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Nauman
4/13/15

CS FOR HOUSE BILL NO. 147()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES VAZQUEZ, Gruenberg, LeDoux, Lynn, Drummond, Edgmon, Guttenberg, Josephson, Ortiz, Tarr, Tuck, Muñoz, Talerico, Stutes

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the investigation of cruelty to animals complaints; relating to the**
2 **seizure of animals; relating to the destruction of animals; relating to the costs of care of**
3 **an animal that has been seized; relating to the inclusion of an animal in a protective**
4 **order and the crimes and arrests for violating that protective order; and relating to the**
5 **ownership of an animal upon divorce or dissolution of marriage."**

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

7 *** Section 1.** AS 03.55.110(b) is amended to read:

8 (b) A peace officer who receives a complaint of animal cruelty may apply for
9 a search warrant under AS 12.35 to the judicial officer in the judicial district in which
10 the alleged violation has taken place or is taking place. If the court finds that probable
11 cause exists, the court shall issue a search warrant directing a peace officer to proceed
12 immediately to the location of the alleged violation, search the place designated in the
13 warrant, and, if warranted, seize [TAKE] property, including animals, specified in the

1 warrant. The warrant shall be executed by the peace officer and returned to the court.

2 * **Sec. 2.** AS 03.55.110(c) is amended to read:

3 (c) Before a peace officer may seize [TAKE] an animal and place it into
4 protective custody, the peace officer shall request an immediate inspection and
5 decision by a veterinarian licensed under AS 08.98 that placement into protective
6 custody is in the immediate best interest of the animal. If a veterinarian is not available
7 to perform an inspection, before a peace officer may seize [TAKE] an animal, the
8 peace officer shall communicate with a veterinarian who has, after hearing a
9 description of the condition of the animal and its environment, decided it is in the
10 immediate best interest of the animal that it be placed into protective custody. If the
11 peace officer is not able to communicate with a veterinarian, before the officer may
12 take an animal, the officer shall decide it is in the immediate best interest of the animal
13 that it be placed into protective custody [. FOR PURPOSES OF THIS SECTION,
14 "PEACE OFFICER" MEANS

- 15 (1) AN OFFICER OF THE STATE TROOPERS;
16 (2) A MEMBER OF THE POLICE FORCE OF A MUNICIPALITY;
17 (3) A VILLAGE PUBLIC SAFETY OFFICER; OR
18 (4) A REGIONAL PUBLIC SAFETY OFFICER].

19 * **Sec. 3.** AS 03.55.120 is amended to read:

20 **Sec. 03.55.120. Seizure of animals.** (a) A peace officer shall place an animal
21 in protective custody before seizing [REMOVING] the animal from the location
22 where it was found. If the animal is seized [REMOVED], the peace officer shall place
23 the animal with a veterinarian licensed under AS 08.98 or, if a veterinarian is not
24 readily available, with a responsible public or private custodian to be sheltered, cared
25 for, and provided necessary medical attention.

26 (b) A peace officer who has seized [REMOVED] an animal shall immediately
27 notify the animal's owner in writing of the seizure [REMOVAL] and of the owner's
28 right to petition the court under AS 03.55.130 for return of the animal. Notification
29 may be delivered in person, posted at the owner's residence, or mailed to the owner.

30 (c) If a seized [REMOVED] animal's owner is unknown and cannot be
31 ascertained with reasonable effort,

1 **(1) the animal shall be considered a stray or abandoned; and**
2 **(2) the notice required in (b) of this section shall be conspicuously**
3 **posted at the premises from which the animal was seized.**

4 (d) The state, a municipality, or a person [,] that supplies shelter, care,
5 veterinary attention, or medical treatment for an animal seized under this section shall
6 make a reasonable effort to locate the owner.

