

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 80 / 2

3361 HJUD HB 494 - HB 496 237

1 certified copy of the judgment under (c)(2) of this section estab-  
2 lishing the amount owed to a claimant from whom it has a binding  
3 stop-lending notice, a lender shall send to the claimant a verified  
4 statement showing, by date and amount, all construction financing  
5 provided by the lender for the project. Except as provided in (e) of  
6 this section, the lender shall include with the statement payment in  
7 the amount of the lender's liability to the claimant under (c) of this  
8 section.

9 (e) If there are two or more claimants to whom a lender is or  
10 may be liable under (c) of this section and the lender is uncertain as  
11 to the amount of its liability or possible liability to each, the  
12 lender may bring an action to require the claimants to interplead  
13 their claims.

14 (f) A draw against construction financing may be made only after  
15 certification of job progress is delivered to the lender by the owner.  
16 The form of the certification may be prescribed by the lender and  
17 shall include

18 (1) a statement of the progress of the project, including  
19 the percentage of completion of the project;

20 (2) the name, address, and telephone number of each prime  
21 contractor who has furnished labor, material, service, or equipment  
22 for the project;

23 (3) the amount owed by the owner to each listed prime  
24 contractor; and

25 (4) the portion of the draw that the owner will pay to each  
26 listed prime contractor.

27 (g) The owner shall use each draw as indicated in the certifi-  
28 cates given by them to the lender under (f) of this section. The  
29 lender may not be required to verify the information in a certificate

1 and is not liable for an error in a certificate.

2 (h) An owner who intentionally fails to apply construction  
3 financing proceeds as indicated by the certificate required under (f)  
4 of this section is guilty of a class C felony. If the owner is not a  
5 natural person, upon conviction the owner may be fined in an amount  
6 not to exceed \$50,000.

7 (i) Within 10 days after being requested, a lender shall provide  
8 a person who has given it a stop-lending notice with a copy of

9 (1) each certificate received by the lender under (f) of  
10 this section; and

11 (2) a verified certificate stating the amount of construc-  
12 tion financing proceeds committed by the lender for the project that  
13 have not been disbursed by the lender.

14 (j) The lender may not provide construction financing proceeds  
15 for payment of indebtedness of the owner that is not incurred for the  
16 project.

17 \* Sec. 2. AS 34.35.064(a) is amended to read:

18 (a) Before furnishing labor, material, service, or equipment for  
19 a project, a person [AFTER ENTERING INTO A CONTRACT, A CLAIMANT] may  
20 give a notice of right to lien to the owner or owner's agent [AND THE  
21 LENDER]. If the notice is given in accordance with this section, the  
22 owner has the burden of proof to show that the owner did not know of  
23 or consent to the furnishing of the labor, material, service, or  
24 equipment by the claimant in an action to foreclose the claimant's  
25 lien on the property under AS 34.35.050 - 34.35.120. Otherwise the  
26 claimant has the burden of proof to show that the owner knew of and  
27 consented to the furnishing of the labor, material, service, or equip-  
28 ment. The notice of right to lien shall be in writing, state that it  
29 is a notice of a right to assert a lien against real property [A

1 BUILDING OR OTHER IMPROVEMENT] for labor, materials, services, or  
2 equipment furnished in connection with a project [CONSTRUCTION, ALTER-  
3 ATION, OR REPAIR OF THE BUILDING OR OTHER IMPROVEMENT], and contain

4 (1) a legal description sufficient for identification of  
5 the real property [UPON WHICH THE BUILDING OR OTHER IMPROVEMENT IS  
6 LOCATED];

7 (2) the name of the owner;

8 (3) the name and address of the claimant;

9 (4) the name and address of the person with whom the claim-  
10 ant contracted;

11 (5) a general description of the labor, materials, ser-  
12 vices, or equipment provided or to be provided;

13 (6) a statement that the claimant may be entitled to record  
14 a claim of lien; and

15 (7) the following statement in type no smaller than that  
16 used in providing the information required by (1) - (6) of this  
17 subsection: WARNING: Unless provision is [HAS BEEN] made for payment  
18 of sums that may be due to the undersigned, your above property may be  
19 subject to foreclosure to satisfy those sums even though you may pay  
20 [THIS CLAIM, YOU MAY BE LIABLE FOR PAYMENT DIRECTLY TO THIS CLAIMANT,  
21 NOTWITHSTANDING THE FACT THAT PAYMENT HAS BEEN MADE TO] a prime con-  
22 tractor or other person for the labor, material, service, or equipment  
23 furnished by the undersigned [PARTY].

24 \* Sec. 3. AS 34.35.067 is amended to read:

25 Sec. 34.35.067. RECORDING NOTICE OF RIGHT TO LIEN. A notice of  
26 right to lien may be recorded by a claimant at any time after the  
27 claimant enters [ENTERING] into a contract for or first furnishes  
28 labor, material, service, or equipment [FURNISHED] in connection with  
29 a project [THE CONSTRUCTION, ALTERATION OR REPAIR OF A BUILDING OR

1 OTHER IMPROVEMENT)]. The notice shall be recorded in the same manner  
2 as specified for the recording of a claim of lien under AS 34.35.070.

3 \* Sec. 4. AS 34.35.070(a) is amended to read:

4 (a) A [SUBJECT TO THE PROVISIONS OF AS 34.35.069(a), A] claimant  
5 may record a claim of lien after entering into a contract for a proj-  
6 ect [THE CONSTRUCTION, ALTERATION, OR REPAIR OF A BUILDING OR IMPROVE-  
7 MENT]. A claim of lien may not be recorded later than the time spec-  
8 ified under AS 34.35.068.

9 \* Sec. 5. AS 34.35.071(a) is amended to read:

10 (a) The owner of real property that may be subject to a lien  
11 under AS 34.35.050 - 34.35.120 may announce the date of completion of  
12 the project [A BUILDING OR OTHER IMPROVEMENT ON THE PROPERTY] by

13 (1) recording a notice of completion after completion of  
14 the project [CONSTRUCTION, ALTERATION OR REPAIR OF THE BUILDING OR  
15 OTHER IMPROVEMENT] in the office of the recorder of the district in  
16 which the real property [BUILDING OR OTHER IMPROVEMENT] is situated;  
17 and

18 (2) giving notice at least five days before the recording  
19 of the notice of completion to all claimants who have given a notice  
20 of right to lien or a stop-lending [STOP-PAYMENT] notice to the owner  
21 and the lender prior to 10 days before recording a notice of comple-  
22 tion; the notice must include a copy of the notice of completion and a  
23 statement advising claimants that a notice of completion will be  
24 recorded not earlier than five days after the date of the notice.

25 \* Sec. 6. AS 34.35 is amended by adding a new section to read:

26 Sec. 34.35.074. CIVIL SUITS. (a) A person injured by a viola-  
27 tion of AS 34.35.050 - 34.35.120 may bring a civil action

28 (1) for actual damages that are proximately caused by the  
29 violation plus costs, including reasonable actual attorney's fees;

1 (2) to enjoin the violation, and if the person prevails,  
2 the person shall be awarded costs, including reasonable actual attor-  
3 ney's fees.

4 (b) A claimant who files a stop-payment notice or has a claim of  
5 lien recorded under AS 34.35.075 and who fails to promptly remove the  
6 stop-payment notice or claim of lien from the record upon receiving  
7 payment in full on the claim or discovering that the stop-payment  
8 notice or claim of lien is in error is liable for actual damages  
9 caused by the improperly filed stop-payment notice or improperly  
10 recorded claim of lien plus costs, including reasonable actual attor-  
11 ney's fees.

12 \* Sec. 7. AS 34.35.080(a) is amended to read:

13 (a) A lien provided for in AS 34.35.050 - 34.35.120 does not  
14 bind real property [A BUILDING, STRUCTURE, OR OTHER IMPROVEMENT] for  
15 more than six months after the claim of lien is recorded [FILED],  
16 unless an action is commenced in [SUIT IS BROUGHT BEFORE] the proper  
17 court to enforce the lien within

18 (1) [WITHIN] that time; [,] or

19 (2) [WITHIN] six months after recording of an extension  
20 notice in the same recording office within the original six-month  
21 period showing the recording date and the book and page or instrument  
22 number of the claim of lien, and the balance owing.

23 \* Sec. 8. AS 34.35.080 is amended by adding a new subsection to read:

24 (c) A lien whose duration is extended by commencement of an  
25 action under (a) of this section is void as against a person who,  
26 after the commencement of the action and without knowledge or actual  
27 notice of its pendency, acquires an interest in the subject property  
28 in good faith for valuable consideration, unless a notice of the  
29 pendency of the action has been duly filed for record before the time

1 the person's conveyance is duly filed for record. Notice of the  
2 pendency of the action shall conform to the requirements of AS 09.45.-  
3 790.

4 \* Sec. 9. AS 34.35.112 is amended to read:

5 Sec. 34.35.112. PAYMENT OF CLAIMANT'S LIENS. (a) If more than  
6 one lien created under AS 34.35.050 - 34.35.120 is claimed against  
7 property, the court in its judgment shall declare the rank of each  
8 lien or class of liens in the following order:

9 (1) all persons other than prime contractors or subcontrac-  
10 tors with lien rights under AS 34.35.050(1);

11 (2) the trustees of employment benefit trusts for persons  
12 described in (1) of this subsection;

13 (3) all materialmen and subcontractors;

14 (4) [SUBCONTRACTORS, INCLUDING] prime contractors other  
15 than the general contractor [AND PERSONS DESCRIBED IN AS 34.35.050-  
16 (5)];

17 (5) the general contractor.

18 (b) For purposes of AS 34.35.050 - 34.35.120, if the proceeds of  
19 the foreclosure sale of the property are insufficient to pay the lien  
20 claims of all persons who have recorded claims [A CLAIM] of lien, the

21 (1) [THE] liens of all individuals with lien rights under  
22 AS 34.35.050(1) shall first be paid in full, or pro rata if the pro-  
23 ceeds are insufficient to pay them in full;

24 (2) [THE] liens of trustees of employment benefit trusts  
25 for persons described in (1) of this subsection shall be paid in full  
26 or pro rata if the proceeds are insufficient to pay them in full;

27 (3) [THE] liens of materialmen and subcontractors shall be  
28 paid in full or pro rata if the proceeds are insufficient to pay them  
29 in full;

1           (4) liens of persons described in AS 34.35.050(5) and [OUT  
2 OF THE REMAINDER THE SUBCONTRACTORS, INCLUDING] prime contractors,  
3 other than the general contractor, shall be paid in full [,] or pro  
4 rata if the remainder is insufficient to pay them in full and

5           (5) lien of the general contractor [THE BALANCE] shall be  
6 paid out of [TO THE GENERAL CONTRACTOR; A GENERAL CONTRACTOR IS ENTI-  
7 TLED TO EXECUTION FOR] the balance [DUE AFTER DISTRIBUTION].

8 \* Sec. 10. AS 34.35.112 is amended by adding a new subsection to read:

9           (c) For purposes of AS 34.35.050 - 34.35.120, if the proceeds of  
10 the foreclosure sale of the property are sufficient to pay the lien  
11 claims of all persons who have recorded claims of lien, the balance  
12 shall be paid to the person who owned the property before the foreclo-  
13 sure sale.

