

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4679 HJUD HB 189 - HB 198

25

(2)

of our Departments of Revenue, child support enforcement division, Health and Social Services, family and youth service division, Public Safety, State Trooper Division, law's, Court System, as well as all other related political subdivision services, dealing with domestic relations and violence. This equals millions of dollars saved on administrative and personnel costs by making children happy by addressing their well-being, instead of bias, selfishness and or vengeance which has absolutely nothing to do with facts directly related to children(s) well-being.

Thank you for your assistance. It is past time that a decision for minor(s) well-being be made by said minor(s) and the hands on case study reality of Ad Litum, rather than a Judge making decisions on assumption. Anyone who supports fairness, equality and cares about children can support this very right and needed change. The children deserve it and everyone benefits.

AMENDMENTS TO ALASKA STATUTE 25.24.150

Addition's underscored:

Deletion's [bracketed]:

Add last sentence to 25.24.150(a)

Equal physical custody of minor(s) shall be awarded when it is the minor(s) preference and recommended by Ad Litum, as it is considered to be in the minor(s) best interests for well-being:

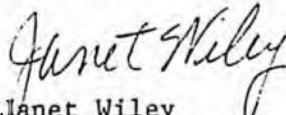
Add the word only to 24.24.150(c)

(c) The court shall determine custody in accordance with the best interests of the child under AS 25.20.060 - 25.20.130. In determining the best interest of the child the court shall only consider

Add/Delete to 25.24.150 (3)

(3) The child's stated preference if the child is [of sufficient age and capacity to form a preference] age seven (7) years or older and the investigating Ad Litum concurs. Ad Litum's recommendation if child is under age seven (7).

Sincerely,


Janet Wiley
P.O. Box 964
Douglas, Ak. 99824
789-3942

Attachment

Original sponsor: Rule 5/Governor



1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2

CS FOR HOUSE BILL NO. 189 (HESS)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to divorce, dissolution, and annulment, and amending Rule 84(a), Alaska Rules of Civil Procedure."

7

8

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

10

* Section 1. AS 25.24.100 is amended to read:

11

NEW
Sec. 25.24.100. RESIDENCY OF MILITARY PERSONNEL. A person serving in a military branch of the United States government who is assigned to a duty station at [HAS BEEN CONTINUOUSLY STATIONED IN] a military base or installation in the state [FOR A PERIOD OF ONE YEAR] shall be considered [DEEMED] a resident [IN GOOD FAITH] of the state for the purposes of this chapter [AS 25.24.010 - 25.24.150].

12

13

14

15

16

17

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

18

19

20

21

22

23

24

25

26

27

28

29

Same

Sec. 25.24.140. ORDERS DURING ACTION. (a) During the pendency of the action, a spouse may, upon application and 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 other spouse to provide support.

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

New

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

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

Same

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

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

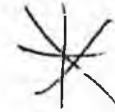
25 * Sec. 5. AS 25.24.200 is amended to read:

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

CORRECTION

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

Original sponsor: Rules/Governor



1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2

CS FOR HOUSE BILL NO. 189 (HESS)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to divorce, dissolution, and annulment, and amending Rule 84(a), Alaska Rules of Civil Procedure."

8

9

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

10

Section 1. AS 25.24.100 is amended to read:

11

Sec. 25.24.100. RESIDENCY OF MILITARY PERSONNEL. A person

12

serving in a military branch of the United States government who is

13

assigned to a duty station at [HAS BEEN CONTINUOUSLY STATIONED IN] a

14

military base or installation in the state [FOR A PERIOD OF ONE YEAR]

15

shall be considered [DEEMED] a resident [IN GOOD FAITH] of the state

16

for the purposes of this chapter [AS 25.24.010 - 25.24.180].

17

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

18

Sec. 25.24.140. ORDERS DURING ACTION. (a) During the pendency

19

of the action, a spouse may, upon application and in appropriate

20

circumstances, be awarded expenses, including

21

(1) attorney fees and costs that reasonably approximate the

22

actual fees and costs required to prosecute or defend the action;

23

(2) reasonable spousal support, including medical expenses;

24

and

25

(3) reasonable support for minor children in the care of

26

the spouse, if there is a legal obligation of the other spouse to

27

provide support.

28

(b) During the pendency of the action, upon application, a

29

spouse is entitled to necessary protective orders, including orders

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

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

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

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

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

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

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

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

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

NEW

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

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

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

Same

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

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

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

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

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

10 (3) the spouses have agreed as to the distribution of all
11 jointly owned real and personal property, including retirement bene-
12 fits and career assets, and the payment of spousal support, if any,
13 and the tax consequences resulting from these ^{distributions are} payments; and — From 17B496

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

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

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

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

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

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

Same

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

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

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

New

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

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

4 * Sec. 8. AS 25.24.210(e) is repealed and reenacted to read:

5 (e) If the petition is filed by both spouses under AS 25.24.-
6 200(a), the petition must state in detail the terms of the agreement
7 between the spouses concerning the custody of children, child support,
8 visitation, spousal support and tax consequences, if any, division of
9 property, including retirement benefits and career assets, and allo-
10 cation of debts. In addition, the petition must state

11 (1) the respective occupations of the petitioners;

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

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

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

18 (5) whether the wife is pregnant;

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

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

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

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

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

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

High Level
of Secretary

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

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

8 * Sec. 10. AS 25.24.220(c) is amended to read:

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

14 * Sec. 11. AS 25.24.220(d) is amended to read:

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

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

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

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

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

Same
rewritten

New

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

2 * Sec. 12. AS 25.24.200(e) is amended to read:

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

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

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

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

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

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

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

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

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

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

same

Change from usually with child support

New from "or"

SH

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 ARTICLE 4. GENERAL PROVISIONS.

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

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

1 annulment or a petition for dissolution of marriage.

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

*Name
Change*

Greenberg
#1

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

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

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

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

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

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

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

agreements concerning child custody, child support, and visitation are in the best interests 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 that it would constitute a significant hardship on one of the spouses to appear, and that a just agreement has been reached. If one of the spouses cannot attend the hearing ^{b/c attendance would constitute a significant hardship} ~~because the spouse has left the state~~, the court may require that spouse to be available by telephone to answer questions, at that spouse's expense.