7 * **Sec. 4.** AS 03.55.130(a) is amended to read:

8 (a) If a determination is made by a veterinarian licensed under AS 08.98, by a
9 peace officer in consultation with a veterinarian licensed under AS 08.98, or by a
10 peace officer who is unable to locate or communicate with a veterinarian licensed
11 under AS 08.98 that an animal **seized** [REMOVED] under AS 03.55.100 - 03.55.190
12 is injured or diseased to such an extent that, in the opinion of the veterinarian, it is
13 probable the animal cannot recover, the veterinarian or the peace officer may
14 humanely destroy the animal or arrange for the animal's humane destruction.

15 * **Sec. 5.** AS 03.55.130(b) is amended to read:

16 (b) Upon diagnosis and recommendation of a veterinarian licensed under
17 AS 08.98, a public or private custodian may humanely destroy or arrange for the
18 humane destruction of a severely injured, diseased, or suffering animal that has been
19 **seized** [REMOVED] under AS 03.55.100 - 03.55.190.

20 * **Sec. 6.** AS 03.55.130(d) is amended to read:

21 (d) Except as provided in (a) or (b) of this section, the custodian of an animal
22 may not adopt, provide for the adoption of, or euthanize the animal within 10 business
23 days after the animal is taken into custody. An owner **or custodian** may prevent the
24 animal's adoption or destruction by

25 [(1)] petitioning the court of the judicial district in which the animal
26 was **seized** [REMOVED] for the animal's [IMMEDIATE] return, subject [, IF
27 APPROPRIATE,] to court-imposed conditions [; OR

28 (2) POSTING A BOND OR SECURITY WITH THE COURT OF
29 THE JUDICIAL DISTRICT IN WHICH THE ANIMAL WAS SEIZED IN AN
30 AMOUNT DETERMINED BY THE COURT TO BE SUFFICIENT TO PROVIDE
31 FOR THE ANIMAL'S CARE FOR A MINIMUM OF 30 DAYS FROM THE DATE

1 THE ANIMAL WAS REMOVED].

2 * **Sec. 7.** AS 03.55.130(e) is repealed and reenacted to read:

3 (e) The court may, on its own accord or upon a filing by the custodian, the
4 owner of the animal, or the entity that seized the animal, enter an order for the cost of
5 care of the animal pending final disposition of the custody of the animal. An order
6 under this section may include a requirement that the owner of the animal post a bond
7 or other security to guarantee that the cost of care of the animal is received and
8 maintained. If, without justifiable cause, the owner of the animal fails to comply with
9 an order under this section, the court may order that the animal be forfeited.

10 * **Sec. 8.** AS 03.55.130(f) is amended to read:

11 (f) The state may not be required to reimburse a public or private agency,
12 organization, or person that voluntarily assists with the seizure [A REMOVAL] of an
13 animal or receives custody of an animal seized [REMOVED] under this section for
14 the cost of care of [COSTS OF SHELTER, CARE, VETERINARY ASSISTANCE,
15 OR MEDICAL TREATMENT RENDERED TO] the animal.

16 * **Sec. 9.** AS 03.55.130 is amended by adding a new subsection to read:

17 (g) Nothing in (d) or (e) of this section shall shift the burden of proof from the
18 party who would otherwise have that burden.

19 * **Sec. 10.** AS 03.55.190 is amended by adding new paragraphs to read:

20 (4) "cost of care" means the cost of shelter, care, veterinary assistance,
21 and medical treatment rendered to the animal;

22 (5) "cruelty to animals" includes acts constituting cruelty to animals
23 under AS 11.61.140(a), acts promoting an exhibition of fighting animals under
24 AS 11.61.145(a)(1) or (2), and other serious acts of animal cruelty warranting
25 protective actions under AS 03.55.100 - 03.55.190, whether or not they are
26 specifically listed in AS 11.61.140 or 11.61.145;

27 (6) "peace officer" means

28 (A) an officer of the state troopers;

29 (B) a member of the police force of a municipality;

30 (C) a village public safety officer; or

31 (D) a regional public safety officer.

