

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2

CS FOR HOUSE BILL NO. 189 (HESS)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to divorce, dissolution, and annul-

7

ment, and amending Rule 84(a), Alaska Rules of Civil

8

Procedure."

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

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* Section 1. AS 25.24.100 is amended to read:

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Sec. 25.24.100. RESIDENCY OF MILITARY PERSONNEL. A person

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serving in a military branch of the United States government who is

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assigned to a duty station at [HAS BEEN CONTINUOUSLY STATIONED IN] a

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military base or installation in the state [FOR A PERIOD OF ONE YEAR]

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shall be considered [DEEMED] a resident [IN GOOD FAITH] of the state

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for the purposes of this chapter [AS 25.24.010 - 25.24.180].

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* Sec. 2. AS 25.24.140 is repealed and reenacted to read:

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Sec. 25.24.140. ORDERS DURING ACTION. (a) During the pendency

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of the action, a spouse may, upon application and in appropriate

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circumstances, be awarded expenses, including

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(1) attorney fees and costs that reasonably approximate the

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actual fees and costs required to prosecute or defend the action;

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(2) reasonable spousal support, including medical expenses;

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and

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(3) reasonable support for minor children in the care of

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the spouse, if there is a legal obligation of the other spouse to

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provide support.

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(b) During the pendency of the action, upon application, a

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spouse is entitled to necessary protective orders, including orders

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

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

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

8 (4) restraining a spouse from communicating directly or
9 indirectly with the other spouse;

10 (5) restraining a spouse from entering a propelled vehicle
11 in the possession of or occupied by the other spouse; and

12 (6) prohibiting a spouse from disposing of the property of
13 either spouse or marital property without the permission of the other
14 spouse or a court order.

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

19 * Sec. 3. AS 25.24.160(a)(4) is amended to read:

20 (4) for the division between the parties of their property,
21 including retirement benefits and career assets, whether joint or
22 separate, acquired only during marriage [COVERTURE], in a just [THE]
23 manner [AS MAY BE JUST,] and without regard to which of the parties is
24 in fault; however, the court, in making the division, may invade the
25 property, including retirement benefits and career assets, of either
26 spouse acquired before marriage when the balancing of the equities
27 between the parties requires it; and to accomplish this end the judg-
28 ment may require that one or both of the parties assign, deliver, or
29 convey any of their real or personal property, including retirement

1 benefits and career assets, to the other party; a division of career
2 assets must take into consideration the extent to which each spouse
3 contributed to the acquisition of the career assets, including consid-
4 eration of the value of homemaking and child rearing services provided
5 by each spouse;

6 * Sec. 4. AS 25.24 is amended by adding a new section to read:

7 Sec. 25.24.165. CHANGE OF NAME IN DIVORCE OR ANNULMENT. (a) In
8 a judgment in an action for divorce or action declaring a marriage
9 void, the court may change the name of either of the parties.

10 (b) If a party seeks a change of name to a name other than a
11 prior name, the court shall set a date for hearing not less than 40
12 days after filing of the action. Notice of the application for a
13 change of name to a name other than a prior name and the date of the
14 hearing shall be published once each week for four consecutive calen-
15 dar weeks before the hearing in a newspaper of general circulation in
16 the judicial district. The court may also require posting of the
17 notice at locations it considers appropriate. The court shall by
18 judgment authorize the party to assume the new name in not less than
19 30 days after issuance of the judgment, if the court is satisfied that
20 no reasonable objection exists to assumption of the new name. Within
21 10 days after issuance of the judgment the party shall publish notice
22 of the approval of the name change in a newspaper of general circula-
23 tion in the judicial district. The court may also require the posting
24 of a copy of the judgment.

