

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 195 (Judiciary)

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 annul-
7 ment, and amending Rule 84(a), Alaska Rules of Civil
8 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 has
13 been continuously stationed at [IN] a military base or installation in
14 the state for at least 30 days is considered [A PERIOD OF ONE YEAR
15 SHALL BE DEEMED] a resident [IN GOOD FAITH] of the state for the
16 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 AS 25.24.140 is repealed and reenacted to read: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 (c) After a hearing, if both parties agree, the court may also
16 order that the parties engage in personal or family counseling or
17 mediation. In the order, the court shall provide for the payment of
18 the costs of the counseling or mediation.

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

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

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

1 the clerk of the superior court that [WHICH] entered the judgment or
2 to the court trustee, and the amount of the installment is exempt from
3 execution;

4 (2) for the recovery by one party from the other of an
5 amount of money for maintenance, in gross or in installments, as may
6 be just and necessary without regard to which of the parties is in
7 fault; an award of maintenance must take into consideration the extent
8 to which each spouse contributed to the acquisition of career assets;

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

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

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

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

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

29 (b) If a party seeks a change of name to a name other than a

1 prior name, the court shall set a date for hearing not less than 40
2 days after filing of the action. Notice of the application for a
3 change of name to a name other than a prior name and the date of the
4 hearing shall be published once each week for four consecutive calen-
5 dar weeks before the hearing in a newspaper of general circulation in
6 the judicial district. The court may also require posting of the
7 notice at locations it considers appropriate. The court shall by
8 judgment authorize the party to assume the new name not less than 30
9 days after issuance of the judgment, if the court is satisfied that no
10 reasonable objection exists to assumption of the new name. Within 10
11 days after issuance of the judgment the party shall publish notice of
12 the approval of the name change in a newspaper of general circulation
13 in the judicial district. The court may also require the posting of a
14 copy of the judgment.

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

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

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

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

1 (3) the spouses have agreed as to the distribution of all
2 jointly owned real and personal property, including retirement bene-
3 fits, and the payment of spousal maintenance [SUPPORT], if any, and
4 the tax consequences resulting from these payments; the agreement must
5 be fair and just and take into consideration career assets; and

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

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

12 (1) incompatibility of temperament, as evidenced by extend-
13 ed absence or otherwise, has caused the irremediable breakdown of the
14 marriage;

15 (2) the petitioning spouse has been unable to ascertain the
16 other spouse's position in regard to the dissolution of their marriage
17 and in regard to the fair and just division of property, including
18 retirement benefits, spousal maintenance, payment of debts, and
19 custody, support and visitation because the whereabouts of the other
20 spouse is unknown to the petitioning spouse after reasonable efforts
21 have been made to locate the absent spouse; the division of property
22 and spousal maintenance must take into consideration career assets;
23 and

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

26 (c) Except as provided in AS 25.24.220(i), [NOTHING IN THIS
27 SECTION PROHIBITS] a spouse who has been personally served with a copy
28 of a petition filed [MADE] under (a) of this section may execute [FROM
29 EXECUTING] an appearance, waiver of time to answer, and waiver of

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

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

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

20 (e) A division of property, and spousal maintenance, must take
21 into consideration career assets.

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

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

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

27 (e) If the petition is filed by both spouses under AS 25.24.-
28 200(a), the petition must state in detail the terms of the agreement
29 between the spouses concerning the custody of children, child support,

1 visitation, spousal maintenance and tax consequences, if any, and fair
2 and just division of property, including retirement benefits. Agree-
3 ments on spousal maintenance and property division must take into
4 consideration career assets. In addition, the petition must state
5 (1) the respective occupations of the petitioners;
6 (2) the income, assets, and liabilities of the respective
7 petitioners at the time of filing the petition;
8 (3) the date and place of the marriage;
9 (4) the name, date of birth, and current custodial status
10 of each minor child born of the marriage or adopted by the petition-
11 ers;
12 (5) whether the wife is pregnant;
13 (6) whether either petitioner requires medical care or
14 treatment;
15 (7) whether a domestic violence complaint has been filed
16 during the marriage by a member of the household;
17 (8) whether either petitioner has received the advice of
18 legal counsel regarding a divorce or dissolution;
19 (9) other facts and circumstances that the petitioners
20 believe should be considered;
21 (10) that the petition constitutes the entire agreement
22 between the petitioners; and
23 (11) any other relief sought by the petitioners.

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

25 (b) Except as provided in (i) of this section, if the petition
26 is filed by both spouses under AS 25.24.200(a), both spouses shall
27 attend the hearing personally and not through counsel. However, if
28 the petition is not subject to (i) of this section, a spouse who
29 complies with AS 25.24.200(c) is not required to attend the hearing.