14 \* Sec. 11. AS 34.35.114(c) is repealed and reenacted to read:

15           (c) A person who receives a stop-lending notice or notice of  
16 right to lien identifying a project for which the person is not the  
17 lender shall notify the claimant in writing within 10 days after  
18 receipt of the notice that the person is not the lender.

19 \* Sec. 12. AS 34.35.114(d) is repealed and reenacted to read:

20           (d) A claimant shall, within 10 days after receipt of a request,  
21 provide an owner or lender to whom the claimant has given a stop-lend-  
22 ing notice or notice of right to lien a written statement of the  
23 amount due to the claimant and unpaid.

24 \* Sec. 13. AS 34.35.117(a) is amended to read:

25           (a) Except as provided under (b) of this section, a written  
26 waiver of lien or stop-lending [STOP-PAYMENT] notice of rights created  
27 under AS 34.35.050 - 34.35.120 signed by a claimant requires no con-  
28 sideration and is valid and binding. A waiver permitted under this  
29 section may not relate to labor, materials, services, or equipment

1 furnished after the date the waiver is signed by the claimant.

2 \* Sec. 14. AS 34.35.120(4) is amended to read:

3 (4) "construction financing" means [THAT PORTION OF] money  
4 loaned or other credit extended to an owner secured by an encumbrance  
5 on real property to finance a project on that [ORIGINAL CONSTRUCTION  
6 OF A BUILDING OR OTHER IMPROVEMENT ON, OR DEVELOPMENT OF,] real prop-  
7 erty [, BUT DOES NOT INCLUDE

8 (A) FUNDS TO ACQUIRE REAL PROPERTY;

9 (B) FUNDS TO PAY PRINCIPAL AMORTIZATION OF ENCUM-  
10 BRANCES WITH PRIORITY OVER THE ENCUMBRANCE SECURING THE CONSTRUC-  
11 TION FINANCING;

12 (C) FUNDS TO PAY LOAN, COMMITMENT, TITLE, LEGAL,  
13 CLOSING, RECORDING OR APPRAISAL FEES ON THE CONSTRUCTION LOAN];

14 \* Sec. 15. AS 34.35.120(9) is amended to read:

15 (9) "give notice" means to mail a notice required under  
16 AS 34.35.050 - 34.35.120 by first-class mail and by using a form of  
17 mail requiring a signed receipt, or to deliver the notice and obtain a  
18 receipt signed by the person to whom it is directed or an agent of  
19 that person; a notice is effective when given or delivered to

20 (A) [TO] a lender at the address designated in the  
21 encumbrance securing that lender;

22 (B) [TO] an owner at the last known address of the  
23 owner;

24 (C) [TO] a prime contractor at the last known address  
25 of the prime contractor;

26 (D) [TO] a potential lien claimant at the address  
27 specified in a stop-lending [STOP-PAYMENT] notice or notice of  
28 right to lien or claim of lien;

29 \* Sec. 16. AS 34.35.120(13) is amended to read:

1 (13) "owner" means a person who owns real property or a  
2 possessory interest in real property [THE BUILDING OR OTHER IMPROVE-  
3 MENT] and who enters into a contract, express or implied, for a proj-  
4 ect on that property [THE CONSTRUCTION, ALTERATION OR REPAIR OF A  
5 BUILDING OR IMPROVEMENT];

6 \* Sec. 17. AS 34.35.120 is amended by adding a new paragraph to read:

7 (17) "project" means construction, alteration, or repair of  
8 an improvement on real property or work done to enhance the real  
9 property itself.

10 \* Sec. 18. AS 34.35.069, 34.35.070(f), 34.35.080(b), 34.35.114(e), and  
11 34.35.118 are repealed.

# Alaska State Legislature

POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4931



CHAIRMAN  
Special Committee on  
Telecommunications

DISTRICT 10  
BOX 111038  
ANCHORAGE, ALASKA 99511  
(907) 349 2192

MEMBER  
Labor and Commerce  
State Affairs  
Finance—Subcommittee Administration

Representative H. A. "Red" Boucher

March 21, 1986

Roger I. Woods, President  
Woods and Rhode, Inc.  
Alaska Truss and Millwork  
6325 Petersburg Street  
Anchorage, Alaska 99507

Dear Roger:

I just received your letter of March 13 regarding HB 494. It is unfortunate that you and others were not given the time to testify at the recent teleconferenced hearing of the bill. This seems to be happening more and more to various bills, and I am not certain what we can do to rectify it.

The shorter sessions of 120 days have made for many fewer days for hearings to be held by Committees, but that is only part of the problem; dwindling revenues and threatened budget cuts have greatly increased the amount of correspondence and requests for additional hearings on issues as more and more programs and positions become threatened, so the volume is increasing. Thus, we have more and more work to do in less and less time with the same amount of staff.

As you may have heard, this bill passed out of House Labor and Commerce Committee recently, and is currently in House Judiciary Committee awaiting scheduling. You may wish to contact Rep. Mike Miller, chair of that Committee, if you have additional concerns regarding the bill. I am taking the liberty of forwarding a copy of your letter to both the Chairman and to the sponsor of the bill, Rep. Cotton, so that it can be entered into the record. I think your comments give some additional valuable insight.

I will support this bill when it gets to the House floor.

Sincerely,

A handwritten signature in cursive script, appearing to read "Red Boucher".

Representative H.A. "Red" Boucher

RB/rp

cc: Rep. Sam Cotten  
Rep. Mike Miller



# WOODS AND ROHDE INC.

ALASKA TRUSS AND MILLWORK

6325 PETERSBURG STREET □ ANCHORAGE, ALASKA 99507

907 563-3200

March 13, 1986

House Labor and Commerce  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 98111

Re: House Bill - 494

Dear Rep. Red Boucher,

During the first teleconference, at which no one in Anchorage was given opportunity to speak, 24 interested people were in the conference room to speak or observe. Today, eighteen persons were there, nine of whom asked to testify. Only one did, because of time constraints on the part of the committee in Juneau. We all need to speak, because the fact is the existing law does not work.

It was interesting to hear Mr. Wes Clubb testify in your first committee hearing that the existing law is workable if only the subcontractors and suppliers would do the paper work.

In our experience in just the last two years, we have had at least ten liens, properly perfected, result in total loss of moneys due us, because of bank foreclosures which effectively eliminated our position. In one case our own bank advised us that there would be no money for us unless we could take them out of first position. Dollar values of first and prior positions in a foreclosure are almost invariably ten to 15 times a supplier's lien value. It is obvious that we small businesses have neither the resources nor the desire to assume ownership of properties. If we did so, in order to recapture our investment, we would be forced to compete in the market with the contractors we sell to. We have had banks verify to us, in writing, their commitment to finance a project, then later cut off financing in the middle of a commitment, and force both contractor and supplier to scramble to stay alive. We have seen this so often that most of us feel that the honor, integrity and honesty of too many bankers fluctuate with the condition of the economy.

As Swede Holmstrom testified in your hearing, when the existing law was formulated in 1978 the bankers promised to protect the rights of the subcontractors and suppliers. Today, the existing law does not work, partly because these verbal and implied promises were not honored by the bankers.

It is also interesting to hear the lawyers testify that the existing law has many remedies. All we have to do is pay a lot of money to attorneys and litigate our claims, in the hope that perhaps we will prevail.

My lawyer told me shortly after the emergence of the existing statute that it was a bad piece of legislation, poorly worded, and ambiguous. He said that it would take several years and many court cases before the scope and content of the law was determined.

It is obvious that the bankers and the lawyers want to retain the status quo; they have a good thing going for them.

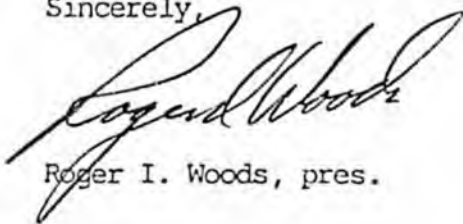
But the fact is, the law does not work. All is not sweetness - and - light in the land of construction lending.

In the past month, three individual contractors have complained long, loud, and bitterly in my office about bankers who played fast and loose with their assets, then reniged on commitments. One cited a sale flyer he published and distributed to attract buyers to a condo project he had. His values were \$90,000.00 to \$105,000.00. Within a very few days a major Anchorage bank copied his tactic, distributing flyers on a special weekend sale of foreclosed condos in the same neighborhood, with similar values, BUT the bank was asking only \$59,500.00, which would recover THEIR costs. The point is, the bank had foreclosed, all other claimants lost their interest, then the bank dumped the properties on the market in an unfair competitive practice.

We feel that the law must protect producers and suppliers as well as financiers. We need parity, or equality of rights, which is not present in the existing law. If the bankers have full control of all funds, including ours, we need to be able to force their accountability to us. We need to legally be in a position to hold their feet to the fire. The law must protect our interests because the bankers do not.

I will be most happy to discuss remedial legislation with you at your convenience.

Sincerely,

A handwritten signature in cursive script, appearing to read "Roger I. Woods".

Roger I. Woods, pres.



PROCTOR  
SALES INC.

5401 Cordova Street  
Unit #303  
Anchorage, AK 99502  
TLX 090-26510  
(907) 562-2608

113494  
1086

FEBRUARY 18, 1986

M. MIKE MILLER - JUNEAU  
ALASKA STATE LEGISLATURE  
POUCH V (MS3100)  
JUNEAU, ALASKA 99811

ATTN: M. MIKE MILLER

Dear Mr. Miller,

PSI is a small Alaskan business which represents a group of heating, ventilating, and air conditioning manufacturers, primarily to provide equipment for use on commercial projects. As we sell to mechanical contractors who are sub-contractors we often find ourselves classified as second tier subs with no lien rights at all.

Added to this problem is the absurd acknowledgement of right to lien which is rarely if ever signed or acknowledged.

In the past few years we have lost thousands of dollars and spent thousands of dollars legally pursuing money for equipment provided on construction jobs. Most of the problems are tied to disbursement and our inability to have legal rights to be paid for material we provide.

I recently went through a situation so blantant?y, morally wrong that I am compelled to write this letter:

- 1) PSI provided \$20,000 worth of equipment (for a state funded elementary school) to a mechanical contractor.
- 2) We obtained joint check agreements with the general contractor to guarantee payment when funds were disbursed.
- 3) The material was shipped to the contractor in Anchorage.

PAGE 2

FEBRUARY 18, 1986

- 4) The mechanical contractor and his assets were taken over by the bank (Alaska Bank of the North) forcing the mechanical into Chapter 11.
- 5) The bank seized equipment which the contractor had not paid for and offered to release it to PSI for a \$10,000 ransom.

PSI had already paid for the equipment and as it was not delivered to the job site the general had no obligation to pay for it. We were over a barrel as if we could not secure the release of the equipment immediately the general contractor would have to order it from another source.

