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Referred: Health, Education &
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1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 189

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to divorce and dissolution."

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

8 * Section 1. AS 25.24.140 is repealed and reenacted to read:

9 Sec. 25.24.140. ORDERS DURING ACTION. (a) During the pendency
10 of the action, a spouse may, upon application and in appropriate
11 circumstances, be awarded expenses, including

12 (1) attorney fees and costs that reasonably approximate the
13 actual fees and costs required to prosecute or defend the action;

14 (2) reasonable spousal support, including medical expenses;
15 and

16 (3) reasonable support for minor children in the care of
17 the spouse.

18 (b) During the pendency of the action, the court may grant an
19 order

20 (1) providing for the freedom of each spouse from the
21 control of the other spouse;

22 (2) restraining each spouse from subjecting the other
23 spouse or another person living in the household to domestic violence,
24 as defined in AS 25.35.060;

25 (3) directing one spouse to vacate the marital residence or
26 the home of the other spouse;

27 (4) restraining a spouse from communicating directly or
28 indirectly with the other spouse;

29 (5) restraining a spouse from entering a propelled vehicle

1 in the possession of or occupied by the other spouse; and

2 (6) prohibiting a spouse from disposing of the property of
3 either spouse or marital property without the permission of the other
4 spouse or a court order.

5 (c) After a hearing, the court may also order that the parties
6 engage in personal or family counseling or mediation if both parties
7 agree. The court shall provide in the order for the payment of the
8 costs of counseling or mediation.

9 * Sec. 2. AS 25.24.160(a)(4) is amended to read:

10 (4) for the division between the parties of their property,
11 including retirement benefits and career assets, whether joint or
12 separate, acquired only during coverture, in a just [THE] manner [AS
13 MAY BE JUST,] and without regard to which of the parties is in fault;
14 however, the court, in making the division, may invade the property,
15 including retirement benefits and career assets, of either spouse
16 acquired before marriage when the balancing of the equities between
17 the parties requires it; and to accomplish this end the judgment may
18 require that one or both of the parties assign, deliver, or convey any
19 of their real or personal property, including retirement benefits and
20 career assets, to the other party;

21 * Sec. 3. AS 25.24.200 is amended to read:

22 Sec. 25.24.200. DISSOLUTION OF MARRIAGE. (a) A husband and
23 wife together may petition the superior court for the dissolution of
24 their marriage under AS 25.24.200 -- 25.24.260 if the following con-
25 ditions exist at the time of filing the petition:

26 (1) incompatibility of temperament has caused the irremedi-
27 able breakdown of the marriage;

28 (2) [IF] there are minor children of the marriage or the
29 wife is pregnant, and the spouses have agreed on which spouse or third

1 party is to [SHALL] be awarded custody of each minor child of the
2 marriage and the extent of visitation, including visitation by grand-
3 parents and other persons, and support to be provided on the chil-
4 dren's behalf, whether the payments are to be made through the child
5 support enforcement agency and the tax consequences of that agreement;

6 (3) the spouses have agreed as to the distribution of all
7 jointly owned real and personal property, including retirement bene-
8 fits and other career assets, and the payment of spousal support, if
9 any, and the tax consequences resulting from these payments; and

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

13 (b) A husband or wife may separately petition for dissolution of
14 their marriage under AS 25.24.200 -- 25.24.260 if the following con-
15 ditions exist at the time of filing the petition:

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

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

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

28 (c) Except as provided in AS 25.24.220(i), [NOTHING IN THIS
29 SECTION PROHIBITS] a spouse who has been personally served with a copy

1 of a petition filed [MADE] under (a) of this section may execute [FROM
2 EXECUTING] an appearance, waiver of time to answer, and waiver of
3 notice of hearing. The appearance and waivers must [SHALL] include an
4 acknowledgment signed before an officer authorized to administer an
5 oath or affirmation that the spouse being served has read the peti-
6 tion; assents to the terms relating to custody of the children, child
7 support, visitation, spousal support and resultant tax consequences,
8 division of property, including retirement benefits and other career
9 assets, and allocating of debts; agrees that the conditions otherwise
10 required by (a) of this section exist; agrees that the petition con-
11 stitutes the entire agreement between the parties; understands fully
12 the nature and consequences of the action; and is not signing the
13 appearance and waivers under duress or coercion.

14 (d) The action created under this section is separate from the
15 action created by AS 25.24.010. The procedures prescribed by AS 25.-
16 24.200 -- 25.24.260 do not apply to an action brought under AS 25.24.-
17 010, nor do procedures prescribed under AS 25.24.010 -- 25.24.180
18 apply to an action brought under this section, except as specifically
19 provided.

