

HB

B

1

9

5

SENATE FINANCE COMMITTEE REPORT

DATE: 3/30/90

FURTHER:

DATE TURNED INTO OFFICE: 4/20/90

The Finance Committee considered CSHB 195 (Fin) am Divorce, dissolution and annulment, amending Rule 84(a), AK Rules of Civil Procedure.

and recommended:

- [x] replace with § CS HB 195 (Fin) [x] same title [ ] or adopt CS [ ] new title [ ] technical title change (HB only) [ ] attached amendment(s) [ ] letter of intent adopted

- [ ] do pass [ ] do not pass [ ] no recommendation [x] individual recommendations [ ] further referral to

ATTACHES NEW FISCAL NOTE(S):

APPROVES PREVIOUS:

[x] fiscal note(s) Dept/Date: Court 1/31/90 65.9

[ ] fiscal note(s) Dept/Date:

[ ] zero fiscal note(s)

[ ] zero fiscal note(s)

[ ] appropriation-no fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Handwritten signatures and initials under 'SIGNING DO PASS'.

Handwritten signature and initials under 'OTHER RECOMMENDATIONS'.

FISCAL NOTE

REQUEST:

Revision Date	1/31/90	Agency Affected:	Alaska Court System
Title:	An act related to divorce and dissolution	BRU:	Trial Courts
Sponsor:	Rules/Governor	Components:	
Requestor:	Senate Judiciary		

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services		50.4	60.4	50.4	50.4	60.4
Travel		12.9	10.0	10.0	10.0	10.0
Contractual						
Supplies						
Equipment		2.6				
Land & Structures						
Grants & Claims						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>65.9</b>	<b>60.4</b>	<b>60.4</b>	<b>60.4</b>	<b>60.4</b>

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

General Funds	0.0	65.9	60.4	60.4	60.4	60.4
Federal Funds						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>65.9</b>	<b>60.4</b>	<b>60.4</b>	<b>60.4</b>	<b>60.4</b>

POSITIONS:

Full-time		1.0	1.0	1.0	1.0	1.0
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Jan Strandberg, General Counsel

Division: Alaska Court System

Phone: 284-8228

Date: 01/31/90

Approved by: Arthur H. Snowden, II, Administrative Director

Agency: Alaska Court System

Date: 01/31/90

Distribution (by preparer):

Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management & Budget  
Impacted Agency(ies)

Changes in SCS CSHB 195 (Fin)  
have no fiscal impact.  
This fiscal note is  
appropriate. 4/30/90 vvw

Adopted

**ALASKA COURT SYSTEM**  
**FISCAL ANALYSIS**

**HB 195 - Divorce and Dissolution**

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
<b><u>Personal Services</u></b>			
Custody Investigator, Range 18A, Anchorage, PFT - 12 months	\$37,648	\$12,900	<u>\$50,448</u>
<b><u>Travel</u></b>			
Custody Investigator travel-			
Monthly service to Fairbanks, Kenai and Kodiak. Quarterly service to Ketchikan, Sitka, Wrangell, & Petersburg			10,000
Forms Committee meeting- (one time cost)			
Cost of Dissolution Forms Committee meeting in Anchorage for two days with one and one-half days of in-transit time.			<u>2,900</u>
<b>Total Travel</b>			<u>12,900</u>
<b><u>Equipment: (one time cost)</u></b>			
Desk, chair, filing cabinet, and typewriter for new employee			<u>2,574</u>
<b>Total First Year Cost</b>			<u>\$65,922</u>

**ALASKA COURT SYSTEM**  
**FISCAL ANALYSIS**

**Summary of FY 89 Filings - Dissolution of Marriage**

<u>Court</u>	<u>Number of Filings</u>	<u>Estimated # of Cases Involving Children (1)</u>	<u>Estimated # of Cases Requiring Custody Investigation (2)</u>
Anchorage	1,445	868	97
Fairbanks	475	310	32
Palmer	187	125	13
Kenai	150	101	10
Kodiak	61	41	4
Juneau	173	118	12
Ketchikan	125	84	8
Sitka	51	34	3
Wrangell/ Petersburg	21	14	1
Others	<u>68</u>	<u>48</u>	<u>5</u>
Total	<u>2,756</u>	<u>1,847</u>	<u>185</u>

(1) Two-thirds of dissolution cases are estimated to involve children.