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

Sec. 25.24.230. JUDGMENT. (a) If the petition is filed under AS 25.24.200(a), and is not subject to AS 25.24.220(h), the court may grant the spouses a final decree of dissolution and shall order 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 interests of the children of the marriage and constitute the entire agreement of the parties on child custody, child support, and visitation;

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

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

*Grucenberg
this*

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

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

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

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

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

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

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

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

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

HB 189 Revised Koponen Amelt
to §1
- AMENDMENT -

Page 1, lines 12-13:

Delete: "has been continuously stationed in"

Insert: "is assigned to a duty station at"

Page 1, line 14:

Delete: "for a period of one year"

Page 1, line 15:

Delete: "in good faith"

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

Bill Version: HB 189
Publish Date:

REQUEST: _____

Revision Date: _____ Agency Affected: Alaska Court System
Title: An act relating to divorce and BRU: Trial Courts
dissolution.
Sponsor: Rules by request of governor Components:
Requestor: _____

EXPENDITURES/REVENUES:		(Thousands of Dollars)				
OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
Personal Services	81.7	81.7	81.7	81.7	81.7
Travel	10.4	7.5	7.5	7.5	7.5
Contractual
Supplies
Equipment	8.2	. . . .	. . . .	. . . .	. . . .
Land & Structures
Grants & Claims
TOTAL OPERATING	0.0	100.3	89.2	89.2	89.2	89.2
CAPITAL
REVENUE

FUNDING:		(Thousands of Dollars)				
General Funds	0.0	100.3	89.2	89.2	89.2	89.2
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	100.3	89.2	89.2	89.2	89.2

POSITIONS:						
Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Part-time	. . . .	3.0	3.0	3.0	3.0	3.0
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Karla Forsythe, General Counsel Phone: 264-8228
Division: Alaska Court System Date: 4-1-87
Approved by: *Stephanie J. Cole* Date: 4-1-87
Agency: Alaska Court System

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

ALASKA COURT SYSTEM
HB 189 - FISCAL ANALYSIS

Personal Services:	Salary	Benefits	Total
Special Master, Range 24A, Fairbanks, PPT - 6 months	\$32,310	\$8,789	\$41,099
Custody Investigator, Range 1 A, Anchorage, PPT - 6 months	18,774	5,781	24,555
Court Clerk II, Range 10B, Palmer, PPT - 6 months	11,790	4,228	16,018

Total Personal Services			81,672

 Travel:			
Custody investigator travel-			
Monthly service to Kenai and Kodiak. Quarterly service to Ketchikan, Sitka, Wrangell, & Petersburg			7,500
 Forms Committee meeting- (one time cost)			
Cost of Dissolution Forms Committee meeting in Anchorage for two days with one and one-half days of in-transit time.			2,900

Total Travel			10,400

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

Total First Year Cost			\$100,274
			=====

ALASKA COURT SYSTEM

HB 189 - FISCAL ANALYSIS

Summary of FY 86 Filings - Dissolution of Marriage

Court	Number of Filings	Estimated # of Cases Involving Children (1)	Estimated # of Cases Requiring Custody Investigation (2)
Anchorage	1,703	1,141	114
Fairbanks	511	342	34
Palmer	222	149	15
Kenai	193	129	13
Kodiak	76	51	5
Juneau	195	131	13
Ketchikan	111	74	7
Sitka	37	25	3
Wrangell/ Petersburg	30	20	2

- (1) Two-thirds of dissolution cases are estimated to involve children.
- (2) Ten percent of dissolution cases involving children are estimated to require custody investigations.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 25, 1988

SUBJECT: Interaction of AS 25.24.090 and 25.24.100 and
the Soldiers and Sailors Relief Act

TO: Representative Gruenberg

FROM: George Utermohle
Legislative Counsel

This memorandum is in response to your request for an opinion as to whether AS 25.24.090 and 25.24.100 conflict with the terms of the Soldiers and Sailors Civil Relief Act.

AS 25.24.100 provides that a person serving in the military services who has been continuously stationed in the state for a period of one year is to be considered to be a resident for the purposes of bringing an action for divorce in the courts of Alaska. AS 25.24.100 does not make military personnel who have been continuously stationed in the state for a year or more state residents. This provision of state law merely confers one of the benefits of state residency upon certain military personnel.

AS 25.24.090 provides that a non-resident person may bring a divorce action against a spouse in the courts of Alaska if that person's spouse is a resident of the state or has a right to bring an action for divorce in the state courts under AS 25.24.100. The effect of AS 25.24.090 and 25.24.100 together is that a non-resident member of the military may be summoned into an Alaskan court to defend against a divorce action brought by a non-resident spouse.

The Soldiers and Sailors Civil Relief Act (50 app. USCA 501 - 591) protects the rights of military personnel from actions and proceedings in state courts while they are in the service. Military personnel may stay actions or proceedings pending in a state court, vacate default judgments entered against them, stay or vacate judgments, attachments, and numerous other legal proceedings brought against them.

Representative Gruenberg

Page 2

February 25, 1988

The critical fact that must exist before military personnel may invoke the protections of the Act is that their ability to defend or prosecute actions or proceedings be materially affected by reason of their military service. If the military personnel are not materially and adversely affected by reason of their military service, a state court may decide actions or proceedings brought against them and may enter valid and enforceable judgments against them.

Thus the non-resident spouse of a non-resident member of the military stationed in the state could bring a divorce action under AS 25.24.090, if the member has been stationed in the state for the one year period set out in AS 25.24.100. If the member of the military is present in the state and adequately served with notice of the divorce action, the state court has personal jurisdiction. The Soldiers and Sailors Civil Relief Act would not prevent the state court from granting the divorce and granting other relief, unless a member of the military could show that service in the military materially affected the ability to defend the action. It would be difficult for a based in Anchorage, Juneau, or some other major city in the state where a superior court is located to show that the member could not adequately defend the divorce action because military duties prevented an adequate defense. The purpose of the Act is to protect military personnel from legal proceedings occurring in locations far from where they are located which they can not adequately participate in because military obligations foreclose their opportunity to participate. This is not often the case when legal actions are occurring conveniently near the place where the military personnel are permanently stationed.

The ability of an Alaskan court to validly and effectively exercise jurisdiction over non-resident personnel stationed in the state is based upon the establishment of personnel jurisdiction over them by their presence in the state and the ability to adequately serve them with notice of the action. Legal residency is not a factor.

The question has arisen whether AS 25.24.090 and 25.24.100 result in the imposition of Alaska residency upon non-resident military personnel in violation of the Soldiers and Sailors Civil Relief Act. The exercise of personnel jurisdiction over non-resident military personnel under AS 25.24.090 and 25.24.100 is independent of the residency status of the military personnel. The Act does not address

Representative Gruenberg
Page 3
February 25, 1988

the issue of the residency of a member of the military except to provide that the member may establish residency in a state for tax purposes and then maintain that residency for as long as the member remains in the military service without regard to how long the member may be absent from that state. (50 app. USCA 574) The purpose of this provision is to prevent the income and personal property of a member of the military from being subject to taxes in more than one state. This provision does not otherwise bar a state from making determinations as to benefits that may be available to individuals, including military personnel based on their residency status. Thus the state may determine what benefits of residency it may wish to confer on non-resident military personnel and their families.

