

ALASKA LEGISLATURE COMMITTEE BILL FILES - 1987 - 1988 8879

HB 189 thru CS HB 196 294 888

HB

189

(11)

HOUSE COMMITTEE REPORT

Date referred: 3/22/88

FURTHER REFERRALS:

DATE: 3-30-88

The Finance Committee has considered HB 189

"An Act relating to divorce and dissolution."

RECOMMENDS:

- replace with CS HB 189 (HSS) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published 3-26-88
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature] - No Rec

[Signature] - No Rec.

 MANNBOWER NO REC.

 Steve [Signature] No Recommendation

 Mike Davis NO REC

 Steve [Signature] NO REC

[Signature]
 Chairman's signature

STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST:

Bill Version: CSHB 189 (HESS)
Publish Date: HOUSE 2/26/88

Revision Date: 02/25/88
Title: An act relating to divorce and
dissolution
Sponsor: House HESS
Requestor:

Agency Affected: Alaska Court System
BRU: Trial Courts

Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)						
OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
Personal Services		83.1	83.1	83.1	83.1	83.1
Travel		10.4	7.5	7.5	7.5	7.5
Contractual						
Supplies						
Equipment		8.2				
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	101.7	90.6	90.6	90.6	90.6
CAPITAL						
REVENUE						
FUNDING: (Thousands of Dollars)						
General Funds	0.0	101.7	90.6	90.6	90.6	90.6
Federal Funds						
Other						
TOTAL	0.0	101.7	90.6	90.6	90.6	90.6
POSITIONS:						
Full-time						
Part-time		3.0	3.0	3.0	3.0	3.0
Temporary						
ANALYSIS: (Attach a separate page if necessary)						

See attached fiscal analysis.

Prepared by: Jan Strandberg, General Counsel
Division: Alaska Court System

Phone: 264-8228
Date: 2-25-88

Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System

Date: 2-25-88

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management & Budget
Impacted Agency(ies)
Senate Secretary

ALASKA COURT SYSTEM

CS HB 189 - FISCAL ANALYSIS

CSHB 189 (HESS)
No. 2
HOUSE 2/26/88

<u>Personal Services:</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Special Master, Range 24A, Fairbanks, PPT - 6 months	\$32,310	\$9,215	\$41,525
Custody Investigator, Range 18A, Anchorage, PPT - 6 months	18,774	6,255	25,029
Court Clerk II, Range 10B, Palmer, PPT - 6 months	11,790	4,728	16,518

Total Personal Services			83,072

Travel:

Custody investigator travel-

Monthly service to Kenai and Kodiak. Quarterly service to Ketchikan, Sitka, Wrangell, & Petersburg

7,500

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.

2,900

Total Travel

10,400

Equipment: (one time cost)

Desk, chair, filing cabinet, and typewriter for each new employee

8,202

Total First Year Cost

\$101,674

ALASKA COURT SYSTEM
HB 189 - FISCAL ANALYSIS

No. 2
CSHB 189 (HESS)
HOUSE 2/26/88

Summary of FY 87 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	1,641	1,099	110
Fairbanks	556	373	37
Palmer	178	119	12
Kenai	164	110	11
Kodiak	65	44	4
Juneau	171	115	12
Ketchikan	122	82	8
Sitka	54	36	4
Wrangell/ Petersburg	27	18	2
Others	80	54	5

- (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.

FISCAL NOTE

REQUEST: _____

Revision Date: _____
Title: An Act relating to divorce
and dissolution
Sponsor: Rules/Governor
Requestor: House HESS

Agency Affected: Public Safety
BRU: Council on Domestic Violence
and Sexual Assault
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Barbara Miklos, Executive Director Phone: 465-4356
Division: Council on Domestic Violence & Sexual Assault Date: 1/20/88
Approved by Commissioner: Paul A. Havelle, Dep. Comm. Date: 1-28-88
Agency: Public Safety

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

JAN 20 1988

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 CS FOR HOUSE BILL NO. 189 (HESS)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH 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. AS 25.24.100 is amended to read:

11 Sec. 25.24.100. RESIDENCY OF MILITARY PERSONNEL. A person
12 serving in a military branch of the United States government who is
13 assigned to a duty station at [HAS BEEN CONTINUOUSLY STATIONED IN] a
14 military base or installation in the state [FOR A PERIOD OF ONE YEAR]
15 shall be considered [DEEMED] a resident [IN GOOD FAITH] of the state
16 for the purposes of this chapter [AS 25.24.010 - 25.24.180].

17 * Sec. 2. AS 25.24.140 is repealed and reenacted to read:

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

21 (1) attorney fees and costs that reasonably approximate the
22 actual fees and costs required to prosecute or defend the action;

23 (2) reasonable spousal support, including medical expenses;
24 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, the court may also order that the parties
16 engage in personal or family counseling or mediation if both parties
17 agree. The court shall provide in the order for the payment of the
18 costs of counseling or mediation.

19 * Sec. 3. AS 25.24.160(a)(4) is amended to read:

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

1 benefits and career assets, to the other party; a division of career
2 assets must take into consideration the extent to which each spouse
3 contributed to the acquisition of the career assets, including consid-
4 eration of the value of homemaking and child rearing services provided
5 by each spouse;

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

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

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

25 * Sec. 5. AS 25.24.200 is amended to read:

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

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

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

10 (3) the spouses have agreed as to the distribution of all
11 jointly owned real and personal property, including retirement bene-
12 fits and career assets, and the payment of spousal support, if any,
13 and the tax consequences resulting from these payments; and

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

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

20 (1) incompatibility of temperament, as evidenced by ex-
21 tended absence or otherwise, has caused the irremediable breakdown of
22 the marriage;

23 (2) the petitioning spouse has been unable to ascertain the
24 other spouse's position in regard to the dissolution of their marriage
25 and in regard to the division of property, including retirement bene-
26 fits and career assets, payment of debts, and custody, support, and
27 visitation because the whereabouts of the other spouse is unknown to
28 the petitioning spouse after reasonable efforts have been made to
29 locate the absent spouse; and

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

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

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

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

25 (e) A division of career assets must take into consideration the
26 extent to which each spouse contributed to the acquisition of the
27 career assets, including consideration of the value of homemaking and
28 child rearing services provided by each spouse.

29 * Sec. 7. 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. 8. 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 support and tax consequences, if any, division of
9 property, including retirement benefits and career assets, and allo-
10 cation of debts. In addition, the 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. 9. 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, one spouse may
6 comply with AS 25.24.200(c). Either spouse may have counsel at the
7 hearing.

8 * Sec. 10. 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. 11. 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 agreements between the spouses concerning child
21 custody, child support, and visitation are [FAIR,] just [, AND EQUIT-
22 ABLE] as between the spouses and in the best interests of the children
23 of the marriage;

24 (3) the written agreements between the spouses relating to
25 the division of property, including retirement benefits and career
26 assets, spousal support, and the allocation of obligations are [FAIR,]
27 just [, AND EQUITABLE]; [AND]

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

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

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

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

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

9 (g) The court may amend the written agreements between the
10 spouses relating to child custody, child support, visitation, spousal
11 support, division of the property, including retirement benefits and
12 career assets, and allocation of obligations, but only if both peti-
13 tioners concur in the amendment in writing or on the record.

14 * Sec. 14. AS 25.24.220 is amended by adding new subsections to read:

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

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

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

23 (3) there are minor children of the marriage; or

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

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

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

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

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

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

19 (2) the written agreements between the spouses concerning
20 child custody, child support, and visitation are in the best interests
21 of the children of the marriage and constitute the entire agreement of
22 the parties on child custody, child support, and visitation;

23 (3) the written agreements between the spouses concerning
24 spousal support and tax consequences, if any, division of property,
25 including retirement benefits and career assets, and allocation of
26 obligations are not grossly unjust and constitute the entire agreement
27 between the parties;

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

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

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

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

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

15 (3) the written agreements between the spouses concerning
16 spousal support and tax consequences, if any, division of property,
17 including retirement benefits and career assets, and allocation of
18 obligations are just and constitute the entire agreement between the
19 parties;

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

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

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

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

1 (2) the conditions in AS 25.24.200(b) have been met; and
2 (3) the requirements of AS 25.24.165(b) have been sat-
3 isfied, if a change of name is requested.

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

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

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

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

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

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

27 (g) Notwithstanding other provisions of AS 25.24.200 - 25.24.-
28 260, the court may not award as between the spouses real or personal
29 property acquired by either spouse before the date of the marriage,

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

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

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

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

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

18 ARTICLE 4. GENERAL PROVISIONS.

19 Sec. 25.24.350. DEFINITION. In this chapter, "career assets"
20 means tangible and intangible assets resulting from a spouse's educa-
21 tion, profession, or employment that were acquired at least in part as
22 a result of direct or indirect contributions made by the other spouse;
23 "career assets" includes professional education, licenses, increased
24 earnings, and good will.

25 * Sec. 18. AS 25.24.165, as added by sec. 4 of this Act, AS 25.24.-
26 210(d) as amended by sec. 7 of this Act, and AS 25.24.230(c) and 25.24.-
27 230(f) as amended by sec. 15 of this Act, have the effect of amending Rule
28 84(a), Alaska Rules of Civil Procedure, to allow a change of name to a name
29 other than a prior name to be commenced in a complaint for divorce or

1 annulment or a petition for dissolution of marriage.

2 * Sec. 19. AS 25.24.160(a)(5) is repealed.