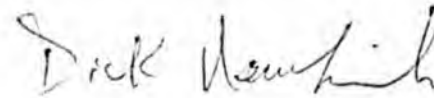
According to the current lien law the bank was in first position and we had no legal right to \$20,000 worth of equipment which we had already paid our manufacturer for.

We ended up paying the bank \$5,000 for equipment we owned in order to avoid losing the entire \$20,000. This, to me, is an outrage which I would like to see others avoid.

I strongly urge your consideration to the current lien legislation in order to assure some chance of fair play for the small Alaskan businessman.

Sincerely yours,

PROCTOR SALES INC



RICHARD M. NEWKIRK, Jr.

RMN:aeg

REPRESENTATIVE  
SAM COTTEN  
DISTRICT 15



P.O. BOX 296, EAGLE RIVER, AK 99577  
POUCH V, JUNEAU, AK 99811

ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES

MEMO

TO: House Judiciary committee members  
FROM: Rep. Sam Cotten  
DATE: March 26, 1986  
RE: CSHB 494

---

The purpose of HB 494 is to clarify and strengthen the existing lien law. It was introduced at the request of suppliers and subcontractors because of increasing problems they are having with being paid for services or material they provide.

The Labor and Commerce committee substitute represents a compromise between the suppliers/subcontractors, lending institutions and the builders.

LABOR & COMMERCE COMMITTEE SUBSTITUTE  
HB 494

MAJOR POINTS

1. Clarifies the existing procedure available to suppliers and subcontractors. Changes the "stop-payment" notice to a "stop-lending" notice. (page 1, line 10)
2. Eliminates the current requirement that a claimant wait 20-30 days after an account becomes delinquent before he can give a stop-lending notice to the lender.
3. Allows a claimant to bring suit within 90 days of filing a stop-lending notice rather than 30. Removes the requirement the claimant put up a bond when taking a case to court. (page 1, line 29)
4. Before disbursing funds a lender must have a verified certificate from the owner and each prime contractor involved with the project providing information on the project. (page 2, line 29)
5. Provides for criminal penalties for owners and prime contractors who "willfully" and "intentionally" fail to apply financing draws to their stated purpose. (page 4, line 20)
6. Filing a notice of right to lien is optional. (pg 5, ln 8)  

A notice may be given to the owner any time before furnishing labor, material, service or equipment for improvement of the property. If given properly the burden of proof is on the owner to show that he/she did not know of or consent to improvements on his/her property.

A notice may be recorded anytime after the claimant enters into a contract or first furnishes labor, etc.
7. Civil actions may be brought for actual damages by a person who is injured in its business or property by a violation of any provision of the lien act. If the judgement is in favor of the person they shall be awarded triple the amount of damages, reasonable attorney fees plus costs. (page 7, line 15)
8. Subcontractors are given equal status with suppliers in sharing foreclosure sale proceeds. (page 8, line 23)
9. Clarifies definitions. (page 10)
10. Repeals the acknowledgement of right to lien provision. (page 11, line 29)

PROPOSED CHANGES TO CS HB 494

Page 3 and 4, lines 27 -15 (delete)

Removes the requirement that prime contractors provide a verified certificate to lenders prior to the lender disbursing construction funds.

Page 3, line 16

delete "verified certificate" and insert "sworn signed statement" Makes requirement clearer.

Page 4, line 20

delete "wilfully and" Wilfully is not a defined term.

Page 5, line 9

Change "may" to "shall"

Will make the notice of right to lien mandatory.

Page 7, line 19

Delete "and if the person prevails and the defendant's conduct is found to be wilful and intentional, the person shall be awarded three times the amount of actual damages"

This provided for treble damages in the case of civil action brought under this section. Deleting this language will allow actual damages only.

The changes proposed to the CS will clean up the bill even further. The requirement that prime contractors provide certificates similar to owners will be deleted. This will save builders from having to do excess paperwork.

Making notices of right to lien mandatory will help suppliers and subcontractors. Presently there is a sort of stigma attached to filing lien notices, suppliers and subcontractors fear it will affect their reputation. By making the notice mandatory the stigma is removed and suppliers/subcontractors are covered in the event of non-payment.

Removing treble damages is in response to concerns raised by Labor & Commerce committee members.

PROPOSED CS FOR HB 494  
SECTIONAL ANALYSIS

SECTION 1

page 1, ln 10

(a) Revises 34.35.062 to more clearly and accurately state the present "stop-payment" rule. "Stop-payment" is changed to "stop-lending."

Eliminates the current requirement that a claimant wait 20-30 days after an account becomes delinquent before giving a stop payment notice to the lender.

page 1, ln 29

(b) Changes to 90 days (from 30) the time within which a claimant may bring suit after filing a stop-payment notice. Eliminates the present requirement that the claimant must provide a bond.

page 2, ln 10

(c) Addresses the lender's liabilities when they disburse funds that are the subject of a binding stop-lending notice.

page 2, ln 29

(d) Requires a lender to send a verified statement to the claimant showing all construction financing provided to the owner or owner's agent within ten days of receiving a certified copy of a judgment establishing the amount owed a claimant.

page 3, ln 9

(e) Allows a lender to bring an action requiring claimants to interplead their claims when there are two or more claimants and the lender is uncertain of the amount of its liability.

page 3, ln 14

(f) A lender may not provide a draw to the owner or an agent of the owner until the owner and each prime contractor delivers a verified certificate to the lender detailing specified information about the project the draw is to be applied to.

page 4, ln 16

(g) Requires draw to be applied pursuant to the required certificate. The lender is not required to verify the information and is not liable for any error in the certificate.

page 4, ln 20

(h) Criminal penalties are provided for owners and prime contractors who willfully and intentionally fail to apply construction financing draws in accordance with the required certificate.

page 4, ln 26

(i) When requested a lender is required to provide a person who has given a notice of right to lien a copy of certificates submitted under subsection (f) and a verified certificate stating the undisbursed funds available for the project.

page 5, ln 4

(j) A lender may not disburse funds to pay for any debts that were not incurred to finance the cost of the project.

## Section 2

page 5, ln 8

(a) Notices of right to lien given to the owner shift the burden to the owner to prove that he was not aware of and did not consent to the improvements to his property. The notice may be given before furnishing labor or material.

Revises the required warning in the notice of Right to Lien to more correctly alert the owner of the significance of the notice.

## Section 3

page 6, ln 14

Clarifies recording of notice of right to lien.

## Section 4

page 6, ln 22

Technical change relating to section 3.

## Section 5

page 6, ln 29

Technical change.

## Section 6

page 7, ln 15

(a) Civil actions may be brought for actual damages by a person who is injured in its business or property by a violation of any provision of the lien act. If the judgement is in favor of the person they shall be awarded triple the amount of damages, reasonable attorney fees plus costs.

page 7, ln 26

(b) Penalizes a claimant who does not remove a lien once payment has been made.

## Section 7

page 8, ln 2

Technical change.

## Section 8

page 8, ln 13

Requires a claimant to record notice that he has brought suit to keep the lien alive. Unless it is recorded the claimant could lose his lien to a subsequent good faith purchaser who doesn't know of the claimant's action.

## Section 9

page 8, ln 23

Subcontractors are given equal status with suppliers in sharing foreclosure sale proceeds.

## Section 10

page 9, ln 27

When there are sufficient funds provided by a foreclosure sale to pay off all lien claims the balance will be payed to the person who owned the property.

## Section 11

page 10, ln 4

Clarifies responsibility of a lender wrongly named in a stop-lending notice.

## Section 12

page 10, ln 9

Clarifies claimants responsibility in providing information to an owner or lender who has been served a stop-lending notice.

## Section 13

page 10, ln 15

Technical change.

## Sections 14 - 17

page 10, ln 21

Definitions.

## Section 18

page 11, ln 29

Repeals acknowledgement of right to lien.

Repeals garbled language.

Repeals penalty to owner for failing to provide information.

Repeals claimant liability for filing unjust or premature stop-payment notice.

Repeals claimant liability for filing unjust or premature stop-payment notice.

CSHB 494, Revising Alaska's Lien Law

The following changes were made in the committee substitute:

Page 1, line 29 - line 2

deleted: "(b) After the lender has received a stop-lending notice and has had a reasonable time to act on it the lender may not disburse a draw until the notice expires or is revoked."

inserted: "(b) A stop-lending notice is binding upon a lender from the time the lender has received it and had a reasonable opportunity to act upon it until it expires or is revoked."

-Accepted lenders language.

page 2, line 10

inserted after who: "disburses, advances or otherwise"

-Lenders suggestion.

page 2, line 14

inserted after financing: "disbursed, advanced or otherwise"

-Lenders suggestion

Page 2, line 27: deleted "as due"

-Redundant

Page 3, line 14

deleted: "(f) A lender may not provide a draw to the owner or an agent of the owner until"

inserted: "(f) A draw against construction financing may be made only after certification of job progress is delivered to the lender by the owner. The form of the certification may be prescribed by the lender and shall include:"

-This is existing law except that the legislation lists four items that must be included in the certificate.

-Removed the requirement that prime contractors provide a verified certificate to lenders prior to the lender disbursing construction funds. (pages 3-4, lines 27-15 of original bill).

Page 4, line 20

deleted "wilfully and"

page 4, line 20

deleted: "or prime contractor"

page 4, line 23

deleted: "or prime contractor"

page 4, line 24

deleted: "or prime contractor"

Page 4, line 8

deleted: "notice of right to lien"

inserted: "stop-lending notice"

-The lender will be required to provide specified information to a person who has given it a stop-lending notice instead of to everyone that has filed a notice of right to lien. The change was made because it was apparent that a person would not need the information unless there was a problem with payment.

Page 6, line 15

Changed the warning language to what had been originally proposed by the lenders and subs/suppliers. (The drafter had changed the language).

Section 6, page 6, line 26

Deleted "and if the person prevails and the defendant's conduct is found to be wilful and intentional, the person shall be awarded three times the amount of actual damages"

-Removes the awarding of treble damages.

Page 7, line 4

Changed (b) to incorporate existing language regarding penalties for filing a premature or excessive stop-payment notice. (Technical change has to be made to change "stop-payment" to "stop-lending")

page 7, line 7 -- after payment added "in full"

deleted: "A lien extended by commencement of an action in accordance with (a) of this section does not affect an interest of a person in real property acquired after the commencement of the action without knowledge or actual notice of the action if the person acquired the interest in good faith for valuable consideration. For purposes of this subsection, notice of the pendency of the action conforming to requirements under AS 09.45.790 and recorded before the person acquires the interest in property constitutes actual notice of the action."

inserted: "A lien whose duration is extended by commencement of an action pursuant to (a) of this section is void as against a person who, after the commencement of such action and without knowledge or actual notice of its pendency, acquires an interest in the subject property in good faith and for valuable consideration, unless a notice of the pendency of the action has been duly filed for record prior to the time such person's conveyance is duly filed for record. Notice of the pendency of the action shall conform to the requirements of AS 09.45.790."

-Lenders suggestion.

