

Amended: 4/29/89

go0949hJ

Offered: 4/25/89

Referred: Rules

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 195 (Finance) am  
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 AS 25.24.140 is repealed and reenacted to read: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; in  
23 applying this paragraph, the court shall take appropriate steps to  
24 ensure that the award of attorney fees does not contribute to an  
25 unnecessary escalation in the litigation;

26 (2) reasonable spousal maintenance, including medical  
27 expenses; and

28 (3) reasonable support for minor children in the care of  
29 the spouse, if there is a legal obligation of the other spouse to

1 provide support.

2 (b) During the pendency of the action, upon application, a  
3 spouse is entitled to necessary protective orders, including orders

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

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

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

11 (4) restraining a spouse from communicating directly or  
12 indirectly with the other spouse;

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

15 (6) prohibiting a spouse from disposing of the property of  
16 either spouse or marital property without the permission of the other  
17 spouse or a court order.

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

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

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

25 (1) for the payment by either or both parties of an amount  
26 of money or goods, in gross or installments that may include cost-  
27 of-living adjustments, as may be just and proper for the parties to  
28 contribute toward the nurture and education of their children, and the  
29 court may order the parties to arrange with their employers for an

1 automatic payroll deduction each month or each pay period, if the  
2 period is other than monthly, of the amount of the installment; if the  
3 employer agrees, the installment shall be forwarded by the employer to  
4 the clerk of the superior court that [WHICH] entered the judgment or  
5 r to the court trustee, and the amount of the installment is exempt from  
6 execution;

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

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

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

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

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

28 Sec. 25.24.165. CHANGE OF NAME IN DIVORCE OR ANNULMENT. (a) In  
29 a judgment in an action for divorce or action declaring a marriage

1 void, the court may change the name of either of the parties.

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

17 \* Sec. 5. AS 25.24.200 is amended to read:

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

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

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

1 are to be made through the child support enforcement agency and the  
2 tax consequences of that agreement;

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

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

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

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

17 (2) the petitioning spouse has been unable to ascertain the  
18 other spouse's position in regard to the dissolution of their marriage  
19 and in regard to the fair and just division of property, including  
20 retirement benefits, spousal maintenance, payment of debts, and  
21 custody, support and visitation because the whereabouts of the other  
22 spouse is unknown to the petitioning spouse after reasonable efforts  
23 have been made to locate the absent spouse; the division of property  
24 and spousal maintenance must take into consideration career assets;  
25 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 maintenance taking into consideration  
8 career assets, [[SUPPORT] and [RESULTANT] tax consequences, division of  
9 property, including retirement benefits and taking into consideration  
10 career assets, and allocation of debts; agrees that the conditions  
11 otherwise required by (a) of this section exist; agrees that the  
12 petition constitutes the entire agreement between the parties; under-  
13 stands fully the nature and consequences of the action; and is not  
14 signing the appearance and waivers under duress or coercion.

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

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

22 ((e)) A ~~division of property, and spousal maintenance, must take~~  
23 ~~into consideration career assets.~~

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

25 ((d)) The petition shall request that the marriage be dissolved  
26 and that the [[PRETOR] name of a spouse be changed [RESTORED], if  
27 desired by ~~that~~ spouse.

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

29 ((e)) If the petition is filed by both spouses under

1 AS 25.24.200(a), the petition must state in detail the terms of the  
2 agreement between the spouses concerning the custody of children,  
3 child support, visitation, spousal maintenance and tax consequences,  
4 if any, and fair and just division of property, including retirement  
5 benefits. Agreements on spousal maintenance and property division  
6 must take into consideration career assets. In addition, the petition  
7 must state

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

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

28 (b) Except as provided in (i) of this section, if the petition  
29 is filed by both spouses under AS 25.24.200(a), both spouses shall

1 attend the hearing personally and not through counsel. However, if  
2 the petition is not subject to (i) of this section, a spouse who  
3 complies with AS 25.24.200(c) is not required to attend the hearing.  
4 Either spouse may have counsel at the hearing.