1 * **Sec. 11.** AS 11.56.740(a) is amended to read:

2 (a) A person commits the crime of violating a protective order if the person is
3 subject to a protective order

4 (1) issued or filed under AS 18.66 and the protective order contains
5 one or more of the provisions [CONTAINING A PROVISION] listed in
6 AS 18.66.100(c)(1) - (7) and the person knowingly commits or attempts to commit an
7 act with reckless disregard that the act violates or would violate a provision of the
8 protective order;

9 (2) issued under AS 18.65.850, 18.65.855, or 18.65.860 and knowingly
10 commits or attempts to commit an act that violates or would violate a provision listed
11 in AS 18.65.850(c)(1) - (3); or

12 (3) issued under AS 13.26.207 - 13.26.209 and knowingly commits or
13 attempts to commit an act with reckless disregard that the act violates or would violate
14 a provision of the protective order.

15 * **Sec. 12.** AS 18.65.520(a) is amended to read:

16 (a) A peace officer investigating a crime involving domestic violence shall
17 orally and in writing inform the victim of the rights of victims of domestic violence
18 and the services available to them. The notice must be in substantially the following
19 form:

20 If you are the victim of domestic violence and you believe that
21 law enforcement protection is needed for your physical safety, you
22 have the right to request that the officer assist in providing for your
23 safety, including asking for an emergency protective order.

24 You may also request the officer to assist you in obtaining your
25 essential personal belongings and locating and taking you to a safe
26 place, including a designated meeting place or shelter, the residence of
27 a household member or friend, or a similar place of safety. In some
28 places in Alaska there are organizations that provide aid and shelter to
29 victims of domestic violence. The nearest organization is located at

30 _____
31 If you are in need of medical treatment, you may request that

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the officer assist you in obtaining medical treatment.

You may obtain information about whether the prosecuting attorney will file a criminal complaint about the domestic violence. Additionally, the victim/witness assistance program of the Department of Law may be able to help you. This information is available from the district attorney's office, which is located at _____.

You also have the right to file a petition in court requesting a protective order that may include any of the following provisions:

(1) prohibit your abuser from threatening to commit or committing further acts of domestic violence;

(2) prohibit your abuser from stalking, harassing, telephoning, contacting, or otherwise communicating with you, directly or indirectly;

(3) remove your abuser from your residence;

(4) order your abuser to stay away from your residence, school, place of employment, or any other specified place frequented by you or another designated household member;

(5) prohibit your abuser from entering your vehicle or a vehicle you occupy;

(6) prohibit your abuser from using or possessing a deadly weapon if the court finds your abuser was in the actual possession of or used a weapon during the commission of your abuse;

(7) direct your abuser to surrender any firearm owned or possessed by that person if the court finds your abuser was in the actual possession of or used a firearm during the commission of your abuse;

(8) request a peace officer to accompany you to your residence to ensure your safe possession of the residence, vehicle, or other items, or to ensure your safe removal of personal items from the residence;

(9) award temporary custody of a minor child to the petitioner and may arrange for visitation with a minor child if the safety

of the child and the petitioner can be protected;

(10) grant you possession and use of a vehicle and other essential personal **items, including a pet, regardless of the ownership of those items** [EFFECTS];

(11) prohibit your abuser from consuming controlled substances;

(12) require your abuser to pay support for you or a minor child in your care if there is an independent legal obligation of your abuser to support you or the child;

(13) require your abuser to reimburse you for your expenses caused by domestic violence, including medical bills, or for your costs in getting a protective order;

(14) order your abuser to participate in an intervention program for batterers; and

(15) other relief the court determines to be necessary for your safety.

The forms you need to obtain a protective order are available from the nearest court. It is not necessary to have an attorney to obtain a protective order, but you may consult an attorney if you choose. If you would like help obtaining a protective order, you may contact the nearest domestic violence program located at _____. The program can also tell you about other resources available in this community for information about domestic violence, treatment of injuries, and places of safety and shelter.

You may also qualify for compensation from the Violent Crimes Compensation Board. The board may be contacted at _____.