1 Either spouse may have counsel at the hearing.

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

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

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

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

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

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

18 (3) the written agreements between the spouses relating to
19 the division of property, including retirement benefits, spousal
20 maintenance [SPOUSAL SUPPORT], and the allocation of obligations are
21 [FAIR,] just; the division of property and spousal maintenance must
22 take into consideration career assets; [, AND EQUITABLE; AND]

23 (4) the written agreements constitute the entire agreement
24 between the parties; and

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

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

27 (e) If the petition is filed [BROUGHT] by one spouse under
28 AS 25.24.200(b), the court shall examine the petitioner and consider
29 whether the petitioner fully understands the nature and consequences

1 of the action and whether the conditions in AS 25.24.200(b) have been
2 met.

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

4 (g) The court may amend the written agreements between the
5 spouses relating to child custody, child support, visitation, [SPOUSAL
6 SUPPORT,] division of the property, including retirement benefits,
7 spousal maintenance, and allocation of obligations, but only if both
8 petitioners concur in the amendment in writing or on the record.
9 Division of property and spousal maintenance must take into consid-
10 eration career assets.

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

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

15 (1) one party is represented by counsel and the other is
16 not;

17 (2) a domestic violence complaint has been filed during the
18 marriage by a member of the family or there is evidence of domestic
19 violence during the marriage;

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

21 (4) there is a patently inequitable division of the marital
22 estate.

23 (i) If the court finds that a higher level of scrutiny is re-
24 quired by (h) of this section, the court shall examine the written
25 agreements between the spouses to determine that they are just, that
26 they constitute the entire agreement between the parties, and that the
27 agreements concerning child custody, child support, and visitation are
28 in the best interest of the children of the marriage, if any. The
29 court shall require the presence of both spouses at a hearing for this

1 purpose unless the court finds on the record that it would constitute
2 a significant hardship on one of the spouses to appear and that a just
3 agreement has been reached. If one of the spouses cannot attend the
4 hearing because it would constitute a significant hardship, the court
5 may require that spouse to be available by telephone to answer ques-
6 tions, at that spouse's expense.

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

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

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

16 (2) the written agreements between the spouses concerning
17 spousal maintenance and tax consequences, if any, division of proper-
18 ty, including retirement benefits, and allocation of obligations are
19 fair and just and constitute the entire agreement between the parties;
20 division of property and spousal maintenance must take into consid-
21 eration career assets;

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

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

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

1 hearing, finds that

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

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

9 (3) the written agreements between the spouses concerning
10 spousal maintenance and tax consequences, if any, division of proper-
11 ty, including retirement benefits, and allocation of obligations are
12 just and constitute the entire agreement between the parties; division
13 of property and spousal maintenance must take into consideration
14 career assets;

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

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

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

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

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

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

28 (d) The court shall dismiss a petition or continue action on a
29 petition filed under AS 25.24.200 - 25.24.260 before findings are made

1 if

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

4 (2) either of the spouses withdraws from an agreement
5 required under AS 25.24.200(a); or

6 (3) the petition alleges that the conditions in AS 25.24.-
7 200(b) exist, but the whereabouts of the absent spouse becomes known
8 to the other spouse or the court before findings are made.

9 (e) The court shall deny the relief sought in a petition filed
10 under AS 25.24.200 - 25.24.260 if the court does not make the findings
11 required under (a) - (c) of this section.

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

22 (g) Notwithstanding other provisions of AS 25.24.200 - 25.24.-
23 260, the court may not award to one spouse real or personal property
24 acquired by the other spouse before the date of the marriage, unless
25 the spouses expressly agree otherwise or the court determines that the
26 property should be made available, by sale or other conveyance, to
27 ensure that the best interests of the children are provided for. If
28 the court determines that the best interests of the children require
29 an award of premarital property, but the spouses do not agree, the

1 court shall dismiss or continue the action.

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

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

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

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

13 ARTICLE 4. GENERAL PROVISIONS.

14 Sec. 25.24.400. DEFINITION. In this chapter, "career assets"
15 means the ability of a spouse to earn money resulting from that
16 spouse's education, profession, or employment that was acquired at
17 least in part as a result of the direct or indirect contribution,
18 including the value of homemaking and child rearing services, provided
19 by the other spouse.

20 * Sec. 18. AS 25.24.165, as added by sec. 4 of this Act, AS 25.24.-
21 210(d) as amended by sec. 7 of this Act, and AS 25.24.230(c) and 25.24.-
22 230(f) as amended by sec. 15 of this Act, have the effect of amending Rule
23 84(a), Alaska Rules of Civil Procedure, to allow a change of name to a name
24 other than a prior name to be commenced in a complaint for divorce or
25 annulment or a petition for dissolution of marriage.