(2) Ten percent of dissolution cases involving children are estimated to require custody investigations.

Although the estimated increase in dissolutions that will require custody investigations is principally centered in Anchorage and Fairbanks, each of the other superior courts is expected to be impacted as well. To meet these needs on a statewide basis, one new custody investigator will be hired in Anchorage to provide services to Anchorage, Fairbanks and other communities on an as needed basis.

go0949hI  
Lauterbach  
4/20/90

4/21/90  
SF  
Adopted

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 195 ( )

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 25.20.090 is amended to read:

*shared  
custody*

20 Sec. 25.20.090. ~~AS~~ FACTORS FOR CONSIDERATION IN AWARDING SHARED  
21 CHILD CUSTODY. In determining whether to award shared custody of a  
22 child the court shall consider

- 23 (1) the child's preference if the child is of sufficient
- 24 age and capacity to form a preference;
- 25 (2) the needs of the child;
- 26 (3) the stability of the home environment likely to be
- 27 offered by each parent;
- 28 (4) the education of the child;
- 29 (5) the advantages of keeping the child in the community

1 where the child presently resides;

2 (6) the optimal time for the child to spend with each  
3 parent considering

4 (A) the actual time spent with each parent;

5 (B) the proximity of each parent to the other and to  
6 the school in which the child is enrolled;

7 (C) the feasibility of travel between the parents;

8 (D) special needs unique to the child that may be  
9 better met by one parent than the other;

10 (E) which parent is more likely to encourage frequent  
11 and continuing contact with the other parent;

12 (7) any findings and recommendations of a neutral mediator;

13 (8) any evidence of domestic violence, child abuse, or  
14 child neglect in the proposed custodial household or a history of  
15 violence between the parents;

16 (9) evidence that substance abuse by either parent or other  
17 members of the household directly affects the emotional or physical  
18 well-being of the child;

19 (10) the past history of the parents with respect to their  
20 compliance with the child support payment provisions of temporary or  
21 permanent support orders or agreements;

22 (11) other factors the court considers pertinent.

23 \* Sec. 3. AS 25.20.110 is amended by adding a new subsection to read:

24 *Modifications* (b) When making a determination under (a) of this section, the  
25 court shall consider the past history of the parents with respect to  
26 their compliance with the child support payment provisions of tempo-  
27 rary or permanent support orders or agreements.

28 \* Sec. 4. AS 25.20 is amended by adding a new section to read:

29 Sec. 25.20.115. ATTORNEY FEE AWARDS IN CUSTODY AND VISITATION

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

7       \* Sec. 5. AS 25.24.100 is amended to read:

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

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

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

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

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. 7. AS 25.24.150(c) is amended to read:

*Sole  
custody*

20 (c) The court shall determine custody in accordance with the  
21 best interests of the child under AS 25.20.060 - 25.20.130. In de-  
22 termining the best interests of the child the court shall consider

23 (1) the physical, emotional, mental, religious, and social  
24 needs of the child;

25 (2) the capability and desire of each parent to meet these  
26 needs;

27 (3) the child's preference if the child is of sufficient  
28 age and capacity to form a preference;

29 (4) the love and affection existing between the child and

1 each parent;

2 (5) the length of time the child has lived in a stable,  
3 satisfactory environment and the desirability of maintaining continu-  
4 ity;

5 (6) the desire and ability of each parent to allow an open  
6 and loving frequent relationship between the child and the other  
7 parent;

8 (7) any evidence of domestic violence, child abuse, or  
9 child neglect in the proposed custodial household or a history of  
10 violence between the parents;

11 (8) evidence that substance abuse by either parent or other  
12 members of the household directly affects the emotional or physical  
13 well-being of the child;

14 (9) the past history of the parents with respect to their  
15 compliance with the child support payment provisions of temporary or  
16 permanent support orders or agreements;

17 (10) other factors that the court considers pertinent.