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: An Act relating to divorce
and dissolution
 Sponsor: Rules/Governor
 Requestor: House HESS

Agency Affected: Public Safety
 BRU: Council on Domestic Violence
and Sexual Assault
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Barbara Miklos, Executive Director Phone: 465-4356
 Division: Council on Domestic Violence & Sexual Assault Date: 1/20/88

Approved by Commissioner: Donal A. Havelle, Dep. Comm. Date: 1-28-88
 Agency: Public Safety

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

JAN 20 1988

STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: CSHB 189 (HESS)
Publish Date: HOUSE 2/26/88

REQUEST:

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Sponsor: House HESS
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Agency Affected: Alaska Court System
BRU: Trial Courts

Components:

EXPENDITURES/REVENUES:		(Thousands of Dollars)					
OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93	
Personal Services	83.1	83.1	83.1	83.1	83.1	
Travel	10.4	7.5	7.5	7.5	7.5	
Contractual	
Supplies	
Equipment	8.2	. . . .	. . . .	. . . .	. . . .
Land & Structures	
Grants & Claims	
TOTAL OPERATING	0.0	101.7	90.6	90.6	90.6	90.6	

CAPITAL
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REVENUE
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FUNDING:		(Thousands of Dollars)					
General Funds	0.0	101.7	90.6	90.6	90.6	90.6	
Federal Funds	
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	101.7	90.6	90.6	90.6	90.6	

POSITIONS:		(Thousands of Dollars)					
Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Part-time	. . . .	3.0	3.0	3.0	3.0	3.0
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: Jan Strandberg, General Counsel
Division: Alaska Court System

Phone: 264-8228
Date: 2-25-88

Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System

Date: 2-25-88

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

ALASKA COURT SYSTEM
CS HB 189 - FISCAL ANALYSIS

CSHB 189(HESS)
No. 2
HOUSE 2/26/88

<u>Personal Services:</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Special Master, Range 24A, Fairbanks, PPT - 6 months	\$32,310	\$9,215	\$41,525
Custody Investigator, Range 18A, Anchorage, PPT - 6 months	18,774	6,255	25,029
Court Clerk II, Range 10B, Palmer, PPT - 6 months	11,790	4,728	16,518

Total Personal Services			83,072

Travel:			
Custody investigator travel-			
Monthly service to Kenai and Kodiak. Quarterly service to Ketchikan, Sitka, Wrangell, & Petersburg			7,500
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.			2,900

Total Travel			10,400

Equipment: (one time cost)			
Desk, chair, filing cabinet, and typewriter for each new employee			8,202

Total First Year Cost			\$101,674
			=====

ALASKA COURT SYSTEM
HB 189 - FISCAL ANALYSIS

No. 2

CSHB 189 (HESS)
HOUSE 2/26/88

Summary of FY 87 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	1,641	1,099	110
Fairbanks	556	373	37
Palmer	178	119	12
Kenai	164	110	11
Kodiak	65	44	4
Juneau	171	115	12
Ketchikan	122	82	8
Sitka	54	36	4
Wrangell/ Petersburg	27	18	2
Others	80	54	5

(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.

BILL NO:CS HB 189 (HESS)

DATE: March 29, 1988

TITLE: An Act Relating to Divorce
and Dissolution

CONTACT: Barbara Miklos
Executive Director
Council on Domestic Violence
and Sexual Assault

DEPARTMENT OF
PUBLIC SAFETY

HB 189 proposes changes which address current inequities in the divorce and dissolution statutes. The Council supports the bill, but has reservations about Section 1 (AS 25.24.140(c), Section 8 (AS 25.24.210(e)(7) and Section 13 (AS 25.24.220(g)(2).

The proposed wording in Section 1 provides that the court may order mediation, but does not prohibit mediation in cases where domestic violence has occurred. Effective mediation depends on the equality of personal, social and economic power between the parties. Violence in a relationship gives unequal power to the violent person; violent men physically coerce and psychologically dominate and intimidate battered women. We have concerns that women may agree to mediation through fear and intimidation unless mediation is prohibited where domestic violence has occurred.

In Section 8, AS 25.24.210(e) is changed to require that the petition for dissolution state "whether a domestic violent complaint has been filed during the marriage by a member of the household." Many women in violent marriages have not filed domestic violent complaints for a number of reasons, including they lived in rural areas where filing would be extremely difficult, they felt it would not relieve the violence or they do not know how to file domestic violence complaints. Thus, it would be preferable to change this section to "whether domestic violence has occurred in the marriage." Also, since changes were made in Section 13 but not in Section 8, the sections are no longer consistent.

Section 13, amending 25.24.220(g)(2), requires a heightened level of scrutiny in dissolution agreements if "a domestic violence complaint has been filed during the marriage by a member of the family or there is evidence of significant domestic violence during the marriage." We question how the court would define "significant domestic violence" - broken bones? concussions? Victims of domestic violence tend to minimize the violence that has occurred. The Council recommends changing this section to "domestic violence has occurred in the marriage."


Arthur English
Commissioner

ALASKA COURT SYSTEM

Fiscal Analysis CSHB 189

The court system assumes that this bill's requirement of heightened judicial scrutiny for certain dissolutions will both lengthen and increase the number of court hearings necessary because of the additional information that may be needed from couples involved in these dissolutions. It is also anticipated that because of the nature of the property and/or custody issues, some of these dissolutions will be converted into divorce actions with concomitantly more pre-trial hearings and trial time.

With the assistance of one more custody investigator to provide custody and visitation recommendations, it is anticipated that the present standing masters and superior court judges will be able to absorb this workload in the Third Judicial District. The Fourth Judicial District presently has no standing master to hear domestic relations cases so that a permanent part-time master position is being created in Fairbanks to handle these cases. A clerk position is being added in Palmer because, as a relatively new superior court, it does not have sufficient clerical staff to absorb the increased caseload expected to result from this bill.

Each of the additional positions has been added as a permanent part-time position for six months to give the court system the ability to increase or decrease the positions according to the caseload requirements.



STATE OF ALASKA
OFFICE OF THE GOVERNOR

ALASKA WOMEN'S COMMISSION
3601 C STREET - SUITE 742
ANCHORAGE, ALASKA 99503

HOUSE BILL 189

There are five areas in which HB 189 differs from SCS CSHB 496 (Fin), a bill which was before the legislature during the 14th Legislative Session. The changes resulted from interim review and recommendations provided by the Alaska Court System and the Family Law Section of the Alaska Bar Association.

I. HB 189 changes the categories that trigger heightened scrutiny in dissolution cases, reducing the number of situations from five to three. The situations which will trigger heightened scrutiny are if:

- 1) one party is represented by counsel and the other is not;
- 2) a domestic violence complaint has been filed during the marriage by a member of the family; or
- 3) there are any minor children of the marriage.

These changes were arrived at after considerable dialogue with representatives of the Alaska Court System. There was general agreement that the provisions would provide increased protection of the interests of those parties who might be more vulnerable and would also be administratively "do-able."

II. HB 189 changes the provisions relating to heightened judicial scrutiny to make it clear that in the three areas mentioned in I. above, the court will examine agreements to determine that they are "just." In all other cases the court will continue to use the present criterion, that is, to ensure that they are "not grossly unfair."

III. HB 189 would make it mandatory for both parties to appear at a dissolution hearing only in the above three situations where heightened judicial scrutiny is required.

House Bill 189

Page Two

- IV. HB 189 removes provisions relating to Name Change in Divorce or Annulment which had been included in SCS CSHB 496 (Fin). The Alaska Court System indicated that current procedures work well for all parties and that the changes suggested would be more cumbersome for parties seeking the change as well as for the courts. At their suggestion, the section was removed.
- V. "Career assets" pertain to both the divorce and dissolution statutes in HB 189. In last session's bill only dissolution statutes were affected. Members of the Alaska Bar Association suggested that this was a more consistent approach.

Submitted by:

Alaska Women's Commission
April 27, 1987



FAMILY EQUITY AT ISSUE: A Study of the Economic Consequences of Divorce on Women and Children

During the 1970's social reformers sought to ease the acrimony of divorce and create more fairness and equity for the families involved. "No fault" divorce reform was introduced in many states including Alaska. In addition, Alaska developed a dissolution procedure that allows people to file without the expense of an attorney. Unfortunately, many of these changes have had unintended economic results for women. It now appears that women and children are suffering major financial inequities as a direct result of some of the changes in divorce law and procedure.

The most striking documentation of the "downward mobility" of women and children created by "no fault" divorce was in the state of California. Because of the seriousness of the findings there, in 1986 the Alaska

Women's Commission undertook a study to determine if Alaskan women and children were suffering the same effects.

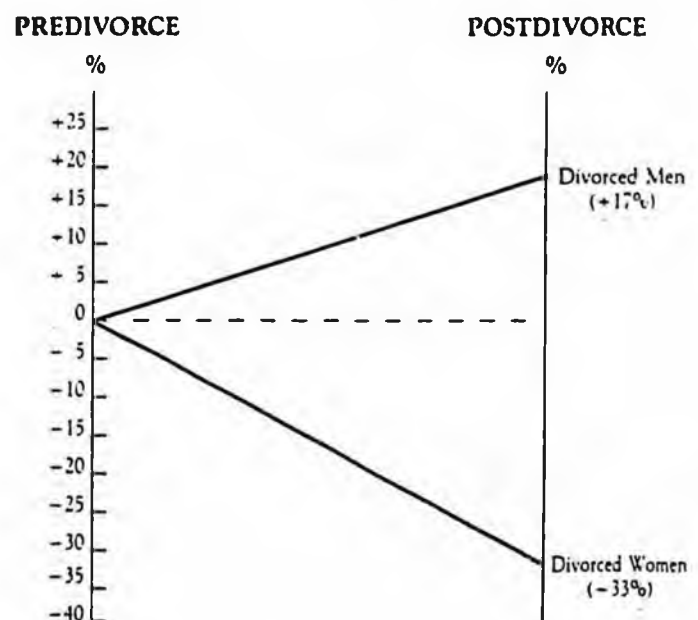
The study of divorce is important because so many people are affected by it. The divorce rate in Alaska is 63 percent compared to 46 percent nationally. More than 11,000 people are affected each year, 3,000 of them children. Even though the two-decade increase in the divorce rate seems to have peaked, each year thousands of Alaskan families are affected by divorce.

