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1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2

HOUSE BILL NO. 195

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to divorce, dissolution, and
7 annulment, and amending Rule 84(a), Alaska Rules of
8 Civil Procedure."

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

10 * Section 1. AS 25.24.100 is amended to read:

11 Sec. 25.24.100. RESIDENCY OF MILITARY PERSONNEL. A person
12 serving in a military branch of the United States government who is
13 assigned to a duty station at [HAS BEEN CONTINUOUSLY STATIONED IN] a
14 military base or installation in the state is considered [FOR A PERIOD
15 OF ONE YEAR SHALL BE DEEMED] a resident [IN GOOD FAITH] of the state
16 for the purposes of this chapter [AS 25.24.010 -- 25.24.180].

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 AS 25.24.140 is repealed and reenacted to read:

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

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

23 (2) reasonable spousal maintenance, including medical
24 expenses; and

25 (3) reasonable support for minor children in the care of
26 the spouse, if there is a legal obligation of the other spouse to
27 provide support.

28 (b) During the pendency of the action, upon application, a
29 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 * Sec. 3. AS 25.24.160(a) is amended to read:

16 (a) In a judgment in an action for divorce or action declaring a
17 marriage void or at any time after judgment, the court may provide

18 (1) for the payment by either or both parties of an amount
19 of money or goods, in gross or installments that may include cost-
20 of-living adjustments, as may be just and proper for the parties to
21 contribute toward the nurture and education of their children, and the
22 court may order the parties to arrange with their employers for an
23 automatic payroll deduction each month or each pay period, if the
24 period is other than monthly, of the amount of the installment; if the
25 employer agrees, the installment shall be forwarded by the employer to
26 the clerk of the superior court which entered the judgment or to the
27 court trustee, and the amount of the installment is exempt from exe-
28 cution;

29 (2) for the recovery by one party from the other of an

1 amount of money for maintenance, in gross or in installments, as may
2 be just and necessary without regard to which of the parties is in
3 fault;

4 (3) for the delivery to either party of that party's per-
5 sonal property in the possession or control of the other party at the
6 time of giving the judgment;

7 (4) for the division between the parties of their property,
8 including retirement benefits, whether joint or separate, acquired
9 only during marriage [COVERTURE], in a just [THE] manner [AS MAY BE
10 JUST,] and without regard to which of the parties is in fault; howev-
11 er, the court, in making the division, may invade the property, in-
12 cluding retirement benefits, of either spouse acquired before marriage
13 when the balancing of the equities between the parties requires it;
14 and to accomplish this end the judgment may require that one or both
15 of the parties assign, deliver, or convey any of their real or person-
16 al property, including retirement benefits, to the other party; a
17 division of property and award of spousal maintenance must take into
18 consideration the extent to which each spouse contributed to the
19 acquisition of career assets, as defined in AS 25.24.350

20 [(5) TO CHANGE THE NAME OF ONE OF THE PARTIES].

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

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

25 (b) If a party seeks a change of name to a name other than a
26 prior name, the court shall set a date for hearing not less than 40
27 days after filing of the action. Notice of the application for a
28 change of name to a name other than a prior name and the date of the
29 hearing shall be published once each week for four consecutive

1 calendar weeks before the hearing in a newspaper of general circu-
2 lation in the judicial district. The court may also require posting
3 of the notice at locations it considers appropriate. The court shall
4 by judgment authorize the party to assume the new name in not less
5 than 30 days after issuance of the judgment, if the court is satisfied
6 that no reasonable objection exists to assumption of the new name.
7 Within 10 days after issuance of the judgment the party shall publish
8 notice of the approval of the name change in a newspaper of general
9 circulation in the judicial district. The court may also require the
10 posting of a copy of the judgment.

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

12 Sec. 25.24.200. DISSOLUTION OF MARRIAGE. (a) A husband and
13 wife together may petition the superior court for the 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 has caused the irremedi-
17 able breakdown of the marriage;

18 (2) if there are minor children of the marriage or the wife
19 is pregnant, and the spouses have agreed on which spouse or third
20 party is to [SHALL] be awarded custody of each minor child of the
21 marriage and the extent of visitation, including visitation by grand-
22 parents and other persons, if in the child's best interests, and
23 support to be provided on the children's behalf, whether the payments
24 are to be made through the child support enforcement agency and the
25 tax consequences of that agreement;

26 (3) the spouses have agreed as to the distribution of all
27 jointly owned real and personal property, including retirement bene-
28 fits, and the payment of spousal maintenance [SUPPORT], if any, and
29 the tax consequences resulting from these payments; and that agreement

1 is fair and just and takes into consideration career assets, as
2 defined in AS 25.24.350; and