* Sec. 13. AS 18.65.590 is amended to read:

Sec. 18.65.590. Definitions [DEFINITION]. In AS 18.65.510 - 18.65.590,

(1) "domestic violence" has the meaning given in AS 18.66.990;

(2) "pet" means a vertebrate living creature maintained for

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1 companionship or pleasure, but does not include dogs primarily owned for
2 participation in a generally accepted mushing or pulling contest or practice or
3 animals primarily owned for participation in rodeos or stock contests.

4 * Sec. 14. AS 18.66.100(c) is amended to read:

5 (c) A protective order under this section may

6 (1) prohibit the respondent from threatening to commit or committing
7 domestic violence, stalking, or harassment;

8 (2) prohibit the respondent from telephoning, contacting, or otherwise
9 communicating directly or indirectly with the petitioner;

10 (3) remove and exclude the respondent from the residence of the
11 petitioner, regardless of ownership of the residence;

12 (4) direct the respondent to stay away from the residence, school, or
13 place of employment of the petitioner or any specified place frequented by the
14 petitioner or any designated household member;

15 (5) prohibit the respondent from entering a propelled vehicle in the
16 possession of or occupied by the petitioner;

17 (6) prohibit the respondent from using or possessing a deadly weapon if
18 the court finds the respondent was in the actual possession of or used a weapon during
19 the commission of domestic violence;

20 (7) direct the respondent to surrender any firearm owned or possessed
21 by the respondent if the court finds that the respondent was in the actual possession of
22 or used a firearm during the commission of the domestic violence;

23 (8) request a peace officer to accompany the petitioner to the
24 petitioner's residence to ensure that the petitioner

25 (A) safely obtains possession of the petitioner's residence,
26 vehicle, or personal items; and

27 (B) is able to safely remove a vehicle or personal items from the
28 petitioner's residence;

29 (9) award temporary custody of a minor child to the petitioner and may
30 arrange for visitation with a minor child if the safety of the child and the petitioner can
31 be protected; if visitation is allowed, the court may order visitation under the

1 conditions provided in AS 25.20.061;

2 (10) give the petitioner possession and use of a vehicle and other
3 essential personal items, including a pet, regardless of ownership of the items;

4 (11) prohibit the respondent from consuming controlled substances;

5 (12) require the respondent to pay support for the petitioner or a minor
6 child in the care of the petitioner if there is an independent legal obligation of the
7 respondent to support the petitioner or child;

8 (13) require the respondent to reimburse the petitioner or other person
9 for expenses associated with the domestic violence, including medical expenses,
10 counseling, shelter, and repair or replacement of damaged property;

11 (14) require the respondent to pay costs and fees incurred by the
12 petitioner in bringing the action under this chapter;

13 (15) order the respondent, at the respondent's expense, to participate in
14 (A) a program for the rehabilitation of perpetrators of domestic violence that meets the
15 standards set by, and that is approved by, the Department of Corrections under
16 AS 44.28.020(b), or (B) treatment for the abuse of alcohol or controlled substances, or
17 both; a protective order under this section may not require a respondent to participate
18 in a program for the rehabilitation of perpetrators of domestic violence unless the
19 program meets the standards set by, and that is approved by, the Department of
20 Corrections under AS 44.28.020(b);

21 (16) order other relief the court determines necessary to protect the
22 petitioner or any household member.

23 * **Sec. 15.** AS 18.66.990 is amended by adding a new paragraph to read:

24 (11) "pet" means a vertebrate living creature maintained for
25 companionship or pleasure, but does not include dogs primarily owned for
26 participation in a generally accepted mushing or pulling contest or practice or animals
27 primarily owned for participation in rodeos or stock contests.

