified in writing in the custody order, of at
8 least 30 percent but not more than 70 percent of the year, regardless of the status of
9 legal custody;

10 (6) "tribunal" means the superior court or the child support services
11 agency created in AS 25.27.010.

12 * Sec. 2. AS 47.10.120(a) is amended to read:

13 (a) When a child in need of aid is committed under this chapter, the court or
14 the child support services agency created in AS 25.27.010 shall, after giving the parent
15 a reasonable opportunity to be heard, require that the parent pay to the department in a
16 manner that the court or the child support services agency directs a sum to cover in
17 full or in part the maintenance and care of the child. The support obligation shall be
18 calculated under AS 25.28 [RULE 90.3(i) OF THE ALASKA RULES OF CIVIL
19 PROCEDURE].

20 * Sec. 3. AS 47.12.230(a) is amended to read:

21 (a) When a delinquent minor is committed under this chapter, the court or the
22 child support services agency created in AS 25.27.010 shall, after giving the parent a
23 reasonable opportunity to be heard, require that the parent pay to the department in a
24 manner that the court or the child support services agency directs a sum to cover in
25 full or in part the maintenance and care of the minor. The support obligation shall be
26 calculated under AS 25.28 [RULE 90.3(i) OF THE ALASKA RULES OF CIVIL
27 PROCEDURE].

28 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 REPEAL OF COURT RULE. Rule 90.3, Alaska Rules of Civil Procedure, is repealed.

31 * Sec. 5. The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 NONAPPLICABILITY OF TWO-THIRDS VOTE REQUIREMENT. Because the
3 rule repealed in sec. 4 of this Act is a substantive rule rather than a rule of practice or
4 procedure, the repeal of the rule takes effect even if sec. 4 of this Act does not receive the
5 two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of
6 Alaska.

CS FOR SENATE BILL NO. 46()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR KOOKESH

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9 parent multiplied by a percentage specified in (b) of this section.

10 (b) To calculate the child support award, the tribunal shall multiply the
11 noncustodial parent's adjusted annual income by the following percentages:

- 12 (1) 20 percent for one child;
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1 (4) an additional three percent for each additional child.

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3 payments by up to 75 percent for a period in which the obligor parent has extended
4 visitation of more than 27 consecutive days. The order must specify the amount of the
5 reduction that is allowable if the extended visitation is exercised.

6 (d) The tribunal may calculate child support based on a determination of the
7 potential income of a parent who voluntarily and unreasonably is unemployed or
8 underemployed. A determination of potential income may not be made for a parent
9 who is physically or mentally incapacitated, or who is caring for a child under two
10 years of age to whom the parents owe a joint legal responsibility. Potential income
11 shall be based on the parent's work history, qualifications, and job opportunities. The
12 tribunal also may impute potential income for nonincome producing or low income
13 producing assets.

14 (e) In this section, "adjusted annual income" means the parent's total income
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16 (1) mandatory deductions, including

17 (A) federal, state, and local income tax;

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19 alternate plan established by a public employer, and self-employment tax;

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23 (2) voluntary contributions to a retirement or pension plan or account
24 in which the earnings are tax-free or tax-deferred, except that the total amount of these
25 voluntary contributions plus any mandatory contributions under (1)(E) of this
26 subsection may not exceed 7.5 percent of the parent's gross wages and self-
27 employment income;

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29 relationships that are required by another tribunal and actually paid;

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7 parents are awarded shared physical custody by

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9 parent under AS 25.28.010 assuming the other parent had primary custody; in this
10 calculation, the income limit in AS 25.28.030(c) and the minimum support amount in
11 AS 25.28.030(d) apply;

12 (2) multiplying the amount determined under (1) of this subsection for
13 each parent by the percentage of time the other parent has physical custody of the
14 child; however, if the tribunal finds that the percentage of time each parent will have
15 physical custody does not accurately reflect the ratio of funds each parent will directly
16 spend on supporting the child, the tribunal shall vary this percentage to reflect its
17 findings;

18 (3) determining which parent has the greater amount under (2) of this
19 subsection; the parent with the greater amount under (2) of this subsection is the
20 obligor parent, and the annual award is equal to the difference between the two
21 amounts under (2) of this subsection multiplied by 1.5; however, if this amount is
22 greater than the amount of support calculated under AS 25.28.010 assuming the
23 obligor parent has primary custody, the annual support is the amount calculated under
24 AS 25.28.010.