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

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

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

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

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

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

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

26 (4) the written agreements constitute the entire agreement  
27 between the parties; and

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

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

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

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

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

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 domestic  
22 violence during the marriage;

23 (3) there is a minor child 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 interest 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 on the record that it would constitute  
5 a significant hardship on one of the spouses to appear and that a just  
6 agreement has been reached. If one of the spouses cannot attend the  
7 hearing because it would constitute a significant hardship, the court  
8 may require that spouse to be available by telephone to answer ques-  
9 tions, at that spouse's expense.

10 (j) If the court exercises a higher level of scrutiny under (h)  
11 of this section because one party is represented by counsel and the  
12 other is not, and the court is uncertain whether the agreement between  
13 the parties is just, the court shall resolve its uncertainty by making  
14 a finding that gives priority to the interests of the party that is  
15 not represented by counsel if the facts presented and the law applica-  
16 ble to the proceeding permit the finding.

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

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

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

26 (2) the written agreements between the spouses concerning  
27 spousal maintenance and tax consequences, if any, division of proper-  
28 ty, including retirement benefits, and allocation of obligations are  
29 fair and just and constitute the entire agreement between the parties;

1 division of property and spousal maintenance must take into consid-  
2 eration career assets;

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

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

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

12 (1) the spouses understand fully 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 in the best interest  
16 of the children of the marriage, constitute the entire agreement of  
17 the parties on child custody, child support, and visitation, and, as  
18 between the spouses, are just;

19 (3) the written agreements between the spouses concerning  
20 spousal maintenance and tax consequences, if any, division of proper-  
21 ty, including retirement benefits, and allocation of obligations are  
22 just and constitute the entire agreement between the parties; division  
23 of property and spousal maintenance must take into consideration  
24 career assets;

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

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

28 (c) If the petition is filed by one spouse under AS 25.24.-  
29 200(b), the court may grant the spouse a final decree of dissolution

1 and change the petitioner's name, if so requested, if the court, upon  
2 consideration of affidavits supplied by the spouse and the testimony  
3 of the spouse at the hearing, finds that

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

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

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

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

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

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

16 (3) the petition alleges that the conditions in AS 25.24.-  
17 200(b) exist, but the whereabouts of the absent spouse becomes known  
18 to the other spouse or the court before findings are made.

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

22 (f) If the petition is filed by both spouses under AS 25.24.-  
23 200(a), the court shall change either spouse's name, if the spouse  
24 seeking a change of name to a name other than a prior name complies  
25 with AS 25.24.165(b), and shall fully and specifically set out in the  
26 decree the written agreements of the spouses and shall order the  
27 performance of those written agreements. The court shall also state,  
28 in the decree, whether child support payments are to be made through  
29 the child support enforcement agency. If the petition is filed by one

1 spouse under AS 25.24.200(b), the decree must state that it does not  
2 bar future action on the issues not resolved in the decree.

3 (g) Notwithstanding other provisions of AS 25.24.200 - 25.24.-  
4 260, the court may not award to one spouse real or personal property  
5 acquired by the other spouse before the date of the marriage, unless  
6 the spouses expressly agree otherwise or the court determines that the  
7 property should be made available, by sale or other conveyance, to  
8 ensure that the best interests of the children are provided for. If  
9 the court determines that the best interests of the children require  
10 an award of premarital property, but the spouses do not agree, the  
11 court shall dismiss or continue the action.

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

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

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

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

23 ARTICLE 4. GENERAL PROVISIONS.

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

1 \* Sec. 18. AS 25.24.165, as added by sec. 4 of this Act, AS 25.24.-  
2 210(d) as amended by sec. 7 of this Act, and AS 25.24.230(c) and 25.24.-  
3 230(f) as amended by sec. 15 of this Act, have the effect of amending Rule  
4 84(a), Alaska Rules of Civil Procedure, to allow a change of name to a name  
5 other than a prior name to be commenced in a complaint for divorce or  
6 annulment or a petition for dissolution of marriage.