

Introduced: 2/11/77
Referred: Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 CS HOUSE BILL NO. 208 *ams*
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to child custody jurisdiction;
7 changing Rule 4, Rules of Civil Procedure; and provid-
8 ing for an effective date."

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

10 * Section 1. AS 25 is amended by adding a new chapter to read:

11 CHAPTER 30. UNIFORM CHILD CUSTODY JURISDICTION ACT.

12 Sec. 25.30.010. PURPOSE. The general purposes of this chapter
13 are to:

- 14 (1) avoid jurisdictional competition and conflict with
15 courts of other states in matters of child custody which have in the
16 past resulted in the shifting of children from state to state with
17 harmful effects on their well-being;
- 18 (2) promote cooperation with the courts of other states to
19 the end that a custody decree is rendered in the state which can best
20 decide the case in the interest of the child;
- 21 (3) assure that litigation concerning the custody of a
22 child takes place ordinarily in the state with which the child and his
23 family have the closest connection and where significant evidence
24 concerning his care, protection, training, and personal relationships
25 is most readily available, and that courts of this state decline the
26 exercise of jurisdiction when the child and his family have a closer
27 connection with another state;
- 28 (4) discourage continuing controversies over child custody
29 in the interest of greater stability of home environment and of secure

1 family relationships for the child;

2 (5) deter abductions and other unilateral removals of
3 children undertaken to obtain custody awards;

4 (6) avoid re-litigation of custody decisions of other
5 states in this state insofar as feasible;

6 (7) facilitate the enforcement of custody decrees of other
7 states;

8 (8) promote and expand the exchange of information and
9 other forms of mutual assistance between the courts of this state and
10 those of other states concerned with the same child; and

11 (9) make uniform the law of those states which enact it.

12 Sec. 25.30.020. JURISDICTION. (a) The superior court has
13 jurisdiction to make a child custody determination by initial or
14 modification decree if the conditions set out in any of the following
15 paragraphs are met:

16 (1) this state (A) is the home state of the child at the
17 time of commencement of the proceeding, or (B) had been the child's
18 home state within six months before commencement of the proceeding and
19 the child is absent from this state because of his removal or retention
20 by a person claiming his custody or for other reasons, and a parent or
21 person acting as parent continues to live in this state; or

22 (2) it is in the best interest of the child that a court of
23 this state assume jurisdiction because (A) the child and his parents,
24 or the child and at least one contestant, have a significant connec-
25 tion with this state, and (B) there is available in this state the
26 best evidence concerning the child's present or future care, protection,
27 training, and personal relationships; or

28 (3) the child is physically present in this state and (A)
29 the child has been abandoned, or (B) it is necessary in an emergency

1 to protect the child because he has been subjected to child abuse or
2 neglect as defined in AS 47.17.070(1) and (5) or because he is a
3 dependent minor as defined in AS 47.10.290(3); or

4 (4) it (A) appears that no other state would have juris-
5 diction under prerequisites substantially in accordance with paragraphs
6 (1), (2), or (3) of this subsection, or another state has declined to
7 exercise jurisdiction on the ground that this state is the more appro-
8 priate forum to determine the custody of the child, and (B) is in the
9 best interest of the child that this court assume jurisdiction.

10 (b) Except under (a)(3) and (4) of this section, physical presence
11 in this state of the child, or of the child and one of the contestants,
12 is not alone sufficient to confer jurisdiction on a court of this
13 state to make a child custody determination.

14 (c) Physical presence of the child, while desirable, is not a
15 prerequisite for jurisdiction to determine his custody.

16 Sec. 25.30.030. NOTICE AND OPPORTUNITY TO BE HEARD. Before
17 making a decree under this chapter, reasonable notice and opportunity
18 to be heard, taking into account education and language differences
19 which are known or reasonably ascertainable, shall be given to the
20 contestants, any parent whose parental rights have not been previously
21 terminated, and any person who has physical custody of the child. If
22 any of these persons is outside this state, notice and opportunity to
23 be heard shall be given to them under sec. 40 of this chapter or under
24 Rule 4(e), Alaska Rules of Civil Procedure.

