

SB

126

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 19, 2001

SUBJECT: Legal Separations (CSSB 126(STA), draft version "L")

TO: Senator Gene Therriault
Attn: Joe Balash

FROM: Terri Lauterbach
Legislative Counsel *TLauterbach*

Enclosed is a draft CS for SB 126.

As you requested, there is a new section 5 that would require certain reports from and between the court system, the state registrar, and the legislature. Section 6 repeals section 5 in three years so that the court system must give only three annual reports to the state registrar.

I have also added clarifications to sec. 4 of the draft, the applicability section. I have added references to actions for divorce and annulment so that the consolidation requirement of AS 25.24.430 (Page 2, lines 2 - 4) will apply after the bill takes effect even though the complaint for legal separation was filed before the bill took effect. I have also added a reference to orders for legal separation issued after the bill takes effect so that the orders must follow the requirements of the bill even if the initial complaint for legal separation was filed before the bill took effect.. For instance, the order would have to specify whether it was an interim or final order. See AS 25.24.450 on page 2 of the draft for other provisions applicable to orders (decrees).

If I may be of further assistance, please advise.

TML:glc
01-261.glc

Enclosure

22-LS0005\L
Lauterbach
3/19/01

CS FOR SENATE BILL NO. 126(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR WILKEN

A BILL
FOR AN ACT ENTITLED

1 **"An Act establishing a right of action for a legal separation; requiring a report about**
2 **legal separations; and amending Rule 42(a), Alaska Rules of Civil Procedure."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** AS 25.24 is amended by adding new sections to read:

5 **Article 3A. Legal Separation.**

6 **Sec. 25.24.400. Complaint for legal separation.** A husband or a wife may
7 separately or jointly file a complaint in the superior court for a legal separation. A
8 legal separation may be granted no more than once to the same married couple.

9 **Sec. 25.24.410. Grounds for a legal separation.** A legal separation may be
10 granted by the court based on a finding that

11 (1) an incompatibility of temperament exists between the parties; and

12 (2) the continuation of the parties' status as married persons preserves
13 or protects significant legal, financial, social, or religious interests.

14 **Sec. 25.24.420. Residency required.** One of the parties to a complaint for

1 legal separation must be a resident of the state at the time the action is commenced.

2 **Sec. 25.24.430. Consolidation of actions.** If, at any time, a party to an action
3 for legal separation files an action for divorce or annulment, the court shall consolidate
4 the new action with the action for legal separation.

5 **Sec. 25.24.440. Applicability of other statutes.** The following statutes
6 relating to divorce actions shall be applied similarly to an action for legal separation:
7 AS 25.24.060, 25.24.140, 25.24.150, 25.24.152, 25.24.160, and 25.24.170.

8 **Sec. 25.24.450. Decree.** (a) If a court finds that the grounds specified under
9 AS 25.24.410 exist, the court shall enter a decree of legal separation.

10 (b) Unless otherwise provided in the decree, provisions for child custody and
11 visitation, child support, and spousal support included in a decree of legal separation
12 are final orders subject to modification only as provided in AS 25.20.110 and
13 AS 25.24.170.

14 (c) If the decree of legal separation includes provisions for division of
15 property and debts of the marriage, the decree must state whether the division is an
16 interim or final order. To the extent the division is not a final order, the court shall
17 determine the parties' respective rights to and responsibilities for property and
18 obligations not finally distributed and as to any property or debts accrued by either
19 party while the order is in effect.

20 **Sec. 25.24.460. Effect of separation.** A decree of legal separation does not
21 restore the parties to the status of unmarried persons. A decree of legal separation
22 modifies the parties' rights and responsibilities as married persons only to the extent
23 specified in the decree of separation.