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26 be paid in 12 equal monthly installments, except that if

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28 custody for periods of 30 consecutive days or more, the total annual award may be
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30 physical custody; or

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1 unequal monthly support payments as provided in AS 25.28.030(g) and (h).

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3 physical custody to qualify for shared physical custody under (b) or (c) of this section
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5 custodial parent is not cause to increase a child support award.

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11 minimum support amount in AS 25.28.030(d), and offsetting those amounts; and

12 (2) consider whether the amount determined under (1) of this
13 subsection should be varied under AS 25.28.030(b).

14 (f) The tribunal shall

15 (1) calculate a child support award in a case in which the parents are
16 awarded hybrid custody by

17 (A) applying AS 25.28.010, taking into account the income
18 limit in AS 25.28.030(c) and the minimum support amount in
19 AS 25.28.030(d), to determine support for a child in the primary physical
20 custody of each parent;

21 (B) applying (b) of this section to determine support for a child
22 in the shared physical custody of the parents;

23 (C) adjusting pro rata the percentages provided in
24 AS 25.28.010(b) based on the number of children to which each type of
25 custody applies; and

26 (D) combining the amounts to determine the net obligation; and

27 (2) consider whether the amount determined under (1) of this
28 subsection should be varied under AS 25.28.030(b).

29 **Sec. 25.28.030. Exceptions to support awards.** (a) Notwithstanding the
30 requirements in AS 25.28.010 and 25.28.020, the tribunal may vary the award for the
31 reasons stated in this section.

1 (b) The tribunal may vary the child support award as calculated under the
2 other provisions of this chapter for good cause on proof by clear and convincing
3 evidence that manifest injustice would result if the support award were not varied. The
4 tribunal shall specify in writing the reason for the variation, the amount of support that
5 would have been required but for the variation, and the estimated value of any
6 property conveyed instead of support calculated under the other provisions of this
7 chapter. Good cause may include a finding that unusual circumstances exist that
8 require variation of the award in order to award an amount of support that is just and
9 proper for the parties to contribute toward the nurture and education of their children.
10 The tribunal shall consider the custodial parent's income in this determination.

11 (c) The calculation for primary physical custody under AS 25.28.010 does not
12 apply to the extent that the parent has an adjusted annual income of more than
13 \$100,000. The tribunal may make an additional award only if it is just and proper,
14 taking into account the needs of the child, the standard of living of the child, and the
15 extent to which that standard should reflect the supporting parent's ability to pay.

16 (d) Except as provided in AS 25.28.010(c) and 25.28.020, the minimum child
17 support amount that may be ordered is \$50 a month or \$600 a year.

18 (e) In addition to ordering a parent to pay child support as calculated under
19 this chapter, the tribunal may, in appropriate circumstances and when the parents are
20 minors as described in (f) of this section, order one or more grandparents of a child to
21 pay child support to an appropriate person in an amount determined by the tribunal to
22 serve the best interests of the child; however, the amount may not exceed the lesser of

23 (1) a proportionate share of the amount required to provide care in a
24 supervised setting to the grandchild, as determined by the tribunal; or

25 (2) the amount that would have been awarded if the child's parents had
26 the incomes of the child's grandparents and AS 25.28.010 and 25.28.020 were applied.

27 (f) An order under (e) of this section may be issued only with respect to a
28 child whose parents are both minors, and the order terminates when either parent
29 becomes 18 years of age. The tribunal shall specify in writing the reasons it considers
30 it to be appropriate to order a grandparent to pay child support under this subsection
31 and the factors considered in setting the amount of the child support award. In this

1 subsection, "grandparent" means the natural or adoptive parent of the minor parent.