The study site chosen was Anchorage, where more than half of the state's divorces occur. A statistically valid sample drawn from all divorce and dissolution cases occurring in a one-year period was analyzed.

GENERAL FINDINGS:

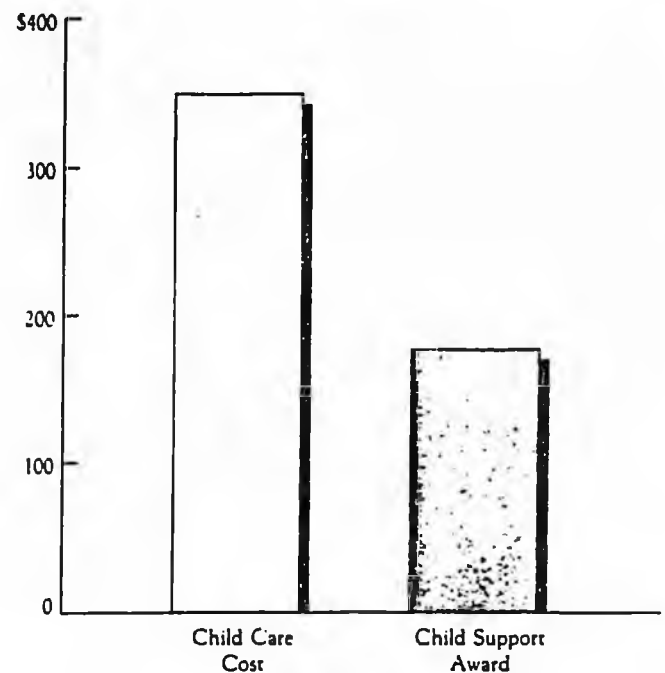
- In Alaska, divorce has substantially different economic consequences for women and men.
- Divorced women and their children experienced a 33 percent decline in per capita income resulting in a radical downward shift of their standard of living (see Figure 1). The greatest relative deprivation was experienced by women and children of middle and upper middle class families.
- Divorced men, however, experienced an improvement in their standard of living as a result of a 17 percent rise in their per capita incomes (see Figure 1).
- In many marriages the couple's major investments were in the education and career of the primary wage earner. Yet the division of marital property often excluded career assets. Disregarding this property allows the major wage earner, usually the husband, to keep what are often the most valuable assets of the marriage.

FIGURE 1: PERCENTAGE CHANGE IN PER CAPITA INCOME OF DIVORCED MEN AND WOMEN



- Fifty-four percent of divorcing men had pensions compared to 33 percent of divorcing women. The median value of the husband's pension was worth more than 3 times that of the wife's (\$27,500 and \$7,500 respectively). Yet, only 20 percent of the couples in the study divided pensions.
- Other types of career assets such as life insurance, paid leave, professional licenses, medical and dental insurance were rarely included in the division of property, even though they were acquired during the marriage.
- Award of the family home was influenced by the presence of children. In 74 percent of the cases, the home was given to the parent having physical custody. Fathers with physical custody almost always got the home (93 percent) while mothers with custody were awarded the family home only 68 percent of the time.
- Among the families who moved following divorce were accounts of children traumatized by the dislocation. New schools and neighborhoods increased the disruption already generated from economic and emotional distress.
- In the absence of children, husbands were awarded the family home and mortgage more frequently (60 percent) than wives (40 percent).
- Alimony was awarded in only 10 percent of the divorces surveyed. For the few who receive it, this "safety net" appears to be an illusion. Awards usually lasted for only one year and provided an average of only \$500 a month, despite the fact that most who received it had no job, no other income or were of an age which makes it difficult to find paid work.
- Divorced mothers are the primary caretakers of children. Sole custody was awarded to mothers in 58 percent of the cases, while fathers received it in 18 percent of the cases. Joint custody was awarded 19 percent of the time.
- Child support was awarded in 80 percent of the divorces where minor children were present. However, the average amount per child was \$191. This barely meets half the monthly cost of child care in Anchorage today (see Figure 2). This figure also falls below the standard used to determine eligibility for welfare.
- Cost of living increments were included in only 23 percent of the child support awards. Without these adjustments, the purchasing power of the support award continually declines because of inflation and the increased costs associated with older children.
- Only 22 percent of child support awards were written beyond the age of majority although financial burdens such as education continue for several years beyond this point.

FIGURE 2: AVERAGE MONTHLY COST OF CHILD CARE COMPARED TO AVERAGE MONTHLY CHILD SUPPORT AWARD



- Only 58 percent of the people in the survey received the full amount of child support awarded. This is consistent with statewide data from the Child Support Enforcement Agency.
- Divorced men are rarely required to pay more than 15 percent of their predivorce income to support their children.

IMPACT OF DISSOLUTION:

In Alaska people can end their marriage in two ways. Both are considered "no-fault." One, a divorce, usually involves attorneys' fees and court hearings, with the judge making a final decision in areas where the two parties cannot agree. The other, a dissolution, can be done without attorneys, with minimal expense, and requires that both parties agree about every issue. About two-thirds of all Alaskan couples who end their marriages choose a dissolution.

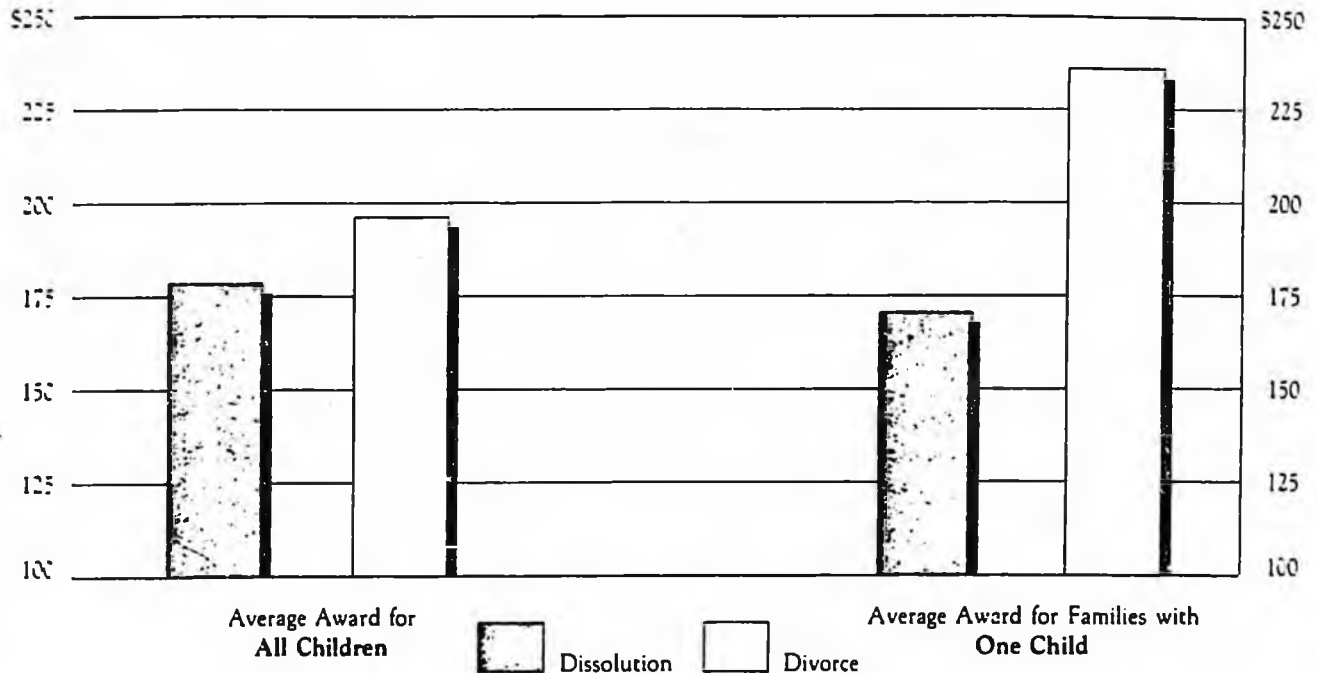
Alaska is one of only 8 states that permit dissolutions. It is also one of the most liberal in its provisions. Most

other states do not permit dissolutions if there are minor children, if the marriage is one of long duration, or if the couple has property. Alaska law places no limitations on the use of dissolutions.

In addition to the study's general findings, it appears that women who choose dissolution suffer even more financial hardship than women who go through a divorce.

- Women who used the dissolution procedure received far less than half of the couple's property. Wives received only 29 percent of the property in dissolutions. Women who used divorce received 50 percent of the marital property.
- Child support awards were lower when the dissolution procedure was used. Particularly hard hit were families with one child where average awards were 27 percent lower than in divorce (see Figure 3).

FIGURE 3: AVERAGE MONTHLY CHILD SUPPORT AWARD FOR ALL CHILDREN AND ONE CHILD FAMILIES BY LEGAL PROCEDURE



SUMMARY:

The findings of this study together with a growing body of research suggest that the current legal system of divorce creates economic hardships for women and children instead of providing greater family equity. Inadequate and poorly enforced child support awards, the near absence of spousal support, and unequal division of marital property are creating a new class of poor.