25 Sec. 25.30.040. NOTICE TO PERSONS OUTSIDE THIS STATE; SUBMISSION
26 TO JURISDICTION. (a) Notice required for the exercise of jurisdic-
27 tion over a person outside this state shall be given in a manner
28 reasonably calculated to give actual notice, and may be:

29 (1) according to the provisions of Rule 4(e), Alaska Rules

1 of Civil Procedure; or

2 (2) by personal delivery outside this state in the manner
3 prescribed for service of process within this state; or

4 (3) in the manner prescribed by the law of the place in
5 which the service is made for service of process within that place; or

6 (4) by any form of mail addressed to the person to be
7 served and requesting a receipt; or

8 (5) as directed by the court, including publication, if
9 other means of notification are ineffective.

10 (b) Notice under this section shall be served, mailed, delivered,
11 or published at least 20 days before any hearing in this state.

12 (c) Proof of service outside this state may be made by affidavit
13 of the individual who made the service, or in the manner prescribed by
14 the law or court rules of this state, the order under which the service
15 is made, or the law of the place in which the service is made. If
16 service is made by mail, proof may be a receipt signed by the addressee
17 or other evidence of delivery to the addressee.

18 (d) Notice is not required if a person submits to the jurisdic-
19 tion of the court.

20 Sec. 25.30.050. SIMULTANEOUS PROCEEDINGS IN OTHER STATES. (a)
21 The superior court may not exercise its jurisdiction under this chapter
22 if at the time of filing the petition a proceeding concerning the
23 custody of the child was pending in a court of another state exercising
24 jurisdiction substantially in conformity with this chapter, unless the
25 proceeding is stayed by the court of the other state because this
26 state is a more appropriate forum or for other reasons.

27 (b) Before hearing the petition in a custody proceeding the
28 court shall examine the pleadings and other information supplied by
29 the parties under sec. 30 of this chapter and shall consult the child

1 custody records maintained under sec. 150 of this chapter concerning
2 the pendency of proceedings with respect to the child in other states.
3 If the court has reason to believe that proceedings may be pending in
4 another state it shall direct an inquiry to the state court admini-
5 strator or other appropriate official of the other state.

6 (c) If the court is informed during the course of the proceeding
7 that a proceeding concerning the custody of the child was pending in
8 another state before the court assumed jurisdiction, it shall stay the
9 proceeding and communicate with the court in which the other pro-
10 ceeding is pending so that the issue may be litigated in the more
11 appropriate forum and information may be exchanged in accordance with
12 secs. 180 - 210 of this chapter. If a court of this state has made a
13 custody decree before being informed that a proceeding was commenced
14 in another state after it assumed jurisdiction it shall likewise
15 inform the other court to the end that the issues may be litigated in
16 the more appropriate forum.

17 Sec. 25.30.060. INCONVENIENT FORUM. (a) The superior court may
18 decline to exercise its jurisdiction any time before issuing a decree
19 if it finds that it is an inconvenient forum to make a custody de-
20 termination under the circumstances of the case and that a court of
21 another state is a more appropriate forum.

22 (b) A finding of inconvenient forum may be made upon the court's
23 own motion or upon motion of a party or a guardian ad litem or other
24 representative of the child.

25 (c) In determining if it is an inconvenient forum, the court
26 shall consider if it is in the interest of the child that another
27 state assume jurisdiction. For this purpose it may take into account
28 the following factors, among others:

29 (1) if another state is or recently was the child's home

1 state;

2 (2) if another state has a closer connection with the child
3 and his family or with the child and one or more of the contestants;

4 (3) if better evidence concerning the child's present or
5 future care, protection, training, and personal relationships is
6 available in another state, or if equally substantial evidence is more
7 readily available in another state;

8 (4) if the parties have agreed on another forum which is no
9 less appropriate; and

10 (5) if the exercise of jurisdiction by a court of this
11 state would contravene any of the purposes stated in sec. 10 of this
12 chapter.

13 (d) Before determining whether to decline or retain jurisdiction
14 the court may communicate with a court of another state and exchange
15 information pertinent to the assumption of jurisdiction by either
16 court with a view to assuring that jurisdiction will be exercised by
17 the more appropriate court and that a forum will be available to the
18 parties.