24 * **Sec. 2.** AS 09.05.015(a) is amended to read:

25 (a) A court of this state having jurisdiction over the subject matter has
26 jurisdiction over a person served in an action according to the rules of civil procedure

27 (1) in an action, whether arising in or out of this state, against a
28 defendant who, when the action is commenced,

29 (A) is a natural person present in this state when served;

30 (B) is a natural person domiciled in this state;

31 (C) is a domestic corporation; or

1 (D) is engaged in substantial and not isolated activities in this
2 state, whether the activities are wholly interstate, intrastate, or otherwise;

3 (2) in an action that may be brought under statutes of this state that
4 specifically confer grounds for personal jurisdiction over the defendant;

5 (3) in an action claiming injury to person or property in or out of this
6 state arising out of an act or omission in this state by the defendant;

7 (4) in an action claiming injury to person or property in this state
8 arising out of an act or omission out of this state by the defendant, provided, in
9 addition, that at the time of the injury either

10 (A) solicitation or service activities were carried on in this state
11 by or on behalf of the defendant; or

12 (B) products, materials, or things processed, serviced, or
13 manufactured by the defendant were used or consumed in this state in the
14 ordinary course of trade;

15 (5) in an action that

16 (A) arises out of a promise, made anywhere to the plaintiff or
17 to some third party for the plaintiff's benefit, by the defendant to perform
18 services in this state or to pay for services to be performed in this state by the
19 plaintiff;

20 (B) arises out of services actually performed for the plaintiff by
21 the defendant in this state, or services actually performed for the defendant by
22 the plaintiff in this state if the performance in this state was authorized or
23 ratified by the defendant;

24 (C) arises out of a promise, made anywhere to the plaintiff or to
25 some third party for the plaintiff's benefit, by the defendant to deliver or
26 receive in this state or to ship from this state goods, documents of title, or other
27 things of value;

28 (D) relates to goods, documents of title, or other things of value
29 shipped from this state by the plaintiff to the defendant on the order or
30 direction of the defendant; or

31 (E) relates to goods, documents of title, or other things of value

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

actually received by the plaintiff in this state from the defendant without regard to where delivery to the carrier occurred;

(6) in an action that arises out of

(A) a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to create in either party an interest in, or to protect, acquire, dispose of, use, rent, own, control, or possess by either party real property situated in this state;

(B) a claim to recover a benefit derived by the defendant through the use, ownership, control, or possession by the defendant of tangible property situated in this state either at the time of the first use, ownership, control, or possession or at the time the action is commenced; or

(C) a claim that the defendant return, restore, or account to the plaintiff for an asset or thing of value that was in this state at the time the defendant acquired possession or control over it;

(7) in an action to recover a deficiency judgment upon a mortgage note or conditional sales contract or other security agreement executed by the defendant or a predecessor of the defendant to whose obligations the defendant has succeeded and the deficiency is claimed

(A) in an action in this state to foreclose upon real property situated in this state;

(B) following sale of real property in this state by the plaintiff;
or

(C) following resale of tangible property in this state by the plaintiff;

(8) in an action against a defendant who is or was an officer or director of a domestic corporation where the action arises out of the defendant's conduct as such officer or director or out of the activities of the corporation while the defendant held office as a director or officer;

(9) in an action for the collection of taxes or assessments levied, assessed, or otherwise imposed by a taxing authority after April 10, 1968;

(10) in an action that arises out of a promise made to the plaintiff or

1 some third party by the defendant to insure upon or against the happening of an event
2 if

3 (A) the person insured was a resident of this state when the
4 event out of which the cause of action is claimed to arise occurred;

5 (B) the event out of which the cause of action is claimed to
6 arise occurred in this state; or

7 (C) the promise to insure was made in the state;

8 (11) in an action against a personal representative to enforce a claim
9 against the deceased person represented if one or more of the grounds stated in (2) -
10 (10) of this subsection would have furnished a basis for jurisdiction over the deceased
11 if living, and it is immaterial under this paragraph whether the action was commenced
12 during the lifetime of the deceased;

13 (12) in an action for annulment, divorce, legal separation, or separate
14 maintenance when a personal claim is asserted against the nonresident party [,] if

15 (A) the parties resided in this state in a marital relationship for
16 not less than six consecutive months within the six years preceding the
17 commencement of the action;

18 (B) the party asserting the personal claim has continued to
19 reside in this state; and

20 (C) the nonresident party receives notice as required by law.

