

**HOUSE BILL NO. 390**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES KELLY, Dyson, Therriault

Introduced: 2/11/98

Referred: Judiciary, Finance

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to marriage; and amending Rules 54 and 56, Alaska Rules of  
2 Civil Procedure."

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

4 \* **Section 1.** AS 25.05 is amended by adding a new section to read:

5 **Sec. 25.05.015. Charter marriages.** (a) A charter marriage is a marriage  
6 authorized under AS 25.05.011 between a man and a woman who have

7 (1) agreed that the marriage between them will be a lifelong  
8 relationship;

9 (2) received counseling emphasizing the nature, purposes, and  
10 responsibilities of marriage;

11 (3) declared in their application for a marriage license their intent to  
12 enter into a charter marriage as required under AS 25.05.091(c); and

13 (4) have executed a declaration of intent to contract a charter marriage  
14 under AS 25.05.096.

1 (b) A couple that is already lawfully married under a contract that is not a  
 2 charter marriage may execute a declaration of intent to designate their marriage as a  
 3 charter marriage to be governed by the laws relating to charter marriages. The  
 4 declaration of intent must contain the contents required under AS 25.05.096 and be  
 5 presented to a licensing officer. The licensing officer shall prepare two short-form  
 6 certificates that include a notation of the declaration of intent to designate a charter  
 7 marriage and, after the parties have signed them, give one to each of the parties to the  
 8 marriage with an attached copy of the declaration. The licensing officer shall also  
 9 forward to the registrar each declaration of intent received under this subsection. The  
 10 registrar shall attach the declaration to the original marriage certificate and make a  
 11 notation on the original and any required copies that the marriage has been converted  
 12 to a charter marriage. A marriage for which a declaration under this subsection has  
 13 been presented to a licensing officer is considered a charter marriage from the time  
 14 that the parties sign the short-form certificates under this subsection.

15 \* **Sec. 2.** AS 25.05.091 is amended by adding a new subsection to read:

16 (c) If an application under (a) of this section is for a charter marriage, the  
 17 application must, in addition to the requirements of (a) and (b) of this section, include  
 18 a statement substantially similar to the following:

19 We, (Name of Intended Husband) and (Name of Intended Wife),  
 20 declare our intent to contract a charter marriage and, accordingly, have  
 21 executed a declaration of intent to contract a charter marriage that is  
 22 attached to this application.

23 \* **Sec. 3.** AS 25.05 is amended by adding a new section to read:

24 **Sec. 25.05.096. Declaration of intent for charter marriage.** The declaration  
 25 of intent to contract a charter marriage that is required under AS 25.05.091(c) must  
 26 include

- 27 (1) a recitation by each party that the party  
 28 (A) intends to enter into a charter marriage;  
 29 (B) understands and agrees that the marriage will be a lifelong  
 30 relationship;  
 31 (C) has received counseling emphasizing the nature, purposes,

1 and responsibilities of marriage;

2 (D) believes that the party's intended mate is a wise choice as  
3 a mate for life;

4 (E) has disclosed to the intended mate all facts that may  
5 adversely affect the intended mate's decision to enter into the charter marriage;  
6 and

7 (F) is committed to seeking marital counseling to strengthen the  
8 marital relationship if the parties have marital difficulties;

9 (2) an affirmation by the parties that both parties have received  
10 counseling from a priest, minister, rabbi, clerk of the religious society of friends,  
11 clergy member of a religious sect, psychologist, psychological associate, or marital and  
12 family therapist that included

13 (A) a discussion of the seriousness of charter marriage;

14 (B) communication of the fact that a charter marriage is a  
15 commitment for life; and

16 (C) receipt of a copy of AS 25.24.270 and 25.24.275;

17 (3) an attestation by the counselor that the parties were counseled as  
18 to the nature, purposes, and responsibilities of marriage; the attestation must be signed  
19 by the counselor but need not be notarized; and

20 (4) the notarized signatures of both parties.

21 \* **Sec. 4.** AS 25.05.111 is amended by adding new subsections to read:

22 (c) If the parties to the marriage have complied with AS 25.05.015, the  
23 licensing officer shall indicate on the marriage license that the parties have entered into  
24 a charter marriage.

