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Referred: Rules

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Original sponsor(s): Rules/Governor

1 IN THE HOUSE BY THE FINANCE COMMITTEE
2 SENATE CS FOR CS FOR HOUSE BILL NO. 195 (Finance) am S
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. Except for
15 AS 25.24.160(a)(4)(F), the factors codified are intended to restate the
16 principal factors found in case law, not to change them, affect the inter-
17 pretation given to them, or preclude changes or additions to them by other
18 court rulings.
19 * Sec. 2. AS 25.20.110 is amended by adding a new subsection to read:
20 (b) When making a determination relating to child custody under
21 (a) of this section, the court shall consider the past history of the
22 parents with respect to their compliance with the child support pay-
23 ment provisions of temporary or permanent support orders or agreements
24 relating to the child or to other children. Under this subsection,
25 the court may consider a parent's failure to pay child support only if
26 the parent had actual knowledge of the amount of the child support
27 obligation and had funds available for payment of support or could
28 have obtained those funds through reasonable efforts, as determined by
29 the court.

1 * Sec. 3. AS 25.20 is amended by adding a new section to read:

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

9 * Sec. 4. AS 25.24.100 is amended to read:

10 Sec. 25.24.100. RESIDENCY OF MILITARY PERSONNEL. A person
11 serving in a military branch of the United States government who has
12 been continuously stationed at [IN] a military base or installation in
13 the state for at least 30 days is considered [A PERIOD OF ONE YEAR
14 SHALL BE DEEMED] a resident [IN GOOD FAITH] of the state for the
15 purposes of this chapter [AS 25.24.010 - 25.24.180].

16 * Sec. 5. AS 25.24.140 is repealed and reenacted to read:

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

20 (1) attorney fees and costs that reasonably approximate the
21 actual fees and costs required to prosecute or defend the action; in
22 applying this paragraph, the court shall take appropriate steps to
23 ensure that the award of attorney fees does not contribute to an
24 unnecessary escalation in the litigation;

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

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

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

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

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

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

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

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

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

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

21 * Sec. 6. AS 25.24.160(a) is amended to read:

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

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

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

6 (2) for the recovery by one party from the other of an
7 amount of money for maintenance, for a limited or indefinite period of
8 time, in gross or in installments, as may be just and necessary with-
9 out regard to which of the parties is in fault; an award of mainte-
10 nance must fairly allocate the economic effect of divorce by being
11 based on a consideration of the following factors:

12 (A) the length of the marriage and station in life of
13 the parties during the marriage;

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

15 (C) the earning capacity of the parties, including
16 their educational backgrounds, training, employment skills, work
17 experiences, length of absence from the job market, and custodial
18 responsibilities for children during the marriage;

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

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

23 (F) the division of property under (4) of this sub-
24 section; and

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

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

1 (4) for the division between the parties of their property,
2 including retirement benefits, whether joint or separate, acquired
3 only during marriage [COVERTURE], in a just [THE] manner [AS MAY BE
4 JUST,] and without regard to which of the parties is in fault; howev-
5 er, the court, in making the division, may invade the property, in-
6 cluding retirement benefits, of either spouse acquired before marriage
7 when the balancing of the equities between the parties requires it;
8 and to accomplish this end the judgment may require that one or both
9 of the parties assign, deliver, or convey any of their real or person-
10 al property, including retirement benefits, to the other party; the
11 division of property must fairly allocate the economic effect of
12 divorce by being based on consideration of the following factors:

13 (A) the length of the marriage and station in life of
14 the parties during the marriage;

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

16 (C) the earning capacity of the parties, including
17 their educational backgrounds, training, employment skills, work
18 experiences, length of absence from the job market, and custodial
19 responsibilities for children during the marriage;

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

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

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

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

28 (H) the time and manner of acquisition of the property
29 in question; and

1 (I) the income-producing capacity of the property and
2 the value of the property at the time of division

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

4 * Sec. 7. AS 25.24 is amended by adding a new section to read:

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

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

23 * Sec. 8. AS 25.24.200 is amended to read:

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

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

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

9 (3) the spouses have agreed as to the distribution of all
10 jointly owned real and personal property, including retirement bene-
11 fits, and the payment of spousal maintenance [SUPPORT], if any, and
12 the tax consequences resulting from these payments; the agreement must
13 be fair and just and take into consideration the factors listed in
14 AS 25.24.160(a)(2) and (4) so that the economic effect of dissolution
15 is fairly allocated; and