18 \* Sec. 8. AS 25.24.160(a) is amended to read:

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

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

1 to the court trustee, and the amount of the installment is exempt from  
2 execution;

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

9 (A) the length of the marriage and station in life of  
10 the parties during the marriage;

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

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

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

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

20 (F) the division of property under (4) of this sub-  
21 section; and

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

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

27 (4) for the division between the parties of their property,  
28 including retirement benefits, whether joint or separate, acquired  
29 only during marriage [COVERTURE], in a just [THE] manner [AS MAY BE

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

10 (A) the length of the marriage and station in life of  
11 the parties during the marriage;

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

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

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

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

21 (F) the desirability of awarding the family home, or  
22 the right to live in it for a reasonable period of time, to the  
23 party who has primar physical custody of children;

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

25 (H) the time and manner of acquisition of the property  
26 in question; and

27 (I) the income-producing capacity of the property and  
28 the value of the property at the time of division

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

1 \* Sec. 9. AS 25.24 is amended by adding a new section to read:

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

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

20 \* Sec. 10. AS 25.24.200 is amended to read:

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

25 (1) incompatibility of temperament has caused the irremedi-  
26 able breakdown of the marriage;

27 (2) if there are minor children of the marriage or the wife  
28 is pregnant, and the spouses have agreed on which spouse or third  
29 party is to [SHALL] be awarded custody of each minor child of the

1 marriage and the extent of visitation, including visitation by grand-  
2 parents and other persons if in the child's best interests, and sup-  
3 port to be provided on the children's behalf, whether the payments are  
4 to be made through the child support enforcement agency and the tax  
5 consequences of that agreement;

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

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

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

19 (1) incompatibility of temperament, as evidenced by extend-  
20 ed absence or otherwise, has caused the irremediable breakdown of the  
21 marriage;

22 (2) the petitioning spouse has been unable to ascertain the  
23 other spouse's position in regard to the dissolution of their marriage  
24 and in regard to the fair and just division of property, including  
25 retirement benefits, spousal maintenance, payment of debts, and cus-  
26 tody, support and visitation because the whereabouts of the other  
27 spouse is unknown to the petitioning spouse after reasonable efforts  
28 have been made to locate the absent spouse; and

29 (3) the other spouse cannot be personally served with

1 process inside or outside the state.

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

19 (d) The action created under this section is separate from the  
20 action created by AS 25.24.010. The procedures prescribed by AS 25.-  
21 24.200 - 25.24.260 do not apply to an action brought under AS 25.24.-  
22 010, nor do procedures prescribed under AS 25.24.010 - 25.24.180 apply  
23 to an action filed [BROUGHT] under this section, except as specifical-  
24 ly provided.

25 \* Sec. 11. AS 25.24.200 is amended by adding a new subsection to read:

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

29 \* Sec. 12. AS 25.24.210(d) is amended to read:

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

4 \* Sec. 13. AS 25.24.210(e) is repealed and reenacted to read:

5 (e) If the petition is filed by both spouses under AS 25.24.-  
6 200(a), the petition must state in detail the terms of the agreement  
7 between the spouses concerning the custody of children, child support,  
8 visitation, spousal maintenance and tax consequences, if any, and fair  
9 and just division of property, including retirement benefits. Agree-  
10 ments on spousal maintenance and property division must fairly allo-  
11 cate the economic effect of dissolution and take into consideration  
12 the factors listed in AS 25.24.160(a)(2) and (4). In addition, the  
13 petition must state

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

1 (10) that the petition constitutes the entire agreement  
2 between the petitioners; and

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

4 \* Sec. 14. AS 25.24.220(b) is repealed and reenacted to read:

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

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

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

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

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

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

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

27 (3) the written agreements between the spouses relating to  
28 the division of property, including retirement benefits, spousal  
29 maintenance [SPOUSAL SUPPORT], and the allocation of obligations are

1        [FAIR,] just; the spousal maintenance and division of property must  
2        fairly allocate the economic effect of dissolution and take into  
3        consideration the factors listed in AS 25.24.160(a)(2) and (4); [, AND  
4        EQUITABLE; AND]

5                (4) the written agreements constitute the entire agreement  
6        between the parties; and

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

8        \* Sec. 17. AS 25.24.220(e) is amended to read:

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

14        \* Sec. 18. AS 25.24.220(g) is amended to read:

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

20        \* Sec. 19. AS 25.24.220 is amended by adding new subsections to read:

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

24                        (1) one party is represented by counsel and the other is  
25        not;

26                        (2) a domestic violence complaint has been filed during the  
27        marriage by a member of the family or there is evidence of domestic  
28        violence during the marriage;