21 * Sec. 3. The uncoded law of the State of Alaska is amended by adding a new section to
22 read:

23 INDIRECT COURT RULE CHANGE. AS 25.24.430, enacted by sec. 1 of this Act,
24 amends Rule 42(a), Alaska Rules of Civil Procedure, by requiring consolidation of
25 subsequent divorce and annulment actions with legal separation actions filed by the same
26 parties.

27 * Sec. 4. The uncoded law of the State of Alaska is amended by adding a new section to
28 read:

29 APPLICABILITY. (a) This Act applies to complaints for legal separation, divorce,
30 and annulment that are filed on or after the effective date of this Act and orders of legal
31 separation issued on or after the effective date of this Act.

1 (b) An order of legal separation issued by a court in the state before the effective date
2 of this Act

3 (1) is not subject to or rendered void by this Act; and

4 (2) remains enforceable between the parties regardless of whether the issuing
5 court was authorized to issue the order.

6 * Sec. 5. The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 REPORTS. (a) The administrative director of the Alaska Court System shall
9 annually, beginning September 30, 2002, report to the state registrar the number of legal
10 separations granted by courts in the state during the 12 calendar months preceding the date of
11 the report.

12 (b) The state registrar shall, by January 15, 2005, submit a report to the legislature
13 containing the statistics received from the court system under (a) of this section and the
14 recommendations, if any, of the state registrar for legislation on how information relating to
15 legal separations should be organized and whether the information should be made accessible
16 to members of the public through the Bureau of Vital Statistics.

17 * Sec. 6. Section 5 of this Act is repealed May 1, 2005.

FISCAL NOTE

**STATE OF ALASKA
2001 LEGISLATIVE SESSION**

Fiscal Note Number: _____
 Bill Version: SB 126
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act establishing a right of action for a legal separation; and amending Rule 42(a), Alaska Rules of Civil ..." BRU Civil Division
 Sponsor Senator Wilken Component Collections and Support
 Requester Senate State Affairs Committee Component No. 2210

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

SB 126 creates a new cause of action which allows married couples to remain legally married but obtain many of the legal benefits of a divorce or dissolution action. The couple remain married, however the rights and responsibilities of the couple can be modified by the decree, including provisions for child custody and visitation, child support, spousal support, and provisions for division of property and debts.

Passage of SB 126 will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson Phone 465-5370
 Division Attorney General's Office Date/Time 3/14/01 2:48 PM
 Approved by: Kathryn Daughhetee for Bruce M. Botelho, Attorney General Date 3/14/01
 Agency Department of Law

For distribution information, call the Governor's Legislative Office

States with Legal Separation in Statute

Alabama
Arizona
California
Colorado
Connecticut
Illinois
Indiana
Kentucky
Louisiana
Maine
Missouri
Montana
New Hampshire
New York
Ohio
Oregon
Rhode Island
District of Columbia

Information provided by the National Conference of State Legislatures

GARY WILKEN

SENATOR
Districts 29 & 30
West Fairbanks

Senate Standing Committees

Member: Finance
Member: Health, Education, &
Social Services (HESS)
Member: Legislative Budget & Audit
Member: State Affairs



During Session:
State Capitol Building
Juneau, Alaska 99801-1182
Tel: (907) 451-5501 (in Fbks area)
Tel: (907) 465-3709 (outside Fbks)
Fax: (907) 465-4714
Website: www.garywilken.com
E-Mail: Senator_Gary_Wilken@legis.state.ak.us

Interim:
1851 Fox Ave.
Fairbanks, Alaska 99701
Tel: (907) 451-5501
Fax: (907) 451-0438

SPONSOR STATEMENT

Senate Bill 126

Senate Bill 126 establishes a right of action for legal separation. Currently, Alaskan couples who develop incompatibility issues that they can not resolve have only the option of either a divorce or an annulment. A legal separation would provide a third avenue for Alaskans. A legal separation is similar to a divorce in that it would provide provisions for child custody and support, spousal support, and property division. However, a legal separation allows couples to retain their legal status as married for financial, social, or religious reasons.