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

19 (b) A husband or wife may separately petition for 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, as evidenced by extend-
23 ed absence or otherwise, has caused the irremediable breakdown of the
24 marriage;

25 (2) the petitioning spouse has been unable to ascertain the
26 other spouse's position in regard to the dissolution of their marriage
27 and in regard to the fair and just division of property, including
28 retirement benefits, spousal maintenance, payment of debts, and cus-
29 tody, support and visitation because the whereabouts of the other

1 spouse is unknown to the petitioning spouse after reasonable efforts
2 have been made to locate the absent spouse; and

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

5 (c) Except as provided in AS 25.24.220(i), [NOTHING IN THIS
6 SECTION PROHIBITS] a spouse who has been personally served with a copy
7 of a petition filed [MADE] under (a) of this section may execute [FROM
8 EXECUTING] an appearance, waiver of time to answer, and waiver of
9 notice of hearing. The appearance and waivers must [SHALL] include an
10 acknowledgment signed before an officer authorized to administer an
11 oath or affirmation that the spouse being served has read the peti-
12 tion; assents to the terms relating to custody of the children, child
13 support, visitation, spousal maintenance taking into consideration the
14 factors listed in AS 25.24.160(a)(2), [SUPPORT] and [RESULTANT] tax
15 consequences, division of property, including retirement benefits and
16 taking into consideration the factors listed in AS 25.24.160(a)(4),
17 and allocation of debts; agrees that the conditions otherwise required
18 by (a) of this section exist; agrees that the petition constitutes the
19 entire agreement between the parties; understands fully the nature and
20 consequences of the action; and is not signing the appearance and
21 waivers under duress or coercion.

22 (d) The action created under this section is separate from the
23 action created by AS 25.24.010. The procedures prescribed by AS 25.-
24 24.200 - 25.24.260 do not apply to an action brought under AS 25.24.-
25 010, nor do procedures prescribed under AS 25.24.010 - 25.24.180 apply
26 to an action filed [BROUGHT] under this section, except as specifical-
27 ly provided.

28 * Sec. 9. AS 25.24.200 is amended by adding a new subsection to read:

29 (e) Spousal maintenance and a division of property must fairly

1 allocate the economic effect of dissolution and take into consid-
2 eration the factors listed in AS 25.24.160(a)(2) and (4).

3 * Sec. 10. AS 25.24.210(d) is amended to read:

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

7 * Sec. 11. AS 25.24.210(e) is repealed and reenacted to read:

8 (e) If the petition is filed by both spouses under AS 25.24.-
9 200(a), the petition must state in detail the terms of the agreement
10 between the spouses concerning the custody of children, child support,
11 visitation, spousal maintenance and tax consequences, if any, and fair
12 and just division of property, including retirement benefits. Agree-
13 ments on spousal maintenance and property division must fairly allo-
14 cate the economic effect of dissolution and take into consideration
15 the factors listed in AS 25.24.160(a)(2) and (4). In addition, the
16 petition must state

17 (1) the respective occupations of the petitioners;
18 (2) the income, assets, and liabilities of the respective
19 petitioners at the time of filing the petition;

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

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

24 (5) whether the wife is pregnant;

25 (6) whether either petitioner requires medical care or
26 treatment;

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

29 (8) whether either petitioner has received the advice of

1 legal counsel regarding a divorce or dissolution;

2 (9) other facts and circumstances that the petitioners
3 believe should be considered;

4 (10) that the petition constitutes the entire agreement
5 between the petitioners; and

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

7 * Sec. 12. AS 25.24.220(b) is repealed and reenacted to read:

8 (b) Except as provided in (i) of this section, if the petition
9 is filed by both spouses under AS 25.24.200(a), both spouses shall
10 attend the hearing personally and not through counsel. However, if
11 the petition is not subject to (i) of this section, a spouse who
12 complies with AS 25.24.200(c) is not required to attend the hearing.
13 Either spouse may have counsel at the hearing.