20 * Sec. 4. AS 25.24.210(e) is repealed and reenacted to read:

21 (e) If the petition is filed by both spouses under AS 25.24.-
22 200(a), the petition must state in detail the terms of agreement as
23 between the spouses with regard to the custody of children, child
24 support, visitation, spousal support and tax consequences, if any,
25 division of property, including retirement benefits and other career
26 assets, and allocation of debts. In addition, the petition must state

27 (1) the respective occupations of the petitioners;

28 (2) the income, assets, and liabilities of the respective
29 petitioners at the time of filing the petition;

- 1 (3) the date and place of the marriage;
- 2 (4) the name, date of birth, and current custodial status
3 of each minor child born of the marriage or adopted by the petition-
4 ers;
- 5 (5) whether the wife is pregnant;
- 6 (6) whether either petitioner requires medical care or
7 treatment;
- 8 (7) whether a domestic violence complaint has been filed
9 during the marriage by a member of the household;
- 10 (8) whether either petitioner has received the advice of
11 legal counsel regarding a divorce or dissolution;
- 12 (9) other facts and circumstances that the petitioners
13 believe should be considered;
- 14 (10) that the petition constitutes the entire agreement
15 between the petitioners; and
- 16 (11) any other relief sought by the petitioners.

17 * Sec. 5. AS 25.24.220(b) is repealed and reenacted to read:

18 (b) Except as provided in (i) of this section, if the petition
19 is filed by both spouses under AS 25.24.200(a) both spouses shall
20 attend the hearing personally and not through counsel. However, if
21 the petition is not subject to (i) of this section, one spouse may
22 comply with AS 25.24.200(c). Either spouse may have counsel at the
23 hearing.

24 * Sec. 6. AS 25.24.220(d) is amended to read:

25 (d) If the petition is filed [BROUGHT] by both spouses under
26 AS 25.24.200(a), the court shall examine the petitioners or petitioner
27 present and consider whether

28 (1) the spouses fully understand the nature and conse-
29 quences of their action;

1 (2) the written agreements between the spouses concerning
2 child custody, child support, and visitation are [FAIR,] just [, AND
3 EQUITABLE] as between the spouses and in the best interests of the
4 children of the marriage;

5 (3) the written agreements between the spouses relating to
6 the division of property, including retirement benefits and other
7 career assets, spousal support, and the allocation of obligations are
8 [FAIR,] just[, AND EQUITABLE]; [AND]

9 (4) the written agreements constitute the entire agreement
10 between the parties; and

11 (5) the conditions in AS 25.24.200(a) have been met.

12 * Sec. 7. AS 25.24.220(g) is amended to read:

13 (g) The court may amend the written agreements between the
14 spouses relating to child custody, child support, visitation, spousal
15 support, division of the property, including retirement benefits and
16 other career assets, and allocation of obligations, but only if both
17 petitioners concur in the amendment in writing or on the record.

18 * Sec. 8. AS 25.24.220 is amended by adding new subsections to read:

19 (h) In its examination of a petitioner under (d) of this sec-
20 tion, the court shall use a heightened level of scrutiny of agreements
21 if

22 (1) one party is represented by counsel and the other is
23 not;

24 (2) a domestic violence complaint has been filed during the
25 marriage by a member of the family; or

26 (3) there are any minor children of the marriage.

27 (i) If the court finds that a higher level of scrutiny is
28 required by (h) of this section, the court shall examine the written
29 agreements between the spouses to determine that they are just, that

1 they constitute the entire agreement between the parties, and that the
2 agreements concerning child custody, child support, and visitation are
3 in the best interest of the children of the marriage, if any. The
4 court shall require the presence of both spouses at a hearing for this
5 purpose unless the court finds on the record that it would constitute
6 a significant hardship on one of the spouses to appear, and that a
7 just agreement has been reached.

8 * Sec. 9. AS 25.24.230 is repealed and reenacted to read:

9 Sec. 25.24.230. JUDGMENT. (a) If the petition is filed under
10 AS 25.24.200(a), and is not subject to AS 25.24.220(h), the court may
11 grant the spouses a final decree of dissolution and shall order other
12 relief as provided in this section if the court, upon consideration of
13 the information contained in the petition and the testimony of the
14 spouse or spouses at the hearing, finds that

15 (1) the spouses understand fully the nature and conse-
16 quences of their action;

17 (2) the written agreements between the spouses concerning
18 spousal support and tax consequences, if any, division of property,
19 including retirement benefits and other career assets, and allocation
20 of obligations are not grossly unjust;

21 (3) each spouse entered into the agreement voluntarily and
22 free from the coercion of any person; and

23 (4) the conditions in AS 25.24.200(a) have been met.