2 (g) If the noncustodial parent's income is seasonal, the tribunal may order that
3 the annual support amount be paid in unequal monthly payments, with higher
4 payments during the months the parent expects to receive higher income and lower
5 payments in other months; the tribunal may not make an unequal payment order unless

6 (1) the tribunal finds that the burden of budgeting for periods of
7 unequal income should be placed on the obligee rather than the obligor; and

8 (2) the obligee agrees.

9 (h) An order of the tribunal for unequal payments under (g) of this section
10 must specify the annual support amount, the average monthly support amount, and the
11 amount due for each month. The order must provide that variations from the average
12 monthly amount begin with monthly payments in excess of the average monthly
13 amount so that a deficit situation cannot occur. Until the excess payments begin, the
14 tribunal shall order payment of the average monthly amount.

15 **Sec. 25.28.040. Health care expenses.** (a) The tribunal shall include in the
16 order coverage of the child's health care needs and require health insurance for the
17 child if insurance is available to either parent or both parents at a reasonable cost. The
18 tribunal shall consider whether the child is eligible for services through the Indian
19 Health Service, any other entity, or other insurance coverage before ordering either
20 parent or both parents to provide health care coverage through insurance, cash medical
21 support, or other means. The tribunal shall allocate equally the cost of insurance and
22 cash medical support between the parents unless the tribunal orders otherwise for good
23 cause. An obligor's child support obligation shall be decreased by the amount of the
24 obligee's portion of health insurance payments and cash medical support ordered by
25 the tribunal and actually paid by the obligor.

26 (b) The tribunal shall increase a child support award by the obligor's portion of
27 health insurance if the obligee is ordered to, and actually does, obtain and pay for
28 insurance. The cost of insurance is the cost attributable to the child for whom support
29 is paid. If the cost to the employee of covering the employee alone is the same as the
30 cost to the employee of covering the employee and dependents, then there is no
31 additional cost to the employee for adding the child and no portion of the cost of

1 coverage may be allocated to the child. If dependent coverage can be added for a
2 single cost, rather than for each dependent, and the dependent coverage covers
3 dependents in addition to the child subject to the order, the cost of the dependent
4 coverage shall be allocated equally among the dependents covered. If there is reason
5 to believe that there is an incremental cost to the employee for insuring dependents but
6 evidence of that incremental cost is unavailable, the cost of insurance is determined by
7 dividing the total cost of coverage by the number of family members covered and
8 multiplying that amount by the number of children subject to the order.

9 (c) The tribunal shall allocate equally between the parties the cost of
10 reasonable health care expenses not covered by insurance unless the tribunal orders
11 otherwise for good cause. A party shall reimburse the other party for the party's share
12 of the uncovered health care expenses within 30 days after receipt of the bill for the
13 health care, payment verification, and, if applicable, a health insurance statement
14 indicating what portion of the cost is uncovered. The tribunal shall allocate the
15 reasonable, uncovered health care expenses exceeding \$5,000 in a calendar year based
16 on the parties' relative financial circumstances when the expenses occur.

17 (d) In this section, "health care expenses" means medical, dental, vision, and
18 mental health counseling expenses.

19 **Sec. 25.28.050. Child support affidavit and documentation.** (a) Subject to
20 the confidentiality requirements of Rule 90.1(f), Alaska Rules of Civil Procedure, each
21 parent in a proceeding of a tribunal at which child support is involved shall file a
22 statement under oath that states the parent's adjusted annual income and the
23 components of adjusted annual income as described in AS 25.28.010(e). This
24 statement must be filed with a party's initial pleading, including the dissolution
25 petition, divorce complaint or answer, motion to modify, and any response to a motion
26 to modify, and must be accompanied by documentation verifying the income. The
27 documents must be redacted to delete social security numbers and to provide only
28 partial financial account information as provided in Rule 90.1(f), Alaska Rules of
29 Civil Procedure. The statement must state whether the parent has access to health
30 insurance for the children and, if so, the additional cost to the parent of the children's
31 health insurance.