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

6 (b) A husband or wife may separately petition for dissolution of
7 their marriage under AS 25.24.200 -- 25 24.260 if the following con-
8 ditions exist at the time of filing the petition:

9 (1) incompatibility of temperament, as evidenced by extend-
10 ed absence or otherwise, has caused the irremediable breakdown of the
11 marriage;

12 (2) the petitioning spouse has been unable to ascertain the
13 other spouse's position in regard to the dissolution of their marriage
14 and in regard to the fair and just division of property, including
15 retirement benefits, and spousal maintenance which take into consid-
16 eration career assets, as defined in AS 25.24.350, payment of debts,
17 and custody, support and visitation because the whereabouts of the
18 other spouse is unknown to the petitioning spouse after reasonable
19 efforts have been made to locate the absent spouse; and

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

22 (c) Except as provided in AS 25.24.220(i), [NOTHING IN THIS
23 SECTION PROHIBITS] a spouse who has been personally served with a copy
24 of a petition filed [MADE] under (a) of this section may execute [FROM
25 EXECUTING] an appearance, waiver of time to answer, and waiver of
26 notice of hearing. The appearance and waivers must [SHALL] include an
27 acknowledgment signed before an officer authorized to administer an
28 oath or affirmation that the spouse being served has read the peti-
29 tion; assents to the terms relating to custody of the children, child

1 support, visitation, spousal maintenance (taking into consideration
2 career assets, as defined in AS 25.24.350) [SUPPORT] and [RESULTANT]
3 tax consequences, division of property, including retirement benefits,
4 and allocation of debts; agrees that the conditions otherwise required
5 by (a) of this section exist; agrees that the petition constitutes the
6 entire agreement between the parties; understands fully the nature and
7 consequences of the action; and is not signing the appearance and
8 waivers under duress or coercion.

9 (d) The action created under this section is separate from the
10 action created by AS 25.24.010. The procedures prescribed by AS 25.-
11 24.200 -- 25.24.260 do not apply to an action brought under AS 25.24.-
12 010, nor do procedures prescribed under AS 25.24.010 -- 25.24.180
13 apply to an action filed [BROUGHT] under this section, except as
14 specifically provided.

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

16 (e) A division of property, and spousal maintenance, must take
17 into consideration career assets, as defined in AS 25.24.350.

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

19 (d) The petition shall request that the marriage be dissolved
20 and that the [PRIOR] name of a spouse be changed [RESTORED], if
21 desired by that spouse.

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

23 (e) If the petition is filed by both spouses under AS 25.24.-
24 200(a), the petition must state in detail the terms of the agreement
25 between the spouses concerning the custody of children, child support,
26 visitation, spousal maintenance and tax consequences, if any, and fair
27 and just division of property, including retirement benefits. Agree-
28 ment on spousal maintenance must take into consideration career as-
29 sets, as defined in AS 25.24.350. In addition, the petition must

1 state

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

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

22 (b) Except as provided in (i) of this section, if the petition

23 is filed by both spouses under AS 25.24.200(a), both spouses shall

24 attend the hearing personally and not through counsel. However, if

25 the petition is not subject to (i) of this section, one spouse may

26 comply with AS 25.24.200(c). Either spouse may have counsel at the

27 hearing.

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

29 (c) If the petition is filed [BROUGHT] by one spouse under

1 AS 25.24.200(b), that spouse shall submit proof of diligent inquiry as
2 to the whereabouts of the absent spouse and provide notice by publica-
3 tion, posting, or other means as ordered by the court under [IN ACCOR-
4 DANCE WITH] the Alaska Rules of Civil Procedure.

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

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

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

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

15 (3) the written agreements between the spouses relating to
16 the division of property, including retirement benefits, and spousal
17 maintenance which take into consideration career assets, as defined in
18 AS 25.24.350 [SPOUSAL SUPPORT], and the allocation of obligations are
19 [FAIR,] just[, AND EQUITABLE]; [AND]

20 (4) the written agreements constitute the entire agreement
21 between the parties; and

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

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

24 (e) If the petition is filed [BROUGHT] by one spouse under
25 AS 25.24.200(b), the court shall examine the petitioner and consider
26 whether the petitioner fully understands the nature and consequences
27 of the action and whether the conditions in AS 25.24.200(b) have been
28 met.

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

1 (g) The court may amend the written agreements between the
2 spouses relating to child custody, child support, visitation, [SPOUSAL
3 SUPPORT,] division of the property, including retirement benefits, and
4 spousal maintenance which take into consideration career assets, as
5 defined in AS 25.24.350, and allocation of obligations, but only if
6 both petitioners concur in the amendment in writing or on the record.