# CWENS & TURNER

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

1500 WEST 33RD AVENUE, SUITE 200

ANCHORAGE, ALASKA 99503-3639

TELEPHONE  
AREA CODE 907  
276-1963

THOMAS P. OWENS, JR.  
TERRANCE A. TURNER  
DAVID M. FREEMAN  
WILLIAM F. MEDE  
BETTY L. JOHNSON  
TRAEGER MACHETANZ

March 27, 1986

Judiciary Committee  
House of Representatives  
Alaska State Legislature  
P. O. Box V (MS 3100)  
Juneau, AK 99811

Re: CSHB 494

Gentlemen:

We are the attorneys for Alaskans for Lien Law Reform ("Lien Law Committee"), the group of suppliers and subcontractors that prompted the introduction of HB 494 to amend the Alaska Mechanic's and Materialman's Lien Act ("Lien Act").

HB 494 met with considerable opposition from the Alaska Bankers Association and Home Builders Association. So it was amended by the House Labor and Commerce Committee to accommodate those concerns voiced by the Bankers and Home Builders Associations which the Committee found to have merit. The resulting CSHB 494 preserves the remedial purposes intended by HB 494 and materially improves the position of suppliers and subcontractors, who were adversely impacted by the 1978 and 1979 amendments to the Lien Act. CSHB 494 is supported by the Lien Law Committee, and it urges the passage of this bill. <sup>1/</sup>

The Lien Law Committee understands that there are two major criticisms of CSHB 494 that may be posed by the Bankers and Home Builders Associations: (a) the lack of a requirement for mandatory early recording of notices of right to lien; and (b) the requirement in AS 34.35.062(f) that owners and prime contractors submit verified certificates to lenders which (1) give the progress of the construction, (2) state the amounts owed to prime contractors and suppliers and subcontractors who

---

<sup>1/</sup> One technical correction to CSHB 494 is required. The bracketed language "[AND PERSONS DESCRIBED IN AS 34.35.050(5)]" in lines 5 and 6 on p. 9 of the bill should be left in amended AS 34.35.112(a)(4). Otherwise it will render the underscored language "persons described in AS 34.35.050(5)" in line 20 on p. 9 of the bill meaningless.

have a direct contractual relationship with such prime contractors, and (3) identify those suppliers and subcontractors who are not in a direct contractual relationship with such prime contractors.

The Lien Law Committee believes that CSHB 494 correctly addresses these issues for the following reasons.

1. Mandatory Early Recording of Notices of Right to Lien.

Mandatory early recording of notices of right to lien will probably not adversely affect large suppliers or subcontractors, who may routinely do so anyway. Unfortunately, it will adversely affect the many small suppliers and subcontractors that are not being currently paid, who represent the vast majority of those persons furnishing labor, material, equipment and service to construction jobs. The simple fact is that most of these small suppliers and subcontractors lack either the resources or the sophistication to prepare themselves for nonpayment in the early stages of a job by recording a notice of right to lien. Unfortunately, most of these small suppliers and subcontractors do not even begin to consider their lien rights or other legal remedies until their accounts receivable are long overdue.

CSHB 494 preserves the present law, which allows a supplier or subcontractor to record a claim of lien within 90 days after he/she completes his/her work on the benefitted property, regardless of whether he/she has recorded a notice of right to lien. Recording a notice of right to lien remains significant only in that it continues to prevent an owner from cutting off a supplier's or subcontractor's lien rights within 15 days after the owner complies with the notice of completion provisions of the Lien Act.

It is anticipated that the Bankers and Home Builders Associations will argue that mandatory early recording of notices of rights to lien is required due to the abolition of the acknowledgment of right to lien proposed by CSHB 494 (which the Associations do not oppose). That is, the Associations are expected to argue that, absent an acknowledgment of right to lien, protection of owners against the unauthorized furnishing of labor, material, service and equipment to their properties requires the mandatory early recording of notices of right to lien.

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

have a direct contractual relationship with such prime contractors, and (3) identify those suppliers and subcontractors who are not in a direct contractual relationship with such prime contractors.

The Lien Law Committee believes that CSHB 494 correctly addresses these issues for the following reasons.

1. Mandatory Early Recording of Notices of Right to Lien.

Mandatory early recording of notices of right to lien will probably not adversely affect large suppliers or subcontractors, who may routinely do so anyway. Unfortunately, it will adversely affect the many small suppliers and subcontractors that are not being currently paid, who represent the vast majority of those persons furnishing labor, material, equipment and service to construction jobs. The simple fact is that most of these small suppliers and subcontractors lack either the resources or the sophistication to prepare themselves for nonpayment in the early stages of a job by recording a notice of right to lien. Unfortunately, most of these small suppliers and subcontractors do not even begin to consider their lien rights or other legal remedies until their accounts receivable are long overdue.

CSHB 494 preserves the present law, which allows a supplier or subcontractor to record a claim of lien within 90 days after he/she completes his/her work on the benefitted property, regardless of whether he/she has recorded a notice of right to lien. Recording a notice of right to lien remains significant only in that it continues to prevent an owner from cutting off a supplier's or subcontractor's lien rights within 15 days after the owner complies with the notice of completion provisions of the Lien Act.

It is anticipated that the Bankers and Home Builders Associations will argue that mandatory early recording of notices of rights to lien is required due to the abolition of the acknowledgment of right to lien proposed by CSHB 494 (which the Associations do not oppose). That is, the Associations are expected to argue that, absent an acknowledgment of right to lien, protection of owners against the unauthorized furnishing of labor, material, service and equipment to their properties requires the mandatory early recording of notices of right to lien.

The Lien Law Committee believes that this argument is incorrect for the following reasons. First, the unauthorized furnishing of labor, material, service or equipment to properties without the knowledge or consent of the owner is not a significant problem when viewed in light of the fact that most small suppliers and subcontractors simply do not have the resources or wherewithall to comply with a requirement for mandatory early recording of notices of right to lien. Second, the proposed amendment to AS 34.35.064(a) in CSHB 494 more than adequately protects the owner. If a claimant duly gives a notice of right to lien to the owner prior to furnishing labor, material, service or equipment to a job, the owner has the burden of proof in any subsequent suit to foreclose the claimant's lien to show that the owner did not know of or consent to the furnishing of such labor, material, service or equipment. Otherwise, the claimant has the burden of proof to show that the owner knew of and consented to the furnishing of such labor, material, service or equipment in order to foreclose its lien.

Thus, it is unlikely that any innocent owners will be prejudiced by the lack of a requirement for the mandatory early recording of notices of right to lien. You should also not lose focus of the fact that the bankers and home builders would be the prime beneficiaries of a mandatory early recording requirement for notices of right to lien, because it would successfully cut off the lien rights of most small suppliers and subcontractors.

## 2. AS 34.35.062(f) Certificates.

The Lien Law Committee believes that the superior lien position that lenders obtained in the 1978 and 1979 amendments to the Lien Act (which reversed the former superiority of original construction lien claims over lenders' deeds of trust and mortgages) has resulted in a failure by construction lenders to properly monitor the progress of the construction which they are financing. The unfortunate result is that a significant number of construction projects become underfunded due to (a) diversions by owners of construction financing proceeds to other projects or uses, (b) failures by contractors to pay their suppliers and subcontractors, and (c) misrepresented construction progress estimates that result in premature financing draws.

The Lien Law Committee believes that lenders will be motivated to more diligently monitor their construction loans if the Lien Act is amended to require owners and prime contractors to furnish lenders with verified information concerning (a) the progress of construction, (b) the identity of persons furnishing work to the job, and (c) amounts owed to those persons before the

House Judiciary Committee  
March 27, 1986  
Page 4

lender can issue any construction financing draw to the owner. Such information will give the lender more insight into the status of the job as it is being constructed and, hopefully, encourage the lender to more carefully monitor its construction loan. The verified certificates required by AS 34.35.062(F) in CSHB 494 will achieve this goal.

The only argument against such certificates voiced thus far by the Bankers and Home Builders Associations is that the requirement for such certificates will materially increase the "red tape" and cost of doing business for them. Perhaps it will result in some minimal increase in "red tape" and cost. However, this appears to be a small price to pay for inducing lenders to more effectively monitor their construction loans and thereby preserve sufficient funding for suppliers and subcontractors to be paid -- which is simply not occurring today!

A poll of your constituents will likely reveal that nonpayment of small suppliers and subcontractors by prime contractors is one of the most critical problems in the local construction industry today. If lenders are unwilling to give subcontractors' and suppliers' liens equal priority with their construction deeds of trust and mortgages -- which they clearly are -- they surely should be willing to submit to a requirement that additional verified information be provided to them so that they can effectively monitor their loans and assure that suppliers and subcontractors are in fact paid.

We would be happy to answer any questions concerning CSHB 494 or provide any further information which you may require. We would also request the opportunity to respond to any further objections to CSHB 494 which the Bankers Association, the Home Builders Association or any other opponent of CSHB 494 may address to you.

Very truly yours,

OWENS & TURNER, P.C.  
Attorneys for Alaskans  
for Lien Law Reform



Terrance A. Turner

TAT/sl

cc: Alaskans for Lien Law Reform  
Rick Urion

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE M. MIKE MILLER  
FROM: MIKE SCHUESTER  
8100 PETERSBURG, #1  
ANCHORAGE 99507  
344-5732

BILL NO: HB 494

SUBJECT: LIENS FOR LABOR OR MATERIALS FURNISHED

MESSAGE:

PLEASE SUPPORT CSHB 494 AS WRITTEN. OPPOSITION TO THIS BILL PROPOSED MANDATORY EARLY RECORDING OF NOTICES OF RIGHT TO LIEN. I OBJECT TO THIS OPPOSITION AS A UNNECESSARY EXPENSE AND ALSO AS A PRACTICE WHICH WOULD DEFEAT SEVERAL ASPECTS OF THE BILL. SUB CONTRACTOR, ALASKA QUALITY INSULATORS, INC.

DATE: 04/01/86 TIME: 16:12:24 SENT BY: ANCHORAGE LIO

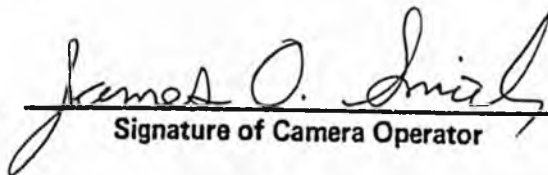
COPIES TO: HOUSE MEMBERS  
SENATE MEMBERS

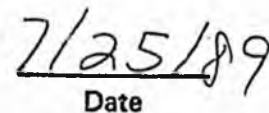


# RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

  
Signature of Camera Operator

  
Date

H B

4 9 6

# STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY  
LEGISLATIVE REFERENCE LIBRARY

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary	2/7/86	1:30 pm
" "	3/3/86	1:30 pm
" "	3/7/86	1:30 pm
" "	3/18/86	<del>7-10 pm</del>
" "	3/26/86	1:30 pm

**HOUSE  
COMMITTEE REPORT**

(7)

Date referred: 1/22/86

FURTHER REFERRALS: FINANCE

DATE: \_\_\_\_\_

The JUDICIARY Committee has considered HB 496

"An Act relating to spousal support and attorney fees during divorce proceedings, and to judicial review of marriage dissolution agreements; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CSHB 496 (JUD)  same title
- new title

and recommends \_\_\_\_\_

further referral to the \_\_\_\_\_ Committee

- and attaches:
- letter of intent
  - first fiscal note
  - new fiscal note
  - zero fiscal note

SIGNING DO PASS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SIGNING OTHER RECOMMENDATIONS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Chairman

# Alaska State Legislature



## House of Representatives House Judiciary Committee

P. O. Box V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-4990

LETTER OF INTENT for CSHB 496 (Jud)

House Judiciary Committee

The Court System submitted a fiscal note on HB 496 of \$400,100 for FY 87. After inquiry, it was determined that the fiscal note assumed that there would be no increase in time between the filing and hearing of each dissolution petition and that the changes in Section 12 will require as much as two hours for each petition.