19 (e) If the court finds that it is an inconvenient forum and that
20 a court of another state is a more appropriate forum, it may dismiss
21 the proceedings, or it may stay the proceedings upon condition that a
22 custody proceeding be promptly commenced in another named state or
23 upon any other conditions which may be just and proper, including the
24 condition that a moving party stipulate his consent and submission to
25 the jurisdiction of the other forum.

26 (f) The court may decline to exercise its jurisdiction under
27 this chapter if a custody determination is incidental to an action for
28 divorce or dissolution of marriage or another proceeding while retaining
29 jurisdiction over the divorce or other proceeding.

1 (g) If it appears to the court that it is clearly an inappro-
2 priate forum it may require the party who commenced the proceedings to
3 pay, in addition to the costs of the proceedings in this state,
4 necessary travel and other expenses, including attorneys' fees,
5 incurred by other parties or their witnesses. Payment is to be made
6 to the clerk of the court for remittance to the proper party.

7 (h) Upon dismissal or stay of proceedings under this section the
8 court shall inform the court found to be the more appropriate forum of
9 this fact, or, if the court which would have jurisdiction in the other
10 state is not certainly known, shall transmit the information to the
11 court administrator or other appropriate official of the other state
12 for forwarding to the appropriate court.

13 (i) Any communication received from another state informing this
14 state of a finding of inconvenient forum because a court of this state
15 is the more appropriate forum shall be filed in the custody records of
16 the court in the appropriate judicial district. Upon assuming juris-
17 diction, the superior court of this state shall inform the original
18 court of this fact.

19 Sec. 25.30.070. JURISDICTION DECLINED BY REASON OF CONDUCT. (a)
20 If the petitioner for an initial decree has wrongfully taken the child
21 from another state or has engaged in similar reprehensible conduct,
22 the court may not exercise its jurisdiction unless it is necessary in
23 an emergency to protect the child for reasons set out in sec. 20(3) of
24 this chapter.

25 (b) If the petitioner for a modification decree has, without the
26 consent of the person entitled to custody, improperly removed the
27 child from the physical custody of the person entitled to custody or
28 has improperly retained the child after a visit or other temporary
29 relinquishment of physical custody, the court may not exercise its

1 jurisdiction to modify a custody decree of another state unless it is
2 necessary in an emergency to protect the child for reasons set out in
3 sec. 20(3) of this chapter. If the petitioner has violated any other
4 provision of a custody decree of another state the court may decline
5 to exercise its jurisdiction if this is just and proper under the
6 circumstances.

7 (c) In appropriate cases a court dismissing a petition under
8 this section may charge the petitioner with necessary travel and other
9 expenses, including attorneys' fees, incurred by other parties or
10 their witnesses.

11 Sec. 25.30.080. INFORMATION UNDER OATH TO BE SUBMITTED TO THE
12 COURT. (a) Every party in a custody proceeding in his first pleading
13 or in an affidavit attached to that pleading shall give information
14 under oath as to the child's present address, the places where the
15 child has lived within the last five years, and the names and present
16 addresses of the persons with whom the child has lived during that
17 period. In this pleading or affidavit every party shall further
18 declare under oath whether:

19 (1) he has participated, as a party, witness, or in any
20 other capacity, in any other litigation concerning the custody of the
21 same child in this or any other state;

22 (2) he has information of any custody proceeding concerning
23 the child pending in a court of this or any other state; and

24 (3) he knows of any person not a party to the proceedings
25 who has physical custody of the child or claims to have custody or
26 visitation rights with respect to the child.

27 (b) If the declaration as to any of the matters specified in
28 (a)(1) - (3) of this section is in the affirmative, the declarant
29 shall give additional information under oath as required by the court.

1 The court may examine the parties under oath as to details of the
2 information furnished and as to other matters pertinent to the court's
3 jurisdiction and the disposition of the case. All information obtained
4 by the court shall be made available to counsel for the parties.

5 (c) Each party has a continuing duty to inform the court of any
6 other custody proceeding concerning the child in this or any other
7 state of which he obtained information during this proceeding.