In conclusion there is no conflict between AS 25.24.090 and 25.24.100 and the Soldiers and Sailors Civil Relief Act. The Act provides protections to military personnel so that they are not adversely affected by actions of state courts as the result of the military personnel's military service. AS 25.24.090 and 25.24.100 allow military personnel and their spouses to take advantage of the divorce laws of the state, however, if a particular member of the military is prejudiced in a divorce action brought in state court due to service in the military, the Act allows the member to obtain a stay or other relief from the action.

GU:bb
wkb3/034

TABLE A.16
POVERTY STATUS^a OF ALASKA AND U.S. FAMILIES
BY RACE, 1980

	<u>All Families</u>			<u>Female-Headed Families, No Husband Present</u>		
	<u>Total</u>	<u>Below Poverty Level</u>		<u>Total</u>	<u>Below Poverty Level</u>	
		<u>Number</u>	<u>% of Total</u>		<u>Number</u>	<u>% of Total</u>
<u>Alaska</u>						
All Races	96,840	8,319	8.6	10,055	2,669	26.5
White	79,300	4,778	6.0	6,549	1,374	21.0
Alaska Native	12,036	3,042	25.3	2,699	1,071	39.7
Black	3,270	301	9.2	570	173	30.3
<u>United States^b</u>						
All Races	59,190	5,670	9.6	8,205	2,484	30.3
White	50,645	3,567	7.0	5,489	1,225	22.3
Black	6,104	1,616	26.5	2,272	1,052	46.3
Spanish Origin	3,274	696	21.3	636	306	48.1

^aA national standard defined by the federal government. Tends to understate poverty in Alaska due to higher living cost.

^bNumbers in thousands

SOURCES: 1980 U.S. Census, Report PC80-1-C3, Table 82.
 1980 U.S. Census, Report PC80-1-C1, U.S. Summary, Tables 96, 139.

Representative Fran Ulmer
P.O. Box V
Juneau, Ak. 99811

April 21, 1987

RECEIVED APR 22 1987

Subject: H.B. 189

Dear Representtative Ulmer:

In reference to H.B. 189 directly, or if Bill is split. Said vehicle must be used to ammend statute custody language to ensure award of joint physical custody by Court, when minor(s) has stated this preference and is also recommended, after investigation of case, by Ad Litum. Necessary statute language follows. We hope, for this States childrens well-being, you will use it! It is the right thing to do.

It was the intent of the people and Legislature, in 1982, after in-depth study, to adopt this basis of fair equality in behalf of minor's well-being. It would also save the State millions of dollars in administration, litigation and policing of support, movement of children to other states and/or countries, delinquency and crimes of all varieties by minors, seven years old and up. Unfortunately, this has yet to occur, due to inadequate and non-specific statute language.

A decision for custody award, during initial dispute or modification, if truely addressing minor(s) well-being, is an easy one to make when adhering to specific law and not allowing the entrance of bias, selfishness and facts not directly related to minor(s) well-being. We must remember that custody disputes are the root issue of most disolutions. However, reality is quite different from rhetoric. Council may use the argument that they follow the adversary process to inform Court of relevent facts. Over ninety percent of the time their alledged facts have no nexus between law, minor's well-being and truth. Children do not get benefit of Jury to decide. They get an individual who may or may not be biased, whom may or may not consider proper facts and the child's well-being only.

For Example, I will quote just two of many attorney's who have similarly stated, "Facts presented in Court have nothing to do with right, wrong, truth or honesty, in winning a case. It has to do with who's the best liar!" Quote-unquote, Phil Wiedner and Ron Drathman.

We must have, at least, the reality of care and equality for minor's. otherwise the State is guilty of abuse of minor's, via mental cruelty. This causes not only grievous despair and anguish of our minor's, but creates disrespect of laws by minor's. As the State has, in no uncertain terms, let m'nor's know that no one really cares and that our laws are meaningless, through unrealistic custody decisions. Children don't get divorced, parents do!

Please review and utilize the following amendment, as it is, 1. In the best interests for the well-being of the children of this State, and 2. Will assist in curtailing disputes of divorcing parties and help avoid mental and possible physical abuse of one another, and 3. Will assist in curtailing the workloads

of our Departments of Revenue, child support enforcement division, Health and Social Services, family and youth service division, Public Safety, State Trooper Division, law's, Court System, as well as all other related political subdivision services, dealing with domestic relations and violence. This equals millions of dollars saved on administrative and personnel costs by making children happy by addressing their well-being, instead of bias, selfishness and or vengeance which has absolutely nothing to do with facts directly related to children(s) well-being.

Thank you for your assistance. It is past time that a decision for minor(s) well-being be made by said minor(s) and the hands on case study reality of Ad Litum, rather than a Judge making decisions on assumption. Anyone who supports fairness, equality and cares about children can support this very right and needed change. The children deserve it and everyone benefits.

AMENDMENTS TO ALASKA STATUTE 25.24.150

Addition's underscored:

Deletion's [bracketed]:

Add last sentence to 25.24.150(a)

Equal physical custody of minor(s) shall be awarded when it is the minor(s) preference and recommended by Ad Litum, as it is considered to be in the minor(s) best interests for well-being:

Add the word only to 24.24.150(c)

(c) The court shall determine custody in accordance with the best interests of the child under AS 25.20.060 - 25.20.130. In determining the best interest of the child the court shall only consider

Add/Delete to 25.24.150 (3)

(3) The child's stated preference if the child is [of sufficient age and capacity to form a preference] age seven (7) years or older and the investigating Ad Litum concurs. Ad Litum's recommendation if child is under age seven (7).

Sincerely,



Janet Wiley
P.O. Box 964
Douglas, Ak. 99824
789-3942

Attachment



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

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

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

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

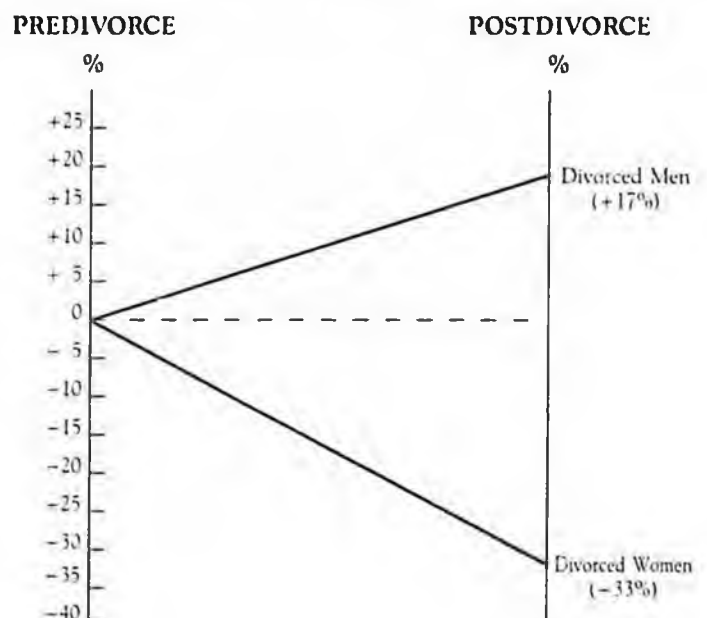
The study of divorce is important because so many people are affected by it. The divorce rate in Alaska is 63 percent compared to 46 percent nationally. More than 11,000 people are affected each year, 3,000 of them children. Even though the two-decade increase in the divorce rate seems to have peaked,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