24 (b) If the petition is filed under AS 25.24.200(a), and is
25 subject to AS 25.24.220(h), the court may grant the spouses a final
26 decree of dissolution and shall order other relief as provided in this
27 section if the court, upon consideration of the information contained
28 in the petition and the testimony of the spouse or spouses at the
29 hearing, finds that

1 (1) the spouses understand fully the nature and conse-
2 quences of their action;

3 (2) the written agreements between the spouses concerning
4 child custody, child support, and visitation are in the best interest
5 of the children of the marriage, constitute the entire agreement of
6 the parties on child custody, child support, and visitation, and, as
7 between the spouses, are just;

8 (3) the written agreements between the spouses concerning
9 spousal support and tax consequences, if any, division of property,
10 including retirement benefits and other career assets, and allocation
11 of obligations are just and constitute the entire agreement between
12 the parties;

13 (4) each spouse entered the agreement voluntarily and free
14 from the coercion of any person; and

15 (5) the conditions in AS 25.24.200(a) have been met.

16 (c) If the petition is filed by one spouse under AS 25.24.-
17 200(b), the court may grant the spouse a final decree of dissolution
18 and restore the petitioner's prior name, if so requested, if the
19 court, upon consideration of affidavits supplied by the spouse and the
20 testimony of the spouse at the hearing, finds that

21 (1) the spouse present at the hearing understands fully the
22 nature and consequences of the action; and

23 (2) the conditions in AS 25.24.200(b) have been met.

24 (d) The court shall dismiss or continue an action brought under
25 AS 25.24.200 -- 25.24.260 before findings are made if

26 (1) a representative of the minor children objects to a
27 term of any of the agreements between the spouses;

28 (2) either of the spouses withdraws from any of the agree-
29 ments required under AS 25.24.200(a); or

1 (3) the petition alleges that the conditions in AS 25.24.-
2 200(b) exist, but the whereabouts of the absent spouse becomes known
3 to the other spouse or the court before findings are made.

4 (e) The court shall deny the relief sought in an action brought
5 under AS 25.24.200 -- 25.24.260 if the court does not make the find-
6 ings required under (a) and (b) of this section.

7 (f) If the petition is filed by both spouses under AS 25.24.-
8 200(a), the court shall restore either spouse's prior name, if so
9 requested, and shall fully and specifically set out in the decree the
10 agreements of the spouses relating to child custody, child support,
11 visitation, spousal support, division of property, including retire-
12 ment benefits and other career assets, and the allocation of the
13 obligations of the spouses; and the court shall order the performance
14 of those agreements. The court shall also state, in the decree,
15 whether child support payments are to be made through the child sup-
16 port enforcement agency. If the petition is filed by one spouse under
17 AS 25.24.200(b), the decree must state that it does not bar future
18 action on the issues not resolved in the decree.

19 (g) Notwithstanding any other provisions of AS 25.24.200 --
20 25.24.260, the court may not award as between the spouses any real or
21 personal property acquired by the spouses before the date of the
22 marriage, unless the spouses expressly agree otherwise or the court
23 determines that the property should be made available, by sale or
24 other conveyance, to ensure that the children's best interests are
25 provided for. If the court determines that the children's best inter-
26 ests require an award of premarital property, but the spouses do not
27 agree, the action must be dismissed or continued.

28 (h) If a judgment under this section distributes benefits to an
29 alternate payee under AS 14.25, AS 22.25, AS 26.05.222 -- 26.05.226,

1 or AS 39.35, the judgment must meet the requirements of a qualified
2 domestic relations order under the definition of that phrase that is
3 applicable to those provisions.

4 * Sec. 10. AS 25.24.250 is amended by adding a new subsection to read:

5 (c) Forms or instructions prepared under (a) of this section
6 must specify that the dissolution petition constitutes the entire
7 agreement between the parties and must provide examples of kinds of
8 property and obligations that are subject to distribution.

9 * Sec. 11. AS 25.24 is amended by adding a new section to article 4 to
10 read:

11 ARTICLE 4. GENERAL PROVISIONS.

12 Sec. 25.24.350. DEFINITION. In this chapter, "career assets"
13 means tangible and intangible assets resulting from a spouse's educa-
14 tion, profession, or employment that were acquired at least in part as
15 a result of direct or indirect contributions made by the other spouse;
16 "career assets" include professional education, licenses, increased
17 earnings, and good will.

18 * Sec. 12. The revisor of statutes shall change forms of the verb
19 "bring" to appropriate forms of the verb "file" in AS 25.24.200 -- 25.24.-
20 290, to assure use of consistent terminology in distinguishing between the
21 concepts of "bringing an action" and "filing a petition."