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

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

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

16 \* Sec. 20. AS 25.24.230 is repealed and reenacted to read:

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

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

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

29 (3) the spousal maintenance and division of property fairly

1 allocate the economic effect of dissolution and take into considera-  
2 tion the factors listed in AS 25.24.160(a)(2) and (4);

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

5 (5) 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;

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

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

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

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

1 AS 25.24.200(b), the court may grant the spouse a final decree of  
2 dissolution and change the petitioner's name, if so requested, if the  
3 court, upon consideration of affidavits supplied by the spouse and the  
4 testimony of the spouse at the hearing, finds that

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

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

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

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

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

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

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

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

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

1 the child support enforcement agency. If the petition is filed by one  
2 spouse under AS 25.24.200(b), the decree must state that it does not  
3 bar future action on the issues not resolved in the decree.

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

13 (h) If a judgment under this section distributes benefits to an  
14 alternate payee under AS 14.25, AS 22.25, AS 26.05.222 - 26.05.226, or  
15 AS 35.35, the judgment must meet the requirements of a qualified  
16 domestic relations order under the definition of that phrase that is  
17 applicable to those provisions.

18 \* Sec. 21. AS 25.24.250 is amended by adding a new subsection to read:

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

23 \* Sec. 22. AS 25.24.165, as added by sec. 9 of this Act, AS 25.24.-  
24 210(d) as amended by sec. 12 of this Act, and AS 25.24.230(c) and 25.24.-  
25 230(f) as amended by sec. 20 of this Act, have the effect of amending Rule  
26 84(a), Alaska Rules of Civil Procedure, to allow a change of name to a name  
27 other than a prior name to be commenced in a complaint for divorce or  
28 annulment or a petition for dissolution of marriage.

AMENDMENT

BY FRANK

TO SCS HB 195 (FIN)

25.20

Page 1 line 19:

Add a new <sup>sub-</sup>section 2 (b)

"When making a determination under this section in a case involving shared custody the court shall consider the history of child support payments under temporary or permanent support orders or agreements."

Renumber following sections accordingly.

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 195 (Finance)

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 under (a) of this section in a  
21 case involving shared custody, the court shall consider the history of  
22 child support payments made under temporary or permanent support  
23 orders or agreements.

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

25 Sec. 25.20.115. ATTORNEY FEE AWARDS IN CUSTODY AND VISITATION  
26 MATTERS. In an action to modify, vacate, or enforce that part of an  
27 order providing for custody of a child or visitation with a child, the  
28 court may, upon request of a party, award attorney fees and costs of  
29 the action. In awarding attorney fees and costs under this section,

1 the court shall consider the relative financial resources of the  
2 parties and whether the parties have acted in good faith.

3 \* Sec. 4. AS 25.24.100 is amended to read:

4 Sec. 25.24.100. RESIDENCY OF MILITARY PERSONNEL. A person  
5 4serving in a military branch of the United States government who has  
6 been continuously stationed at [IN] a military base or installation in  
7 the state for at least 30 days is considered [A PERIOD OF ONE YEAR  
8 SHALL BE DEEMED] a resident [IN GOOD FAITH] of the state for the  
9 purposes of this chapter [AS 25.24.010 - 25.24.180].

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

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

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

19 (2) reasonable spousal maintenance, including medical  
20 expenses; and

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

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

26 (1) providing for the freedom of each spouse from the  
27 control of the other spouse;

28 (2) restraining each spouse from subjecting the other  
29 spouse or another person living in the household to domestic violence,

1 as defined in AS 25.35.060;

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

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

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

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

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

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

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

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

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

1 amount of money for maintenance, for a limited or indefinite period of  
2 time, in gross or in installments, as may be just and necessary with-  
3 out regard to which of the parties is in fault; an award of mainte-  
4 nance must fairly allocate the economic effect of divorce by being  
5 based on a consideration of the following factors:

6 (A) the length of the marriage and station in life of  
7 the parties during the marriage;

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

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

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

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

17 (F) the division of property under (4) of this sub-  
18 section; and

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

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

24 (4) for the division between the parties of their property,  
25 including retirement benefits, whether joint or separate, acquired  
26 only during marriage [COVERTURE], in a just [THE] manner [AS MAY BE  
27 JUST,] and without regard to which of the parties is in fault; howev-  
28 er, the court, in making the division, may invade the property, in-  
29 cluding retirement benefits, of either spouse acquired before marriage