25 * Sec. 5. AS 25.24.200 is amended to read:

26 Sec. 25.24.200. DISSOLUTION OF MARRIAGE. (a) A husband and
27 wife together may petition the superior court for the dissolution of
28 their marriage under AS 25.24.200 - 25.24.260 if the following condi-
29 tions exist at the time of filing the petition:

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

3 (2) if there are minor children of the marriage or the wife
4 is pregnant, and the spouses have agreed on which spouse or third
5 party is to [SHALL] be awarded custody of each minor child of the
6 marriage and the extent of visitation, including visitation by grand-
7 parents and other persons, and support to be provided on the chil-
8 dren's behalf, whether the payments are to be made through the child
9 support enforcement agency and the tax consequences of that agreement;

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

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

17 (b) A husband or wife may separately petition for dissolution of
18 their marriage under AS 25.24.200 - 25.24.260 if the following condi-
19 tions exist at the time of filing the petition:

20 (1) incompatibility of temperament, as evidenced by ex-
21 tended absence or otherwise, has caused the irremediable breakdown of
22 the marriage;

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

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

3 (c) Except as provided in AS 25.24.220(i), [NOTHING IN THIS
4 SECTION PROHIBITS] a spouse who has been personally served with a copy
5 of a petition filed [MADE] under (a) of this section may execute [FROM
6 EXECUTING] an appearance, waiver of time to answer, and waiver of
7 notice of hearing. The appearance and waivers must [SHALL] include an
8 acknowledgment signed before an officer authorized to administer an
9 oath or affirmation that the spouse being served has read the peti-
10 tion; assents to the terms relating to custody of the children, child
11 support, visitation, spousal support and resultant tax consequences,
12 division of property, including retirement benefits and career assets,
13 and allocation of debts; agrees that the conditions otherwise required
14 by (a) of this section exist; agrees that the petition constitutes the
15 entire agreement between the parties; understands fully the nature and
16 consequences of the action; and is not signing the appearance and
17 waivers under duress or coercion.

18 (d) The action created under this section is separate from the
19 action created by AS 25.24.010. The procedures prescribed by AS 25.-
20 24.200 - 25.24.260 do not apply to an action brought under AS 25.24.-
21 010, nor do procedures prescribed under AS 25.24.010 - 25.24.180 apply
22 to an action filed [BROUGHT] under this section, except as specific-
23 ally provided.

24 * Sec. 6. AS 25.24.200 is amended by adding a new subsection to read:

25 (e) A division of career assets must take into consideration the
26 extent to which each spouse contributed to the acquisition of the
27 career assets, including consideration of the value of homemaking and
28 child rearing services provided by each spouse.

29 * Sec. 7. AS 25.24.210(d) is amended to read:

1 (d) The petition shall request that the marriage be dissolved
2 and that the [PRIOR] name of a spouse be changed [RESTORED], if de-
3 sired by that spouse.

4 * Sec. 8. AS 25.24.210(e) is repealed and reenacted to read:

5 (e) If the petition is filed by both spouses under AS 25.24.-
6 200(a), the petition must state in detail the terms of the agreement
7 between the spouses concerning the custody of children, child support,
8 visitation, spousal support and tax consequences, if any, division of
9 property, including retirement benefits and career assets, and allo-
10 cation of debts. In addition, the petition must state

11 (1) the respective occupations of the petitioners;

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

14 (3) the date and place of the marriage;

15 (4) the name, date of birth, and current custodial status
16 of each minor child born of the marriage or adopted by the petition-
17 ers;

18 (5) whether the wife is pregnant;

19 (6) whether either petitioner requires medical care or
20 treatment;

21 (7) whether a domestic violence complaint has been filed
22 during the marriage by a member of the household;

23 (8) whether either petitioner has received the advice of
24 legal counsel regarding a divorce or dissolution;

25 (9) other facts and circumstances that the petitioners
26 believe should be considered;

27 (10) that the petition constitutes the entire agreement
28 between the petitioners; and

29 (11) any other relief sought by the petitioners.

1 * Sec. 9. AS 25.24.220(b) is repealed and reenacted to read:

2 (b) Except as provided in (i) of this section, if the petition
3 is filed by both spouses under AS 25.24.200(a) both spouses shall
4 attend the hearing personally and not through counsel. However, if
5 the petition is not subject to (i) of this section, one spouse may
6 comply with AS 25.24.200(c). Either spouse may have counsel at the
7 hearing.