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(b) While there is an ongoing monthly support obligation, each party shall provide to the other party, within 30 days after a written request, documents such as tax returns and pay stubs showing the party's income for the prior calendar year. The party making the request shall provide documentation of the party's annual income for the same period at the time the request is made. A request under this section may not be made more than once a year. This section does not preclude discovery under the Alaska Rules of Civil Procedure.

(c) Unless the information has already been provided to the tribunal under Rule 90.1(f), Alaska Rules of Civil Procedure, a statement under (a) of this section must be accompanied by a confidential information sheet as described in Rule 90.1, Alaska Rules of Civil Procedure. Once a complete confidential information sheet has been submitted to the tribunal listing names, dates of birth, and social security numbers as required, the parties shall omit or redact social security numbers from documents subsequently filed in the action unless otherwise ordered by the tribunal.

(d) The tribunal may withhold or assess costs or attorney fees for a violation of this section as the circumstances and discouragement of like conduct in the future may require. Costs and attorney fees may be imposed on offending attorneys or parties.

Sec. 25.28.060. Travel expenses. After determining an award of child support under this chapter, the tribunal shall allocate between the parties reasonable travel expenses that are necessary to exercise visitation as may be just and proper for the parties to contribute.

Sec. 25.28.070. Modification; defense against arrearages. (a) A tribunal may modify a final child support award on a showing of a material change of circumstances as provided by state law. A material change of circumstances shall be presumed if support as calculated under this chapter is more than 15 percent greater or less than the outstanding support order. In this subsection, support includes health insurance payments made under AS 25.28.040.

(b) A tribunal may not modify a child support arrearage retroactively, except as authorized by AS 25.27.166(d). A modification that is effective on or after the date that a motion for modification, or a notice of petition for modification by the child

1 support services agency, is served on the opposing party is not considered a retroactive
2 modification.

3 (c) The tribunal may find that a parent and a parent's assignee are precluded
4 from collecting arrearages for support of a child that accumulated during a time period
5 exceeding nine months for which the parent agreed or acquiesced to the obligor
6 exercising primary custody of the child. A finding that preclusion is a defense must be
7 based on clear and convincing evidence.

8 **Sec. 25.28.080. Third-party custody.** (a) When the state, or another third
9 party entitled to child support, has custody of all children of a parent, the parent's
10 support obligation to the third party is an amount equal to the adjusted annual income
11 of the parent multiplied by the percentage specified in AS 25.28.010(b). If the third
12 party has custody of some but not all children, the parent's support obligation to the
13 third party is an amount equal to the adjusted annual income of the parent, multiplied
14 by the percentage specified in AS 25.28.010(b) for the total number of the parent's
15 children, multiplied by the number of the parent's children in third-party custody,
16 divided by the total number of the parent's children. In this subsection, the number of
17 the parent's children includes only children of the parent who live with the parent, are
18 substantially supported by the parent, or are in custody of the third party entitled to
19 support.

20 (b) If, in addition to a support obligation to a third party, one or both parents
21 retain primary or shared physical custody of at least one of their children, the support
22 obligation between the parents is calculated under the other provisions of this chapter,
23 without consideration of the third-party custodian or any children in the custody of the
24 third-party custodian, except that the percentage in AS 25.28.010(b) must be adjusted
25 pro rata for the number of children in the primary custody of a parent, or shared
26 custody of the parents, compared to the total number of children. After that calculation
27 is completed, any support owed may be offset with support owed to a third-party
28 custodian under (a) of this section in order to minimize transactions.

