

**SB**

**46**

26-LS0279\T  
Mischel  
3/25/10

**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**

**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 between the  
25 — parents unless the tribunal orders otherwise for good cause. An obligor's child support  
26 obligation shall be decreased by the amount of the obligee's portion of health  
27 — insurance payments ordered by the tribunal and actually paid by the obligor. The  
28 tribunal shall increase a child support award by the obligor's portion of health  
29 insurance if the obligee is ordered to, and actually does, obtain and pay for insurance.

30 (c) The cost of insurance is the cost attributable to the child for whom support  
31 is paid. If the cost to the employee of covering the employee alone is the same as the

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

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

19 ~~(e) For the purpose of establishing a monthly support obligation for health~~  
20 ~~— care expenses, 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 health care expenses 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, accompanied by documentation verifying the statement, that  
5 states the parent's adjusted annual income and the components of adjusted annual  
6 income as described in AS 25.28.010(e). This statement and documentation must be  
7 filed with a party's initial pleading in superior court, including the dissolution petition,  
8 divorce complaint or answer, motion to modify, and any response to a motion to  
9 modify. 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 tribunal may not modify a child support arrearage retroactively, except  
14 as 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 court orders for payment or  
14 modification of child support shall be entered on a form developed by the  
15 administrative director of the court. <sup>(Amended)</sup> A party may lodge a duplicate of the tribunal form  
16 produced by a laser printer or similar device. A device may also print, in a contrasting  
17 typestyle equivalent to that produced by a typewriter, text that otherwise would have  
18 been entered by a typewriter or word processor. A party or attorney who lodges a  
19 duplicate certifies by lodging the duplicate that it is identical to the current version of  
20 the court form.

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

25 Sec. 25.28.300. Definitions. In this chapter,

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

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

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

4 (4) "primary physical custody" or "primary custody" means that a child  
5 resides with the other parent for a period, specified in the custody order, of less than  
6 30 percent of the year;

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

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

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

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

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

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

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

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

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

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

# STATE OF ALASKA

## DEPARTMENT OF LAW OFFICE OF THE ATTORNEY GENERAL

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March 23, 2010

Honorable Albert Kookesh  
Senate  
Capital Building  
MS 3100, Room 11  
Juneau, AK 99801-1182

RE: Child Support Awards  
CS SB 46

Dear Senator Kookesh:

Thank you for the opportunity to provide comments about CS SB 46 Child Support Awards (CS SB 46 26-LS0279\P). This bill moves the child support guidelines from the court rule (Civil Rule 90.3) to statute. The committee substitute resolves some of the legal issues with the prior version, but raises some new issues. Attached is a page and line number summary of the small changes to the bill (Attachment 1). The main area of concern is section 25.28.040 addressing health care expenses.

The prior version of SB 46 did not include the 2008 federally mandated provisions addressing medical support. CS SB 46 cures two previously deficient areas: defining the reasonable cost of health insurance and defining the accessibility of health insurance. The third area is cash medical support. CS SB 46 now includes cash medical support (page 7, lines 27-29) and the reasonable cost of cash medical support (Page 7, lines 20-25), but these additions now make the section internally inconsistent and subject to several different interpretations. Here are some examples:

- Paragraph (b) provides cash medical support (i.e. uncovered medical costs) will be equally allocated between the parents which conflicts with section (d) that provides that uncovered health care expenses will be allocated equally between the parents unless the cost exceeds \$5,000 in a calendar year, then the costs are allocated based on the parents' relative financial circumstances.
- Paragraph (b) provides the obligor can decrease his/her support obligation by the amount of "cash medical support" paid. As currently defined, the obligor can deduct 50% of all medical expenses he/she pays. This could result in no child support payment to the custodian or possibly the custodian paying the non-

custodial parent. Also, as written, the custodian would effectively pay 75% of the child's uncovered expenses.

