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Original sponsor(s): Rules/Governor

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 SENATE CS FOR CS FOR HOUSE BILL NO. 195 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH 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."

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

10 * Section 1. INTENT. By amending AS 25.24.160(a)(2) and (4) in this
11 Act and by referring to those paragraphs in other sections of AS 25.24 in
12 this Act, it is the legislature's intent to codify the principal factors to
13 be weighed by a court in making an equitable division of property or an
14 award of maintenance in a divorce or dissolution proceeding, as enunciated
15 by the Alaska Supreme Court in the case of Merrill v. Merrill, 368 P.2d 546
16 (Alaska 1962), and subsequent opinions. Except for AS 25.24.160(a)(4)(F),
17 the factors codified are intended to restate the principal factors found in
18 case law, not to change them, affect the interpretation given to them, or
19 preclude changes or additions to them by future court rulings.

20 * Sec. 2. AS 25.20 is amended by adding a new section to read:

21 Sec. 25.20.115. ATTORNEY FEE AWARDS IN CUSTODY AND VISITATION
22 MATTERS. In an action to modify, vacate, or enforce that part of an
23 order providing for custody of a child or visitation with a child, the
24 court may, upon request of a party, award attorney fees and costs of
25 the action. In awarding attorney fees and costs under this section,
26 the court shall consider the relative financial resources of the
27 parties and whether the parties have acted in good faith.

28 * Sec. 3. AS 25.24.100 is amended to read:

29 Sec. 25.24.100. RESIDENCY OF MILITARY PERSONNEL. A person

1 4serving in a military branch of the United States government who has
2 been continuously stationed at [IN] a military base or installation in
3 the state for at least 30 days is considered [A PERIOD OF ONE YEAR
4 SHALL BE DEEMED] a resident [IN GOOD FAITH] of the state for the
5 purposes of this chapter [AS 25.24.010 - 25.24.180].

6 * Sec. 4. AS 25.24.140 is repealed and reenacted to read:

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

10 (1) attorney fees and costs that reasonably approximate the
11 actual fees and costs required to prosecute or defend the action; in
12 applying this paragraph, the court shall take appropriate steps to
13 ensure that the award of attorney fees does not contribute to an
14 unnecessary escalation in the litigation;

15 (2) reasonable spousal maintenance, including medical
16 expenses; and

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

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

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

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

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

29 (4) restraining a spouse from communicating directly or

1 indirectly with the other spouse;

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

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

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

11 * Sec. 5. AS 25.24.160(a) is amended to read:

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

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

25 (2) for the recovery by one party from the other of an
26 amount of money for maintenance, for a limited or indefinite period of
27 time, in gross or in installments, as may be just and necessary with-
28 out regard to which of the parties is in fault; an award of mainte-
29 nance must fairly allocate the economic effect of divorce by being

1 based on a consideration of the following factors:

2 (A) the length of the marriage and station in life of
3 the parties during the marriage;

4 (B) the age and health of the parties;

5 (C) the earning capacity of the parties, including
6 their educational backgrounds, training, employment skills, work
7 experiences, length of absence from the job market, and custodial
8 responsibilities for children during the marriage;

9 (D) the financial condition of the parties, including
10 the availability and cost of health insurance;

11 (E) the conduct of the parties, including whether
12 there has been unreasonable depletion of marital assets;

13 (F) the division of property under (4) of this sub-
14 section; and

15 (G) other factors the court determines to be relevant
16 in each individual case;

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

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

1 division of property must fairly allocate the economic effect of
2 divorce by being based on consideration of the following factors:

3 (A) the length of the marriage and station in life of
4 the parties during the marriage;

5 (B) the age and health of the parties;

6 (C) the earning capacity of the parties, including
7 their educational backgrounds, training, employment skills, work
8 experiences, length of absence from the job market, and custodial
9 responsibilities for children during the marriage;

10 (D) the financial condition of the parties, including
11 the availability and cost of health insurance;

12 (E) the conduct of the parties, including whether
13 there has been unreasonable depletion of marital assets;

14 (F) the desirability of awarding the family home, or
15 the right to live in it for a reasonable period of time, to the
16 party who has primary physical custody of children;

17 (G) the circumstances and necessities of each party;

18 (H) the time and manner of acquisition of the property
19 in question; and

20 (I) the income-producing capacity of the property and
21 the value of the property at the time of division

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

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

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

27 (b) If a party seeks a change of name to a name other than a
28 prior name, the court shall set a date for hearing not less than 40
29 days after filing of the action. Notice of the application for a

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

13 * Sec. 7. AS 25.24.200 is amended to read:

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

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

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

28 (3) the spouses have agreed as to the distribution of all
29 jointly owned real and personal property, including retirement