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

GENERAL FINDINGS:

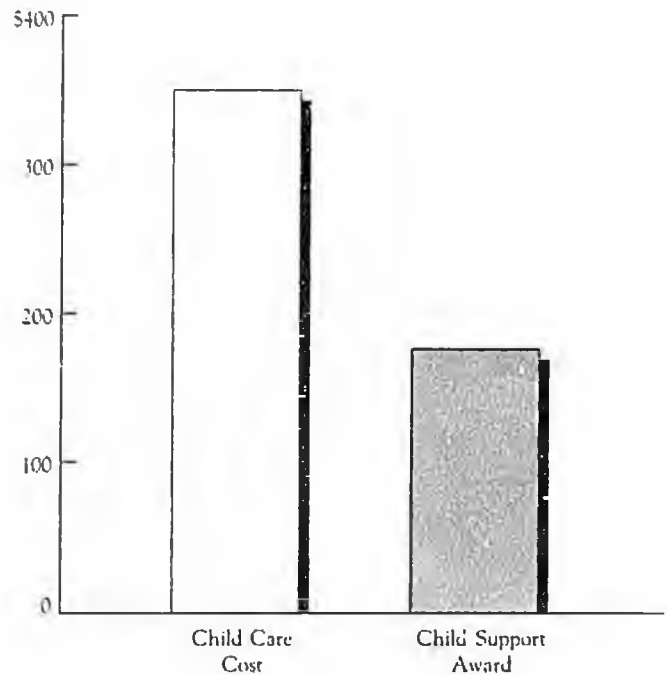
- In Alaska, divorce has substantially different economic consequences for women and men.
- Divorced women and their children experienced a 33 percent decline in per capita income resulting in a radical downward shift of their standard of living (see Figure 1). The greatest relative deprivation was experienced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

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



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

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



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

IMPACT OF DISSOLUTION:

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

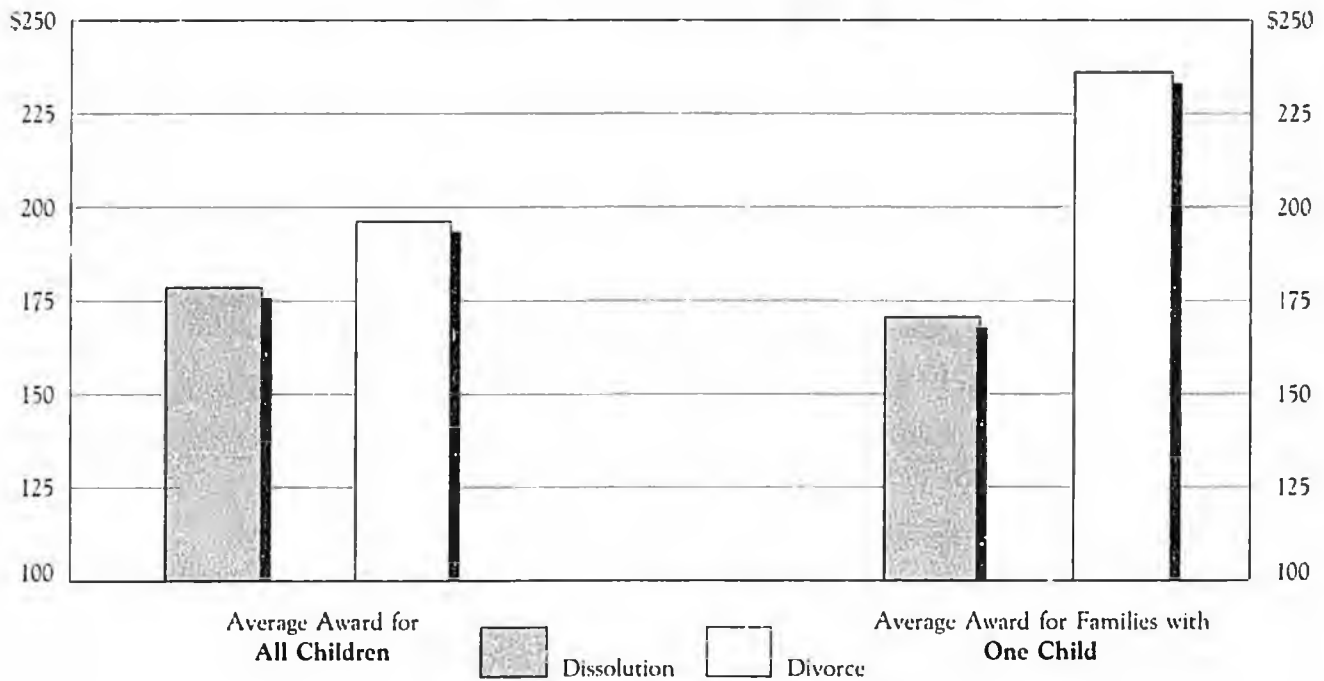
Alaska is one of only 8 states that permit dissolutions. It is also one of the most liberal in its provisions. Most

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

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

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

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



SUMMARY:

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

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

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

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

RESOURCES:

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

Legal Assistance:

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

Dispute Resolution Services, Fairbanks

Counseling and Support:

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

Men's Support Network, Anchorage

Father's Rights Group, Fairbanks

RELATED RESEARCH ON DIVORCE:

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

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

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

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

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



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

Members of Commission:

Kris Chatfield, chair
Anchorage
Joy Green-Armstrong, vice chair
Anchorage
Loretta Bullard
Nome
Elizabeth (Pat) Kennedy, Anchorage
Mary Pete, Bethel
Betty Ramage, Anchorage
Wendy Redman, Fairbanks
Paula Ziegler, Juneau

Executive Director

Christine Callahan

Research Analyst

Barbara Baker

State of Alaska

Steve Cowper, Governor
Stephen McAlpine, Lt. Governor

BULK RATE
U.S. POSTAGE

PAID

Permit No. 691
Anchorage, AK

ADDRESS CORRECTION REQUESTED

Family Law

By Nancy Polikoff

BACKGROUND FACTS

The standard of living of men increases 42 percent one year after divorce, a recent study found. In dramatic contrast, the standard of living of women and children decreases 73 percent one year after divorce.

One of the principle factors contributing to the feminization of poverty is that divorced fathers are not paying sufficient child support; 60 to 80 percent of children in single-parent families receive no child support whatsoever.

Only 59 percent of the 8.4 million divorced, never married and separated women with minor children were awarded any child support, according to Census Bureau's spring 1982 data.