25 (d) If the parties to the marriage have not complied with AS 25.05.015, the  
26 licensing officer shall indicate on the marriage license that the parties have entered into  
27 a testament marriage.

28 \* **Sec. 5.** AS 25.05.321 is amended by adding a new subsection to read:

29 (b) A marriage certificate for a charter marriage and copies of a marriage  
30 certificate for a charter marriage must include a designation that the parties entered  
31 into a charter marriage.

1 \* **Sec. 6.** AS 25.24.050 is amended to read:

2 **Sec. 25.24.050. Grounds for divorce. (a) Except as provided in (b) of this**  
 3 **section, a** [A] divorce may be granted for any of the following grounds:

4 (1) failure to consummate the marriage at the time of the marriage and  
 5 continuing at the commencement of the action;

6 (2) adultery;

7 (3) conviction of a felony;

8 (4) wilful desertion for a period of one year;

9 (5) either

10 (A) cruel and inhuman treatment calculated to impair health or  
 11 endanger life;

12 (B) personal indignities rendering life burdensome; or

13 (C) incompatibility of temperament;

14 (6) habitual gross drunkenness contracted since marriage and continuing  
 15 for one year **before** [PRIOR TO] the commencement of the action;

16 (7) [REPEALED

17 (8)] incurable mental illness when the spouse has been confined to an  
 18 institution for a period of at least 18 months immediately preceding the commencement  
 19 of the action; the status as to the support and maintenance of the mentally ill person  
 20 is not altered in any way by the granting of the divorce;

21 **(8)** [(9)] addiction of either party, subsequent to the marriage, to the  
 22 habitual use of opium, morphine, cocaine, or a similar drug.

23 \* **Sec. 7.** AS 25.24.050 is amended by adding a new subsection to read:

24 (b) A spouse to a charter marriage may obtain a judgment of divorce only  
 25 upon proof of one of the following:

26 (1) the other spouse has committed adultery;

27 (2) the other spouse has been convicted of a felony and has been  
 28 sentenced to death or a term of incarceration of three years or more;

29 (3) the other spouse has abandoned the matrimonial domicile for one  
 30 year and consistently refuses to return; or

31 (4) the spouses have been living separately and apart continuously

1 without reconciliation for one year after the date of a judgment of separation from bed  
 2 and board was signed under AS 25.24.270 and 25.24.275, except that, if there is a  
 3 minor child of the marriage, the spouses must have been living separately and apart  
 4 continuously without reconciliation for 18 months from the date the judgment of  
 5 separation from bed and board was signed.

6 \* **Sec. 8.** AS 25.24.110 is amended to read:

7 **Sec. 25.24.110. Separate domicile or residence.** In an action for divorce or  
 8 separation from bed and board, a spouse may acquire a separate residence or  
 9 domicile from that of the other spouse without reference among other factors to  
 10 misconduct or consent of the other spouse.

11 \* **Sec. 9.** AS 25.24.130 is amended to read:

12 **Sec. 25.24.130. Defenses to other divorce grounds.** When the divorce action  
 13 is for any of the grounds provided in AS 25.24.050(a)(4) - (6) or (b)(3)  
 14 [AS 25.24.050(4) - (6)], the defense of procurement or that the defendant has been  
 15 expressly forgiven may be made. When the divorce action is for the ground provided  
 16 in AS 25.24.050(a)(3) or (b)(2) [AS 25.24.050(3)], the defense of procurement or that  
 17 the defendant has been expressly forgiven or that the action was not brought within  
 18 two years after conviction may be made.

19 \* **Sec. 10.** AS 25.24.150(a) is amended to read:

20 (a) In an action for divorce, separation from bed and board, or [FOR] legal  
 21 separation or for placement of a child when one or both parents have died, the court  
 22 may, if it has jurisdiction under AS 25.30.020 [,] and is an appropriate forum under  
 23 AS 25.30.050 and 25.30.060, during the pendency of the action [,] or at the final  
 24 hearing or at any time thereafter during the minority of a child of the marriage, make,  
 25 modify, or vacate an order for the custody of or visitation with the minor child that  
 26 may seem necessary or proper, including an order that provides for visitation by a  
 27 grandparent or other person if that is in the best interests of the child.