It is the intent of the Judiciary Committee to avoid imposing additional costs on the Court System by acknowledging that petitioners may experience some delays in the processing of non-emergency dissolution petitions. Furthermore, it is the intent of the committee that any additional screening of dissolution petitions which may become necessary be performed by existing personnel and within existing appropriations. Based upon this analysis, the Judiciary Committee believes that a zero fiscal note is most appropriate for CSHB 496(Jud).

A handwritten signature in black ink, appearing to read "Mike Miller", written over a horizontal line.

Rep. M. Mike Miller, Chair  
House Judiciary Committee

Original sponsor: Rules/Governor

IN THE HOUSE

BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 496 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to divorce, dissolution, and annulment; and amending Rule 34(a), Alaska Rules of Civil Procedure."

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

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

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

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

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

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

(b) During the pendency of the action, upon application a spouse is entitled to necessary protective orders, which may include orders

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

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

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

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

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

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

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

\* Sec. 2. AS 25.24.160 is amended to read:

Sec. 25.24.160. JUDGMENT. In a judgment in an action for divorce or action declaring a marriage void or at any time after judgment, the court may provide

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

(2) for the recovery by one party from the other of an amount of money for maintenance, in gross or in installments, as may be just and necessary without regard to which of the parties is in

fault;

(3) for the delivery to either party of that party's personal property in the possession or control of the other party at the time of giving the judgment;

(4) for the division between the parties of their property, whether joint or separate, acquired only during coverture, in the manner as may be just, and without regard to which of the parties is in fault; however, the court, in making the division, may invade the property of either spouse acquired before marriage when the balancing of the equities between the parties requires it; and to accomplish this end the judgment may require that one or both of the parties assign, deliver, or convey any of their real or personal property to the other party [;

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

\* Sec. 3. AS 25.24 is amended by adding a new section to read:

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

(b) If a party seeks a change of name to a name other than a prior name, the court shall set a date for hearing not less than 40 days after filing of the action. Notice of the application for a change of name to a name other than a prior name and the date of the hearing shall be published once each week for four consecutive calendar weeks before the hearing in a newspaper of general circulation in the judicial district. At the hearing, the court shall by judgment authorize the party to assume the new name in not less than 30 days after issuance of the judgment, if the court is satisfied that no reasonable objection exists to assumption of the new name. Within 10 days after issuance of the judgment the party shall publish notice of

the approval of the name change in a newspaper of general circulation in the judicial district.

\* Sec. 4. AS 25.24.200(a) is amended to read:

(a) A husband and wife together may petition the superior court for the dissolution of their marriage under AS 25.24.200 - 25.24.260 if the following conditions exist at the time of filing the petition:

(1) incompatibility of temperament has caused the irremediable breakdown of the marriage;

(2) if there are minor children of the marriage or the wife is pregnant, the spouses have agreed on which spouse or third party shall be awarded custody of each minor child of the marriage and the extent of visitation, including visitation by grandparents and other persons, and support to be provided on the children's behalf, whether the payments are to be made through the child support enforcement agency, and the tax consequences of that agreement;

(3) the spouses have agreed as to the distribution of all jointly owned real and personal property, including retirement benefits and other career assets, and the payment of spousal support, if any, and the tax consequences resulting from these distributions and payments; and

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

\* Sec. 5. AS 25.24.200(b) is amended to read:

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

(1) incompatibility of temperament, as evidenced by extended absence or otherwise, has caused the irremediable breakdown of the

marriage;

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

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

\* Sec. 6. AS 25.24.200(c) is amended to read:

(c) Except as provided in AS 25.24.220(1), nothing [NOTHING] in AS 25.24.200 - 25.24.290 [THIS SECTION] prohibits a spouse who has been personally served with a copy of a petition made under (a) of this section from executing an appearance, waiver of time to answer, and waiver of notice of hearing. The appearance and waivers shall include an acknowledgment signed before an officer authorized to administer an oath or affirmation that the spouse being served has read the petition; assents to the terms relating to custody of the children, child support, visitation, spousal support and resultant tax consequences, division of property, including retirement benefits and other career assets, and allocation of debts; agrees that the conditions otherwise required by (a) of this section exist; agrees that the petition constitutes the entire agreement between the parties; understands fully the nature and consequences of the action; and is not signing the appearance and waivers under duress or coercion.

\* Sec. 7. AS 25.24.210(d) is amended to read:

(d) The petition shall request that the marriage be dissolved and that the [PRIOR] name of a spouse be changed [RESTORED], if

desired by that spouse.

\* Sec. 3. AS 25.24.210(e) is amended to read:

(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, including retirement benefits and other career assets, 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) that the petition constitutes the entire agreement between the parties; and

(8) any other relief sought by the spouses.

\* Sec. 9. AS 25.24.220(b) is repealed and reenacted to read:

(b) Both spouses shall attend the hearing personally and not through counsel. However, if the petition is brought by both spouses under AS 25.24.200(a) and if the petition is not subject to (i) of this section, a spouse may comply with AS 25.24.200(c); in that case only the spouse filing the petition is required to attend. Either spouse may have counsel at the hearing.

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

(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 written 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 written agreements between the spouses relating to the division of property, including retirement benefits and other career assets, spousal support, and the allocation of obligations are fair, just, and equitable; [ADD]

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

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

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

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

\* Sec. 12. AS 25.24.220 is amended by adding new subsections to read:

(h) In its examination of the petitioner or petitioners under (d) of this section, the court shall use a heightened level of scrutiny of agreements if

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

(2) an unusually high or low amount of child support will

be awarded;

(3) a domestic violence complaint has been filed during the marriage;

(4) there are unusual child custody provisions; or

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

(i) If the court finds that a higher level of scrutiny is required by (h) of this section, the court shall examine the written agreements between the spouses to determine that they are fair, just, and equitable, that they constitute the entire agreement between the parties, and that the agreements concerning child custody, child support, and visitation are in the best interest of the children of the marriage, if any. The court shall require the presence of both spouses at a hearing for this purpose unless the court finds on the record that it would constitute a significant hardship on one of the spouses to appear, and that a fair, just, and equitable agreement has been reached.

\* Sec. 13. AS 25.24.230(a) is amended to read:

(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 order [PROVIDE THE] other relief as provided 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 written agreements between the spouses concerning child custody, child support, and visitation are in the best interest of the children of the marriage, constitute the entire agreement of

the parties on child custody, child support, and visitation, and are not grossly unfair, unjust, or inequitable as between the spouses;

(3) the written agreements between the spouses concerning [CHILD CUSTODY, CHILD SUPPORT, VISITATION,] spousal support and tax consequences, if any, division of property, including retirement benefits and other career assets, and allocation of obligations are not grossly unfair, unjust, or inequitable and constitute the entire agreement between the parties [AND ARE IN THE BEST INTERESTS OF THE CHILDREN OF THE MARRIAGE, IF ANY]; and

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

\* Sec. 14. AS 25.24.230(e) is amended to read:

(e) If the petition is brought by both spouses under AS 25.24.-200(a), the court shall change [RESTORE] either spouse's [PRIOR] name, if the spouse seeking a change of name to a name other than a prior name complies with AS 25.24.165(b), [SO REQUESTED, AND] shall fully and specifically set out in the decree the written 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 written 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.

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

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

\* Sec. 16. AS 25.24 is amended by adding a new section to article 2 to read:

Sec. 25.24.290. DEFINITION. In AS 25.24.200 - 25.24.290 "career assets" means tangible and intangible assets and obligations resulting from a spouse's education, profession, or employment that were acquired at least in part as a result of direct or indirect contributions made by the other spouse. A division of career assets shall take into consideration the extent to which each spouse contributed to the acquisition of the career assets.

\* Sec. 17. AS 25.24.165 as added by sec. 3 of this Act, AS 25.24.210(d) as amended by sec. 7 of this Act, and AS 25.24.230(e) as amended by sec. 14 of this Act have the effect of amending Rule 84(a), Alaska Rules of Civil Procedure, to allow a change of name to a name other than a prior name to be commenced in a complaint for divorce or annulment or a petition for dissolution of marriage.

Clocks in Draft  
Utermohle  
3/12/86

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 496 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH 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 25.24.140 is repealed and reenacted to read:

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

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

16 (2) reasonable spousal support, including medical expenses;  
17 and

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

21 (b) During the pendency of the action, upon application a spouse  
22 is entitled to necessary protective orders, which may include orders

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

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

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

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

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

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

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

12 \* Sec. 2. AS 25.24.160 is amended to read:

13 Sec. 25.24.160. JUDGMENT. In a judgment in an action for di-  
14 vorce or action declaring a marriage void or at any time after judg-  
15 ment, the court may provide

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

27 (2) for the recovery by one party from the other of an  
28 amount of money for maintenance, in gross or in installments, as may  
29 be just and necessary without regard to which of the parties is in

1 fault;

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

5 (4) for the division between the parties of their property,  
6 whether joint or separate, acquired on'y during coverture, in the  
7 manner as may be just, and without regard to which of the parties is  
8 in fault; however, the court, in making the division, may invade the  
9 property of either spouse acquired before marriage when the balancing  
10 of the equities between the parties requires it; and to accomplish  
11 this end the judgment may require that one or both of the parties  
12 assign, deliver, or convey any of their real or personal property to  
13 the other party [;

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

15 \* Sec. 3. AS 25.24 is amended by adding a new section to read:

16 Sec. 25.24.165. CHANGE OF NAME IN DIVORCE. (a) In a judgment  
17 in an action for divorce or action declaring a marriage void, the  
18 court may change the name of either of the parties.

19 (b) If a party seeks a change of name to a name other than a  
20 prior name, the court shall set a date for hearing not less than 40  
21 days after filing of the action. Notice of the application for a  
22 change of name to a name other than a prior name and the date of the  
23 hearing shall be published once each week for four consecutive calen-  
24 dar weeks before the hearing in a newspaper of general circulation in  
25 the judicial district. At the hearing, the court shall by judgment  
26 authorize the party to assume the new name in not less than 30 days  
27 after issuance of the judgment, if the court is satisfied that no  
28 reasonable objection exists to assumption of the new name. Within 10  
29 days after issuance of the judgment the party shall publish notice of

1 the approval of the name change in a newspaper of general circulation  
2 in the judicial district.