1 when the balancing of the equities between the parties requires it;  
2 and to accomplish this end the judgment may require that one or both  
3 of the parties assign, deliver, or convey any of their real or person-  
4 al property, including retirement benefits, to the other party; the  
5 division of property must fairly allocate the economic effect of  
6 divorce by being based on consideration of the following factors:

7 (A) the length of the marriage and station in life of  
8 the parties during the marriage;

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

10 (C) the earning capacity of the parties, including  
11 their educational backgrounds, training, employment skills, work  
12 experiences, length of absence from the job market, and custodial  
13 responsibilities for children during the marriage;

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

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

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

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

22 (H) the time and manner of acquisition of the property  
23 in question; and

24 (I) the income-producing capacity of the property and  
25 the value of the property at the time of division

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

27 \* Sec. 7. 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. 8. 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 sup-  
29 port to be provided on the children's behalf, whether the payments are

1 to be made through the child support enforcement agency and the tax  
2 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 the factors listed in  
8 AS 25.24.160(a)(2) and (4) so that the economic effect of dissolution  
9 is fairly allocated; and

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

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

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

19 (2) the petitioning spouse has been unable to ascertain the  
20 other spouse's position in regard to the dissolution of their marriage  
21 and in regard to the fair and just division of property, including  
22 retirement benefits, spousal maintenance, payment of debts, and cus-  
23 tody, support and visitation because the whereabouts of the other  
24 spouse is unknown to the petitioning spouse after reasonable efforts  
25 have been made to locate the absent spouse; 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  
30

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 the  
8 factors listed in AS 25.24.160(a)(2), [SUPPORT] and [RESULTANT] tax  
9 consequences, division of property, including retirement benefits and  
10 taking into consideration the factors listed in AS 25.24.160(a)(4),  
11 and allocation of debts; agrees that the conditions otherwise required  
12 by (a) of this section exist; agrees that the petition constitutes the  
13 entire agreement between the parties; understands fully the nature and  
14 consequences of the action; and is not signing the appearance and  
15 waivers under duress or coercion.

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

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

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

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

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

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

2 (e) If the petition is filed by both spouses under AS 25.24.-  
3 200(a), the petition must state in detail the terms of the agreement  
4 between the spouses concerning the custody of children, child support,  
5 visitation, spousal maintenance and tax consequences, if any, and fair  
6 and just division of property, including retirement benefits. Agree-  
7 ments on spousal maintenance and property division must fairly allo-  
8 cate the economic effect of dissolution and take into consideration  
9 the factors listed in AS 25.24.160(a)(2) and (4). In addition, the  
10 petition must state

11 (1) the respective occupations of the petitioners;

12 (2) the income, assets, and liabilities of the respective  
13 petitioners at the time of filing the petition;

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

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

18 (5) whether the wife is pregnant;

19 (6) whether either petitioner requires medical care or  
20 treatment;

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

23 (8) whether either petitioner has received the advice of  
24 legal counsel regarding a divorce or dissolution;

25 (9) other facts and circumstances that the petitioners  
26 believe should be considered;

27 (10) that the petition constitutes the entire agreement  
28 between the petitioners; and

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

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

2 (b) Except as provided in (i) of this section, if the petition  
3 is filed by both spouses under AS 25.24.200(a), both spouses shall  
4 attend the hearing personally and not through counsel. However, if  
5 the petition is not subject to (i) of this section, a spouse who  
6 complies with AS 25.24.200(c) is not required to attend the hearing.  
7 Either spouse may have counsel at the hearing.

