

**CS FOR HOUSE BILL NO. 390(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/2/98

Referred: Finance

Sponsor(s): REPRESENTATIVES KELLY, Dyson, Therriault

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

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

5 We, (Name of Intended Husband) and (Name of Intended Wife),  
6 declare our intent to contract a charter marriage and, accordingly, have  
7 executed a declaration of intent to contract a charter marriage that is  
8 attached to this application.

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

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

13 (1) a recitation by each party that the party

14 (A) intends to enter into a charter marriage governed by the  
15 laws of this state;

16 (B) understands and agrees that the marriage will be a lifelong  
17 relationship;

18 (C) has received counseling emphasizing the nature, purposes,  
19 and responsibilities of marriage;

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

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

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

27 (2) an affirmation by the parties that both parties have received  
28 counseling from a priest, minister, rabbi, clerk of the religious society of friends,  
29 clergy member of a religious sect, psychologist, psychological associate, licensed  
30 clinical social worker, or marital and family therapist that included

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

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

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

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

7 (4) the notarized signatures of both parties.

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

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

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

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

16 (b) A marriage certificate for a charter marriage and copies of a marriage  
17 certificate for a charter marriage must include a designation that the parties entered  
18 into a charter marriage.

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

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

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

24 (2) adultery;

25 (3) conviction of a felony;

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

27 (5) either

28 (A) cruel and inhuman treatment calculated to impair health or  
29 endanger life;

30 (B) personal indignities rendering life burdensome; or

31 (C) incompatibility of temperament;

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

3 (7) [REPEALED

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

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

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

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

13 (1) the other spouse has committed adultery;

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

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

18 (4) the spouses have been living separately and apart continuously  
19 without reconciliation for one year after the date of a judgment of separation from bed  
20 and board was signed under AS 25.24.270 and 25.24.275, except that, if there is a  
21 minor child of the marriage, the spouses must have been living separately and apart  
22 continuously without reconciliation for 18 months from the date the judgment of  
23 separation from bed and board was signed.

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

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

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

30 **Sec. 25.24.130. Defenses to other divorce grounds.** When the divorce action  
31 is for any of the grounds provided in **AS 25.24.050(a)(4) - (6) or (b)(3)**

1 [AS 25.24.050(4) - (6)], the defense of procurement or that the defendant has been  
2 expressly forgiven may be made. When the divorce action is for the ground provided  
3 in **AS 25.24.050(a)(3) or (b)(2)** [AS 25.24.050(3)], the defense of procurement or that  
4 the defendant has been expressly forgiven or that the action was not brought within  
5 two years after conviction may be made.

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

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

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

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

20 (1) incompatibility of temperament has caused the irremediable  
21 breakdown of the marriage;

22 (2) if there are unmarried children of the marriage under the age of 19  
23 or the wife is pregnant, and the spouses have agreed on which spouse or third party  
24 is to be awarded custody of each minor child of the marriage and the extent of  
25 visitation, including visitation by grandparents and other persons if in the child's best  
26 interests, and support to be provided on the children's behalf, whether the payments  
27 are to be made through the child support enforcement agency and the tax consequences  
28 of that agreement;

29 (3) the spouses have agreed as to the distribution of all jointly owned  
30 real and personal property, including retirement benefits, and the payment of spousal  
31 maintenance, if any, and the tax consequences resulting from these payments; the

1 agreement must be fair and just and take into consideration the factors listed in  
 2 AS 25.24.160(a)(2) and (4) so that the economic effect of dissolution is fairly  
 3 allocated; and

4 (4) the spouses have agreed as to the payment of all unpaid obligations  
 5 incurred by either or both of them, and as to payment of obligations incurred jointly  
 6 in the future.

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

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

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

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

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

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

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

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

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

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

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

- 1 (2) the other spouse has
- 2 (A) committed adultery;
- 3 (B) been convicted of a felony under AS 11.41 or convicted of
- 4 an offense under a law in another jurisdiction with elements substantially
- 5 similar to a felony under AS 11.41;
- 6 (C) abandoned the matrimonial domicile for one year and
- 7 consistently refuses to return;
- 8 (D) physically abused the petitioning spouse;
- 9 (E) physically or sexually abused a child of the marriage or a
- 10 child of one of the spouses;
- 11 (F) been habitually intemperate in the consumption of alcohol
- 12 or in the use of drugs;
- 13 (G) treated the petitioning spouse cruelly in a manner that
- 14 impairs the health or endangers the life of the petitioning spouse; or
- 15 (H) inflicted on the petitioning spouse personal indignities
- 16 rendering life burdensome.

17 (b) During the pendency of an action for separation from bed and board under

18 this section, the court may, upon application and in appropriate circumstances, issue

19 orders that are authorized under AS 25.24.140 during the pendency of divorce

20 proceedings.

21 (c) The court may not make a judgment on the pleadings, except for a default

22 judgment, or grant a summary judgment in an action for separation from bed and

23 board under this section.

24 **Sec. 25.24.275. Effect of decree.** A decree of separation from bed and board

25 issued under AS 25.24.270

26 (1) does not dissolve the bond of matrimony; the separated husband and

27 wife are not at liberty to marry again;

28 (2) puts an end to the parties' conjugal cohabitation and to the common

29 concerns that existed between them;

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

31 \* **Sec. 15. COURT RULE CHANGE.** AS 25.24.270(c), enacted by sec. 14 of this Act, has

1 the effect of amending Rules 54 and 56, Alaska Rules of Civil Procedure, by prohibiting a  
2 court from making a judgment on the pleadings, except for a default judgment, or granting  
3 a summary judgment in an action for separation from bed and board in a charter marriage.

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