28 \* **Sec. 11.** AS 25.24.200(a) is amended to read:

29 (a) Except as provided in (f) of this section, a [A] husband and wife together  
 30 may petition the superior court for the dissolution of their marriage under  
 31 AS 25.24.200 - 25.24.260 if the following conditions exist at the time of filing the

1 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  
6 is to be awarded custody of each minor child of the marriage and the extent of  
7 visitation, including visitation by grandparents and other persons if in the child's best  
8 interests, and support to be provided on the children's behalf, whether the payments  
9 are to be made through the child support enforcement agency and the tax consequences  
10 of that agreement;

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

20 \* **Sec. 12.** AS 25.24.200(b) is amended to read:

21 (b) **Except as provided in (f) of this section, a** [A] husband or wife may  
22 separately petition for dissolution of their marriage under AS 25.24.200 - 25.24.260  
23 if the following conditions exist at the time of filing the petition:

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

26 (2) the petitioning spouse has been unable to ascertain the other  
27 spouse's position in regard to the dissolution of their marriage and in regard to the fair  
28 and just division of property, including retirement benefits, spousal maintenance,  
29 payment of debts, and custody, support, and visitation because the whereabouts of the  
30 other spouse is unknown to the petitioning spouse after reasonable efforts have been  
31 made to locate the absent spouse; and

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

3 \* **Sec. 13.** AS 25.24.200 is amended by adding a new subsection to read:

4 (f) A spouse to a charter marriage may not petition for the dissolution of the  
5 marriage under AS 25.24.200 - 25.24.260.

6 \* **Sec. 14.** AS 25.24 is amended by adding new sections to read:

7 **Article 2A. Separation from Bed and Board in a Charter Marriage.**

8 **Sec. 25.24.270. Separation from bed and board.** (a) A spouse to a charter  
9 marriage may obtain a judgment of separation from bed and board only on proof of  
10 having obtained personal counseling within the six months preceding the date of filing  
11 the petition for separation of bed and board and proof that

12 (1) the spouses have been living separately and continuously apart  
13 without reconciliation for one year; or

14 (2) the other spouse has

15 (A) committed adultery;

16 (B) been convicted of a felony under AS 11.41 or convicted of  
17 an offense under a law in another jurisdiction with elements substantially  
18 similar to a felony under AS 11.41;

19 (C) abandoned the matrimonial domicile for one year and  
20 consistently refuses to return;

21 (D) physically abused the petitioning spouse;

22 (E) physically or sexually abused a child of the marriage or a  
23 child of one of the spouses;

24 (F) been habitually intemperate in the consumption of alcohol  
25 or in the use of drugs;

26 (G) treated the petitioning spouse cruelly in a manner that  
27 impairs the health or endangers the life of the petitioning spouse; or

28 (H) inflicted on the petitioning spouse personal indignities  
29 rendering life burdensome.

30 (b) During the pendency of an action for separation from bed and board under  
31 this section, the court may, upon application and in appropriate circumstances, issue

1 orders that are authorized under AS 25.24.140 during the pendency of divorce  
2 proceedings.

3 (c) The court may not make a judgment on the pleadings, except for a default  
4 judgment, or grant a summary judgment in an action for separation from bed and  
5 board under this section.

6 **Sec. 25.24.275. Effect of decree.** A decree of separation from bed and board  
7 issued under AS 25.24.270

8 (1) does not dissolve the bond of matrimony; the separated husband and  
9 wife are not at liberty to marry again;

10 (2) puts an end to the parties' conjugal cohabitation and to the common  
11 concerns that existed between them;

12 (3) remains in effect until either reconciliation or divorce.

13 \* **Sec. 15. COURT RULE CHANGE.** AS 25.24.270(c), enacted by sec. 14 of this Act, has  
14 the effect of amending Rules 54 and 56, Alaska Rules of Civil Procedure, by prohibiting a  
15 court from making a judgment on the pleadings, except for a default judgment, or granting  
16 a summary judgment in an action for separation from bed and board in a charter marriage.

17 \* **Sec. 16.** AS 25.05.111(d), enacted by sec. 4 of this Act, applies to marriage licenses  
18 issued on or after the effective date of this Act.