- Paragraph (e) defines the reasonable cost of private health insurance or cash medical support. It limits cash medical support to 5% of the responsible parent's gross income. The paragraph does not address circumstances when the uncovered medical costs exceed the 5% standard—who pays the health care provider if the bill exceeds each parent's 5% of gross income. As written, the custodian may be burdened with all bills that exceed 5% the obligor's gross income. This paragraph also conflicts with paragraph (d).
- Cash medical support as defined only includes uncovered "medical costs"; Health care expenses are defined broadly including not only "medical" expenses, but also dental, vision, and mental health counseling expenses.

I have included an example to reflect these issues and application of the health care section. (See attachment 2).


Also, the health care expense section does not require the court to order cash medical support if health insurance is not available to either parent at a reasonable cost or accessible to the child.

The federal requirements for medical support are complicated and many states have struggled with complying with the new federal mandates. The discussion in the Federal Register anticipates that a tribunal would order a cash medical support payment when accessible health insurance is not available to the child at a reasonable cost. Thus, a parent would either pay for health insurance each month (and receive a corresponding 50% adjustment in health insurance) or pay the other parent a set cash sum each month.

If you have any questions, please do not hesitate to contact me. I will also be available for questions at the Senate Judiciary committee hearing scheduled for March 24 at 1:30 pm. I will be participating from the Legislative Information Office in Anchorage.

Sincerely yours,

DANIEL S. SULLIVAN  
ATTORNEY GENERAL

By:   
Stacy K. Steinberg  
Chief Assistant Attorney General

//

Letter: Sen. Kookesh  
March 23, 2010

SB46 Child Support Awards  
Page 3

SKS

Enclosures:

45 CFR 302.56

45 CFR 303.31

45 CFR 308.2

Federal Register Vol 73, No 140 (July 21, 2008)

CC: CSSD Director John Mallonee  
DOR—Ginger Blaisdell  
Sen Hollis French, Chair Senate Judiciary Committee

Attachment 1

**CS SB 46 Recommended amendments [26-LS0279\P]:**

**By Stacy K. Steinberg, Chief Assistant Attorney General (see letter attached)**

**Page 8, line 5:** after "AS 25.28.010(e)" add and must be accompanied by documentation verifying the income.

**Page 8, line 8:** after "modify" delete and must be accompanied by documentation verifying the income.

**Page 9, line 13:** change court to tribunal

**Page 10, line 13** after "All" add court (Alternatively Sec. 25.28.090 could be deleted).

**Page 10, line 13** change tribunal to court (Alternatively Sec. 25.28.090 could be deleted).

**Page 6, line 15-Page 7, line 31** Sec. 25.28.040 Health Care Expenses. This section is internally inconsistent and needs to be revised.

Attachment 2

Medical Support				
Example: Primary Custody				
Mom has primary custody of Johnny				
Mom earns \$25,000/year (42% of total parents' incomes)				
Dad earns \$35,000/year (58% of total parents' incomes)				
Dad is the "obligor" and pays \$480/mo in child support (\$5,760/year)				
Johnny breaks his arm and has \$10,000 in medical bills				
If insurance, insurance pays for \$8,000 and \$2,000 uncovered				
	<b>Senario #1</b>	<b>Senario #2</b>	<b>Senario #3</b>	<b>Senario#4</b>
	Current 90.3(d): Dad has health ins \$100; Uncovered meds \$2,000	Current 90.3(d) Dad has no health ins; uncovered meds \$10,000	CS SB46 25.28.40: Dad has health ins \$100/mo; Uncovered meds \$2,000	CS SB 46 25.28.40: Dad has no health ins; Uncovered meds \$10,000
<b>Basic Monthly Support</b>	\$480	\$480	\$480	\$480
<b>Health Ins. 50%</b>	(\$50)	\$0	(\$50)	\$0
<b>Total Monthly Support</b>	\$430	\$480	\$430	\$480
<b>Uncovered Medicals</b>	Dad pay \$1,000 (50%)	Dad pay \$5,800 (58%)	Dad pay \$1,000 (50%)	Does dad pay \$5,000 meds (50%)? or \$5,800 meds (58%)? or \$1,750 meds (5% gross income)?
<b>New Support</b>	\$1,000 meds plus \$430/mo support	\$5,800 meds plus \$480/mo support	\$1,000 meds--subtract from support and pays \$346/mo in support?? (\$5,760-\$1,000)	\$5,000 meds? or \$5,800 meds? or \$1,750 meds? <b>PLUS</b> \$63/mo for support (\$5,760-\$5,000)? or \$0/mo for support (\$5,760-\$5,800)? or \$334/mo for support (\$5,760-\$1,750) in support? Or mom pays dad \$3/mo (\$5,760-\$5,800)?