8 * Sec. 10. AS 25.24.220(c) is amended to read:

9 (c) If the petition is filed [BROUGHT] by one spouse under
10 AS 25.24.200(b), that spouse shall submit proof of diligent inquiry as
11 to the whereabouts of the absent spouse and provide notice by publica-
12 tion, posting, or other means as ordered by the court under [IN ACCOR-
13 DANCE WITH] the Alaska Rules of Civil Procedure.

14 * Sec. 11. AS 25.24.220(d) is amended to read:

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

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

20 (2) the agreements between the spouses concerning child
21 custody, child support, and visitation are [FAIR,] just [, AND EQUIT-
22 ABLE] as between the spouses and in the best interests of the children
23 of the marriage;

24 (3) the written agreements between the spouses relating to
25 the division of property, including retirement benefits and career
26 assets, spousal support, and the allocation of obligations are [FAIR,]
27 just [, AND EQUITABLE]; [AND]

28 (4) the written agreements constitute the entire agreement
29 between the parties; and

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

2 * Sec. 12. AS 25.24.220(e) is amended to read:

3 (e) If the petition is filed [BROUGHT] by one spouse under
4 AS 25.24.200(b), the court shall examine the petitioner and consider
5 whether the petitioner fully understands the nature and consequences
6 of the action and whether the conditions in AS 25.24.200(b) have been
7 met.

8 * Sec. 13. AS 25.24.220(g) is amended to read:

9 (g) The court may amend the written agreements between the
10 spouses relating to child custody, child support, visitation, spousal
11 support, division of the property, including retirement benefits and
12 career assets, and allocation of obligations, but only if both peti-
13 tioners concur in the amendment in writing or on the record.

14 * Sec. 14. AS 25.24.220 is amended by adding new subsections to read:

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

18 (1) one party is represented by counsel and the other is
19 not;

20 (2) a domestic violence complaint has been filed during the
21 marriage by a member of the family or there is evidence of significant
22 domestic violence during the marriage;

23 (3) there are minor children of the marriage; or

24 (4) there is a patently inequitable division of the marital
25 estate.

26 (i) If the court finds that a higher level of scrutiny is re-
27 quired by (h) of this section, the court shall examine the written
28 agreements between the spouses to determine that they are just, that
29 they constitute the entire agreement between the parties, and that the

1 agreements concerning child custody, child support, and visitation are
2 in the best interests of the children of the marriage, if any. The
3 court shall require the presence of both spouses at a hearing for this
4 purpose unless the court finds that it would constitute a significant
5 hardship on one of the spouses to appear, and that a just agreement
6 has been reached. If one of the spouses cannot attend the hearing
7 because it would constitute a significant hardship, the court may
8 require that spouse to be available by telephone to answer questions,
9 at that spouse's expense.

10 * Sec. 15. AS 25.24.230 is repealed and reenacted to read:

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

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

19 (2) the written agreements between the spouses concerning
20 child custody, child support, and visitation are in the best interests
21 of the children of the marriage and constitute the entire agreement of
22 the parties on child custody, child support, and visitation;

23 (3) the written agreements between the spouses concerning
24 spousal support and tax consequences, if any, division of property,
25 including retirement benefits and career assets, and allocation of
26 obligations are not grossly unjust and constitute the entire agreement
27 between the parties;

28 (4) each spouse entered into the agreement voluntarily and
29 free from the coercion of another person; and

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

2 (b) If the petition is filed under AS 25.24.200(a) and is sub-
3 ject to AS 25.24.220(h), the court may grant the spouses a final
4 decree of dissolution and shall order other relief as provided in this
5 section if the court, upon consideration of the information contained
6 in the petition and the testimony of the spouse or spouses at the
7 hearing, finds that

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

10 (2) the written agreements between the spouses concerning
11 child custody, child support, and visitation are in the best interests
12 of the children of the marriage, constitute the entire agreement of
13 the parties on child custody, child support, and visitation, and, as
14 between the spouses, are just;