Divorced women and their children face a precipitous drop in family income. Some face certain impoverishment. Women who choose the dissolution procedure suffer even more financial hardship than those who go through a divorce.

The Alaska Women's Commission was created to ensure equity for women in Alaska. The Commission's current legislative platform attempts to correct many of the inequities that occur under existing divorce laws. The findings of the Commission's study support these efforts.

The report was written by Barbara Baker, research analyst for the Alaska Women's Commission. For a copy of the full report or for more information about the Commission's legislative advocacy, research efforts and educational services, please contact the Commission office at 3601 "C" Street, Suite 742, Anchorage, Alaska 99501 or call 561-4227.

RESOURCES:

Community resources exist to assist people who are considering divorce. The following is a list of some of the agencies who provide legal assistance or counseling.

Legal Assistance:

Alaska Legal Services — Provides legal assistance to low income people. It also screens applicants for the Pro Bono Program which provides free legal assistance to low income people. "Do It Yourself" (Pro Se) Divorce Clinics are also conducted by Alaska Legal Services in some communities. Legal Services is located in Anchorage, Barrow, Bethel, Dillingham, Fairbanks, Juneau, Ketchikan, Kodiak, Kotzebue, Nome, Unalaska.

Dispute Resolution Services, Fairbanks

Counseling and Support:

Women's Resource Centers are located in Anchorage, Barrow, Bethel, Cordova, Fairbanks, Homer, Kenai/Soldotna, Kodiak, Kotzebue, Nome and Wasilla.

Men's Support Network, Anchorage

Father's Rights Group, Fairbanks

RELATED RESEARCH ON DIVORCE:

Lenore Weitzman, *The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America* (New York: The Free Press, 1986).

Heather Wishik, "Economics of Divorce: An Exploratory Study," *Family Law Quarterly*, Vol. 20, No. 1, Spring 1986.

California Senate Task Force on Family Equity (Sacramento, State of California, 1987).

S. Hoffman and T. Holmes, "Husbands, Wives, and Divorce," *Five Thousand American Families — Patterns of Economic Progress* (Ann Arbor, Michigan: Institute for Social Research, 1976).

William Goods, *After Divorce* (New York: The Free Press, 1956).



ALASKA WOMEN'S COMMISSION
3601 "C" STREET, SUITE 742
ANCHORAGE, AK 99503

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Anchorage
Joy Green-Armstrong, vice chair
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, October 19, 1987

Survey says divorce hurts women and children most

The Associated Press

Women and children suffer the most financially after a family splits up, while men usually gain, a recently completed study by the Alaska Women's Commission concludes.

The study, based on more than 100 interviews of divorced Alaskans, shows women and children involved in divorces experience a 33 percent decline in per capita income, while men involved see a 17 percent increase.

Several factors contribute to the difference, researchers said. Those include inadequate court awards for child support and alimony, and an inclination by women to settle for less than an equal share of marital property.

This study offers eye-opening

evidence that women and children in Alaska are on the verge of becoming the state's new poor," Gov. Steve Cowper said in a prepared statement announcing the study's results.

The study, entitled, "Family Equity at Issue," also found:

- That 54 percent of the men in divorces had pensions compared to 33 percent of the women. The median value of a husband's pension was worth more than three times that of a wife's — \$27,500 and \$7,500 respectively. Only 20 percent of the couples in the study divided pensions.

- Other types of career assets such as life insurance, paid leave, professional licenses, medical and dental insurance rarely were included in the division of property.

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MARITAL AND DOMESTIC RELATIONS

§ 25.24.140

Sec. 25.24.120. Defenses to adultery. In a divorce action for adultery, the following defenses may be made:

(1) procurement;

(2) connivance;

(3) the act has been expressly forgiven or impliedly forgiven by the voluntary cohabitation of the parties after knowledge of the act;

(4) the plaintiff is also guilty of adultery and without procurement or connivance of the defendant and not forgiven as provided in the defenses to adultery; or

(5) the action has not been commenced within two years after the discovery of the act by the plaintiff. (§ 12.11 ch 101 SLA 1962)

Revisor's notes. — Formerly AS 09.55.180. Renumbered in 1983.

Collateral references. — Connivance, 3 Am. Jur. POF, pp. 371-378.

Sec. 25.24.130. Defenses to other divorce grounds. When the divorce action is for any of the grounds provided in AS 25.24.050(4)-(6), the defense of procurement or that the defendant has been expressly forgiven may be made. When the divorce action is for the ground provided in AS 25.24.050(3), the defense of procurement or that the defendant has been expressly forgiven or that the action was not brought within two years after conviction may be made. (§ 12.12 ch 101 SLA 1962)

Revisor's notes. — Formerly AS 09.55.190. Renumbered in 1983.

tutes reconciliation of separated spouses, 35 ALR2d 746.

Collateral references. — What consti-

Sec. 25.24.140. Orders during action. (a) During the pendency of the action, the court may provide by order

(1) that one spouse pay an amount of money as may be necessary to enable the other spouse to prosecute or defend the action;

(2) for the care, custody, and maintenance of the minor children of the marriage during the pendency of the action;

(3) for the freedom of one spouse from the control of the other spouse during the pendency of the action;

(b) The court may restrain either or both parties from disposing of the property of either party during the pendency of the action. (§ 12.13 ch 101 SLA 1962; am § 71 ch 127 SLA 1974)

Revisor's notes. — Formerly AS 09.55.200. Renumbered in 1983.

and child to maintain each other, see AS 25.20.030.

Cross references. — For duty of parent

NOTES TO DECISIONS

Discretion of trial court. — Whether or not to make any award pursuant to subsection (a)(1) is committed to the sound discretion of the trial court. *Johnson v. Johnson*, Sup. Ct. Op. No. 1429 (File Nos. 2709, 2724), 564 P.2d 71 (1977), cert. denied, 434 U.S. 1048, 98 S. Ct. 896, 54 L. Ed. 2d 800 (1978).

In making the award of attorney's fees the court is limited to making an award to enable the other spouse to prosecute or defend "the action." *Cooper v. State*, Sup. Ct. Op. No. 2453 (File Nos. 4906, 4970), 638 P.2d 174 (1981).

The court is only authorized to make an allowance for future expenses of the suit. *Leak v. Leak*, 156 F. 474 (9th Cir. 1907).

And cannot require husband to pay additional amount borrowed by wife for court costs. — Where the court made an order directing the husband to pay the wife a specific amount for necessary expenses which she might incur in preparation of her defense and the wife, without making further application to the court, borrowed money to cover additional costs, it was error to require the husband to pay this additional amount. *Leak v. Leak*, 156 F. 474 (9th Cir. 1907).

Legislative intent that attorney's fees be allowable regardless of prevailing party. — Subsection (a)(1) of this section shows a legislative intent that attorney's fees be allowable to the wife in a divorce action regardless of who is the prevailing party. *Houger v. Houger*, Sup. Ct. Op. No. 520 (File No. 954), 449 P.2d 766 (1969).

The fact that neither party prevailed is of no relevance to the trial court's determination regarding award of attorney's fees. *Johnson v. Johnson*, Sup. Ct. Op. No. 1429 (File Nos. 2709, 2724), 564 P.2d 71 (1977), cert. denied, 434 U.S. 1048, 98 S. Ct. 896, 54 L. Ed. 2d 800 (1978). See also *Cooke v. Cooke*, Sup. Ct. Op. No. 2275 (File No. 4581), 625 P.2d 291 (1981).

The "prevailing party" rule, used for determination of awards of attorney's fees under Civ. R. 82, is not applicable to awards of fees in divorce actions. *Johnson v. Johnson*, Sup. Ct. Op. No. 1429 (File Nos. 2709, 2724), 564 P.2d 71 (1977), cert. denied, 434 U.S. 1048, 98 S. Ct. 896, 54 L. Ed. 2d 800 (1978).

In divorce or dissolution actions, attorney's fees are not to be awarded solely on the basis of which party is regarded as the

prevailing party. *Cooper v. State*, Sup. Ct. Op. No. 2453 (File Nos. 4906, 4970), 638 P.2d 174 (1981).

The parties' relative economic situations and earning powers are relevant factors to be weighed in determining whether to order payment pursuant to subsection (a)(1). *Burrell v. Burrell*, Sup. Ct. Op. No. 1169 (File No. 2217), 537 P.2d 1 (1975); *Johnson v. Johnson*, Sup. Ct. Op. No. 1429 (File Nos. 2709, 2724), 564 P.2d 71 (1977), cert. denied, 434 U.S. 1048, 98 S. Ct. 896, 54 L. Ed. 2d 800 (1978); *Bussell v. Bussell*, Sup. Ct. Op. No. 2296 (File No. 4869), 623 P.2d 1221 (1981); *Cooper v. State*, Sup. Ct. Op. No. 2453 (File Nos. 4906, 4970), 638 P.2d 174 (1981).

Cost and fee awards in a divorce are not to be based on the prevailing party concept, but primarily on the relative economic situations and earning powers of the parties. *Cooke v. Cooke*, Sup. Ct. Op. No. 2275 (File No. 4581), 625 P.2d 291 (1981).

But are not the only permissible consideration. — The relative economic standing of the parties is only a relevant consideration to the decision to award fees; it is not the only permissible consideration. *Johnson v. Johnson*, Sup. Ct. Op. No. 1429 (File Nos. 2709, 2724), 564 P.2d 71 (1977), cert. denied, 434 U.S. 1048, 98 S. Ct. 896, 54 L. Ed. 2d 800 (1978).