ALASKA STATE LEGISLATURE  
Senator Albert M. Kookesh

State Capitol, Room 7  
Juneau, Alaska 99801-1182

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Standing Committees:  
Transportation  
Community & Regional Affairs

E-mail: Senator\_Albert\_Kookesh@legis.state.ak.us

DISTRICT C

Alatna  
Allakaket  
Aniak  
Angoon  
Anvik  
Arctic Village  
Beaver  
Beluga  
Bettles  
Big Delta  
Birch Creek  
Boundary  
Cape Pole  
Central  
Chalkyitsik  
Chandalar Lake  
Chenega Bay  
Chicken  
Chisana  
Chistochina  
Chitina  
Chuathbaluk  
Circle  
Coffman Cove  
Cordova  
Cube Cove  
Coldfoot  
Copper Center  
Craig  
Crooked Creek  
Delta Junction  
Deltana  
Dot Lake  
Dry Creek  
Eagle  
Eagle Village  
Edna Bay  
Ellamar  
Ernestine  
Excursion Inlet  
Eureka  
Evansville  
Eyak  
Flat  
Fort Greely  
Fort Yukon  
Fortuna Ledge  
Funter Bay  
Gakona  
Galena  
Grayling  
Gulkana  
Gustavus  
Haines  
Healy Lake  
Hogatza  
Hobart Bay  
Holy Cross  
Hoonah  
Hughes  
Huslia  
Hydaburg

March 15, 2010

Senator Hollis French, Chair  
Senate Judiciary Committee  
State Capitol Bldg., Rm. 417  
Juneau, AK 99801

Dear Senator French *Hollis*

I respectfully request a hearing for Senate Bill 46 "An act relating to child support awards; and repealing Rule 90.3, Alaska Rules of Civil Procedure." This bill simply puts the rule into statute. In 1987, the Alaska Supreme Court enacted Civil Rule 90.3. The court frankly admitted that this was a substantive law and recognized the courts are not supposed to pass substantive laws that are the Legislature's job. In the 23 years since then, the Legislature has not replaced Civil Rule 90.3 with an actual law. This bill proposes to correct this long standing deficiency.

Thank you for your consideration and if you have any questions don't hesitate in contacting me personally or my staff Dorothy Shockley at 465-3018.

Respectfully,

Senator Albert Kookesh

Att: Sponsor Statement  
CSSB 46  
Letter of Support

Hyder  
Kake  
Kaltag  
Kasaan  
Katalla  
Kennicott  
Kenny Lake  
Klawock  
Klukwan  
Koyukuk  
Labouchere Bay  
Lake Minchumina  
Lime Village  
Livengood  
Long Island  
Mankomen Lake  
Manley Hot Springs  
Marshall  
McCarthy  
McGrath  
Medfra  
Metlakatla  
Mentasta  
Minto  
Nabesna  
Naukatu Bay  
Nenana  
Nikolai  
Northway  
Nulato  
Ophir  
Point Baker  
Polk Inlet  
Port Alice  
Port Protection  
Rampart  
Red Devil  
Ruby  
Russian Mission  
Shageluk  
Skagway  
Slana  
Sleetmute  
Stevens Village  
Stony River  
Strelna  
Takotna  
Tanacross  
Tanana  
Tatitlek  
Tazlina  
Telida  
Tenakee Springs  
Tetlin Junction  
Tok  
Tonsina  
Tyonek  
Utopia Creek  
Venetie  
View Cove  
Waterfall  
Whale Pass  
Wiseman  
Yakutat