A Colorado study found that two-thirds of fathers were ordered to pay less per month for child support than they paid on monthly car loan payments.

Alimony is, and always has been, virtually nonexistent. Only 17 percent of divorces in California in 1977 resulted in alimony awards. Even among full-time housewives married more than fifteen years, one-third were never awarded alimony. The mean alimony award was \$3,000 and the mean for women over 40 was \$3,600, according to 1981 census data.

Half of divorcing couples have less than \$11,000 worth of distributable property, according to one study.

Although most state statutes now mandate "equitable distribution" of marital assets upon divorce, women are receiving only 30 to 40 percent of the assets.

In the 10 to 17 percent of divorces where custody is contested, fathers prevail 45 to 63 percent of the time.

Recent statutes have given judges greater flexibility in mandating joint custody, even when one parent opposes it.

There is some evidence that joint custody is being inappropriately used to lower child support awards, thereby compounding the devastating economic consequences of divorce for women and children.

THE PROBLEM

The typical divorce looks very different from the woman's perspective than it does from the man's. It is likely that the wife has been either entirely economically dependent upon her husband or has been the secondary wage-earner in the family. It is likely that property which is held in the name of one spouse is held in the husband's name. It is also likely that the husband, and not the wife, has achieved the long-term security of a professional degree, seniority rights, or a guaranteed pension. And it is likely that, even if she is employed, the wife has been the primary caretaker of the children of the marriage. Statutes which govern dissolution of marriage need to take account of these circumstances.

Property division at divorce. While recent changes in divorce law have benefitted women, two crucial aspects of the law of property division still need to be addressed by statutes in most states: (1) The definition of marital or community property often fails to include the value of a pension or a professional degree; and (2) in giving broad discretion to judges, statutes fail to require that, as a starting point, each party should be presumed to be entitled to 50 percent of the divisible property of a marriage.

Alimony. Perhaps no family law area is more shrouded in myth than alimony. The reality is that only a small percentage of women have ever been awarded alimony. While few people would recommend awarding alimony to economically self-sufficient women whose earning potential has not been adversely affected by the marriage, short-term rather than permanent alimony awards should be made when future self-sufficiency is possible. Permanent alimony still is necessary in many instances. Some women should receive alimony, though currently they do not: (1) women who have been full-time homemakers over many years, who have foregone all possible avenues of earning potential and will never be able to meaningfully support themselves; (2) women who have foregone their own career development to further their husbands' education and training and will be unable to obtain further education or training without financial assistance; and (3) women with young children who do not have full-time employment.

Amount of child support awards. Better standards need to be developed for determining the amount of child support awarded. It is largely because child support awards are so low that the standard of living of men increases dramatically after divorce while the standard of living of women and children plummets. The level of child support payments should be set through a resource-sharing approach rather than by the court seeking to determine a fixed monetary value for the

costs of raising a child. This approach seeks to equalize the financial burden of the divorce so that all members of the family -- mother, father and children -- experience about the same proportional reduction in standard of living.

Other reforms needed: 1) automatic cost of living adjustments should be presumed unless the payor could convince a judge that the adjustment should not take place; and 2) courts should be given the power, which they lack in many states, to order a parent to maintain both health and life insurance for the benefit of the children; 3) child support should be terminated at age 21 rather than 18, in order to encourage fathers to share in the expenses of higher education. (See separate chapter on Child Support Enforcement.)

Disputed custody. States have recently begun to replace a "tender years" presumption in custody disputes with a sex-neutral "best interests of the child" standard. Unfortunately, judges interpreting today's sex-neutral custody standards have often given too little weight to which parent has been primarily responsible for child care during the marriage. This undervaluing of "mothering" is often accompanied by consideration of other factors which inappropriately penalize mothers. For example, an employed mother may be judged more harshly than an employed father because the mother is not devoting full time to her expected homemaker role. The father's superior economic position may also make him seem a more attractive custodian.

Men's greater earning power and the substantial costs of litigation are major reasons that fathers who request custody obtain it half the time. Divorcing mothers, because of their disadvantageous economic position, often agree to a lower property division or child support award, in exchange for being able to retain custody without the costs and risks of litigation. This situation has prompted one state supreme court to adopt a presumption that custody will be awarded to the primary caretaker parent, regardless of sex.

The legislation of many states permits a judge to award joint custody over the objection of one parent, but serious unresolved problems exist with such joint custody awards.

Many commentators have cautioned that joint custody can be ordered by a judge as a way to avoid making a difficult choice. This wholly inappropriate approach has nothing to do with the child's best interest. The best approach is to permit joint custody only when both parents agree and when it has been in effect between the parents for enough time for a judge to conclude that the parents can make it work in the child's best interests.

WHAT STATES CAN DO

Amount of Child Support Awards

° States should enact legislation which mandates that judges use resource sharing as the basic premise for child support awards.

° States should enact legislation establishing that the duty to support extends until a child's 21st birthday.

° States should enact legislation establishing automatic cost-of-living adjustments to child support awards unless the payer petitions the court and shows good cause why the adjustment should not be made.

° States should enact legislation authorizing judges to require a parent to maintain health and life insurance for the benefit of the minor children.

° States should enact legislation establishing that a hearing on a child support petition shall not be delayed pending disposition of a custody counterclaim from the other parent.

Property

° States should enact legislation which defines marital or community property to include pensions and professional degrees.

° States should enact a presumption that marital property will be equally divided between the parties, unless the judge enumerates reasons why such a division would be inequitable.

Alimony

° States should enact legislation directing a presumption that an award of alimony to any party married more than twenty years would be permanent alimony.

° States should enact legislation establishing the circumstances under which temporary alimony should be awarded.

Custody

° States should enact legislation requiring judges to give substantial weight in custody disputes to the parent who has acted as the child's primary caretaker.

° States should enact legislation permitting awards of joint custody only when both parents request it, and when the parents have demonstrated the ability to make joint custody work.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 25, 1988

SUBJECT: Constitutionality of Durational Presence
 Requirement under AS 25.24.100

TO: Representative Gruenberg

FROM: George Utermohle *GU*
 Legislative Counsel

This memorandum is in response to your request for an opinion as to whether the one year durational presence requirement under AS 25.24.100 is a violation of the right to equal protection.

AS 25.24.100 states:

A person serving in a military branch of the United States government who has been continuously stationed in a military base or installation in the state for a period of one year shall be deemed a resident in good faith of the state for the purposes of AS 25.24.010 - 25.24.180.

The issue is whether the state may validly confer the right to bring a divorce action in this state upon non-resident military personnel who have been continuously stationed in the state for one year while denying the same right to non-resident military personnel who have been in the state for less than a year.

The Alaska Supreme Court has stated that, under the state equal protection clause, if legislation creates an identifiable class to be treated differently from others not in the class, the classification

. . . must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so

that all persons similarly circumstanced shall be treated alike.