29 **Sec. 25.28.090. Support order forms.** All orders for payment or modification
30 of child support shall be entered on a form developed by the administrative director of
31 the tribunal. A party may lodge a duplicate of the tribunal form produced by a laser

1 printer or similar device. A device may also print, in a contrasting typestyle equivalent
2 to that produced by a typewriter, text that otherwise would have been entered by a
3 typewriter or word processor. A party or attorney who lodges a duplicate certifies by
4 lodging the duplicate that it is identical to the current version of the tribunal form.

5 **Sec. 25.28.100. Dependent tax deduction.** The tribunal may allocate the
6 dependent tax deduction for each child between the parties as is just and proper and in
7 the child's best interests. The allocation must be consistent with AS 25.24.152 and
8 federal law.

9 **Sec. 25.28.300. Definitions.** In this chapter,

10 (1) "child support" and "child support obligation" have the meaning
11 given "duty of support" in AS 25.27.900;

12 (2) "divided custody" means that one parent has primary physical
13 custody of one or more children of the relationship and the other parent has primary
14 custody of one or more other children of the relationship, and the parents do not share
15 physical custody of any of their children;

16 (3) "hybrid custody" means that at least one parent has primary
17 physical custody of one or more children of the relationship, and the parents have
18 shared physical custody of at least one child of the relationship;

19 (4) "primary physical custody" or "primary custody" means that a child
20 resides with the other parent for a period, specified in the custody order, of less than
21 30 percent of the year;

22 (5) "shared physical custody" or "shared custody" means that a child
23 resides with one parent for a period, specified in writing in the custody order, of at
24 least 30 percent but not more than 70 percent of the year, regardless of the status of
25 legal custody;

26 (6) "tribunal" means the superior court or the child support services
27 agency created in AS 25.27.010.

28 * **Sec. 2.** AS 47.10.120(a) is amended to read:

29 (a) When a child in need of aid is committed under this chapter, the court or
30 the child support services agency created in AS 25.27.010 shall, after giving the parent
31 a reasonable opportunity to be heard, require that the parent pay to the department in a

1 manner that the court or the child support services agency directs a sum to cover in
2 full or in part the maintenance and care of the child. The support obligation shall be
3 calculated under AS 25.28 [RULE 90.3(i) OF THE ALASKA RULES OF CIVIL
4 PROCEDURE].

5 * **Sec. 3.** AS 47.12.230(a) is amended to read:

6 (a) When a delinquent minor is committed under this chapter, the court or the
7 child support services agency created in AS 25.27.010 shall, after giving the parent a
8 reasonable opportunity to be heard, require that the parent pay to the department in a
9 manner that the court or the child support services agency directs a sum to cover in
10 full or in part the maintenance and care of the minor. The support obligation shall be
11 calculated under AS 25.28 [RULE 90.3(i) OF THE ALASKA RULES OF CIVIL
12 PROCEDURE].

13 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

15 REPEAL OF COURT RULE. Rule 90.3, Alaska Rules of Civil Procedure, is repealed.

16 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 NON-APPLICABILITY OF TWO-THIRDS VOTE REQUIREMENT. Because the
19 rule repealed in sec. 4 of this Act is a substantive rule rather than a rule of practice or
20 procedure, the repeal of the rule takes effect even if sec. 4 of this Act does not receive the
21 two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of
22 Alaska.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB 46
() Publish Date: _____

Identifier (file name): SB46-REV-CSSD-02-28-10 updated
Title: Child Support Awards
Dept. Affected: Revenue
RDU: Revenue Programs & Services
Component: Child Support Services Division
Sponsor: Senator Kookesh
Requester: (S) Health and Social Services
Component Number: 111

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

Moving the court rule to statute has no fiscal impact on the Child Support Services Division.

The fiscal impact of zero is based on the assumption that the Legislature will assume the responsibility of the four year review including the costs of the program review.