Factors which are reasonable for the trial court to consider in determining whether to award fees are: (1) that an equal amount of fees had been expended by the parties; (2) that an equal amount of time and effort had been expended; and (3) that the property had been divided equally. *Johnson v. Johnson*, Sup. Ct. Op. No. 1429 (File Nos. 2709, 2724), 564 P.2d 71 (1977), cert. denied, 434 U.S. 1048, 98 S. Ct. 896, 54 L. Ed. 2d 800 (1978).

Factors to be considered in determining whether to award attorney's fees are whether an equal amount of fees has been expended by the parties, and whether an equal amount of time and effort has been expended. *Cooper v. State*, Sup. Ct. Op. No. 2453 (File Nos. 4906, 4970), 638 P.2d 174 (1981).

Attorney fees to attorney-litigant. — If a court wishes to award attorney's fees for an attorney-litigant's time it should do so only after making a clear segregation of his compensable time, expended as an attorney active in the litigation, and his noncompensable time, expended as client. *Sherry v. Sherry*, Sup. Ct. Op. No. 2271 (File No. 4939), 622 P.2d 960 (1981).

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Award of \$200 in attorney's fees held clearly inadequate. *Vanover v. Vanover*, Sup. Ct. Op. No. 790 (File Nos. 1505, 1512), 496 P.2d 644 (1972).

Physicians' bills for treating child. — While a divorce suit was pending, an order of the court directing the husband to pay the wife a specified sum for the purpose of enabling her to satisfy the claims of the physicians for their professional services in attending their child was justified by the second subdivision of this section. *Leak v. Leak*, 156 F. 474 (9th Cir. 1907).

Deposit to cover costs of wife's appeal. — An order of court made after the entry of the final decree, requiring the husband, in the event of an appeal by the wife, to deposit in the registry of the court or to give security for the payment of costs on such appeal, was proper. *Leak v. Leak*, 156 F. 474 (9th Cir. 1907).

Poverty of a husband is no defense to an application for temporary alimony where the action for divorce is brought by him, because he should not be permitted to prosecute an action if he cannot furnish the wife with the means necessary to make her defense. *Van Atta v. Van Atta*, 6 Alaska 266 (1920).

Suit money is allowed when wife's statement of need is only contradicted by husband's affidavit. — Where a wife states on oath that she has no means, and there is no other proof, except the counteraffidavit of the husband to the effect that she has means, suit money will be allowed to the wife. *Van Atta v. Van Atta*, 6 Alaska 266 (1920).

Award as condition of voluntary dismissal of action. — The superior court clearly had discretion to award costs and

attorney's fees as a condition of a voluntary dismissal of an action to modify a child custody agreement. *Sherry v. Sherry*, Sup. Ct. Op. No. 2271 (File No. 4939), 622 P.2d 960 (1981).

Award of costs in suit for modification. — In an action seeking modification of property division agreement previously incorporated in a divorce decree, when a party seeks modification of an arrearages judgment and of the property division in the divorce decree, the award of costs and attorney's fees is appropriately made under Civ. R. 82. *O'Link v. O'Link*, Sup. Ct. Op. No. 2394 (File No. 5297), 632 P.2d 225 (1981).

Improper award. — Superior court erred in awarding wife and mother her costs and attorney's fees in a custody proceeding where the costs and fees were carried over from a related child in need of aid proceeding. *Cooper v. State*, Sup. Ct. Op. No. 2453 (File Nos. 4906, 4970), 638 P.2d 174 (1981).

Retroactive modification of child support. — The superior court abused its discretion when it retroactively modified the interim child support order in the absence of extraordinary circumstances. *Jones v. Jones*, Sup. Ct. Op. No. 2695 (File No. 6700), P.2d (1983).

Applied in *Olsen v. Olsen*, 5 Alaska 459 (1916); *Rostel v. Rostel*, Sup. Ct. Op. No. 2262 (File No. 5077), 622 P.2d 449 (1981); *Hinchey v. Hinchey*, Sup. Ct. Op. No. 2312 (File No. 3528), 625 P.2d 297 (1981); *Siggelkow v. Siggelkow*, Sup. Ct. Op. No. 2490 (File No. 5630), 643 P.2d 985 (1982).

Quoted in *Lovell v. Lovell*, Sup. Ct. Op. No. 2504 (File No. 5851), 645 P.2d 151 (1982).

Collateral references. — Earning capacity or prospective earnings of husband as basis for determining alimony pendente lite, 6 ALR 192; 139 ALR 207.

Allowance of counsel fees to wife to prosecute or defend appeal in matrimonial action. 18 ALR 1494.

Power of court to award temporary alimony as affected by failure to make claim in pleading or notice, 152 ALR 457.

Misconduct or fault of wife as affecting right to temporary alimony, 2 ALR2d 307.

Adequacy or excessiveness of amount of

money awarded as temporary alimony, 1 ALR3d 280.

Necessity and sufficiency of notice and hearing as to allowance of suit money or counsel fees in divorce or other marital action, 10 ALR3d 280.

Wife's possession of independent means as affecting her right to alimony pendente lite, 60 ALR3d 728.

Wife's possession of independent means as affecting her right to child support pendente lite, 60 ALR3d 832.

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§ 25.24.210 MARITAL AND DOMESTIC RELATIONS § 25.24.210

Revisor's notes. — Formerly AS 09.55.231. Renumbered in 1983.
Cross references. — For jurisdiction of court to consider child custody, see AS 25.30.020.

Effect of amendments. — The 1982 amendment, in subsection (a), inserted "including visitation by grandparents and other persons" in the middle of paragraph (2).

NOTES TO DECISIONS

Jurisdiction. — The superior court has no jurisdiction to make the "child custody determination" that is a prerequisite to the entry of a decree of dissolution under AS 25.24.230(a) unless one of the conditions listed in AS 25.30.020(a) exists.

Layne v. Niles, Sup. Ct. Op. No. 2396 (File No. 5887), 632 P.2d 234 (1981).
Cited in *Szmyd v. Szmyd*, Sup. Ct. Op. No. 2472 (File No. 5854), 641 P.2d 14 (1982).

Sec. 25.24.210. Petition for dissolution. (a) The caption in a petition for dissolution of marriage under AS 25.24.200 — 25.24.260 shall be styled substantially "In the Matter of the Dissolution of the Marriage of and"

(b) The petition shall be filed with the superior court and shall either

(1) recite that the conditions enumerated under AS 25.24.200(a) exist and shall be signed and verified by both of the petitioners or by one petitioner, if that petitioner personally serves the petition on the other spouse in accordance with the Alaska Rules of Civil Procedure in anticipation that the spouse will comply with AS 25.24.200(c); or

(2) recite that the conditions enumerated under AS 25.24.200(b) exist and be signed and verified by one of the petitioners.

(c) The petition shall state that the spouse or spouses executing the petition consent to the jurisdiction of the court.

(d) The petition shall request that the marriage be dissolved and that the prior name of a spouse be restored, if desired by that spouse.

(e) If the petition is brought by both spouses under AS 25.24.200(a), the petition shall state in detail the terms of agreement as between the spouses with regard to the custody of children, child support, visitation, spousal support and tax consequences, if any, division of property, and allocation of debts, and, in addition, shall state

- (1) the respective occupations of the spouses;
- (2) the income, assets, and liabilities of the respective spouses at the time of filing the petition;
- (3) the date and place of the marriage;
- (4) the name, date of birth, and current custodial status of each minor child born of the marriage or adopted by the petitioners;
- (5) whether the wife is pregnant;
- (6) other facts and circumstances which the petitioners believe should be considered; and
- (7) any other relief sought by the spouses. (§ 1 ch 260 SLA 1976)

Revisor's notes. — Formerly AS
09.55.232. Renumbered in 1983.

Sec. 25.24.220. Hearing. (a) After a petition for dissolution is filed under the provisions of AS 25.24.210, a hearing shall be scheduled in accordance with the Alaska Rules of Civil Procedure.

(b) If the petition is brought by both spouses under AS 25.24.200(a), both the husband and wife are required to attend the hearing personally and not through counsel unless the court, for good cause, provides otherwise, or unless a spouse has complied with AS 25.24.200(c), in which case only the spouse filing the petition is required to attend. Either spouse may have counsel at the hearing.

(c) If the petition is brought by one spouse under AS 25.24.200(b), that spouse shall submit proof of diligent inquiry as to the whereabouts of the absent spouse and provide notice by publication, posting, or other means as ordered by the court in accordance with the Alaska Rules of Civil Procedure.

(d) If the petition is brought by both spouses under AS 25.24.200(a), the court shall examine the petitioners or petitioner present and consider whether

(1) the spouses fully understand the nature and consequences of their action;

(2) the agreements between the spouses concerning child custody, child support, and visitation are fair, just, and equitable as between the spouses and in the best interests of the children of the marriage;

(3) the agreements between the spouses relating to the division of property, spousal support, and the allocation of obligations are fair, just, and equitable; and

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

(e) If the petition is brought by one spouse under AS 25.24.200(b), the court shall examine the petitioner and consider whether the petitioner fully understands the nature and consequences of the action and whether the conditions in AS 25.24.200(b) have been met.

(f) The court may appoint a guardian ad litem to represent the best interests of the child. Appointment of a guardian ad litem or attorney for the child shall be made under the terms of AS 25.24.310.

(g) The court may amend the agreements between the spouses relating to child custody, child support, visitation, spousal support, division of the property, and allocation of obligations, but only if both petitioners concur in the amendment. (§ 1 ch 260 SLA 1976)

Revisor's notes. — Formerly AS
09.55.233. Renumbered in 1983.