**CS SB 46 Recommended amendments [26-LS0279\P]:**

**By Stacy K. Steinberg, Chief Assistant Attorney General (see letter attached)**

**Page 8, line 5:** after "AS 25.28.010(e)" add and must be accompanied by documentation verifying the income.

**Page 8, line 8:** after "modify" delete and must be accompanied by documentation verifying the income.

**Page 9, line 13:** change court to tribunal

**Page 10, line 13** after "All" add court (Alternatively Sec. 25.28.090 could be deleted).

**Page 10, line 13** change tribunal to court (Alternatively Sec. 25.28.090 could be deleted).

**Page 6, line 15-Page 7, line 31** Sec. 25.28.040 Health Care Expenses. This section is internally inconsistent and needs to be revised.

is made in the month, the assignment is no longer in effect and there are no longer any assigned arrearages, or the conditions in paragraph (b) of this section are met.

(2) The monthly notice must list separately payments collected from each noncustodial parent when more than one noncustodial parent owes support to the family and must indicate the amount of current support collected, the amount of arrearages collected and the amount of support collected which was paid to the family.

(b)(1) The Office may grant a waiver to permit a State to provide quarterly, rather than monthly, notices, if the State:

(i) Until September 30, 1997, does not have an automated system that performs child support enforcement activities consistent with §302.85 or has an automated system that is unable to generate monthly notices; or

(ii) Uses a toll-free automated voice response system which provides the information required under paragraph (a) of this section.

(2) A quarterly notice must be provided in accordance with conditions set forth in paragraph (a)(1) of this section and such notice must contain the information set forth in paragraph (a)(2) of this section.

[57 FR 30681, July 10, 1992, as amended at 61 FR 67241, Dec. 20, 1996; 64 FR 6249, Feb. 9, 1999; 68 FR 25303, May 12, 2003]

### § 302.55 Incentive payments to States and political subdivisions.

Effective October 1, 1985, in order for the State to be eligible to receive any incentive payments under §304.12 and part 305 of this chapter, the State plan shall provide that, if one or more political subdivisions of the State participate in the costs of carrying out the activities under the State plan during any period, each such subdivision shall be entitled to receive an appropriate share of any incentive payments made to the State for such period, as determined by the State in accordance with §303.52 of this chapter, taking into account the efficiency and effectiveness

of the political subdivision in carrying out the activities under the State plan.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19649, May 9, 1985; 50 FR 23958, June 7, 1985, as amended at 51 FR 37731, Oct. 24, 1986; 54 FR 32309, Aug. 4, 1989; 65 FR 82208, Dec. 27, 2000]

### § 302.56 Guidelines for setting child support awards.

(a) Effective October 13, 1989, as a condition of approval of its State plan, the State shall establish one set of guidelines by law or by judicial or administrative action for setting and modifying child support award amounts within the State.

(b) The State shall have procedures for making the guidelines available to all persons in the State whose duty it is to set child support award amounts.

(c) The guidelines established under paragraph (a) of this section must at a minimum:

(1) Take into consideration all earnings and income of the noncustodial parent;

(2) Be based on specific descriptive and numeric criteria and result in a computation of the support obligation; and

(3) Address how the parents will provide for the child(ren)'s health care needs through health insurance coverage and/or through cash medical support in accordance with §303.31 of this chapter.

(d) The State must include a copy of the guidelines in its State plan.

(e) The State must review, and revise, if appropriate, the guidelines established under paragraph (a) of this section at least once every four years to ensure that their application results in the determination of appropriate child support award amounts.

(f) Effective October 13, 1989, the State must provide that there shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the guidelines established under paragraph (a) of this section is the correct amount of child support to be awarded.

(g) A written finding or specific finding on the record of a judicial or administrative proceeding for the award of child support that the application of the guidelines established under paragraph (a) of this section would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case, as determined under criteria established by the State. Such criteria must take into consideration the best interests of the child. Findings that rebut the guidelines shall state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.