8 Sec. 25.30.090. ADDITIONAL PARTIES. If the court learns from
9 information furnished by the parties under sec. 80 of this chapter or
10 from other sources that a person not a party to the custody proceeding
11 has physical custody of the child or claims to have custody or visita-
12 tion rights with respect to the child, it shall order that person to
13 be joined as a party and to be properly notified of the pendency of
14 the proceeding and of his joinder as a party. If the person joined as
15 a party is outside this state he shall be served with process or
16 otherwise notified in accordance with sec. 40 of this chapter.

17 Sec. 25.30.100. APPEARANCE OF PARTIES AND THE CHILD. (a) The
18 court may order any party to the proceeding who is in this state to
19 appear personally before the court. If that party has physical custody
20 of the child the court may order that he appear personally with the
21 child.

22 (b) If a party to the proceeding whose presence is desired by
23 the court is outside this state with or without the child, the court
24 may order that the notice given under sec. 40 of this chapter include
25 a statement directing that party to appear personally with or without
26 the child and declaring that failure to appear may result in a decision
27 adverse to that party.

28 (c) If a party to the proceeding who is outside this state is
29 directed to appear under (b) of this section or desires to appear

1 personally before the court with or without the child, the court may
2 require another party to pay to the clerk of the court travel and
3 other necessary expenses of the party so appearing and of the child if
4 this is just and proper under the circumstances.

5 Sec. 25.30.110. BINDING FORCE AND RES JUDICATA EFFECT OF CUSTODY
6 DECREE. A custody decree rendered by the superior court of this state
7 having jurisdiction under sec. 20 of this chapter binds all parties
8 who have been served in this state or notified in accordance with sec.
9 40 of this chapter or who have submitted to the jurisdiction of the
10 court, and who have been given an opportunity to be heard. As to
11 these parties the custody decree is conclusive as to all issues of law
12 and fact decided and as to the custody determination made until that
13 determination is modified pursuant to law, including the provisions of
14 this chapter.

15 Sec. 25.30.120. RECOGNITION OF OUT-OF-STATE CUSTODY DECREES.
16 The superior court of this state shall recognize and enforce an
17 initial or modification decree of a court of another state which had
18 assumed jurisdiction under statutory provisions substantially in
19 accordance with this chapter or which was made under factual circum-
20 stances meeting the jurisdictional standards of this chapter.

21 Sec. 25.30.130. MODIFICATION OF CUSTODY DECREE OF ANOTHER STATE.
22 (a) If a court of another state has made a custody decree, a superior
23 court of this state may not modify that decree unless (1) it appears
24 to the court of this state that the court which rendered the decree
25 does not now have jurisdiction under jurisdictional prerequisites
26 substantially in accordance with this chapter or has declined to
27 assume jurisdiction to modify the decree, and (2) the court of this
28 state has jurisdiction.

29 (b) If a court of this state is authorized under (a) of this

1 section and sec. 70 of this chapter to modify a custody decree of
2 another state it shall consider the transcript of the record and other
3 documents of all previous proceedings submitted to it in accordance
4 with sec. 210 of this chapter.

5 Sec. 25.30.140. FILING AND ENFORCEMENT OF CUSTODY DECREE OF
6 ANOTHER STATE. (a) A certified copy of a custody decree of another
7 state may be filed in the office of the clerk of the trial courts of
8 any judicial district of this state. A custody decree so filed has
9 the same effect and shall be enforced in the same manner as a custody
10 decree rendered by a court of this state.

11 (b) A person violating a custody decree of another state, which
12 makes it necessary to enforce the decree in this state, may be required
13 to pay necessary travel and other expenses, including attorneys' fees,
14 incurred by the party entitled to the custody or his witness.

15 Sec. 25.30.150. MAINTENANCE OF OUT-OF-STATE CUSTODY DECREES AND
16 PROCEEDINGS. The clerk of the trial courts for each judicial district
17 shall maintain the following:

18 (1) certified copies of custody decrees of other states
19 received for filing;

20 (2) communications as to the pendency of custody proceed-
21 ings in other states;

22 (3) communications concerning a finding of inconvenient
23 forum by a court of another state; and

24 (4) other communications or documents concerning custody
25 proceedings in another state which may affect the jurisdiction of a
26 court of this state or the disposition to be made by it in a custody
27 proceeding.