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

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

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

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

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

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

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

1 EQUITABLE; AND]

2 (4) the written agreements constitute the entire agreement  
3 between the parties; and

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

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

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

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

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

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

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

21 (1) one party is represented by counsel and the other is  
22 not;

23 (2) a domestic violence complaint has been filed during the  
24 marriage by a member of the family or there is evidence of domestic  
25 violence during the marriage;

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

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

29 (i) If the court finds that a higher level of scrutiny is

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

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

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

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

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

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

29 (4) each spouse entered into the agreement voluntarily and

1 free from the coercion of another person; and

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

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

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

11 (2) the written agreements between the spouses concerning  
12 child custody, child support, and visitation are in the best interest  
13 of the children of the marriage, constitute the entire agreement of  
14 the parties on child custody, child support, and visitation, and, as  
15 between the spouses, are just;

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

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

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

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

26 (c) If the petition is filed by one spouse under AS 25.24.-  
27 200(b), the court may grant the spouse a final decree of dissolution  
28 and change the petitioner's name, if so requested, if the court, upon  
29 consideration of affidavits supplied by the spouse and the testimony

1 of the spouse at the hearing, finds that

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

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

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

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

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

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

14 (3) the petition alleges that the conditions in AS 25.24.-  
15 200(b) exist, but the whereabouts of the absent spouse becomes known  
16 to the other spouse or the court before findings are made.

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

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

1 (g) Notwithstanding other provisions of AS 25.24.200 - 25.24.-  
2 260, the court may not award to one spouse real or personal property  
3 acquired by the other spouse before the date of the marriage, unless  
4 the spouses expressly agree otherwise or the court determines that the  
5 property should be made available, by sale or other conveyance, to  
6 ensure that the best interests of the children are provided for. If  
7 the court determines that the best interests of the children require  
8 an award of premarital property, but the spouses do not agree, the  
9 court shall dismiss or continue the action.

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

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

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

20 \* Sec. 20. AS 25.24.165, as added by sec. 7 of this Act, AS 25.24.-  
21 210(d) as amended by sec. 10 of this Act, and AS 25.24.230(c) and 25.24.-  
22 230(f) as amended by sec. 18 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.

(Binkley)

go0949hP  
Lauterbach  
4/19/90



Original sponsor(s): Rules/Governor

1 IN THE HOUSE BY THE FINANCE COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 195 (Finance)

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  
17 interpretation given to them, or preclude changes or additions to them by  
18 other court rulings.

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

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

27 \* Sec. 3. AS 25.24.100 is amended to read:

28 Sec. 25.24.100. RESIDENCY OF MILITARY PERSONNEL. A person  
29 4serving in a military branch of the United States government who has

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

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

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

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

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

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

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

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

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

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

28                   (4) restraining a spouse from communicating directly or  
29                  indirectly with the other spouse;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 divorce by being based on 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 desirability of awarding the family home, or  
14 the right to live in it for a reasonable period of time, to the  
15 party who has primary physical custody of children;

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

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

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

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

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

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

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

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

12 \* Sec. 7. AS 25.24.200 is amended to read:

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

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

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

27 (3) the spouses have agreed as to the distribution of all  
28 jointly owned real and personal property, including retirement  
29 benefits, and the payment of spousal maintenance [SUPPORT], if any;

1 and the tax consequences resulting from these payments; the agreement  
2 must be fair and just and take into consideration the factors listed  
3 in AS 25.24.160(a)(2) and (4) so that the economic effect of disso-  
4 lution is fairly allocated; and

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

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

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

14 (2) the petitioning spouse has been unable to ascertain the  
15 other spouse's position in regard to the dissolution of their marriage  
16 and in regard to the fair and just division of property, including  
17 retirement benefits, spousal maintenance, payment of debts, and cus-  
18 tody, support and visitation because the whereabouts of the other  
19 spouse is unknown to the petitioning spouse after reasonable efforts  
20 have been made to locate the absent spouse; and

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

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

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

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

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

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

21 \* Sec. 9. AS 25.24.210(d) is amended to read:

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

25 \* Sec. 10. AS 25.24.210(e) is repealed and reenacted to read:

26 (e) If the petition is filed by both spouses under AS 25.24.-  
27 200(a), the petition must state in detail the terms of the agreement  
28 between the spouses concerning the custody of children, child support,  
29 visitation, spousal maintenance and tax consequences, if any, and fair

1 and just division of property, including retirement benefits. Agree-  
2 ments on spousal maintenance and property division must fairly allc-  
3 cate the economic effect of dissolution and take into consideration  
4 the factors listed in AS 25.24.160(a)(2) and (4). In addition, the  
5 petition must state

6 (1) the respective occupations of the petitioners;

7 (2) the income, assets, and liabilities of the respective  
8 petitioners at the time of filing the petition;

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

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

13 (5) whether the wife is pregnant;

14 (6) whether either petitioner requires medical care or  
15 treatment;

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

18 (8) whether either petitioner has received the advice of  
19 legal counsel regarding a divorce or dissolution;

20 (9) other facts and circumstances that the petitioners  
21 believe should be considered;

22 (10) that the petition constitutes the entire agreement  
23 between the petitioners; and

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

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

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

1 complies with AS 25.24.200(c) is not required to attend the hearing.  
2 Either spouse may have counsel at the hearing.