Sec. 25.24.230. Judgment. (a) If the petition is brought by one or both spouses under AS 25.24.200(a), the court may grant the spouses a final decree of dissolution and shall provide the other relief as pro-

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§ 25.24.230

MARITAL AND DOMESTIC RELATIONS

§ 25.24.230

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

(1) the spouses understand fully the nature and consequences of their action;

(2) the agreements between the spouses concerning child custody, child support, visitation, spousal support and tax consequences, if any, division of property, and allocation of obligations are not grossly unfair, unjust, or inequitable and are in the best interests of the children of the marriage, if any; and

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

(b) If the petition is brought by one spouse under AS 25.24.200(b), the court may grant the spouses a final decree of dissolution and restore the petitioner's prior name, when so requested, if the court, upon consideration of affidavits supplied by the spouse and the testimony of the spouse at the hearing, finds that

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

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

(c) The court shall dismiss or continue an action brought under AS 25.24.200 — 25.24.260 before findings are made if

(1) a representative of the minor children objects to a term of any of the agreements between the spouses;

(2) either of the spouses withdraws from any of the agreements required under AS 25.24.200(a); or

(3) the petition alleges that the conditions in AS 25.24.200(b) exist, but the whereabouts of the absent spouse becomes known to the other spouse or the court before findings are made.

(d) The court shall deny the relief sought in an action brought under AS 25.24.200 — 25.24.260 if the court does not make the findings requisite under (a) and (b) of this section.

(e) If the petition is brought by both spouses under AS 25.24.200(a), the court shall restore either spouse's prior name, if so requested, and shall fully and specifically set out in the decree the agreements of the spouses relating to child custody, child support, visitation, spousal support, division of property, and the allocation of the obligations of the spouses; and the court shall order the performance of those agreements. The court shall also state, in the decree, whether child support payments are to be made through the child support enforcement agency. If the petition is brought by one spouse under AS 25.24.200(b), the decree shall state that it does not bar future action on the issues not resolved in the decree.

(f) Notwithstanding any other provisions of AS 25.24.200 — 25.24.260, the court may not award as between the spouses any real or personal property acquired by the spouses before the date of the marriage, unless the spouses expressly agree otherwise or the court deter-

mines that such property should be made available, by sale or other conveyance, to ensure that the children's best interests are provided for. If the court determines that the children's best interests require an award of premarital property but the spouses do not agree, the action shall be dismissed or continued. (§ 1 ch 260 SLA 1976)

Revisor's notes. — Formerly AS 09.55.234. Renumbered in 1983.

Cross references. — For jurisdiction of

court to make child custody determination, see AS 25.30.020(a).

NOTES TO DECISIONS

Jurisdiction to make child custody determination. — The superior court has no jurisdiction to make the "child custody determination" that is a prerequisite to the entry of a decree of dissolution under

subsection (a) unless one of the conditions listed in AS 25.30.020(a) exists. *Layne v. Niles*, Sup. Ct. Op. No. 2396 (File No. 5887), 632 P.2d 234 (1981).

Sec. 25.24.240. Effect and modification of decree. (a) A decree of dissolution issued under AS 25.24.200 — 25.24.260 shall have the same force and effect as a decree granted under AS 25.24.010 — 25.24.180.

(b) A decree of dissolution granted under AS 25.24.200 — 25.24.260 may be modified or enlarged as prescribed by AS 25.24.150 — 25.24.170. (§ 1 ch 260 SLA 1976)

Revisor's notes. — Formerly AS 09.55.235. Renumbered in 1983.

Sec. 25.24.250. Forms. (a) The Department of Law, in cooperation with the administrator of the Alaska Court System, shall prepare forms and instructions for use by persons wishing to obtain a dissolution of their marriage under AS 25.24.200 — 25.24.260 and wishing to utilize the services of the child support enforcement agency. These forms shall conform to the requirements of the Alaska Rules of Civil Procedure, except that information appearing on the forms in legible handwriting shall be acceptable.

(b) Forms prepared under (a) of this section shall be made available to the public at each office of the division of social services of the Department of Health and Social Services, and every superior court, and wherever else considered necessary by the Department of Law. (§ 1 ch 260 SLA 1976)

Revisor's notes. — Formerly AS 09.55.236. Renumbered in 1983.

Sec. 25.24.260. Miscellaneous. No spouse may be precluded from filing an action for divorce under AS 25.24.010 — 25.24.180 upon dismissal or denial of a petition filed under AS 25.24.200 — 25.24.260. (§ 1 ch 260 SLA 1976)

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2

HOUSE BILL NO. 189

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to divorce and dissolution."

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

8 * Section 1. AS 25.24.140 is repealed and reenacted to read:

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

12 (1) attorney fees and costs that reasonably approximate the
13 actual fees and costs required to prosecute or defend the action;

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

16 (3) reasonable support for minor children in the care of
17 the spouse.

18 (b) During the pendency of the action, the court may grant an
19 order

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

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

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

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

29 (5) restraining a spouse from entering a propelled vehicle

1 in the possession of or occupied by the other spouse; and

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

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

9 * Sec. 2. AS 25.24.160(a)(4) is amended to read:

10 (4) for the division between the parties of their property,
11 including retirement benefits and career assets, whether joint or
12 separate, acquired only during coverture, in a just [THE] manner [AS
13 MAY BE JUST,] and without regard to which of the parties is in fault;
14 however, the court, in making the division, may invade the property,
15 including retirement benefits and career assets, of either spouse
16 acquired before marriage when the balancing of the equities between
17 the parties requires it; and to accomplish this end the judgment may
18 require that one or both of the parties assign, deliver, or convey any
19 of their real or personal property, including retirement benefits and
20 career assets, to the other party;

21 * Sec. 3. AS 25.24.200 is amended to read:

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

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

28 (2) [IF] there are minor children of the marriage or the
29 wife is pregnant, and the spouses have agreed on which spouse or third

1 party is to [SHALL] be awarded custody of each minor child of the
2 marriage and the extent of visitation, including visitation by grand-
3 parents and other persons, and support to be provided on the chil-
4 dren's behalf, whether the payments are to be made through the child
5 support enforcement agency and the tax 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 other career assets, and the payment of spousal support, if
9 any, and the tax consequences resulting from these payments; 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 division of property, including retirement bene-
22 fits and other career assets, payment of debts, and custody, support
23 and visitation because the whereabouts of the other spouse is unknown
24 to the petitioning spouse after reasonable efforts have been made to
25 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

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 support and resultant tax consequences,
8 division of property, including retirement benefits and other career
9 assets, and allocating of debts; agrees that the conditions otherwise
10 required by (a) of this section exist; agrees that the petition con-
11 stitutes the entire agreement between the parties; understands fully
12 the nature and consequences of the action; and is not signing the
13 appearance and waivers under duress or coercion.

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

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

21 (e) If the petition is filed by both spouses under AS 25.24.-
22 200(a), the petition must state in detail the terms of agreement as
23 between the spouses with regard to the custody of children, child
24 support, visitation, spousal support and tax consequences, if any,
25 division of property, including retirement benefits and other career
26 assets, and allocation of debts. In addition, the petition must state

- 27 (1) the respective occupations of the petitioners;
28 (2) the income, assets, and liabilities of the respective
29 petitioners at the time of filing the petition;

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

17 * Sec. 5. AS 25.24.220(b) is repealed and reenacted to read:

18 (b) Except as provided in (i) of this section, if the petition
19 is filed by both spouses under AS 25.24.200(a) both spouses shall
20 attend the hearing personally and not through counsel. However, if
21 the petition is not subject to (i) of this section, one spouse may
22 comply with AS 25.24.200(c). Either spouse may have counsel at the
23 hearing.

24 * Sec. 6. AS 25.24.220(d) is amended to read:

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

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

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

5 (3) the written agreements between the spouses relating to
6 the division of property, including retirement benefits and other
7 career assets, spousal support, and the allocation of obligations are
8 [FAIR,] just[, AND EQUITABLE]; [AND]

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

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

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

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

18 * Sec. 8. AS 25.24.220 is amended by adding new subsections to read:

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

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

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

26 (3) there are any minor children of the marriage.

27 (i) If the court finds that a higher level of scrutiny is
28 required by (h) of this section, the court shall examine the written
29 agreements between the spouses to determine that they are just, that

1 they constitute the entire agreement between the parties, and that the
2 agreements concerning child custody, child support, and visitation are
3 in the best interest of the children of the marriage, if any. The
4 court shall require the presence of both spouses at a hearing for this
5 purpose unless the court finds on the record that it would constitute
6 a significant hardship on one of the spouses to appear, and that a
7 just agreement has been reached.

8 * Sec. 9. 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 support and tax consequences, if any, division of property,
19 including retirement benefits and other career assets, and allocation
20 of obligations are not grossly unjust;

21 (3) each spouse entered into the agreement voluntarily and
22 free from the coercion of any person; and

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

24 (b) If the petition is filed under AS 25.24.200(a), and is
25 subject to AS 25.24.220(h), the court may grant the spouses a final
26 decree of dissolution and shall order other relief as provided in this
27 section if the court, upon consideration of the information contained
28 in the petition and the testimony of the spouse or spouses at the
29 hearing, finds that

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

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

8 (3) the written agreements between the spouses concerning
9 spousal support and tax consequences, if any, division of property,
10 including retirement benefits and other career assets, and allocation
11 of obligations are just and constitute the entire agreement between
12 the parties;

13 (4) each spouse entered the agreement voluntarily and free
14 from the coercion of any person; and

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

16 (c) If the petition is filed by one spouse under AS 25.24.-
17 200(b), the court may grant the spouse a final decree of dissolution
18 and restore the petitioner's prior name, if so requested, if the
19 court, upon consideration of affidavits supplied by the spouse and the
20 testimony of the spouse at the hearing, finds that

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

23 (2) the conditions in AS 25.24.200(b) have been met.