28 Sec. 25.30.160. CERTIFIED COPIES OF CUSTODY DECREE. The clerk
29 of the trial courts for each judicial district of this state, at the

1 request of the court of another state or at the request of any person
2 who is affected by or has a legitimate interest in a custody decree,
3 shall certify and forward a copy of the decree to that court or person,
4 upon payment of a prescribed fee.

5 Sec. 25.30.170. TAKING TESTIMONY IN ANOTHER STATE. In addition
6 to other procedural devices available to a party, any party to the
7 proceeding or a guardian ad litem or other representative of the child
8 may adduce testimony of witnesses, including parties and the child, by
9 deposition or otherwise, in another state. The court on its own
10 motion may direct that the testimony of a person be taken in another
11 state and may prescribe the manner in which and the terms upon which
12 the testimony shall be taken.

13 Sec. 25.30.180. HEARINGS AND STUDIES IN ANOTHER STATE; ORDERS TO
14 APPEAR. (a) The superior court of this state may request the appro-
15 priate court of another state to hold a hearing to adduce evidence, to
16 order a party to produce or give evidence under other procedures of
17 that state, or to have social studies made with respect to the custody
18 of a child involved in proceedings pending in the court of this
19 state, and may request the other court to forward to the superior
20 court of this state certified copies of the transcript of the record
21 of the hearing, the evidence otherwise adduced, or any social studies
22 prepared in compliance with the request. The cost of the services may
23 be assessed against the parties or, if a party against whom the costs
24 are assessed is determined by the court to be indigent, paid by the
25 court.

26 (b) The superior court of this state may request the appropriate
27 court of another state to order a party to custody proceedings pending
28 in the superior court of this state to appear in the proceedings, and
29 if that party has physical custody of the child, to appear with the

1 child. The request may state that travel and other necessary expenses
2 of the party and of the child whose appearance is desired will be
3 assessed against another party or, if that party is determined by a
4 court of this state to be indigent, that the costs will be paid by the
5 court.

6 Sec. 25.30.190. ASSISTANCE TO COURTS OF OTHER STATES. (a) Upon
7 request of the court of another state the superior court of this state
8 may order a person in this state to appear at a hearing to adduce
9 evidence or to produce or give evidence under other procedures available
10 in this state or may order social studies to be made for use in a
11 custody proceeding in another state. A certified copy of the transcript
12 of the record of the hearing or the evidence otherwise adduced and any
13 social studies prepared shall be forwarded by the clerk of the court
14 to the requesting court upon receipt of payment from the requesting
15 court.

16 (b) A person within this state may voluntarily give his testi-
17 mony or statement in this state for use in a custody proceeding out-
18 side this state.

19 (c) Upon request of the court of another state, the superior
20 court of this state may order a person in this state to appear alone
21 or with the child in a custody proceeding in another state. The court
22 may condition compliance with the request upon assurance by the other
23 state that travel and other necessary expenses will be advanced or
24 reimbursed.

25 Sec. 25.30.200. PRESERVATION OF DOCUMENTS FOR USE IN OTHER
26 STATES. In any custody proceeding in this state, the court shall
27 preserve the pleadings, orders and decrees, any record that has been
28 made of its hearings, social studies, and other pertinent documents or
29 a microphotographic film print or copy of any of the above papers

1 until the child has reached majority or is emancipated under applicable
2 law. Upon appropriate request of and payment from the court of another
3 state, the court shall forward to the other court certified copies of
4 any or all of those documents.

5 Sec. 25.30.210. REQUEST FOR COURT RECORDS OF ANOTHER STATE. If
6 a custody decree has been rendered in another state concerning a child
7 involved in a custody proceeding pending in a court of this state, the
8 superior court of this state upon taking jurisdiction of the case
9 shall request of the court of the other state a certified copy of the
10 transcript of any court record and other documents mentioned in sec.
11 200 of this chapter and send payment for them.

12 Sec. 25.30.220. INTERNATIONAL APPLICATION. The general policies
13 of this chapter extend to the international area. The provisions of
14 this chapter relating to the recognition and enforcement of custody
15 decrees of other states apply to custody decrees and decrees involving
16 legal institutions similar in nature to custody rendered by appropriate
17 authorities of other nations if reasonable notice and opportunity to
18 be heard were given to all affected persons.

