

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: 3/12/10

Referred: Judiciary, Finance

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.