Prepared by: John Mallonee, Director
Division: Child Support Services Division
Approved by: Ginger Blaisdell, Director
Administrative Services Division

Phone 269-2801
Date/Time 02-24-10; 1:02pm
Date 02-28-10; 4:16pm

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 46
 () Publish Date: _____

Identifier (file name): SB46-REV-CSSD-02-24-10
 Title: Child Support Awards
 Sponsor: Senator Kookesh
 Requester: (S) Health and Social Services
 Dept. Affected: Revenue
 RDU: Revenue Programs & Services
 Component: Child Support Services Division
 Component Number: 111

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

This legislation has no fiscal impact on the Child Support Services Division.

Prepared by: John Mallonee, Director
 Division: Child Support Services Division
 Approved by: Ginger Blaisdell, Director
 Administrative Services Division

Phone 269-2801
 Date/Time 02-24-10; 1:02pm
 Date 02-24-10; 4:16pm

Celeste Hodge

From: Dorothy Shockley
Sent: Monday, March 01, 2010 10:42 AM
To: Celeste Hodge
Subject: SB 46 Child Support Awards--legal comments

Hi Celeste....here's Ken's letter (I just got it!) thanks, ~D

Ms. Shockley: Here is a copy of Mr. Kirk's letter to you of 2/22/10.

February 22, 2010

Office of Senator Albert Kookesh

Attn: Dorothy J. Shockley

State Capitol, Room 11

Juneau, AK 99801

Re: SB 46

Dear Senator:

I am writing to express my support for the proposed SB 46, which, if passed, would finally enact a child support guideline into statute.

The lack of a child support guideline has been a blot on our constitutional system for over 20 years. In 1987 the Alaska Supreme Court adopted Civil Rule 90.3, which I am sure they intended to be only a short-term solution to avoid loss of federal benefits until the legislature replaced the rule with an actual statute. Unfortunately the justices, who predictably do not have a very good collective ear for political realities, did not realize that when you take a hot potato away from the legislature, you tend to get stuck with the hot potato for life. And so in 23 years, no legislator (until now) has even introduced a bill to enact a specific guideline. In the meantime the Supreme Court, with its typical inability to admit when it is wrong, has whitewashed the fact that this is a substantive law enacted by the judiciary, by trying to claim that it is "merely a guideline" even though its own cases require that the guideline be followed.

The Alaska Constitution gives the judiciary the authority to enact administrative and procedural rules, and to decide individual cases. It has no right or ability to enact substantive laws. For the judiciary to enact a substantive law, is a terrible precedent which threatens the structure of separation of powers. And so I implore you to remedy this embarrassment by enacting a substantive child-support law to replace 90.3.

That said, if this bill gets a committee hearing you will be provided with a lot of options, some of them probably better than what you have here. SB 46 essentially adopts the present system of child support guidelines, which is generally referred to as a "percentage of income" system. It does have the advantage of being consistent with the way we have done this in Alaska for the past 23 years, so that the many people who have to apply these rules (judges, attorneys, and CSSD workers) do not have to start all over again. On the other hand most states have adopted the "income shares" system, under which both parents' incomes are taken into account. Our system takes into account, in most cases, only the income of the noncustodial parent. There are good arguments on both sides, and you may want to consider using the income shares system instead. Likewise, there are many desirable changes which could be made to the guidelines, even if the basic structure is kept intact.

Please consider the many changes which are likely to be presented, and keep an open mind to them, but at the end of the day please pass something. Under the current system, the people who are affected by this substantive law can never talk to the people who can change it, because the justices who actually decide on changes do not talk to people. Every four years, the justices appointed a review committee, a group of lawyers who then solicit comments for change, and hold public hearings. However the review committee does not make the final decision, and the justices have been anything but a rubber stamp for the committee's recommendations. I have been on two of the review committees over the years, and many of the changes we proposed were either rejected, or dramatically revised, by the Supreme Court.

The current system is undemocratic. You have the option of changing it into a system which is democratic, in which people can petition their legislators if they believe further changes should be made. Please take some such action. The exact details of how child support is calculated, is less important than that our system of democratic government is able to continue operating the way it should.

Please feel free to contact me if there are any other questions you, or any of your fellow legislators, have for me.

Sincerely,

Kenneth Kirk