(h) As part of the review of a State's guidelines required under paragraph (e) of this section, a State must consider economic data on the cost of raising children and analyze case data, gathered through sampling or other methods, on the application of, and deviations from, the guidelines. The analysis of the data must be used in the State's review of the guidelines to ensure that deviations from the guidelines are limited.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19649, May 9, 1985; 50 FR 23958, June 7, 1985, as amended at 51 FR 37731, Oct. 24, 1986; 56 FR 22354, May 15, 1991; 73 FR 42441, July 21, 2008]

### § 302.60 Collection of past-due support from Federal tax refunds.

The State plan shall provide that:

(a) The IV-D agency has in effect procedures necessary to obtain payment of past-due support from Federal tax refunds as set forth in section 464 of the Act, § 303.72 of this chapter, and regulations of the Internal Revenue Service at 26 CFR 304.6402-1; and

(b) The IV-D agency shall take the steps necessary to implement and use these procedures.

(Approved by the Office of Management and Budget under control number 0960-0253)

[47 FR 7428, Feb. 19, 1982]

### § 302.65 Withholding of unemployment compensation.

The State plan shall provide that the requirements of this section are met.

(a) *Definitions.* When used in this section:

*Legal process* means a writ, summons or other similar process of the nature of a garnishment, whether issued by a court of competent jurisdiction or by an authorized official pursuant to an order of such court or pursuant to State or local law.

*State employment security agency (SESA)* means the State agency charged with the administration of the unemployment compensation law in accordance with title III of the Act.

*Unemployment compensation* means any compensation payable under any unemployment compensation law, including amounts payable in accordance with agreements under any Federal employment compensation law. It includes extended benefits, unemployment compensation for Federal employees, unemployment compensation for ex-servicemen, trade readjustment allowances, disaster unemployment assistance, and payments under the Wood National Park Expansion Act.

(b) *Agreement.* The State IV-D agency shall enter into a written agreement with the SESA in its State for the purpose of withholding unemployment compensation from individuals whose unmet support obligations are being forced by the IV-D agency. The agency shall agree only to a withholding program that it expects to be cost-effective and to reimburse the SESA for the SESA's actual, incremental costs of providing services to the agency.

(c) *Functions to be performed by the IV-D agency.* The IV-D agency shall:

(1) Determine periodically from information provided by the SESA under section 508 of the Unemployment Compensation Amendments of 1976 whether individuals applying for or receiving unemployment compensation owe support obligations that are being forced by the IV-D agency.

(2) Enforce unmet support obligations by arranging for the withholding of unemployment compensation based on a voluntary agreement with the individual who owes the support, or in appropriate cases which meet the selection criteria established under paragraph (c)(3), through legal pro-



**SENATOR ALBERT M. KOOKESH**  
**ALASKA STATE LEGISLATURE SENATE DISTRICT C**  
E-mail: [Senator.Albert.Kookesh@legis.state.ak.us](mailto:Senator.Albert.Kookesh@legis.state.ak.us)

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Juneau AK, 99801-1182  
907-465-3473  
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## **Sponsor Statement**

### **CSSB 46**

**SB 46** puts the Child Support Civil Rule 90.3 guidelines into statute. In 1987, the Alaska Supreme Court enacted Civil Rule 90.3. The Supreme Court admitted that this was a substantive law that the Legislature could replace at anytime. In the 23 years since then, the Legislature has not replaced civil rule 90.3 with an actual law. This bill proposes to correct that long-standing deficiency.

One of the major problems with having the child support guidelines set by a court rule is the people affected by the current guidelines never have the chance to speak to the individuals who have the power to make changes. Instead every four years they are encouraged to write letters or testify before a review committee made up of lawyers and judges who then submit their recommendations to the Supreme Court Justices who make the final decisions. With the rule in statute, individuals can talk to the law makers directly.

The bill proposes enactment of the current rule, into statute. Under this model of child support guidelines, the non-custodial parent's support obligation is based solely on his or her income, without regard to what the other parent makes. The current rule works reasonably well, and with a statute in place, proposals to amend it can be made in the future, through the legislative process.

**CSSB 46** changes the word court to tribunal in some cases back to court and adds number (6) to definition in Sec. 25.28.300 (page 11) to read "tribunal" means the superior court or the child support services agency created in AS 25.27.010. It also includes changes made by SB 96 addressing medical support.

The Child Support Services Division has no objections to the bill. I would appreciate your prompt and favorable action on this bill.

**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