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Referred: Judiciary and  
Finance

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1 IN THE HOUSE

CS HOUSE BILL NO. 238 (Fin) am S

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the custody and representation of  
7 a child in court proceedings; and adding to the court's  
8 authority under Rule 17(b), Rules of Civil Procedure,  
9 and Rules 11(a) and 15, Rules of Children's Procedure."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 \* Section 1. AS 09.55.205 is amended to read:

12 Sec. 09.55.205. JUDGMENTS FOR CUSTODY. In an action for divorce  
13 or for legal separation the court may, during the pendency of the  
14 action, or at the final hearing or at any time thereafter during the  
15 minority of any child of the marriage, make an order for the custody of  
16 or visitation with the minor child which may seem necessary or proper  
17 and may at any time modify or vacate the order. Appointment of a  
18 guardian ad litem or attorney for the child shall be made under the  
19 terms of AS 09.65.130. In awarding custody the court is to be guided  
20 by the following considerations:

21 (1) by what appears to be for the best interests of the child  
22 and if the child is of a sufficient age and intelligence to form a pre-  
23 ference, the court may consider that preference in determining the  
24 question;

25 (2) as between parents adversely claiming the custody neither  
26 parent is entitled to it as of right.

27 \* Sec. 2. AS 09.65 is amended by adding a new section to read:

28 Sec. 09.65.130. REPRESENTATION OF CHILD. (a) The court shall,  
29 upon the motion of either party or upon its own motion, appoint an

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1 attorney or guardian ad litem to represent the interests of a minor or  
2 dependent child with respect to his custody, support, and visitation or  
3 in any other legal proceeding involving his welfare. When custody,  
4 support, or visitation are at issue in a divorce, it is the responsi-  
5 bility of the parties or their counsel to notify the court that those  
6 matters are at issue. Upon notification, the court shall determine  
7 whether the child should have legal assistance or other services and  
8 shall make a finding on the record before trial. The court shall enter  
9 an order for costs, fees, and disbursements in favor of the child's  
10 attorney or guardian ad litem and may further order that other services  
11 be provided for the protection of the child.

12 (b) If custody, support, or visitation is an issue, the order  
13 for costs, fees, and disbursements shall be made against either or both  
14 parents, except that, if the responsible party is indigent, the costs,  
15 fees, and disbursements shall be borne by the state. If either or both  
16 parents are only temporarily without funds, as determined by the court,  
17 the court may advance payment for legal representation or other services  
18 rendered to the child; however, no repayment may be required for those  
19 who are receiving legal services for the indigent. The attorney  
20 general is responsible for enforcing collections owed the court, and  
21 repayment shall be made directly to the court under the provisions of  
22 rules governing the administration of the courts. The court shall,  
23 if possible, avoid assigning costs to only one party by ordering that  
24 costs of the child's legal representation or other services be paid  
25 from proceeds derived from a sale of property belonging to both parties,  
26 before a division of property is made.

27 \* Sec. 3. AS 18.85.100(b) is amended to read:

28 (b) The attorney services and facilities and the court costs  
29 shall be provided at public expense to the extent that the person, at

1 the time the court determines indigency, is unable to provide for pay-  
2 ment without undue hardship. Appointment of a guardian ad litem or  
3 attorney shall be made under the terms of AS 09.65.130, to the extent  
4 that that section is not inconsistent with the requirements of this  
5 chapter.

6 \* Sec. 4. AS 20.15.100 is amended by adding a new subsection to read:

7 (j) Appointment of a guardian ad litem or attorney for a person  
8 to be adopted who is a minor shall be made under the terms of AS 09.65.-  
9 130.

10 \* Sec. 5. AS 47.10.050 is amended to read:

11 Sec. 47.10.050. APPOINTMENT OF GUARDIAN AD LITEM OR ATTORNEY.  
12 Whenever in the course of proceedings instituted under this chapter  
13 it appears to the court that the welfare of a minor will be promoted  
14 by the appointment of a guardian ad litem or attorney, the court may  
15 make the appointment. Appointment of a guardian ad litem or attorney  
16 shall be made under the terms of AS 09.65.130.

17 \* Sec. 6. Section 1 of this Act has the effect of adding to the discre-  
18 tionary authority of the court to appoint a guardian ad litem or attorney  
19 to represent the interests of a minor child in legal proceedings under  
20 Rule 17(b), Alaska Rules of Civil Procedure, and Rules 11(a) and 15, Alaska  
21 Rules of Children's Procedure, by allowing the court to appoint an attorney  
22 to represent the interests of a child in a legal proceeding either on the  
23 court's own motion or on the motion of either party, and by providing for  
24 advances for legal representation and payment of costs from the sale of joint  
25 property before property settlement.