14 * Sec. 13. AS 25.24.220(c) is amended to read:

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

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

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

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

26 (2) the written agreements between the spouses concerning
27 child custody, child support, and visitation are [FAIR,] just [, AND
28 EQUITABLE] as between the spouses and in the best interests of the
29 children of the marriage;

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

8 (4) the written agreements constitute the entire agreement
9 between the parties; and

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

11 * Sec. 15. AS 25.24.220(e) is amended to read:

12 (e) If the petition is filed [BROUGHT] by one spouse under
13 AS 25.24.200(b), the court shall examine the petitioner and consider
14 whether the petitioner fully understands the nature and consequences
15 of the action and whether the conditions in AS 25.24.200(b) have been
16 met.

17 * Sec. 16. AS 25.24.220(g) is amended to read:

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

23 * Sec. 17. AS 25.24.220 is amended by adding new subsections to read:

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

27 (1) one party is represented by counsel and the other is

28 not;

29 (2) a domestic violence complaint has been filed during the

1 marriage by a member of the family or there is evidence of domestic
2 violence during the marriage;

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

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

6 (i) If the court finds that a higher level of scrutiny is re-
7 quired by (h) of this section, the court shall examine the written
8 agreements between the spouses to determine that they are just, that
9 they constitute the entire agreement between the parties, and that the
10 agreements concerning child custody, child support, and visitation are
11 in the best interest of the children of the marriage, if any. The
12 court shall require the presence of both spouses at a hearing for this
13 purpose unless the court finds on the record that it would constitute
14 a significant hardship on one of the spouses to appear and that a just
15 agreement has been reached. If one of the spouses cannot attend the
16 hearing because it would constitute a significant hardship, the court
17 may require that spouse to be available by telephone to answer ques-
18 tions, at that spouse's expense.

19 * Sec. 18. AS 25.24.230 is repealed and reenacted to read:

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

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

28 (2) the written agreements between the spouses concerning
29 spousal maintenance and tax consequences, if any, division of

1 property, including retirement benefits, and allocation of obligations
2 are fair and just and constitute the entire agreement between the
3 parties;

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

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

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

10 (b) If the petition is filed under AS 25.24.200(a) and is sub-
11 ject to AS 25.24.220(h), the court may grant the spouses a final
12 decree of dissolution and shall order other relief as provided in this
13 section if the court, upon consideration of the information contained
14 in the petition and the testimony of the spouse or spouses at the
15 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 child custody, child support, and visitation are in the best interest
20 of the children of the marriage, constitute the entire agreement of
21 the parties on child custody, child support, and visitation, and, as
22 between the spouses, are just;

23 (3) the written agreements between the spouses concerning
24 spousal maintenance and tax consequences, if any, division of proper-
25 ty, including retirement benefits, and allocation of obligations are
26 just and constitute the entire agreement between the parties;

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

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

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

4 (c) If the petition is filed by one spouse under AS 25.24.-
5 200(b), the court may grant the spouse a final decree of dissolution
6 and change the petitioner's name, if so requested, if the court, upon
7 consideration of affidavits supplied by the spouse and the testimony
8 of the spouse at the hearing, finds that

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

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

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

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

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

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

21 (3) the petition alleges that the conditions in AS 25.24.-
22 200(b) exist, but the whereabouts of the absent spouse becomes known
23 to the other spouse or the court before findings are made.

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

27 (f) If the petition is filed by both spouses under AS 25.24.-
28 200(a), the court shall change either spouse's name, if the spouse
29 seeking a change of name to a name other than a prior name complies

1 with AS 25.24.165(b), and shall fully and specifically set out in the
2 decree the written agreements of the spouses and shall order the
3 performance of those written agreements. The court shall also state,
4 in the decree, whether child support payments are to be made through
5 the child support enforcement agency. If the petition is filed by one
6 spouse under AS 25.24.200(b), the decree must state that it does not
7 bar future action on the issues not resolved in the decree.

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

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

22 * Sec. 19. AS 25.24.250 is amended by adding a new subsection to read:

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

27 * Sec. 20. AS 25.24.165, as added by sec. 9 of this Act, AS 25.24.-
28 210(d) as amended by sec. 12 of this Act, and AS 25.24.230(c) and 25.24.-
29 230(f) as amended by sec. 20 of this Act, have the effect of amending Rule

1 84(a), Alaska Rules of Civil Procedure, to allow a change of name to a name
2 other than a prior name to be commenced in a complaint for divorce or
3 annulment or a petition for dissolution of marriage.