24 (d) The court shall dismiss or continue an action brought under
25 AS 25.24.200 -- 25.24.260 before findings are made if

26 (1) a representative of the minor children objects to a
27 term of any of the agreements between the spouses;

28 (2) either of the spouses withdraws from any of the agree-
29 ments required under AS 25.24.200(a); or

1 (3) the petition alleges that the conditions in AS 25.24.-
2 200(b) exist, but the whereabouts of the absent spouse becomes known
3 to the other spouse or the court before findings are made.

4 (e) The court shall deny the relief sought in an action brought
5 under AS 25.24.200 -- 25.24.260 if the court does not make the find-
6 ings required under (a) and (b) of this section.

7 (f) If the petition is filed by both spouses under AS 25.24.-
8 200(a), the court shall restore either spouse's prior name, if so
9 requested, and shall fully and specifically set out in the decree the
10 agreements of the spouses relating to child custody, child support,
11 visitation, spousal support, division of property, including retire-
12 ment benefits and other career assets, and the allocation of the
13 obligations of the spouses; and the court shall order the performance
14 of those agreements. The court shall also state, in the decree,
15 whether child support payments are to be made through the child sup-
16 port enforcement agency. If the petition is filed by one spouse under
17 AS 25.24.200(b), the decree must state that it does not bar future
18 action on the issues not resolved in the decree.

19 (g) Notwithstanding any other provisions of AS 25.24.200 --
20 25.24.260, the court may not award as between the spouses any real or
21 personal property acquired by the spouses before the date of the
22 marriage, unless the spouses expressly agree otherwise or the court
23 determines that the property should be made available, by sale or
24 other conveyance, to ensure that the children's best interests are
25 provided for. If the court determines that the children's best inter-
26 ests require an award of premarital property, but the spouses do not
27 agree, the action must be dismissed or continued.

28 (h) If a judgment under this section distributes benefits to an
29 alternate payee under AS 14.25, AS 22.25, AS 26.05.222 -- 26.05.226,

1 or AS 39.35, the judgment must meet the requirements of a qualified
2 domestic relations order under the definition of that phrase that is
3 applicable to those provisions.

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

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

9 * Sec. 11. AS 25.24 is amended by adding a new section to article 4 to
10 read:

11 ARTICLE 4. GENERAL PROVISIONS.

12 Sec. 25.24.350. DEFINITION. In this chapter, "career assets"
13 means tangible and intangible assets resulting from a spouse's educa-
14 tion, profession, or employment that were acquired at least in part as
15 a result of direct or indirect contributions made by the other spouse;
16 "career assets" include professional education, licenses, increased
17 earnings, and good will.

18 * Sec. 12. The revisor of statutes shall change forms of the verb
19 "bring" to appropriate forms of the verb "file" in AS 25.24.200 -- 25.24.-
20 290, to assure use of consistent terminology in distinguishing between the
21 concepts of "bringing an action" and "filing a petition."

HRB

196

HOUSE COMMITTEE REPORT

(11)

Date referred: 4/17/87

FURTHER REFERRALS:

DATE: 4/29/87

The Finance Committee has considered HB 196

"An Act relating to enplanements, enforcement of compliance with financial responsibility and certificate of compliance requirements for air carriers, penalties, issuance and display of certificates of compliance, and the definition of aircraft."

RECOMMENDS:

replace with CSHB 196 (Kin) the same title
 attached amendment(s) a new title

- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

ADAMS Robert V. Linder

LARSON Ronald J. Larson

SWACK-immered [Signature]

RIEGER Steve King

WALLIS F. Kay Wallis

[Signature] - no rec

POURCHOT [Signature] - no rec

GOLD [Signature] - no rec

BUYER Mark Boyer no rec

FRANK [Signature] no rec

BROWN Tom Brown - No Rec

DAVIS [Signature] no rec

Robert V. Linder
Chairman's signature

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: CSHB 196 (Fin)
Publish Date: _____

REQUEST: _____

Revision Date: _____
Title: Act relating to air carriers

Agency Affected: Comm. & Econ. Dev.
BRU: Consumer Protection

Sponsor: House Transportation
Requestor: _____

Components: Measurement Standards

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
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-	[19.0]	[8.8]	[8.8]	[8.8]	[8.8]

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

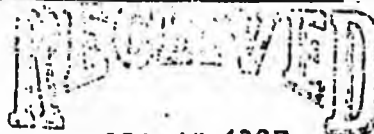
ANALYSIS : (Attach a separate page if necessary) We have 107 air carriers and 436 aircraft registered in the current fiscal year. Research of last fiscal year's records indicates that approximately 14 air carriers and 122 additional aircraft will apply for certificates of compliance prior to the end of FY 87.

Revenue projections were based upon these figures and the assumption that the level of voluntary compliance will remain relatively constant.

Prepared by: Joe Swanson, Director Phone: 345-7750
Division: Measurement Standards Date: April 14, 1987

Approved by Commissioner: J. Anthony South, Commissioner Date: April 14, 1987
Agency: Department of Commerce and Economic Development

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary
5782W41487a



Original sponsor: Transportation Committee

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 196 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to enplanements, enforcement of
7 compliance with financial responsibility and certi-
8 ficate of compliance requirements for air carriers,
9 penalties, issuance and display of certificates of
10 compliance, and the definition of aircraft; and
11 providing for an effective date."

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

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19 (c) The department may authorize department personnel to enforce
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2 the department. The department may issue a certificate of compliance
3 for one aircraft or a fleet of two or more aircraft. The department
4 shall issue or renew a certificate of compliance upon application and
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8 and Economic Development and in effect on the day before the effective date
9 of sec. 5 of this Act is valid for the period issued.

10 * Sec. 11. AS 42.30.225(c) and 42.30.225(d) are repealed.

11 * Sec. 12. Section 6 of this Act takes effect January 1, 1989.

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____ Bill Version: HB 196
 _____ Publish Date: _____
 Revision Date: _____ Agency Affected: Comm. & Econ. Dev.
 Title: Act relating to air carriers BRU: Consumer Protection
 Sponsor: House Transportation Components: Measurement Standards
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
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 Division: Measurement Standards Date: April 14, 1987

Approved by Commissioner: J. Anthony Smith, Commissioner Date: April 14, 1987
 Agency: Department of Commerce and Economic Development

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)
 Senate Secretary
 5782W41487a

RECEIVED
 APR 17 1987

LEGISLATIVE FINANCE

SECTIONAL ANALYSIS - CS HOUSE BILL 196 (TRANSPORTATION)

Section 1 This specifically authorizes DOT/PF to collect the data necessary for the State to receive federal aid to airports. The provision was suggested last year by Commissioner Knapp, and is still deemed desirable by DOT/PF this year. Passenger enplanement statistics mean the number of passengers arriving or departing at a given airport, but does not include a list of passenger names.

Section 2: This section clarifies existing law by specifically authorizing the department (Commerce) to prevent a commercial carrier from flying passengers for hire on a plane which has not been insured for liability at the State minimum level.

Section 3: This section increases the existing penalties for flying passengers for hire without first obtaining the minimum required level of liability insurance.

Section 4: This allows the department (Commerce) to issue a single certificate of insurance for a fleet of aircraft instead of for each individual aircraft. Many air carriers obtain a fleet insurance policy rather than individual plane policies. This would simplify the existing administrative procedure.

Section 5: Maintains the existing fee for a single certificate of insurance and establishes the fee for a fleet certificate. It also allows carriers to display certificates of insurance at the counter, gate, or other location rather than on the aircraft itself.

Section 6: Allows Department of Commerce to set fees by regulation beginning January 1, 1989 (See Section 12 for effective date). The fees set in Section 5 would be effective until changed in 1989.

Section 7: This specifically authorizes the department (Commerce) to issue a stop use order for plane carrying passengers for hire when the carrier has not obtained a certificate of insurance from the State.

Section 8: This section establishes a penalty for the violation described in Section 7. It is a lesser penalty than for violations under Section 3, as flying without a State certificate of insurance is not as serious a violation as flying without liability insurance at the established minimum level.

Section 9: Adds helicopters to the aircraft covered under this bill. This was an oversight in 1985 when this statute was passed.

Section 10: Assures Certificates of Compliance already in effect for a one year period, remain in effect until they expire.

Section 11: Repeals existing 42.30.225(c) which is superseded by Sections 2 and 7 in this bill.

Repeals existing 42.30.225(d) which was a transitional provision of the 1985 statute, and is no longer meaningful.

Section 12: Effective date for Section 6 (only).

sd.9.51

Original sponsor: Transportation Committee

1 IN THE HOUSE BY THE TRANSPORTATION COMMITTEE

2 CS FOR HOUSE BILL NO. 196 (Transportation)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to enplanements, enforcement of
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5 (3) "aircraft" means a propeller, rotor, or jet-powered
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7 * Sec. 10. Notwithstanding AS 42.30.225(b), as amended by sec. 5 of
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10 of sec. 5 of this Act is valid for the period issued.

11 * Sec. 11. AS 42.30.225(c) and 42.30.225(d) are repealed.

12 * Sec. 12. Section 6 of this Act takes effect January 1, 1989.