28 * **Sec. 16.** AS 22.15.030(a) is amended to read:

29 (a) The district court has jurisdiction of civil cases, including foreign
30 judgments filed under AS 09.30.200 and arbitration proceedings under AS 09.43.170
31 or 09.43.530 to the extent permitted by AS 09.43.010 and 09.43.300, as follows:

1 (1) for the recovery of money or damages when the amount claimed
2 exclusive of costs, interest, and attorney fees does not exceed \$100,000 for each
3 defendant;

4 (2) for the recovery of specific personal property, when the value of the
5 property claimed and the damages for the detention do not exceed \$100,000;

6 (3) for the recovery of a penalty or forfeiture, whether given by statute
7 or arising out of contract, not exceeding \$100,000;

8 (4) to give judgment without action upon the confession of the
9 defendant for any of the cases specified in this section, except for a penalty or
10 forfeiture imposed by statute;

11 (5) for establishing the fact of death or cause and manner of death of
12 any person in the manner prescribed in AS 09.55.020 - 09.55.069;

13 (6) for the recovery of the possession of premises in the manner
14 provided under AS 09.45.070 - 09.45.160 when the value of the arrears and damage to
15 the property does not exceed \$100,000;

16 (7) for the foreclosure of a lien when the amount in controversy does
17 not exceed \$100,000;

18 (8) for the recovery of money or damages in motor vehicle tort cases
19 when the amount claimed exclusive of costs, interest, and attorney fees does not
20 exceed \$100,000 for each defendant;

21 (9) over civil actions for taking utility service and for damages to or
22 interference with a utility line filed under AS 42.20.030;

23 (10) over cases involving protective orders for domestic violence under
24 AS 18.66.100 - 18.66.180;

25 (11) over cases involving cruelty to or seizure, destruction,
26 adoption, or cost of care of animals under AS 03.55.100 - 03.55.190.

27 * Sec. 17. AS 25.24.160(a) is amended to read:

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

30 (1) for the payment by either or both parties of an amount of money or
31 goods, in gross or installments that may include cost-of-living adjustments, as may be

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

8 (2) for the recovery by one party from the other of an amount of money
9 for maintenance, for a limited or indefinite period of time, in gross or in installments,
10 as may be just and necessary without regard to which of the parties is in fault; an
11 award of maintenance must fairly allocate the economic effect of divorce by being
12 based on a consideration of the following factors:

13 (A) the length of the marriage and station in life of the parties
14 during the marriage;

15 (B) the age and health of the parties;

16 (C) the earning capacity of the parties, including their
17 educational backgrounds, training, employment skills, work experiences,
18 length of absence from the job market, and custodial responsibilities for
19 children during the marriage;

20 (D) the financial condition of the parties, including the
21 availability and cost of health insurance;

22 (E) the conduct of the parties, including whether there has been
23 unreasonable depletion of marital assets;

24 (F) the division of property under (4) of this subsection; and

25 (G) other factors the court determines to be relevant in each
26 individual case;

27 (3) for the delivery to either party of that party's personal property in
28 the possession or control of the other party at the time of giving the judgment;

29 (4) for the division between the parties of their property, including
30 retirement benefits, whether joint or separate, acquired only during marriage, in a just
31 manner and without regard to which of the parties is in fault; however, the court, in

1 making the division, may invade the property, including retirement benefits, of either
 2 spouse acquired before marriage when the balancing of the equities between the
 3 parties requires it; and to accomplish this end the judgment may require that one or
 4 both of the parties assign, deliver, or convey any of their real or personal property,
 5 including retirement benefits, to the other party; the division of property must fairly
 6 allocate the economic effect of divorce by being based on consideration of the
 7 following factors:

8 (A) the length of the marriage and station in life of the parties
 9 during the marriage;

10 (B) the age and health of the parties;

11 (C) the earning capacity of the parties, including their
 12 educational backgrounds, training, employment skills, work experiences,
 13 length of absence from the job market, and custodial responsibilities for
 14 children during the marriage;

15 (D) the financial condition of the parties, including the
 16 availability and cost of health insurance;

17 (E) the conduct of the parties, including whether there has been
 18 unreasonable depletion of marital assets;