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

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

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

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

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

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

19 (3) the written agreements between the spouses relating to  
20 the division of property, including retirement benefits, spousal  
21 maintenance [SPOUSAL SUPPORT], and the allocation of obligations are  
22 [FAIR,] just; the spousal maintenance and division of property must  
23 fairly allocate the economic effect of dissolution and take into  
24 consideration the factors listed in AS 25.24.160(a)(2) and (4); [, AND  
25 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. 14. 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. 15. 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 \* Sec. 16. AS 25.24.220 is amended by adding new subsections to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (b) If the petition is filed under AS 25.24.200(a) and is sub-  
28 ject to AS 25.24.220(h), the court may grant the spouses a final  
29 decree of dissolution and shall order other relief as provided in this

1 section if the court, upon consideration of the information contained  
2 in the petition and the testimony of the spouse or spouses at the  
3 hearing, finds that

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

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

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

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

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

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

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

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

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

29 (3) the requirements of AS 25.24.165(b) have been sat-

1 isfied, if a change of name is requested.

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

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

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

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

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

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

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

1 ensure that the best interests of the children are provided for. If  
2 the court determines that the best interests of the children require  
3 an award of premarital property, but the spouses do not agree, the  
4 court shall dismiss or continue the action.

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

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

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

15 \* Sec. 19. AS 25.24.165, as added by sec. 6 of this Act, AS 25.24.-  
16 210(d) as amended by sec. 9 of this Act, and AS 25.24.230(c) and 25.24.-  
17 230(f) as amended by sec. 17 of this Act, have the effect of amending Rule  
18 84(a), Alaska Rules of Civil Procedure, to allow a change of name to a name  
19 other than a prior name to be commenced in a complaint for divorce or  
20 annulment or a petition for dissolution of marriage.



HB 195

Alaska Court System  
State of Alaska  
OFFICE OF ADMINISTRATIVE DIRECTOR

JANALEE R. STRANDBERG  
Staff Counsel

April 16, 1990

303 K Street  
Anchorage, AK 99501  
(907) 264-8228

Senator John Binkley  
Senator Rick Uehling  
Co-Chairs Senate Finance Committee  
Alaska State Legislature  
P. O. Box V  
Juneau, Alaska 99811

Re: HB 195 - Divorce and Dissolution

Dear Senators Binkley and Uehling:

I would like to clarify the court system's fiscal note on the increased need for custody investigators under section 16 of HB 195. This section requires the court to use a heightened level of scrutiny of the parties' agreements in dissolution cases in certain circumstances. One of these circumstances is that there are minor children of the marriage. Family court judges and masters have estimated that in at least ten percent of the dissolutions involving children, the cases would be referred to custody investigators for recommendations as to custody or visitation. This would result in approximately 180 new cases per year for the custody investigators.

The investigators presently have a significant backlog of cases that cannot be processed in a timely manner. Because an investigator's workload should not exceed 80-90 cases, the court system most likely will need two, rather than one, additional investigators. However, we will review the actual caseloads and, if necessary, will request another investigator next year to properly implement this provision.

Please let me know if you have any questions about the fiscal note.

Sincerely,

*Janalee R. Strandberg*  
Janalee R. Strandberg  
Staff Counsel

JRS:bh



**ALASKA DADS and MOMS**

5974 North Street  
Juneau, Alaska 99801

Phone: (907) 780-4684

**" A Child's Right - 2 Parents After Divorce "**

April 14, 1990

Senate Finance Committee  
Pouch V  
Juneau, Alaska 99811

Re: HB 195 Divorce, Dissolution

Dear Senator:

HB 195 is scheduled to be heard in the Finance Committee on Tuesday. This bill has a flaw that needs correcting. The dissolution statutes are ammended by this bill to require a heightened judicial scrutiny of agreements involving a minor child of the marriage. The court interprets that language to require a custody investigation in some dissolution cases and review of all dissolution agreements on custody and visitation.