Original sponsor: Transportation Committee

1 IN THE HOUSE BY THE TRANSPORTATION COMMITTEE
2 CS FOR HOUSE BILL NO. 196 (Transportation)
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1 IN THE HOUSE

BY THE TRANSPORTATION
COMMITTEE

2

HOUSE BILL NO. 196

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

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CSHB

196

SENATE COMMITTEE REPORT

FURTHER:

5/14/87

DATE TURNED INTO OFFICE 5/15/87

Mr. President:

FINANCE Committee considered CSHB 196(Fin)

enplanements, enforcement of compliance with financial responsibility and certificate of compliance requirements for air carriers, penalties, issuance and display of certificates of compliance, and the definition of aircraft; efd.
and recommended:

[] replace with CS FOR _____) [] same title
[] or adopt _____ CS FOR _____) [] new title

[] attached amendment(s) and

[] do pass

[] do not pass

[] no recommendation

[] individual recommendations

[] further referral to _____

[] letter of intent adopted _____

Committee [] attached or [] adopted fiscal note(s)
[] new [] updated or [] previous
[] zero [] fiscal impact

MEMBERS SIGNING DO PASS

W. H. ...
[Signature]

OTHER RECOMMENDATIONS

[Signature] (Note)
[Signature]
[Signature] (Note)
[Signature]

83 Do Pass
Chairman signature and recommendation

[] Committee Backup Attached

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: CSHB 196(Fin)
Publish Date: HOUSE 5/1/87

Revision Date: _____
Title: Act relating to air carriers

Agency Affected: Comm. & Econ. Dev.
BRU: Consumer Protection

Sponsor: House Transportation
Requestor: _____

Components: Measurement Standards

EXPENDITURES/REVENUES: (Thousands of Dollars)

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TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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REVENUE	-0-	[19.0]	[8.8]	[8.8]	[8.8]	[8.8]
---------	-----	--------	-------	-------	-------	-------

FUNDING: (Thousands of Dollars)

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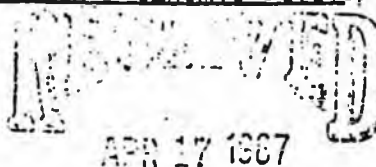
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Prepared by: Joe Swanson, Director Phone: 345-7750
Division: Measurement Standards Date: April 14, 1987

Approved by Commissioner: J. Anthony North, Commissioner Date: April 14, 1987
Agency: Department of Commerce and Economic Development

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary
- 5782W41487a



5/15/87
Hensley
moved
Adopted

SENATE FINANCE COMMITTEE
CS/HB 196 (TRANSPORTATION)
Finance

*Senate
Finance*

Amendment:

lines 15-17 (g) The department may acquire data on passenger enplanements from air carriers; however, the department may not obtain passenger manifests from air carriers except for matters concerning public safety.

Discussion

The Department of Transportation is concerned that the current language in Section 1(g) would prevent them from obtaining passenger manifests in cases involving matters of public safety. The addition of the underlined language would permit DOT to obtain passenger manifests for this purpose. The manifests are unnecessary in gathering data on enplanement statistics, which simply involves the number of passengers arriving and departing from public airports.

Original sponsor: Transportation Committee

1 IN THE HOUSE BY THE FINANCE COMMITTEE
2 CS FOR HOUSE BILL NO. 196 (Finance)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - FIRST SESSION
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2 the department. The department may issue a certificate of compliance
3 for one aircraft or a fleet of two or more aircraft. The department
4 shall issue or renew a certificate of compliance upon application and
5 presentation of

6 (1) proof of financial responsibility required under
7 AS 42.30.200;

8 (2) proof of compliance with Federal Aviation Adminis-
9 tration requirements, and, where applicable, federal certification for
10 scheduled airline service.

11 * Sec. 5. AS 42.30.225(b) is amended to read:

12 (b) The annual fee for a certificate of compliance is \$50 per
13 calendar year for one aircraft and \$100 per calendar year for a fleet
14 of two or more aircraft [. THE CERTIFICATE IS VALID FOR A PERIOD OF
15 12 MONTHS FOLLOWING THE DATE OF CERTIFICATION]. The certificate shall
16 be [DISPLAYED ON THE AIRCRAFT SO THAT IT IS] visible to boarding
17 passengers.

18 * Sec. 6. AS 42.30.225(b) is repealed and reenacted to read:

19 (b) The annual fee for a certificate of compliance for one
20 aircraft and for a fleet of two or more aircraft shall be set by the
21 department by regulation. The certificate is valid for a calendar
22 year. The certificate shall be visible to boarding passengers.

23 * Sec. 7. AS 42.30.225(e) is amended to read:

24 (e) The department may authorize department personnel to enforce
25 this section and may adopt procedural regulations necessary to imple-
26 ment this section. Upon finding a violation the department may issue
27 a stop use order.

28 * Sec. 8. AS 42.30.225 is amended by adding a new subsection to read:

29 (g) A person who violates this section is guilty of a class B

Original sponsor: Transportation Committee

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2

CS FOR HOUSE BILL NO. 196 (Finance)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to enplanements, enforcement of
7 compliance with financial responsibility and certi-
8 ficate of compliance requirements for air carriers,
9 penalties, issuance and display of certificates of
10 compliance, and the definition of aircraft; and
11 providing for an effective date."

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

13 * Section 1. AS 02.15.050 is amended by adding a new subsection to
14 read:

15 (g) The department may acquire data on passenger enplanements
16 from air carriers; however, the department may not obtain passenger
17 manifests.

18 * Sec. 2. AS 42.30.200(c) is amended to read:

19 (c) The department may authorize department personnel to enforce
20 this section and may adopt procedural regulations necessary to imple-
21 ment this section. Upon finding a violation the department may issue
22 a stop use order.

23 * Sec. 3. AS 42.30.200(e) is amended to read:

24 (e) A person who violates [(a) OF] this section is guilty of a
25 class A [B] misdemeanor and is punishable by a fine of not less than
26 \$1,000 [\$500] or more than \$5,000 for each day of violation but not to
27 exceed \$10,000 for each violation [\$1,000].

28 * Sec. 4. AS 42.30.225(a) is amended to read:

29 (a) A person may not use an aircraft in air commerce before

1 misdemeanor and is punishable by a fine of not less than \$500 or more
2 than \$1,000.

3 * Sec. 9. AS 42.30.380(3) is amended to read:

4 (3) "aircraft" means a propeller, rotor, or jet-powered
5 device used or designed for flight in the air;

6 * Sec. 10. Notwithstanding AS 42.30.225(b), as amended by sec. 5 of
7 this Act, a certificate of compliance issued by the Department of Commerce
8 and Economic Development and in effect on the day before the effective date
9 of sec. 5 of this Act is valid for the period issued.

10 * Sec. 11. AS 42.30.225(c) and 42.30.225(d) are repealed.

11 * Sec. 12. Section 6 of this Act takes effect January 1, 1989.

SECTIONAL ANALYSIS - CS HOUSE BILL 196 (TRANSPORTATION)

Section 1 This specifically authorizes DOT/PF to collect the data necessary for the State to receive federal aid to airports. The provision was suggested last year by Commissioner Knapp, and is still deemed desirable by DOT/PF this year. Passenger enplanement statistics mean the number of passengers arriving or departing at a given airport, but does not include a list of passenger names.

Section 2: This section clarifies existing law by specifically authorizing the department (Commerce) to prevent a commercial carrier from flying passengers for hire on a plane which has not been insured for liability at the State minimum level.

Section 3: This section increases the existing penalties for flying passengers for hire without first obtaining the minimum required level of liability insurance.

Section 4: This allows the department (Commerce) to issue a single certificate of insurance for a fleet of aircraft instead of for each individual aircraft. Many air carriers obtain a fleet insurance policy rather than individual plane policies. This would simplify the existing administrative procedure.

Section 5: Maintains the existing fee for a single certificate of insurance and establishes the fee for a fleet certificate. It also allows carriers to display certificates of insurance at the counter, gate, or other location rather than on the aircraft itself.

Section 6: Allows Department of Commerce to set fees by regulation beginning January 1, 1989 (See Section 12 for effective date). The fees set in Section 5 would be effective until changed in 1989.

Section 7: This specifically authorizes the department (Commerce) to issue a stop use order for plane carrying passengers for hire when the carrier has not obtained a certificate of insurance from the State.

Section 8: This section establishes a penalty for the violation described in Section 7. It is a lesser penalty than for violations under Section 3, as flying without a State certificate of insurance is not as serious a violation as flying without liability insurance at the established minimum level.

Section 9: Adds helicopters to the aircraft covered under this bill. This was an oversight in 1985 when this statute was passed.

Section 10: Assures Certificates of Compliance already in effect for a one year period, remain in effect until they expire.

Section 11: Repeals existing 42.30.225(c) which is superseded by Sections 2 and 7 in this bill.

Repeals existing 42.30.225(d) which was a transitional provision of the 1985 statute, and is no longer meaningful.

Section 12: Effective date for Section 6 (only).

sd.9.51

SENATE COMMITTEE REPORT

FURTHER: *Rule*

5/8/87

DATE TURNED INTO OFFICE 5/12/87

Mr. President:

JUDICIARY

Committee considered CSHB 196(Fin)

enplantments, enforcement of compliance with financial responsibility and certificate of compliance requirements for air carriers, penalties, issuance and display of certificates of compliance, and the definition of aircraft; efd.

and recommended:

[] replace with CS FOR _____) [] same title
[] or adopt _____ CS FOR _____) [] new title

[] attached amendment(s) and

[] do pass

[] do not pass

[] no recommendation

individual recommendations

[] further referral to _____

[] letter of intent adopted _____

Committee [] attached or adopted fiscal note(s)

[] new [] updated or previous

zero fiscal impact

House Measurement Standards, fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Joe Greenham

Reik Halord no REC
Walt Eddy no rec
Willis Surplust: no rec

Keith No Rec
Chairman signature and recommendation

[] Committee Backup Attached