3 \* Sec. 4. AS 25.24.200(a) is amended to read:

4 (a) A husband and wife together may petition the superior court  
5 for the dissolution of their marriage under AS 25.24.200 - 25.24.260  
6 if the following conditions exist at the time of filing the petition:

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

9 (2) if there are minor children of the marriage or the wife  
10 is pregnant, the spouses have agreed on which spouse or third party  
11 shall be awarded custody of each minor child of the marriage and the  
12 extent of visitation, including visitation by grandparents and other  
13 persons, and support to be provided on the children's behalf, whether  
14 the payments are to be made through the child support enforcement  
15 agency, and the tax consequences of that agreement;

16 (3) the spouses have agreed as to the distribution of all  
17 jointly owned real and personal property, including retirement bene-  
18 fits and other career assets, and the payment of spousal support, if  
19 any, and the tax consequences resulting from these distributions and  
20 payments; and

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

24 \* Sec. 5. AS 25.24.200(b) is amended to read:

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

28 (1) incompatibility of temperament, as evidenced by extend-  
29 ed absence or otherwise, has caused the irremediable breakdown of the

1 marriage;

2 (2) the petitioning spouse has been unable to ascertain the  
3 other spouse's position in regard to the dissolution of their marriage  
4 and in regard to the division of property, including retirement bene-  
5 fits and other career assets, payment of debts, and custody, support,  
6 and visitation because the whereabouts of the other spouse is unknown  
7 to the petitioning spouse after reasonable efforts have been made to  
8 locate the absent spouse; and

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

11 \* Sec. 6. AS 25.24.200(c) is amended to read:

12 (c) Except as provided in AS 25.24.220(i), nothing [NOTHING] in  
13 AS 25.24.200 - 25.24.290 [THIS SECTION] prohibits a spouse who has  
14 been personally served with a copy of a petition made under (a) of  
15 this section from executing an appearance, waiver of time to answer,  
16 and waiver of notice of hearing. The appearance and waivers shall  
17 include an acknowledgment signed before an officer authorized to  
18 administer an oath or affirmation that the spouse being served has  
19 read the petition; assents to the terms relating to custody of the  
20 children, child support, visitation, spousal support and resultant tax  
21 consequences, division of property, including retirement benefits and  
22 other career assets, and allocation of debts; agrees that the condi-  
23 tions otherwise required by (a) of this section exist; agrees that the  
24 petition constitutes the entire agreement between the parties; under-  
25 stands fully the nature and consequences of the action; and is not  
26 signing the appearance and waivers under duress or coercion.

27 \* Sec. 7. AS 25.24.210(d) is amended to read:

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

1 desired by that spouse.

2 \* Sec. 8. AS 25.24.210(e) is amended to read:

3 (e) If the petition is brought by both spouses under AS 25.24.-  
4 200(a), the petition shall state in detail the terms of agreement as  
5 between the spouses with regard to the custody of children, child  
6 support, visitation, spousal support and tax consequences, if any,  
7 division of property, including retirement benefits and other career  
8 assets, and allocation of debts, and, in addition, shall state

9 (1) the respective occupations of the spouses;

10 (2) the income, assets, and liabilities of the respective  
11 spouses at the time of filing the petition;

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

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

16 (5) whether the wife is pregnant;

17 (6) other facts and circumstances which the petitioners  
18 believe should be considered; [AND]

19 (7) that the petition constitutes the entire agreement  
20 between the parties; and

21 (8) any other relief sought by the spouses.

22 \* Sec. 9. AS 25.24.220(b) is repealed and reenacted to read:

23 (b) Both spouses shall attend the hearing personally and not  
24 through counsel. However, if the petition is brought by both spouses  
25 under AS 25.24.200(a) and if the petition is not subject to (i) of  
26 this section, a spouse may comply with AS 25.24.200(c); in that case  
27 only the spouse filing the petition is required to attend. Either  
28 spouse may have counsel at the hearing.

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

1 (d) If the petition is brought by both spouses under AS 25.24.-  
2 200(a), the court shall examine the petitioners or petitioner present  
3 and consider whether

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

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

10 (3) the written agreements between the spouses relating to  
11 the division of property, including retirement benefits and other  
12 career assets, spousal support, and the allocation of obligations are  
13 fair, just, and equitable; [AND]

14 (4) the written agreements constitute the entire agreement  
15 between the parties; and

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

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

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

23 \* Sec. 12. AS 25.24.220 is amended by adding new subsections to read:

24 (h) In its examination of the petitioner or petitioners under  
25 (d) of this section, the court shall use a heightened level of scruti-  
26 ny of agreements if

27 (1) one party is represented by counsel and the other is  
28 not;

29 (2) an unusually high or low amount of child support will

1 be awarded;

2 (3) a domestic violence complaint has been filed during the  
3 marriage;

4 (4) there are unusual child custody provisions; or

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

7 (i) If the court finds that a higher level of scrutiny is re-  
8 quired by (h) of this section, the court shall examine the written  
9 agreements between the spouses to determine that they are fair, just,  
10 and equitable, that they constitute the entire agreement between the  
11 parties, and that the agreements concerning child custody, child  
12 support, and visitation are in the best interest of the children of  
13 the marriage, if any. The court shall require the presence of both  
14 spouses at a hearing for this purpose unless the court finds on the  
15 record that it would constitute a significant hardship on one of the  
16 spouses to appear, and that a fair, just, and equitable agreement has  
17 been reached.

18 \* Sec. 13. AS 25.24.230(1) is amended to read:

19 (a) If the petition is brought by one or both spouses under  
20 AS 25.24.200(a), the court may grant the spouses a final decree of  
21 dissolution and shall order [PROVIDE THE] other relief as provided in  
22 this section if the court, upon consideration of the information  
23 contained in the petition and the testimony of the spouse or spouses  
24 at the hearing, finds that

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

27 (2) the written agreements between the spouses concerning  
28 child custody, child support, and visitation are in the best interest  
29 of the children of the marriage, constitute the entire agreement of

1 the parties on child custody, child support, and visitation, and are  
2 not grossly unfair, unjust, or inequitable as between the spouses;

3 (3) the written agreements between the spouses concerning  
4 [CHILD CUSTODY, CHILD SUPPORT, VISITATION,] spousal support and tax  
5 consequences, if any, division of property, including retirement  
6 benefits and other career assets, and allocation of obligations are  
7 not grossly unfair, unjust, or inequitable and constitute the entire  
8 agreement between the parties [AND ARE IN THE BEST INTERESTS OF THE  
9 CHILDREN OF THE MARRIAGE, IF ANY]; and

10 (4) [(3)] the conditions in AS 25.24.200(a) have been met.

11 \* Sec. 14. AS 25.24.230(e) is amended to read:

12 (e) If the petition is brought by both spouses under AS 25.24.-  
13 200(a), the court shall change [RESTORE] either spouse's [PRIOR]  
14 name, if the spouse seeking a change of name to a name other than a  
15 prior name complies with AS 25.24.165(b), [SO REQUESTED, AND] shall  
16 fully and specifically set out in the decree the written agreements of  
17 the spouses, [RELATING TO CHILD CUSTODY, CHILD SUPPORT, VISITATION,  
18 SPOUSAL SUPPORT, DIVISION OF PROPERTY, AND THE ALLOCATION OF THE  
19 OBLIGATIONS OF THE SPOUSES;] and [THE COURT] shall order the perfor-  
20 mance of those written agreements. The court shall also state, in the  
21 decree, whether child support payments are to be made through the  
22 child support enforcement agency. If the petition is brought by one  
23 spouse under AS 25.24.200(b), the decree shall state that it does not  
24 bar future action on the issues not resolved in the decree.

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

26 (c) Forms or instructions prepared under (a) of this section  
27 must specify that the dissolution petition constitutes the entire  
28 agreement between the parties and provide examples of kinds of proper-  
29 ty and obligations that are subject to distribution.

ec. 16. AS 25.24 is amended by adding a new section to article 2

Sec. 25.24.290. DEFINITION. In AS 25.24.200 - 25.24.290 "car  
assets" means tangible and intangible assets and obligations result  
from a spouse's education, profession, or employment that were  
acquired at least in part as a result of direct or indirect contri  
butions made by the other spouse.

ec. 17. AS 25.24.165 as added by sec. 3 of this Act, AS 25.24.210  
added by sec. 7 of this Act, and AS 25.24.230(e) as amended by sec.  
5 of this Act have the effect of amending Rule 84(a), Alaska Rules of Ci  
vil Procedure, to allow a change of name to a name other than a prior name  
mentioned in a complaint for divorce or annulment or a petition  
for dissolution of marriage.

Original sponsor: Rules/governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 496 (Judiciary)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FOURTEENTH LEGISLATURE - SECOND 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, upon application a spouse may, in appropriate circum-  
11 stances, 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, if there is a legal obligation of the noncustodial spouse  
18 to provide support.

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

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

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

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

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

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

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

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

10 \* Sec. 2. AS 25.24.200(a) is amended to read:

11 (a) A husband and wife together may petition the superior court  
12 for the dissolution of their marriage under AS 25.24.200 - 25.24.260  
13 if the following conditions exist at the time of filing the petition:

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

16 (2) if there are minor children of the marriage or the wife  
17 is pregnant, the spouses have agreed on which spouse or third party  
18 shall be awarded custody of each minor child of the marriage and the  
19 extent of visitation, including visitation by grandparents and other  
20 persons, and support to be provided on the children's behalf, whether  
21 the payments are to be made through the child support enforcement  
22 agency, and the tax consequences of that agreement;

23 (3) the spouses have agreed as to the distribution of all  
24 jointly owned real and personal property, including retirement bene-  
25 fits and other career assets, and the payment of spousal support, if  
26 any, and the tax consequences resulting from these distributions and  
27 payments; and

28 (4) the spouses have agreed as to the payment of all unpaid  
29 obligations incurred by either or both of them, [AND] as to payment of

1 obligations incurred jointly in the future, and as to the tax conse-  
2 quences of these payments.

3 \* Sec. 3. AS 25.24.200(b) is amended to read:

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

7 (1) incompatibility of temperament, as evidenced by extend-  
8 ed absence or otherwise, has caused the irremediable breakdown of the  
9 marriage;

10 (2) the petitioning spouse has been unable to ascertain the  
11 other spouse's position in regard to the dissolution of their marriage  
12 and in regard to the division of property, including retirement bene-  
13 fits and other career assets, tax consequences, payment of debts, and  
14 custody, support, and visitation because the whereabouts of the other  
15 spouse is unknown to the petitioning spouse after reasonable efforts  
16 have been made to locate the absent spouse; and

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

19 \* Sec. 4. AS 25.24.200(c) is amended to read:

20 (c) Except as provided in AS 25.24.220(i), nothing [NOTHING] in  
21 AS 25.24.200 - 25.24.290 [THIS SECTION] prohibits a spouse who has  
22 been personally served with a copy of a petition made under (a) of  
23 this section from executing an appearance, waiver of time to answer,  
24 and waiver of notice of hearing. The appearance and waivers shall  
25 include an acknowledgment signed before an officer authorized to  
26 administer an oath or affirmation that the spouse being served has  
27 read the petition; assents to the terms relating to custody of the  
28 children, child support, visitation, spousal support [AND RESULTANT  
29 TAX CONSEQUENCES], division of property, including retirement benefits

1 and other career assets, [AND] allocation of debts, and tax conse-  
2 quences; agrees that the conditions otherwise required by (a) of this  
3 section exist; agrees that the petition constitutes the entire agree-  
4 ment between the parties; understands fully the nature and conse-  
5 quences of the action; and is not signing the appearance and waivers  
6 under duress or coercion.