15 (3) the written agreements between the spouses concerning
16 spousal support and tax consequences, if any, division of property,
17 including retirement benefits and career assets, and allocation of
18 obligations are just and constitute the entire agreement between the
19 parties;

20 (4) each spouse entered the agreement voluntarily and free
21 from the coercion of another person; and

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

23 (c) If the petition is filed by one spouse under AS 25.24.-
24 200(b), the court may grant the spouse a final decree of dissolution
25 and change the petitioner's name, if so requested, if the court, upon
26 consideration of affidavits supplied by the spouse and the testimony
27 of the spouse at the hearing, finds that

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

1 (2) the conditions in AS 25.24.200(b) have been met; and
2 (3) the requirements of AS 25.24.165(b) have been sat-
3 isfied, if a change of name is requested.
4 (d) The court shall dismiss a petition or continue action on a
5 petition filed under AS 25.24.200 - 25.24.260 before findings are made
6 if
7 (1) a representative of the minor children objects to a
8 term of an agreement between the spouses;
9 (2) either of the spouses withdraws from an agreement
10 required under AS 25.24.200(a); or
11 (3) the petition alleges that the conditions in AS 25.24.-
12 200(b) exist, but the whereabouts of the absent spouse becomes known
13 to the other spouse or the court before findings are made.
14 (e) The court shall deny the relief sought in a petition filed
15 under AS 25.24.200 - 25.24.260 if the court does not make the findings
16 required under (a) - (c) of this section.
17 (f) If the petition is filed by both spouses under AS 25.24.-
18 200(a), the court shall change either spouse's name, if the spouse
19 seeking a change of name to a name other than a prior name complies
20 with AS 25.24.165(b), and shall fully and specifically set out in the
21 decree the written agreements of the spouses and shall order the
22 performance of those written agreements. The court shall also state,
23 in the decree, whether child support payments are to be made through
24 the child support enforcement agency. If the petition is filed by one
25 spouse under AS 25.24.200(b), the decree must state that it does not
26 bar future action on the issues not resolved in the decree.
27 (g) Notwithstanding other provisions of AS 25.24.200 - 25.24.-
28 260, the court may not award as between the spouses real or personal
29 property acquired by either spouse before the date of the marriage,

1 unless the spouses expressly agree otherwise or the court determines
2 that the property should be made available, by sale or other convey-
3 ance, to ensure that the best interests of the children are provided
4 for. If the court determines that the best interests of the children
5 require an award of premarital property, but the spouses do not agree,
6 the court shall dismiss or continue the action.

7 (h) If a judgment under this section distributes benefits to an
8 alternate payee under AS 14.25, AS 22.25, AS 26.05.222 - 26.05.226, or
9 AS 39.35, the judgment must meet the requirements of a qualified
10 domestic relations order under the definition of that phrase that is
11 applicable to those provisions.

12 * Sec. 16. AS 25.24.250 is amended by adding a new subsection to read:

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

17 * Sec. 17. AS 25.24 is amended by adding a new section to read:

18 ARTICLE 4. GENERAL PROVISIONS.

19 Sec. 25.24.350. DEFINITION. In this chapter, "career assets"
20 means tangible and intangible assets resulting from a spouse's educa-
21 tion, profession, or employment that were acquired at least in part as
22 a result of direct or indirect contributions made by the other spouse;
23 "career assets" includes professional education, licenses, increased
24 earnings, and good will.

25 * Sec. 18. AS 25.24.165, as added by sec. 4 of this Act, AS 25.24.-
26 210(d) as amended by sec. 7 of this Act, and AS 25.24.230(c) and 25.24.-
27 230(f) as amended by sec. 15 of this Act, have the effect of amending Rule
28 84(a), Alaska Rules of Civil Procedure, to allow a change of name to a name
29 other than a prior name to be commenced in a complaint for divorce or

1 annulment or a petition for dissolution of marriage.

2 * Sec. 19. AS 25.24.160(a)(5) is repealed.