Isakson v. Rickey, 550 P.2d 359, 363 (Alaska 1976).
Moreover, the object of the legislation must be a legitimate governmental purpose.

In determining whether a statute violates a person's equal protection rights the court will look at the statute to determine what interest of the person is affected. To the extent that the statute affects more important interests such as the right to vote, or makes distinctions based on suspect classifications, such race or religion, the reason for the statute must be more important and the means used to achieve the goal of the statute must be closely tailored to fit the problem without affecting persons who are not part of the problem. If the interests of the person affected by the statute are less important, then the standard applied is more lenient. In the case where only economic interests of a person are affected the court will accept the statute if there is a rational relationship between the problem to be addressed and the means used to solve the problem. Also the closeness of the fit between the means and ends of the statute may be less precise. (Wilson v. Municipality of Anchorage, 669 P.2d 569,572 (Alaska 1983); State v. Ostrosky, 667 P.2d 1184, 1192-93 (Alaska 1983)).

Under the equal protection analysis used by the Alaska Supreme Court the first step is to identify what interest of the person is affected. In the case of AS 25.24.100 the interest affected is arguably on the one hand the right of access to state courts for divorce and on the other hand the right to be treated the same as other non-resident military personnel. If the interest at stake is the right of access to the state courts for a divorce, the court will use strict scrutiny in analyzing the issue because access to the courts is among those fundamental rights which are most highly protected under the equal protection clause. Under strict scrutiny, the state must have a compelling reason for distinguishing between non-resident military personnel who have been present in the state for a year and those who have been in the state for less than a year. In Adams v. State, 522 P.2d 1125 (Alaska 1974), the court found that the state must have a compelling state interest to justify limited access to state courts by state residents who have not lived in the state for a year or more and as a consequence, overturned a one year durational residency requirement..

It is not certain that the issue posed by AS 25.24.100 is a clear issue of access to the state divorce courts. The state does have some power to reasonably limit access to its courts by non-residents. If the state could limit access to the state divorce courts to residents, then the issue is not one of access to the courts but rather an issue of discriminating between classes of non-resident military personnel. The state need only have a rational basis for discriminating between classes of individuals if their only interest at stake is their right to be treated the same as other persons similarly situated.

The next step in the analysis is to determine what is the state's interest in discriminating between the two classes of non-resident military personnel. An evident reason for the discrimination is to protect the integrity of its divorce decrees. The state wants to establish an adequate nexus between the state and the non-resident military personnel who are seeking the divorce. Non-resident military personnel are residents of other states and by virtue of their non-resident status have declared that they do not intend to remain in the state. Absent a satisfactory nexus to the marriage that is terminated by the divorce, the divorce decree of the Alaska court is subject to collateral attack in another state.

The final step in the analysis is to weigh the interests of the person against the interest of the state. Under strict scrutiny the states must have a compelling state interest for distinguishing between the classes of people and the means chosen to achieve the end must be very precise and may not affect more persons than necessary to address the problem. The state's interest in assuring an adequate nexus between the state and the persons seeking a divorce does not rise to the level of a compelling state interest. The state has other means available to it to determine whether the adequate nexus is present. The use of the 12 month durational presence as the criteria for determining whether an adequate nexus exists is overbroad. Some non-resident military personnel could establish an adequate nexus with the state in a relatively short time, while others could not establish a sufficient nexus after being present in the state for several years. Thus under strict scrutiny, the requirement for a durational presence in the state under AS 25.24.100 would be unconstitutional.

Under the rational basis test, the state needs only to have a legitimate state purpose to achieve through its discrimination between classes of non-resident military personnel and the fit between means and end of the statute do not need to be very precise. The preservation of the integrity of the state's divorce decrees is a legitimate state purpose and may outweigh the interests of short term non-resident military personnel not to be discriminated against, however the use of an arbitrary 12 month durational presence requirement as the sole criteria for discriminating between non-resident military personnel may be too imprecise to be acceptable, even under the highly deferential rational basis. The alternative available to the state, to allow the divorce courts to determine based on the facts before it whether an adequate nexus exists, is so much more efficient and precise that the durational presence requirement of AS 25.24.100 would not survive even a rational basis analysis.

In conclusion, the durational presence requirement of AS 25.24.100 is subject to challenge under the equal protection clause of the Alaska Constitution (Art. I, sec. 1), because it discriminates between classes of non-resident military personnel in the state based upon the length of time they have been present in the state. Under strict scrutiny by the courts the durational presence requirement would be unconstitutional and even under the highly deferential rational basis test it is possible that the requirement could be unconstitutional. However, in my view, the court would not find that strict scrutiny is the appropriate standard of review and that under a rational basis standard, the durational presence requirement would be sustained.

In the time available, it has not been possible to research into how other states have treated this issue.

GU:bb
wkb3/033

**STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST:

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

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

Agency Affected: Alaska Court System
BRU: Trial Courts

Components:

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

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

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

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

POSITIONS:						
Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Part-time	. . . .	3.0	3.0	3.0	3.0	3.0
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: Jan Strandberg, General Counsel Phone: 264-8228
 Division: Alaska Court System Date: 2-25-88
 Approved by: Arthur H. Snowden, II, Administrative Director Date: 2-25-88
 Agency: Alaska Court System

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

ALASKA COURT SYSTEMCS HB 189 - FISCAL ANALYSISCSHB 189(HESS)
No. 2
HOUSE 2/26/88

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

Total Personal Services			83,072

 <u>Travel:</u>			
Custody investigator travel-			
Monthly service to Kenai and Kodiak. Quarterly service to Ketchikan, Sitka, Wrangell, & Petersburg			7,500
 Forms Committee meeting- (one time cost)			
Cost of Dissolution Forms Committee meeting in Anchorage for two days with one and one-half days of in-transit time.			2,900

Total Travel			10,400

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

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

ALASKA COURT SYSTEM
HB 189 - FISCAL ANALYSIS

No. 2

CSHB 189 (HESS)
HOUSE 2/26/88

Summary of FY 87 Filings - Dissolution of Marriage

<u>Court</u>	<u>Number of Filings</u>	<u>Estimated # of Cases Involving Children (1)</u>	<u>Estimated # of Cases Requiring Custody Investigation (2)</u>
Anchorage	1,641	1,099	110
Fairbanks	556	373	37
Palmer	178	119	12
Kenai	164	110	11
Kodiak	65	44	4
Juneau	171	115	12
Ketchikan	122	82	8
Sitka	54	36	4
Wrangell/ Petersburg	27	18	2
Others	80	54	5

- (1) Two-thirds of dissolution cases are estimated to involve children.
- (2) Ten percent of dissolution cases involving children are estimated to require custody investigations.