7 \* Sec. 5. AS 25.24.210(e) is amended to read:

8 (e) If the petition is brought by both spouses under AS 25.24.-  
9 200(a), the petition shall state in detail the terms of agreement as  
10 between the spouses with regard to the custody of children, child  
11 support, visitation, spousal support [AND TAX CONSEQUENCES, IF ANY],  
12 division of property, including retirement benefits and other career  
13 assets, [AND] allocation of debts, and tax consequences and, in addi-  
14 tion, shall state

15 (1) the respective occupations of the spouses;

16 (2) the income, assets, and liabilities of the respective  
17 spouses at the time of filing the petition;

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

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

22 (5) whether the wife is pregnant;

23 (6) other facts and circumstances which the petitioners  
24 believe should be considered; [AND]

25 (7) that the petition constitutes the entire agreement  
26 between the parties; and

27 (8) any other relief sought by the spouses.

28 \* Sec. 6. AS 25.24.220(b) is repealed and reenacted to read:

29 (b) Both spouses shall attend the hearing personally and not

1 through counsel. However, if the petition is brought by both spouses  
2 under AS 25.24.200(a) and if the petition is not subject to (i) of  
3 this section, a spouse may comply with AS 25.24.200(c); in that case  
4 only the spouse filing the petition is required to attend. Either  
5 spouse may have counsel at the hearing.

6 \* Sec. 7. AS 25.24.220(d) is amended to read:

7 (d) If the petition is brought by both spouses under AS 25.24.-  
8 200(a), the court shall examine the petitioners or petitioner present  
9 and consider whether

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

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

16 (3) the written agreements between the spouses relating to  
17 the division of property, including retirement benefits and other  
18 career assets, spousal support, [AND] the allocation of obligations,  
19 and tax consequences are fair, just, and equitable; [AND]

20 (4) the written agreements constitute the entire agreement  
21 between the parties; and

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

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

24 (g) The court may amend the written agreements between the  
25 spouses relating to child custody, child support, visitation, spousal  
26 support, division of the property, including retirement benefits and  
27 other career assets, [AND] allocation of obligations, and tax  
28 consequences, but only if both petitioners concur in the amendment.

29 \* Sec. 9. AS 25.24.220 is amended by adding new subsections to read:

1 (h) In its examination of the petitioner or petitioners under  
2 (d) of this section, the court shall use a heightened level of scruti-  
3 ny of agreements if

4 (1) one party is represented by counsel and the other is  
5 not;

6 (2) an unusually high or low amount of child support will  
7 be awarded;

8 (3) a domestic violence complaint has been filed during the  
9 marriage;

10 (4) there are unusual child custody provisions;

11 (5) one party has not worked for wages for at least three  
12 years or has a limited future earning capability; or

13 (6) there is a patently inequitable division of the marital  
14 estate.

15 (i) If the court finds that a higher level of scrutiny is re-  
16 quired by (h) of this section, the court shall examine the written  
17 agreements between the spouses to determine that they are fair, just,  
18 and equitable, that they constitute the entire agreement between the  
19 parties, and that the agreements concerning child custody, child  
20 support, and visitation are in the best interest of the children of  
21 the marriage, if any. The court shall require the presence of both  
22 spouses at a hearing for this purpose unless the court finds on the  
23 record that it would constitute an extreme hardship on one of the  
24 spouses to appear, and that a fair, just, and equitable agreement has  
25 been reached.

26 \* Sec. 10. AS 25.24.230(a) is amended to read:

27 (a) If the petition is brought by one or both spouses under  
28 AS 25.24.200(a), the court may grant the spouses a final decree of  
29 dissolution and shall order [PROVIDE THE] other relief as provided in

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

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

6 (2) the written agreements between the spouses concerning  
7 child custody, child support, and visitation are in the best interest  
8 of the children of the marriage, constitute the entire agreement of  
9 the parties on child custody, child support, and visitation, and are  
10 not grossly unfair, unjust, or inequitable as between the spouses;

11 (3) the written agreements between the spouses concerning  
12 [CHILD CUSTODY, CHILD SUPPORT, VISITATION,] spousal support [AND TAX  
13 CONSEQUENCES, IF ANY], division of property, including retirement  
14 benefits and other career assets, [AND] allocation of obligations, and  
15 tax consequences are not grossly unfair, unjust, or inequitable and  
16 constitute the entire agreement between the parties [AND ARE IN THE  
17 BEST INTERESTS OF THE CHILDREN OF THE MARRIAGE, IF ANY]; and

18 (4) [(3)] the conditions in AS 25.24.200(a) have been met.

19 \* Sec. 11. AS 25.24.230(e) is amended to read:

20 (e) If the petition is brought by both spouses under AS 25.24.-  
21 200(a), the court shall change [RESTORE] either spouse's [PRIOR]  
22 name, if so requested, [AND] shall fully and specifically set out in  
23 the decree the written agreements of the spouses, [RELATING TO CHILD  
24 CUSTODY, CHILD SUPPORT, VISITATION, SPOUSAL SUPPORT, DIVISION OF  
25 PROPERTY, AND THE ALLOCATION OF THE OBLIGATIONS OF THE SPOUSES;] and  
26 [THE COURT] shall order the performance of those written agreements.  
27 The court shall also state, in the decree, whether child support  
28 payments are to be made through the child support enforcement agency.  
29 If the petition is brought by one spouse under AS 25.24.200(b), the

1 decree shall state that it does not bar future action on the issues  
2 not resolved in the decree.

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

4 (c) Forms or instructions prepared under (a) of this section  
5 must

6 (1) explain terms under which a dissolution may be modi-  
7 fied;

8 (2) specify that the dissolution petition constitutes the  
9 entire agreement between the parties; and

10 (3) provide examples of kinds of property and obligations  
11 that are subject to distribution.

12 \* Sec. 13. AS 25.24 is amended by adding a new section to article 2 to  
13 read:

14 Sec. 25.24.290. DEFINITION. In AS 25.24.200 - 25.24.290 "career  
15 assets" means tangible and intangible assets and obligations acquired  
16 as part of a person's education, profession, or employment.  
17

POSITION PAPER

HOUSE BILL NO. 496

For an Act entitled: "Act relating to spousal support and attorney fees during divorce proceedings, and to judicial review of marriage dissolution agreements; and providing for an effective date."

HB 496 amends AS 25.24.140 to provide for the payment of attorney fees and costs required for proceedings to enable the other spouse to prosecute or defend a divorce action.

It also provides for maintenance payments for the other spouse during the pendency of the hearing, and it includes retirement benefits as an area of judicial review and determination that it is a fair and equitable agreement.

One of the major impacts upon the health, safety and well-being of children is the ability of a parent to support him or herself and the child. This bill would increase the likelihood of equitable distribution of family resources when a divorce or dissolution occurs.

The bill also provides for equitable distribution of retirement benefits for older individuals. It is important to note that abuse and neglect of children and of older individuals is directly correlated with inadequate financial resources. In addition, poverty itself, even if it does not result in neglect and abuse, creates a number of social problems within the community. These problems, tragic in themselves, are also costly to the community to correct. Consequently, there may be financial savings, as well as social justification to support this bill.

The Department supports this bill.

RECOMMENDED: Michael L. Price  
Michael L. Price, Director  
Division of Family  
and Youth Services

DATE: Feb 6, 1986

APPROVED: John R. Pugh  
John R. Pugh, Commissioner  
Department of Health  
and Social Services

DATE: 2/13/86

# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : \_\_\_\_\_

**REQUEST**

Bill/Resolution No. : HB 496  
 Title : An Act relating to spousal support and attorney fees during divorce proceedings  
 Sponsor : \_\_\_\_\_  
 Requestor : \_\_\_\_\_  
 Date of Request : 2/3/86

**FISCAL DETAIL**

Agency Affected : Health & Social Services  
 BRU : Social Services  
Youth Services  
 Components : \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		0	0	0	0	0

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

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

**FUNDING : (Thousands of Dollars)**

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		0	0	0	0	0

**POSITIONS :**

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

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

n/a

Prepared by: Michael L. Price, Director *Michael L. Price* Phone: 465-3170 *jee*  
 Division: Family and Youth Services Date: \_\_\_\_\_

Approved by Commissioner: John R. Pugh, Commissioner *John R. Pugh* Date: 2/13/86  
 Agency: Health and Social Services

Distribution (by Agency preparing fiscal note):

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

12/22

# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

**REQUEST** HB 496 #1

Bill/Resolution No. : 377-002-86

Title : \_\_\_\_\_

Sponsor : \_\_\_\_\_

Requestor : \_\_\_\_\_

Date of Request : \_\_\_\_\_

Revision Date : \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected : AK Women's Commission

BRU : \_\_\_\_\_

Components : \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	<u>-0-</u>					

CAPITAL	<u>-0-</u>					
---------	------------	--	--	--	--	--

REVENUE	<u>-0-</u>					
---------	------------	--	--	--	--	--

**FUNDING : (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	<u>-0-</u>					

**POSITIONS :**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

**RECEIVED**  
DEC 23 1985

**ALASKA WOMEN'S  
COMMISSION**

Prepared by : Kathy Niskant

Division : AK Women's Commission

Phone : 541-8123

Date : 12/23/85

Approved by Commissioner : \_\_\_\_\_

Agency : \_\_\_\_\_

Date : \_\_\_\_\_

Distribution (by Agency preparing fiscal note) :

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

CE  
1/22

STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date : 12/23/85

REQUEST HB 496 # 2

FISCAL DETAIL

Bill/Resolution No. : 377-002-86  
 Title : Spousal support and attorney fees during divorce proceedings, and judicial review of dissolution agreements  
 Sponsor : \_\_\_\_\_  
 Requestor : \_\_\_\_\_  
 Date of Request : \_\_\_\_\_

Agency Affected : Div. of Fam. & Youth Svcs *AMP*  
 BRU : \_\_\_\_\_  
 Components : \_\_\_\_\_

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE		0	0	0	0	0

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Pearl Johnson  
 Division : Family & Youth Services

Phone : 465-3227  
 Date : 12/23/85

Approved by Commissioner : John R. Boy  
 Agency : Health & Social Services

Date : 12/23/85

Distribution (by Agency preparing fiscal note) :

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

**STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE**

Revision Date : \_\_\_\_\_

**REQUEST**

Bill/Resolution No. : HB496  
 Title : "An Act Relating to Spousal Support and Attorney's fees..."  
 Sponsor : Governor  
 Requestor : House Judiciary  
 Date of Request : \_\_\_\_\_

**FISCAL DETAIL**

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

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

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

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

**FUNDING : (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS :**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

Prepared by : Barbara Miklos, Exec. Dir.  
 Division : Council on Domestic Violence & S.A.