Seventeen other states and the District of Columbia have some type of legal separation law. This bill gives the State of Alaska the authority to issue legal separations and defines the parameters. Although a small number of legal separations are currently being issued in the State of Alaska, there is no statute that specifically gives the court the authorization to do so. The only references to legal separations are found in statutes dealing with child custody and support.

While the need to make legal separations an option for couples originated from a constituent, there are other instances in the state for which clarification of legal separations is needed. On Dec. 1, 2000, the Alaska Supreme Court issued a decision on the case of *Glasen vs. Glasen* [Supreme Court No. S-8943; Opinion No. 5337]. This was a case in which the couple did receive a legal separation in 1991, reconciled, then divorced in 1997. The issue was over the continued viability of the terms of the legal separation granted in 1991. The appellant wanted those terms to be incorporated into his 1997 decree.

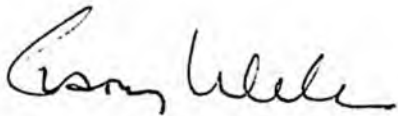
The decision issued by the Supreme Court agreed with the superior court saying that the court did not have to include the provisions set in the 1991 legal separation into the later divorce decree as there is not a statute directly authorizing any court to issue separation degrees. The court did not attempt to define legal separations, nor did it decide whether courts could issue legal separations.

Sponsor Statement for SB 126

Senate Bill 126 responds to the recognition by the Supreme Court for clarification in Alaska law regarding legal separations. The process defined in Senate Bill 126 for legal separation parallels the process for a divorce and clarifies that the provisions for child custody and visitation, child support, and spousal support entered in a legal separation constitute a final order, as if entered into a divorce. On a case by case basis, the court will decide whether the division of property and debts in a legal separation is a final or interim order. The bill also amends Alaska Rules of Civil Procedure by adding legal separation to the actions over which the state has jurisdiction.

The bill would only apply to legal separations filed on or after its effective date. Legal separations issued prior would not be voided, nor would they be subject to the provisions of this bill.

Senate Bill 126 clearly defines legal separation as a valid action in Alaska in State Law. This option will assist the courts, attorneys, and most importantly, Alaskans who need to formally handle the consequences of a separation with their spouse, yet retain the legal status as a married couple. I respectfully request your consideration and support of SB 126.



GARY WILKEN

SENATOR
Districts 29 & 30
West Fairbanks

Senate Standing Committees

Member: Finance
Member: Health, Education, &
Social Services (HESS)
Member: Legislative Budget & Audit
Member: State Affairs



During Session:
State Capitol Building
Juneau, Alaska 99801-1182
Tel: (907) 451-5501 (in Fbks area)
Tel: (907) 465-3709 (outside Fbks)
Fax: (907) 465-4714
Website: www.garywilken.com
E-Mail: Senator_Gary_Wilken@legis.state.ak.us

Interim:
1851 Fox Ave.
Fairbanks, Alaska 99701
Tel: (907) 451-5501
Fax: (907) 451-0438

MEMORANDUM

TO: Senator Gene Therriault
Senate State Affairs Committee Chairman

FROM: Senator Gary Wilken

DATE: March 7, 2001

RE: SB 126 - Establishing a right of action for legal separation

I respectfully request a hearing for Senate Bill 126 - establishing a right of action for legal separation.

Currently, Alaskan couples who develop incompatibility issues that they cannot resolve have only the option of either a divorce or an annulment. A legal separation is similar to getting a divorce in that it would provide provisions for child custody and support, spousal support, and property division. However, a legal separation would allow a couple to retain their legal status as married for financial, social, religious, or other reasons.

Legal separations are not clearly defined in state law, although some are issued. In a recent Supreme Court decision, the court clearly stated that there is currently no statute that authorizes legal separations. Senate Bill 126 would clarify legal separations for the courts and would allow another option for Alaskans.

Thank you for your cooperation and assistance in scheduling a hearing. If you have any questions, please call me, or Ms. Kara Moriarty of my staff at 465-3709.

A handwritten signature in cursive script that reads "Gary Wilken".