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

No. 1

REQUEST: _____

Bill Version: HB 189
Publish Date: HOUSE 3/18/87

Revision Date: _____
Title: An Act Relating to
Divorce and Dissolution
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Office of the Governor
BRU: Special Offices/Commissions

Components: Alaska Womens Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

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

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

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: Michael A. Nizich, Director
Division: Administrative Services

Man

Phone: 465-3616
Date: 3-9-87

Approved by Commissioner: Carol P. Kastelic
Agency: Office of the Governor

CPK

Date: 3-9-87

Distribution (by preparer):

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

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

Bill Version: HB 189
Publish Date:

REQUEST: _____

Revision Date: Agency Affected: Alaska Court System
Title: An act relating to divorce and BRU: Trial Courts
 dissolution.
Sponsor: Rules by request of governor Components:
Requestor:

EXPENDITURES/REVENUES:		(Thousands of Dollars)				
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
Personal Services	81.7	81.7	81.7	81.7	81.7
Travel	10.4	7.5	7.5	7.5	7.5
Contractual
Supplies
Equipment	8.2	. . . .	. . . .	. . . .	. . . .
Land & Structures
Grants & Claims
TOTAL OPERATING	0.0	100.3	89.2	89.2	89.2	89.2
CAPITAL
REVENUE

FUNDING:		(Thousands of Dollars)				
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
General Funds	0.0	100.3	89.2	89.2	89.2	89.2
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	100.3	89.2	89.2	89.2	89.2

POSITIONS:						
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
Full-time
Part-time	3.0	3.0	3.0	3.0	3.0
Temporary

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Karla Forsythe, General Counsel Phone: 264-8228
Division: Alaska Court System Date: 4-1-87
Approved by: *Stephanie J. Cole* Deputy Director Date: 4-1-87
Agency: Alaska Court System

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

ALASKA COURT SYSTEM
HB 189 - FISCAL ANALYSIS

Personal Services:	Salary	Benefits	Total
Special Master, Range 24A, Fairbanks, PPT - 6 months	\$32,310	\$8,789	\$41,099
Custody Investigator, Range 18A, Anchorage, PPT - 6 months	18,774	5,781	24,555
Court Clerk II, Range 10B, Palmer, PPT - 6 months	11,790	4,228	16,018 -----
Total Personal Services			81,672 -----
 Travel:			
Custody investigator travel-			
Monthly service to Kenai and Kodiak. Quarterly service to Ketchikan, Sitka, Wrangell, & Petersburg			7,500
Forms Committee meeting- (one time cost)			
Cost of Dissolution Forms Committee meeting in Anchorage for two days with one and one-half days of in-transit time.			2,900 -----
Total Travel			10,400 -----
 Equipment: (one time cost)			
Desk, chair, filing cabinet, and typewriter for each new employee			8,202 -----
Total First Year Cost			\$100,274 =====

ALASKA COURT SYSTEM

HB 189 - FISCAL ANALYSIS

Summary of FY 86 Filings - Dissolution of Marriage

Court	Number of Filings	Estimated # of Cases Involving Children (1)	Estimated # of Cases Requiring Custody Investigation (2)
Anchorage	1,703	1,141	114
Fairbanks	511	342	34
Palmer	222	149	15
Kenai	193	129	13
Kodiak	76	51	5
Juneau	195	131	13
Ketchikan	111	74	7
Sitka	37	25	3
Wrangell/ Petersburg	30	20	2

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

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

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

REQUEST: _____

Bill Version: HB 189
Publish Date: _____

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

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by Barbara Miklos, Executive Director
Division: Council on Domestic Violence & Sexual Assault

Phone: 465-4356
Date: 3-31-87

Approved by Commissioner: [Signature]
Agency: Public Safety

Date: 4/1/87

Distribution (by preparer):

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

JWR
4/1/87

Bgm

[Handwritten initials]

H B

193

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY


OFFICE OF THE CLERK
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

MEMORANDUM

April 9, 1987

SUBJECT: Heirs and devisees in the sale of inherited
remote parcels [HB 193]

TO: Representative Mike W. Miller

FROM: Richard A. Bradley 
Legislative Counsel

Gene Therriault has asked me to comment on the question whether "heirs" is a complete description of those who might be entitled to the benefits intended by HB 193. He notes that the definitions within AS 13 describe the "heirs" as those who take in the absence of a will under intestate succession and "devisees" as those who take under a will.

The suggestion is accurate.

While Black's Law Dictionary agrees that "heirs" is "popularly" understood as including those who take under a will, the technical understanding is not so.

The addition of "or devisees" after "heirs" on page 1, line 12 of HB 193 would cure the question raised.

If I may be of further assistance, please advise.

RAB:mkr
m10/124

Alaska State Legislature

Representative Mike W. Miller
P.O. Box 55094
North Pole, Alaska 99705



While in Juneau
Pouch V
Juneau, Alaska 99811
(907) 465-4976

House of Representatives

MEMORANDUM

TO: Representative John Sund

FROM: Representative Mike Miller

RE: House Bill 193, "An Act relating to the sale of inherited parcels."

DATE: 4/7/87

House Bill 193 is before the Resources Committee today for your consideration. This bill is designed to address a problem that has developed from the remote parcel disposal statutes that were repealed in 1984.

Former AS 38.05.077 and 38.05.078 allowed individuals to stake the boundaries of a remote parcel on state land and enter into a five year renewable lease for use of the property. Prior to the expiration of the lease and following a survey of the property, these individuals were granted the right to purchase the parcel at its fair market value at the time of lease.

In order to avoid land speculation, AS 38.05.077 clearly determined that "A remote parcel lease may not be assigned, conveyed or otherwise transferred, but rights under the lease may devolve by testate or intestate succession." Likewise, AS 38.05.078 stated "a contract of sale for land in a remote parcel shall containing the following conditions: 1) the land may not be sold, leased, or otherwise conveyed before 10 years after the date the contract of sale is signed by the purchaser, but title to the land may devolve by testate or intestate succession."

These statutory restrictions do not take into consideration that a person receiving such a lease or property right, through testate or intestate succession, may not have the desire or means to fulfill the terms of the lease or contract of sale and therefore, would lose their inheritance.

Passage of HB 193 would alleviate this problem by allowing an individual who has received a remote parcel lease or contract of sale, through testate or intestate succession, to sell their interest in the parcel. The State would retain its protection against land speculation since the right to make such a sale would only be triggered by the death of the individual holding the property rights.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLCOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 455-2400

March 25, 1987

The Honorable Adelheid Herrmann
The Honorable Sam Cotten
Co-Chairs, House Resources Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representatives Herrmann and Cotten:

Subject: HB 193, an act relating to the sale of inherited remote parcels.

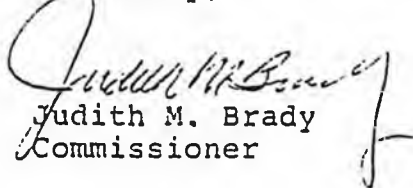
Position: The Department of Natural Resources supports the proposed changes in AS 38.09.100, lessees of remote parcels.