Phone : 465-4356  
 Date : 1/31/86

Approved by Commissioner : *[Signature]*  
 Agency : Dept. of Public Safety

Date : 2/3/86

Distribution (by Agency preparing fiscal note) :

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

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - HB 496

January 31, 1986

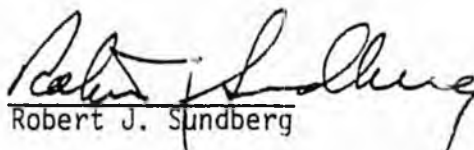
Support

HB 496 - "An Act relating to spousal support and attorney fees during divorce proceedings, and to judicial review of marriage dissolution agreements; and providing for an effective date."

The Council on Domestic Violence and Sexual Assault supports HB 496.

HB 496 amends AS 25.24, pertaining to dissolution of marriages, by (1) providing for support and maintenance while a divorce is pending and reasonable attorney fees for financially needy spouses; (2) specifying that both spouses be present at the hearing, unless good cause is provided by the court, if they both bring the petition before the court; (3) providing for a heightened level of scrutiny by the judge in instances where one marital partner might have an unfair advantage in negotiating an agreement; and (4) adding retirement benefits to the areas to be considered in dissolution agreements.

Currently, some women make these agreements without full understanding of the long range consequences of the agreements or under some coercion from their spouse. Women are not always involved in the money management of the marriage, and thus are unaware of the benefits which might rightfully be theirs. In addition, the Council is particularly concerned because domestic violence exists in many relationships. Women may have experienced long term intimidation by their spouses and may be so anxious to get free of the relationship that they will agree to a dissolution agreement on the terms the spouse dictates as the easiest way out for them. In cases of domestic violence, experience has shown that the intimidation that occurs takes the form of "brainwashing" so that the victim loses confidence in her ability to make decisions and comes to devalue her judgement and her sense of worth. Yet a woman may appear to be in agreement should she come before the judge and is not questioned about her understanding and the long-term consequences of the agreement. The increased judicial scrutiny called for in this bill will further protect victims of domestic violence.

  
Robert J. Sundberg



# REPRESENTATIVE DON CLOCKSIN

Alaska House of Representatives

MAJORITY LEADER

1024 WEST SIXTH AVENUE  
ANCHORAGE, ALASKA 99501  
(907) 274-4031

WHILE IN JUNEAU:  
POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-3704

LETTER OF INTENT for CSHB 496 (Jud)

House Judiciary Committee

The Court System submitted a fiscal note on HB 496 of \$406,100 for FY 87. After inquiry, it was determined that the fiscal note assumed that there would be no increase in time between the filing and hearing of each dissolution petition and that the changes in Section 9<sup>12</sup> will require as much as two hours for each petition.

It is the intent of the Judiciary Committee to avoid imposing additional costs on the Court System by acknowledging that petitioners may experience some delays in the processing of non-emergency dissolution petitions. The costs are further reduced because a judge reviewing these petitions may reject those which require a heightened level of judicial scrutiny but do not on their face meet the standards in AS

25.24.220(i). Furthermore, it is the intent of the committee that any additional screening<sup>of dissolution petitions</sup> which may become necessary be performed by existing personnel and within existing appropriations. Based upon this analysis, the Judiciary Committee believes

that a zero fiscal note is most appropriate for CSHB 496 (Jud).

HB 496

A M E N D M E N T

#2 ✓

Offered in the HOUSE

By Gruenberg

TO: CSHB 496 (Judiciary) Clocksin Draft 2/28/86

Page 1, line 6, following "dissolution" insert:

"; and amending Rule 84(a), Alaska Rules of Civil Procedure"

Page 2, following line 9, insert new bill sections to read:

"\* Sec. 2. AS 25.24.160 is amended to read:

Sec. 25.24.160. JUDGMENT. In a judgment in an action for divorce or action declaring a marriage void or at any time after judgment, the court may provide

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

(2) for the recovery by one party from the other of an amount of money for maintenance, in gross or in installments, as may

be just and necessary without regard to which of the parties is in fault;

(3) for the delivery to either party of that party's personal property in the possession or control of the other party at the time of giving the judgment;

(4) for the division between the parties of their property, whether joint or separate, acquired only during coverture, in the manner as may be just, and without regard to which of the parties is in fault; however, the court, in making the division, may invade the property of either spouse acquired before marriage when the balancing of the equities between the parties requires it; and to accomplish this end the judgment may require that one or both of the parties assign, deliver, or convey any of their real or personal property to the other party [;

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

\* Sec. 3. AS 25.24 is amended by adding a new section to read:

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

(b) If a party seeks a change of name to a name other than a prior name, the court shall set a date for hearing not less than 40 days after filing of the action. Notice of the application for a change of name and the date of the hearing shall be published once each week for four consecutive calendar weeks before the hearing in a newspaper of general circulation in the judicial district. At the hearing, the court shall by judgment authorize the party to assume the

new name in not less than 30 days after issuance of the judgment, if the court is satisfied that no reasonable objection exists to assumption of the new name. Within 10 days after issuance of the judgment the party shall publish notice of the approval of the name change in a newspaper of general circulation in the judicial district."

Renumber remaining bill sections accordingly.

Page 7, line 22, delete "so requested, [AND]" and insert:

"the spouse seeking a change of name to a name other than a prior name complies with AS 25.24.165(b), [SO REQUESTED, AND]"

Page 8, following line 16, insert a new bill section to read:

"\* Sec. 14. AS 25.24.165 as added by sec. 3 of this Act and AS 25.24.-230(e) as amended by sec. 13 of this Act have the effect of amending Rule 84(a), Alaska Rules of Civil Procedure, to allow a change of name to a name other than a prior name to be commenced in a complaint for divorce or a petition for dissolution of marriage."

A M E N D M E N T

Offered in the HOUSE

TO: CSHB 496(Jud)

Page 1, line 6, following "dissolution" insert:

"; and amending Rule 84(d), Alaska Rules of Civil Procedure"

Page 8, following line 15, insert:

"\* Sec. 14. Rule 84(d), Alaska Rules of Civil Procedure is amended to read:

(d) APPLICABILITY. This rule does [SHALL] not apply to a change of [RESTORATION OF A PRIOR] name sought in a complaint for divorce or in a petition for dissolution of marriage."

A M E N D M E N T

Offered in the HOUSE:

by Gruenberg

To: CS HB 496

Page 6 line 23:

Change to read as follows:

"extreme" to "significant"

A M E N D M E N T

#1

Offered in the HOUSE

By Gruenberg

TO: CSHB 496 (Jud) Clocksin draft (2/28/86)

Page 2, line 4, delete "each" and insert "either"

Page 5, line 28, after "amendment" insert "in writing or on the record"

A M E N D M E N T

Offered in the HOUSE: by Gruenberg

To CS HB 496 (Jud) Clocksin draft 2,28/86

Page 6, line 11, following "party" insert:

" , as a result of an agreement or allocation of marital responsibilities between the spouses, "



HB 496

CS  
1/22

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 22, 1986

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

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution. I am transmitting a bill to amend Alaska statutes regarding divorce proceedings, to provide expressly for spousal support and attorney fees to be awarded during the pendency of divorce proceedings. The bill also requires a "heightened level" of judicial review of marriage dissolution agreements in specific situations.

The bill amends AS 25.24.140(a) to deal more specifically with attorney fees and costs and to state that one spouse may be required by the court to provide for the care and maintenance of the other spouse during the pendency of their divorce action.

Also, AS 25.24.220 is amended by adding new subsections to require that the agreements of petitioners in dissolution proceedings be carefully scrutinized if one of the parties is not represented by counsel when the other one is; or if an unusually high or low amount of spousal support will be awarded; or if one or more of three other circumstances suggesting the possibility of an unfair agreement are present. It is believed that this heightened scrutiny would prevent one marital partner from exercising an unequal bargaining power over the other partner.

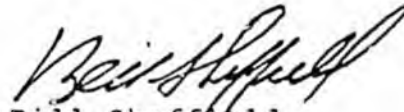
The bill also amends AS 25.24.230(a), on judgments in marriage dissolution proceedings, to add a specific reference to retirement benefits (which include pensions, etc.) and to remove the redundancy from the phrase "unfair, unjust, or inequitable." This latter change is also made in

AS 25.24.220(d) and is consistent with the wording of the proposed AS 25.24.220(i) in sec. 4 of the bill (as well as with existing AS 25.24.160(4) [as renumbered in 1985], pertaining to divorce).

The bill repeals AS 25.24.200(c), and makes a corresponding amendment to AS 25.24.220(b), because requiring both parties to appear at the dissolution hearing will enable the court to question them in depth. The subsection being repealed currently permits a waiver for appearance at the hearing.

It is believed that the changes proposed in this bill will result in more equitable divorce and dissolution arrangements.

Sincerely,



Bill Sheffield  
Governor

ALASKA COURT SYSTEM  
ADMINISTRATIVE OFFICE  
TELEFACSIMILE TRANSMITTAL SHEET

TO: Rep. Mike M. Miller DATE: 3/6/86

FROM: Karla Forsythe, Staff Counsel

TOTAL NUMBER OF PAGES: 4  
(Not including the cover sheet)

MESSAGE: cc to Rep Clocksin  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(If you do not receive the above document(s) please call 264-8232)  
Telecopier number is 276-6342

MAR 06 '86 15:35 AOA 2ND JUD DIST FAX276-6342



Alaska Court System  
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORBYTHE  
STAFF COUNSEL

303 K Street  
Anchorage, Alaska 99501

(807) 264-8228

March 5, 1986

Rep. Mike Miller  
Chair, House Judiciary Committee  
P. O. Box V  
Juneau AK 99811

Dear Representative Miller:

It is my understanding that HB 496 has been scheduled again for hearing on Friday, March 7. I have reviewed a copy of a work draft of Rep. Clocksin's proposed committee substitute dated February 28, 1986. I would appreciate it if the following comments from the Alaska Court System could be brought to the committee's attention.

1. Proposed Section 25.24.140(b)(6) (page 2, line 4) would prohibit a spouse from disposing of "marital property". The term "marital property" should be defined in order to clarify legislative intent.
2. Section 5 of the proposed substitute (page 4) would require petitioners to state in detail the terms of their agreement with regard to tax consequences. Under current law, only the tax consequences of spousal support must be addressed. The proposed changes would require petitioners to also state their agreement about tax consequences of property division, retirement benefits, career assets, and debts. Although the court system could add space to the dissolution forms for parties to explain their agreement about tax consequences, it would be inappropriate for the court to provide detailed instructions about how to determine tax consequences.
3. Section 7 (page 5) and Section 9 (page 6) provide that the court shall examine petitioners to determine whether their agreements are fair, just and equitable. However, under Section 10 (page 7), the court may grant a degree of dissolution upon finding that the agreements are not grossly unfair, unjust or inequitable. The proposed committee substitute should be revised to provide consistent review standards.