1 benefits, and the payment of spousal maintenance [SUPPORT], if any,
2 and the tax consequences resulting from these payments; the agreement
3 must be fair and just and take into consideration the factors listed
4 in AS 25.24.160(a)(2) and (4) so that the economic effect of disso-
5 lution is fairly allocated; 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 cus-
19 tody, 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; and

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

24 (c) Except as provided in AS 25.24.220(i), [NOTHING IN THIS
25 SECTION PROHIBITS] a spouse who has been personally served with a copy
26 of a petition filed [MADE] under (a) of this section may execute [FROM
27 EXECUTING] an appearance, waiver of time to answer, and waiver of
28 notice of hearing. The appearance and waivers must [SHALL] include an
29 acknowledgment signed before an officer authorized to administer an

1 oath or affirmation that the spouse being served has read the peti-
2 tion; assents to the terms relating to custody of the children, child
3 support, visitation, spousal maintenance taking into consideration the
4 factors listed in AS 25.24.160(a)(2), [SUPPORT] and [RESULTANT] tax
5 consequences, division of property, including retirement benefits and
6 taking into consideration the factors listed in AS 25.24.160(a)(4),
7 and allocation of debts; agrees that the conditions otherwise required
8 by (a) of this section exist; agrees that the petition constitutes the
9 entire agreement between the parties; understands fully the nature and
10 consequences of the action; and is not signing the appearance and
11 waivers under duress or coercion.

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

18 * Sec. 8. AS 25.24.200 is amended by adding a new subsection to read:

19 (e) Spousal maintenance and a division of property must fairly
20 allocate the economic effect of dissolution and take into consid-
21 eration the factors listed in AS 25.24.160(a)(2) and (4).

22 * Sec. 9. 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 de-
25 sired by that spouse.

26 * Sec. 10. 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 fairly allo-
4 cate the economic effect of dissolution and take into consideration
5 the factors listed in AS 25.24.160(a)(2) and (4). In addition, the
6 petition must state

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

26 * Sec. 11. AS 25.24.220(b) is repealed and reenacted to read:

27 (b) Except as provided in (i) of this section, if the petition
28 is filed by both spouses under AS 25.24.200(a), both spouses shall
29 attend the hearing personally and not through counsel. However, if

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

4 * Sec. 12. AS 25.24.220(c) is amended to read:

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

10 * Sec. 13. AS 25.24.220(d) is amended to read:

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

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

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

20 (3) the written agreements between the spouses relating to
21 the division of property, including retirement benefits, spousal
22 maintenance [SPOUSAL SUPPORT], and the allocation of obligations are
23 [FAIR,] just; the spousal maintenance and division of property must
24 fairly allocate the economic effect of dissolution and take into
25 consideration the factors listed in AS 25.24.160(a)(2) and (4); [, AND
26 EQUITABLE; AND]

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

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

1 * Sec. 14. AS 25.24.220(e) is amended to read:

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

7 * Sec. 15. AS 25.24.220(g) is amended to read:

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

13 * Sec. 16. AS 25.24.220 is amended by adding new subsections to read:

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

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

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

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

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

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

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

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

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

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

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

22 (3) the spousal maintenance and division of property fairly
23 allocate the economic effect of dissolution and take into considera-
24 tion the factors listed in AS 25.24.160(a)(2) and (4);

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

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

28 (b) If the petition is filed under AS 25.24.200(a) and is sub-
29 ject to AS 25.24.220(h), the court may grant the spouses a final

1 decree of dissolution and shall order other relief as provided in this
2 section if the court, upon consideration of the information contained
3 in the petition and the testimony of the spouse or spouses at the
4 hearing, finds that

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

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

12 (3) 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 just and constitute the entire agreement between the parties;

16 (4) the spousal maintenance and division of property fairly
17 allocate the economic effect of dissolution and take into considera-
18 tion the factors listed in AS 25.24.160(a)(2) and (4);

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

21 (6) the conditions in AS 25.24.200(a) have been met.

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

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

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

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

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

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

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

10 (3) the petition alleges that the conditions in AS 25.24.-
11 200(b) exist, but the whereabouts of the absent spouse becomes known
12 to the other spouse or the court before findings are made.

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

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

26 (g) Notwithstanding other provisions of AS 25.24.200 - 25.24.-
27 260, the court may not award to one spouse real or personal property
28 acquired by the other spouse before the date of the marriage, unless
29 the spouses expressly agree otherwise or the court determines that the

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

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

11 * Sec. 18. AS 25.24.250 is amended by adding a new subsection to read:

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

16 * Sec. 19. AS 25.24.165, as added by sec. 6 of this Act, AS 25.24.-
17 210(d) as amended by sec. 9 of this Act, and AS 25.24.230(c) and 25.24.-
18 230(f) as amended by sec. 17 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.