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

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

11 (1) one party is represented by counsel and the other is
12 not;

13 (2) a domestic violence complaint has been filed during the
14 marriage by a member of the family or there is evidence of domestic
15 violence during the marriage;

16 (3) there is a minor child of the marriage; or

17 (4) there is a patently inequitable division of the marital
18 estate.

19 (i) If the court finds that a higher level of scrutiny is
20 required by (h) of this section, the court shall examine the written
21 agreements between the spouses to determine that they are just, that
22 they constitute the entire agreement between the parties, and that the
23 agreements concerning child custody, child support, and visitation are
24 in the best interest of the children of the marriage, if any. The
25 court shall require the presence of both spouses at a hearing for this
26 purpose unless the court finds on the record that it would constitute
27 a significant hardship on one of the spouses to appear, and that a
28 just agreement has been reached. If one of the spouses cannot attend
29 the hearing because it would constitute a significant hardship, the

1 court may require that spouse to be available by telephone to answer
2 questions, at that spouse's expense.

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

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

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

12 (2) the written agreements between the spouses concerning
13 spousal maintenance and tax consequences, if any, division of proper-
14 ty, including retirement benefits, and allocation of obligations are
15 fair and just and constitute the entire agreement between the parties;
16 division of property and spousal maintenance must take into consid-
17 eration career assets, as defined in AS 25.24.350;

18 (3) each spouse entered into the agreement voluntarily and
19 free from the coercion of another person; and

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

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

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

29 (2) the written agreements between the spouses concerning

1 child custody, child support, and visitation are in the best interest
2 of the children of the marriage, constitute the entire agreement of
3 the parties on child custody, child support, and visitation, and, as
4 between the spouses, are just;

5 (3) the written agreements between the spouses concerning
6 spousal maintenance and tax consequences, if any, division of proper-
7 ty, including retirement benefits, and allocation of obligations are
8 just and constitute the entire agreement between the parties; division
9 of property and spousal maintenance must take into consideration
10 career assets, as defined in AS 25.24.350;

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

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

14 (c) If the petition is filed by one spouse under AS 25.24.-
15 200(b), the court may grant the spouse a final decree of dissolution
16 and change the petitioner's name, if so requested, if the court, upon
17 consideration of affidavits supplied by the spouse and the testimony
18 of the spouse at the hearing, finds that

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

21 (2) the conditions in AS 25.24.200(b) have been met; and

22 (3) the requirements of AS 25.24.165(b) have been sat-
23 isfied, if a change of name is requested.

24 (d) The court shall dismiss a petition or continue action on a
25 petition filed under AS 25.24.200 -- 25.24.260 before findings are
26 made if

27 (1) a representative of the minor children objects to a
28 term of an agreement between the spouses;

29 (2) either of the spouses withdraws from an agreement

1 required under AS 25.24.200(a); or

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

5 (e) The court shall deny the relief sought in a petition filed
6 under AS 25.24.200 -- 25.24.260 if the court does not make the find-
7 ings required under (a) -- (c) of this section.

8 (f) If the petition is filed by both spouses under AS 25.24.-
9 200(a), the court shall change either spouse's name, if the spouse
10 seeking a change of name to a name other than a prior name complies
11 with AS 25.24.165(b), and shall fully and specifically set out in the
12 decree the written agreements of the spouses and shall order the
13 performance of those written agreements. The court shall also state,
14 in the decree, whether child support payments are to be made through
15 the child support enforcement agency. If the petition is filed by one
16 spouse under AS 25.24.200(b), the decree must state that it does not
17 bar future action on the issues not resolved in the decree.

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

27 (h) If a judgment under this section distributes benefits to an
28 alternate payee under AS 14.25, AS 22.25, AS 26.05.222 -- 26.05.226,
29 or AS 39.35, the judgment must meet the requirements of a qualified

1 domestic relations order under the definition of that phrase that is
2 applicable to those provisions.

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

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

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

9 ARTICLE 4. GENERAL PROVISIONS.

10 Sec. 25.24.350. DEFINITION. In this chapter, "career assets"
11 means the ability of a spouse to earn money resulting from a spouse's
12 education, profession, or employment that was acquired at least in
13 part as a result of the direct or indirect contribution, including the
14 value of homemaking and child rearing services, provided by the other
15 spouse.

16 * Sec. 18. AS 25.24.165, as added by sec. 4 of this Act, AS 25.24.-
17 210(d) as amended by sec. 7 of this Act, and AS 25.24.230(c) and 25.24.-
18 230(f) as amended by sec. 15 of this Act, have the effect of amending Rule
19 84(a), Alaska Rules of Civil Procedure, to allow a change of name to a name
20 other than a prior name to be commenced in a complaint for divorce or
21 annulment or a petition for dissolution of marriage.