The net effect of "Heightened Scrutiny" of agreements regarding children will be:

- 1) Adding two permanent court employees at a minimum. The fiscal note only indicated one position, however this is an oversight. I spoke with Jan Strandberg of the Court System Friday the 13th and she indicated that 2 new custody investigators would be required.
- 2) Putting goverment in between a family's agreement. If a man and wife can reach an agreement on their own concerning the future of their family, what business does government have interfering with their wishes. The legislative history of the disolution process was meant to make a simpler, less streesful way of divorcing, intended for people who can agree on their own destiny. Will we have the court decide what is best for our family?

SOLUTION

Ammend the bill by Deleting line 22 on page 11 of the bill:

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

The court already has the power to aid children in need, refer to DFYS allegations of child abuse and furthermore the court

**Alaska Chapter • National Council for Children's Rights**

-2-

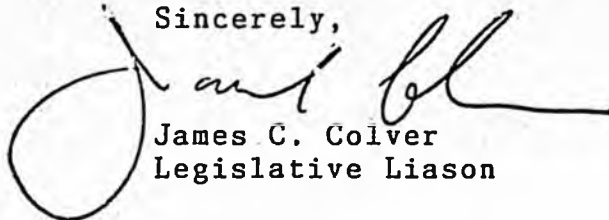
Senate Finance  
April 14, 1990

is required by statute to act in the best interests of the children. A judge may currently deny a dissolution if the court feels the agreement is not in the child's best interest.

Why should government interfere with a peacefully separating family and impose their will upon them.

We urge you to cut red tape and amend HB 195.

Sincerely,

A handwritten signature in cursive script, appearing to read "James C. Colver". The signature is written in dark ink and is positioned to the left of the typed name and title.

James C. Colver  
Legislative Liaison

STEVE COWPER  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 24, 1989

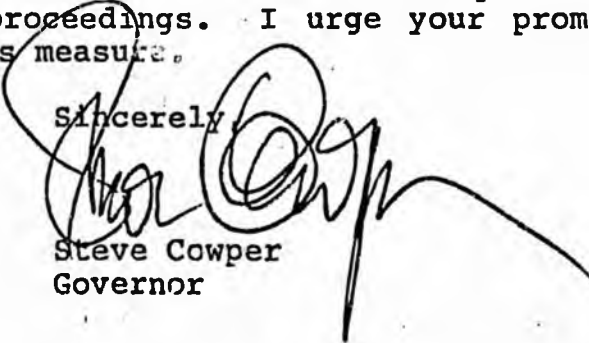
The Honorable Sam Cotten  
Speaker of the House  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to amend the Alaska Statutes regarding divorce proceedings and marriage dissolution proceedings. The bill deals expressly with award of spousal maintenance and attorney fees during the pendency of a proceeding, judicial scrutiny of marriage dissolution agreements, and name changes in connection with divorces and dissolutions. The bill includes some clean-up and technical amendments, and, in so doing, seeks to simplify the dissolution statutes by removing the present inconsistency in references to the dissolution petition being "filed" or being "brought." (Normally, "actions" are "brought" and "petitions" are "filed.")

I believe that the changes proposed in this bill will result in significantly greater justice in divorce and dissolution proceedings, as well as providing some basic clean-up in the statutes governing those proceedings. I urge your prompt and favorable action on this measure.

Sincerely,

  
Steve Cowper  
Governor

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: CSHB 195 (FIN)  
PUBLISH DATE: HOUSE 4/25/89

No. 2

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: An act related to divorce and dissolution  
Sponsor: \_\_\_\_\_  
Requestor: House Finance

Agency Affected: Alaska Court System  
BRU: Trial Courts  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

[Empty box for analysis]

Prepared by: House Finance Committee Phone: 465-3727  
Division: Co-Chairman Ron Larson *Ron Larson* Date: 4/24/89  
Co-Chairman Lyman Hoffman *Lyman Hoffman* 24  
Approved by Commissioner: \_\_\_\_\_ Date: \_\_\_\_\_  
Agency: \_\_\_\_\_

- Distribution (by preparer):
- Legislative Finance
  - Legislative Sponsor
  - Requestor
  - Office of Management and Budget
  - Impacted Agency(ies)