19 Sec. 25.30.230. PRIORITY. Upon the request of a party to a
20 custody proceeding which raises a question of existence or exercise of
21 jurisdiction under this Act, the case shall be given calendar priority
22 to the extent allowed by law and court rules, and shall be handled
23 expeditiously.

24 Sec. 25.30.900. DEFINITIONS. As used in this chapter:

25 (1) "contestant" means a person, including a parent, who
26 claims a right to custody or visitation rights with respect to a
27 child;

28 (2) "custody determination" means a court decision and
29 court orders providing for the custody of a child, including visitation

1 rights; it does not include a decision relating to child support or
2 any other monetary obligation of any person;

3 (3) "custody proceeding" means a proceeding in which a
4 determination of custody of a child is an issue, including an action
5 for divorce, dissolution of marriage, legal separation, and dependency
6 proceedings;

7 (4) "decree" or "custody decree" means a custody determina-
8 tion contained in a judicial decree or order made in a custody pro-
9 ceeding, and includes an initial decree and a modification decree;

10 (5) "home state" means the state in which the child, immedi-
11 ately preceding the time involved, lived with his parents, a parent,
12 or a person acting as parent, for at least six consecutive months, and,
13 in the case of a child less than six months old, the state in which
14 the child lived from birth with any of the persons mentioned; periods
15 of temporary absence of any of the named persons are counted as part
16 of the six-month or other period;

17 (6) "initial decree" means the first custody decree con-
18 cerning a particular child;

19 (7) "modification decree" means a custody decree which
20 modifies or replaces a prior decree, whether made by the court which
21 rendered the prior decree or by another court;

22 (8) "physical custody" means actual possession and control
23 of a child;

24 (9) "person acting as parent" means a person, other than a
25 parent, who has physical custody of a child and who has either been
26 awarded custody by a court or claims a right to custody;

27 (10) "state" means any state, territory, or possession of
28 the United States, the Commonwealth of Puerto Rico, and the District
29 of Columbia.

1 Sec. 25.30.910. SHORT TITLE. This chapter may be cited as the
2 Uniform Child Custody Jurisdiction Act.

3 * Sec. 2. AS 09.55.205 is amended to read:

4 Sec. 09.55.205. JUDGMENTS FOR CUSTODY. In an action for divorce
5 or for legal separation the court may, if it has jurisdiction under AS
6 25.30.020, and is an appropriate forum under AS 25.30.050 and 25.30.060,
7 during the pendency of the action, or at the final hearing or at any
8 time thereafter during the minority of any child of the marriage,
9 make, modify or vacate an order for the custody of or visitation with
10 the minor child which may seem necessary or proper [AND MAY AT ANY
11 TIME MODIFY OR VACATE THE ORDER]. Appointment of a guardian ad litem
12 or attorney for the child shall be made under the terms of AS 09.65.130.
13 In awarding custody the court is to be guided by the following conside-
14 rations:

15 (1) by what appears to be for the best interest of the
16 child and if the child is of a sufficient age and intelligence to form
17 a preference, the court may consider that preference in determining
18 the question; and

19 (2) as between parents adversely claiming the custody of a
20 child neither parent is entitled to it as of right.

21 * Sec. 3. AS 25.30.020(3) is repealed and re-enacted to read:

22 (3) the child is physically present in this state and is a
23 child in need of aid as defined in AS 47.10.290; or

24 * Sec. 4. AS 25.30.900(3) is amended to read:

25 (3) "custody proceeding" includes proceedings in which a
26 custody determination is one of several issues, such as an action for
27 divorce, dissolution of marriage, or legal separation, and includes
28 child-in-need-of-aid [DEPENDENCY] proceedings;

29 * Sec. 5. AS 25.30.040(a)(2) - (5) and (c), enacted in sec. 1 of this

1 Act, has the effect of changing Rule 4(e) and (f), Rules of Civil Procedure,
2 by specifying additional methods of out-of-state service of process and
3 proof of that service.

4 * Sec. 6. Secs. 4 and 5 of this Act take effect upon the effective date
5 of a version of SB 106 which statutorily creates the concept of "child in
6 need of aid" in Alaska. The remainder of this Act takes effect July 1,
7 1977.

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