

CS FOR HOUSE BILL NO. 390(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 3/25/98

Referred: Rules

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 physically abused the petitioning spouse;

15 (3) the other spouse has physically or sexually abused a child of the
16 marriage or a child of one of the spouses;

17 (4) the other spouse has treated the petitioning spouse cruelly in a
18 manner that impairs the health or endangers the life of the petitioning spouse;

19 (5) the other spouse has been convicted of a felony and has been
20 sentenced to death or a term of incarceration of three years or more;

21 (6) the other spouse has been convicted of a felony under AS 11.41;

22 (7) the other spouse has abandoned the matrimonial domicile for one
23 year and consistently refuses to return; or

24 (8) the spouses have been living separately and apart continuously
25 without reconciliation for one year after the date of a judgment of separation from bed
26 and board was signed under AS 25.24.270 and 25.24.275, except that, if there is a
27 minor child of the marriage, the spouses must have been living separately and apart
28 continuously without reconciliation for 18 months from the date the judgment of
29 separation from bed and board was signed.

30 * **Sec. 8.** AS 25.24.110 is amended to read:

31 **Sec. 25.24.110. Separate domicile or residence.** In an action for divorce or

1 separation from bed and board, a spouse may acquire a separate residence or
 2 domicile from that of the other spouse without reference among other factors to
 3 misconduct or consent of the other spouse.

4 * **Sec. 9.** AS 25.24.130 is amended to read:

5 **Sec. 25.24.130. Defenses to other divorce grounds.** When the divorce action
 6 is for any of the grounds provided in AS 25.24.050(a)(4) - (6) or (b)(4) or (7)
 7 [AS 25.24.050(4) - (6)], the defense of procurement or that the defendant has been
 8 expressly forgiven may be made. When the divorce action is for the ground provided
 9 in AS 25.24.050(a)(3) or (b)(5) or (6) [AS 25.24.050(3)], the defense of procurement
 10 or that the defendant has been expressly forgiven or that the action was not brought
 11 within two years after conviction may be made.

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

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

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

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

26 (1) incompatibility of temperament has caused the irremediable
 27 breakdown of the marriage;

28 (2) if there are unmarried children of the marriage under the age of 19
 29 or the wife is pregnant, and the spouses have agreed on which spouse or third party
 30 is to be awarded custody of each minor child of the marriage and the extent of
 31 visitation, including visitation by grandparents and other persons if in the child's best

1 interests, and support to be provided on the children's behalf, whether the payments
2 are to be made through the child support enforcement agency and the tax consequences
3 of that agreement;

4 (3) the spouses have agreed as to the distribution of all jointly owned
5 real and personal property, including retirement benefits, and the payment of spousal
6 maintenance, if any, and the tax consequences resulting from these payments; the
7 agreement must be fair and just and take into consideration the factors listed in
8 AS 25.24.160(a)(2) and (4) so that the economic effect of dissolution is fairly
9 allocated; and

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

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

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

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

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

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

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

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

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

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

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

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

7 (2) the other spouse has

8 (A) committed adultery;

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

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

14 (D) physically abused the petitioning spouse;

15 (E) physically or sexually abused a child of the marriage or a
 16 child of one of the spouses;

17 (F) been habitually intemperate in the consumption of alcohol
 18 or in the use of drugs;

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

21 (H) inflicted on the petitioning spouse personal indignities
 22 rendering life burdensome.

23 (b) During the pendency of an action for separation from bed and board under
 24 this section, the court may, upon application and in appropriate circumstances, issue
 25 orders that are authorized under AS 25.24.140 during the pendency of divorce
 26 proceedings.

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

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

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

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

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

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

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