19 (F) the desirability of awarding the family home, or the right to
 20 live in it for a reasonable period of time, to the party who has primary physical
 21 custody of children;

22 (G) the circumstances and necessities of each party;

23 (H) the time and manner of acquisition of the property in
 24 question; and

25 (I) the income-producing capacity of the property and the value
 26 of the property at the time of division;

27 **(5) if an animal is owned, for the ownership or joint ownership of**
 28 **the animal, considering the well-being of the animal.**

29 * Sec. 18. AS 25.24.200(a) is amended to read:

30 (a) A husband and wife together may petition the superior court for the
 31 dissolution of their marriage under AS 25.24.200 - 25.24.260 if the following

1 conditions exist at the time of filing the petition:

2 (1) incompatibility of temperament has caused the irremediable
3 breakdown of the marriage;

4 (2) if there are unmarried children of the marriage under the age of 19
5 or the wife is pregnant, and the spouses have agreed on which spouse or third party is
6 to be awarded custody of each minor child of the marriage and the extent of visitation,
7 including visitation by grandparents and other persons if in the child's best interests,
8 and support to be provided on the children's behalf, whether the payments are to be
9 made through the child support services agency, and the tax consequences of that
10 agreement;

11 (3) the spouses have agreed as to the distribution of all real and
12 personal property that is jointly owned or community property under AS 34.77,
13 including retirement benefits and the payment of spousal maintenance, if any, and the
14 tax consequences resulting from these payments; the agreement must be fair and just
15 and take into consideration the factors listed in AS 25.24.160(a)(2) and (4) so that the
16 economic effect of dissolution is fairly allocated; [AND]

17 (4) the spouses have agreed as to the payment of all unpaid obligations
18 incurred by either or both of them and as to payment of obligations incurred jointly in
19 the future; and

20 (5) if an animal is owned, the spouses have agreed to the ownership
21 or joint ownership of the animal, taking into consideration the well-being of the
22 animal.

23 * Sec. 19. AS 25.24.200(b) is amended to read:

24 (b) A husband or wife may separately petition for dissolution of their marriage
25 under AS 25.24.200 - 25.24.260 if the following conditions exist at the time of filing
26 the petition:

27 (1) incompatibility of temperament, as evidenced by extended absence
28 or otherwise, has caused the irremediable breakdown of the marriage;

29 (2) the petitioning spouse has been unable to ascertain the other
30 spouse's position in regard to the dissolution of their marriage and in regard to the fair
31 and just division of property, including retirement benefits, spousal maintenance,

1 payment of debts, animals, and custody, support, and visitation because the
2 whereabouts of the other spouse is unknown to the petitioning spouse after reasonable
3 efforts have been made to locate the absent spouse; and

4 (3) the other spouse cannot be personally served with process inside or
5 outside the state.

6 * **Sec. 20.** AS 25.24.200(c) is amended to read:

7 (c) Except as provided in AS 25.24.220(i), a spouse who has been personally
8 served with a copy of a petition filed under (a) of this section may execute an
9 appearance, waiver of time to answer, and waiver of notice of hearing. The appearance
10 and waivers must include an acknowledgment signed before an officer authorized to
11 administer an oath or affirmation that the spouse being served has read the petition;
12 assents to the terms relating to custody of the children, child support, visitation,
13 spousal maintenance taking into consideration the factors listed in AS 25.24.160(a)(2),
14 and tax consequences, division of property, including retirement benefits and taking
15 into consideration the factors listed in AS 25.24.160(a)(4), ownership of animals
16 taking into consideration the well-being of the animals, and allocation of debts;
17 agrees that the conditions otherwise required by (a) of this section exist; agrees that
18 the petition constitutes the entire agreement between the parties; understands fully the
19 nature and consequences of the action; and is not signing the appearance and waivers
20 under duress or coercion.

21 * **Sec. 21.** AS 25.24 is amended by adding a new section to read:

22 **Sec. 25.24.990. Definition.** In this chapter, "animal" means a vertebrate living
23 creature not a human being.