Background: The original drafters of AS 38.09.100, the statute that sets up leasing of remote parcels, did not allow remote parcel leases to be assigned in order to reduce the possibilities for speculation. HB 193 would allow the assignment of a remote parcel lease only in the event of the death of the lessee. The incidents to which this change would apply are few, because the remote parcel program was discontinued in 1983.

Recommendation: The Department of Natural Resources supports the proposed changes in AS 38.09.100.

If you would like additional information or have any questions, please contact my office.

Sincerely,


Judith M. Brady
Commissioner

Committee Members
Bill Sponsors
George Sullivan
Rod Swope

Inherited
Remote Parcels
(sale of) SENATE BILL NO. 368, by Sen. Bennett. Allows the heirs of a deceased lessee of a remote parcel to sell their interest in the lease, notwithstanding the provisions of a former law relating to the purchase of remote parcels (AS 38.05.078). Does not provide effective date (takes effect 90 days after Governor signs bill).

Introduced January 29 and referred to Resources.

Inherited
Remote Parcels
(sale of) SPONSOR SUBSTITUTE FOR SENATE BILL NO. 368, by Sen. Bennett. Would allow the heirs of a deceased lessee of a remote parcel to sell their interest in the lease of the remote parcel in spite of former laws that stated otherwise (this version adds another statute reference of repealed law - only change from original bill).

Introduced February 28 and referred to Resources.

Inherited
Remote Parcels
(sale of) SS FOR SENATE BILL NO. 368, (see pages 82;271). Reported back to the Senate March 4 by Resources recommending it do pass. Concurring: Sturgulewski (Chair), Coghill, Fahrenkamp, Zharoff, V. Fischer and Halford.

Passed the Senate March 7, 16-0-3-1. Excused: Josephson, Sackett, Zharoff. Absent: Abood.

Inherited
Remote Parcels
(sale of) SPONSOR SUBSTITUTE FOR SENATE BILL NO. 368, (see page 82). Received in the House 3/10/86. Referred to Resources, Finance.

Inherited
Remote Parcels
(sale of) SPONSOR SUBSTITUTE FOR SENATE BILL NO. 368, (see pages 82; 271;302;334). Reported back to the House April 14, 1986 by Resources recommending a substitute and that it do pass. Concurring were Shultz (co-chair), Cato, Sund, Thompson, M.W. Miller, Wallis and Pearce. Referred to Judiciary.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3900

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

H.JUD.

4-16-88

1:30p.m.

HOUSE COMMITTEE REPORT

7)
ate referred: 4/8/87

FURTHER REFERRALS:

DATE: 4/16/87

the Judiciary Committee has considered HB 193

an Act relating to the sale of inherited remote parcels."

RECOMMENDS:

- replace with CS HB 193 (JUD) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

DOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

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

SIGNATURE DO PASS:

SIGNING OTHER RECOMMENDATIONS:

2

Mr. J. H. ...

...

Mike ...

...

[Signature]

Chairman's signature

Beckley

J-09056

Original sponsor: Miller

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

BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 193 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the sale of inherited remote parcels."

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

* Section 1. AS 38.09.100 is amended by adding a new subsection to read:

(c) Notwithstanding the provisions of former AS 38.05.077 and 38.05.078, the heirs or devisees of a deceased lessee of a remote parcel may sell their interest in the lease of the remote parcel. The sellers shall notify the commissioner of the sale.

only change in CS (Jud)

5-0903B
Bradley
4/9/87

Adopted

Original sponsor: Miller

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

IN THE HOUSE

BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 193 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the sale of inherited remote parcels."

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

* Section 1. AS 38.09.100 is amended by adding a new subsection to read:

(c) Notwithstanding the provisions of former AS 38.05.077 and 38.05.078, the heirs or devisees of a deceased lessee of a remote parcel may sell their interest in the lease of the remote parcel. The sellers shall notify the commissioner of the sale.

~interests~ IF NEC.

Passed out

Alaska State Legislature

REPRESENTATIVE
MIKE W. MILLER
P.O. Box 55094
North Pole, Alaska 99705
(907) 488-2687

District 18
North Pole
Badger Road
Eielson
Moose Creek
Salcha




White in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-4976

House of Representatives

MEMORANDUM

TO: Representative John Sund

FROM: Representative Mike Miller 

RE: House Bill 193, "An Act relating to the sale of inherited parcels."

DATE: 4/22/87

House Bill 193 is before the full House of Representatives today for consideration. This bill is designed to address a problem that has developed from the remote parcel disposal statutes which were repealed in 1984.

Former AS 38.05.077 and 38.05.078 allowed individuals to stake the boundaries of a remote parcel on state land and enter into a five year renewable lease for use of the property. Prior to the expiration of the lease and following a survey of the property, these individuals were granted the right to purchase the parcel at its fair market value at the time of lease.

In order to avoid land speculation, AS 38.05.077 clearly determined that "A remote parcel lease may not be assigned, conveyed or otherwise transferred, but rights under the lease may devolve by testate or intestate succession." Likewise, AS 38.05.078 stated "a contract of sale for land in a remote parcel shall containing the following conditions: 1) the land may not be sold, leased, or otherwise conveyed before 10 years after the date the contract of sale is signed by the purchaser, but title to the land may devolve by testate or intestate succession."

These statutory restrictions do not take into consideration that a person receiving such a lease or property right, through testate or intestate succession, may not have the desire or means to fulfill the terms of the lease or contract of sale and therefore, would lose their inheritance.

Passage of HB 193 would alleviate this problem by allowing an individual who has received a remote parcel lease or contract of sale, through testate or intestate succession, to sell their interest in the parcel. The State would retain its protection against land speculation since the right to conduct such a sale would only be triggered by the death of the lease holder.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: HB 193
Publish Date: _____

Revision Date: _____
Title: An act relating to the sale of inherited remote parcels
Sponsor: Miller
Requestor: House Resources

Agency Affected: Natural Resources
BRU: Land and Water Management
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

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

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

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)

The Department of Natural Resources anticipates no additional staff time or expenditures associated with this legislation.

Prepared by: Paula Burgess Phone: 465-3400
Division: Land and Water Management Date: 3/25/87

Approved by Commissioner: *Judith H. Brant* Date: 3/25/87
Agency: Natural Resources

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

HB

196

Sectional Analysis - House Bill 196

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

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

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

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

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

Section 6 This specifically authorizes the department (Commerce) to issue a stop use order for plane carrying passengers for hire when the carrier has not obtained a certificate of insurance from the State.

Section 7: This section establishes a penalty for the violation described in Section 6. It is a lesser penalty than for violations under Section 3, as flying without a State certificate of insurance is not as serious a violation as flying without liability insurance at the established minimum level.

Section 8: Adds helicopters to the aircraft covered under this bill. This was an oversight in 1985 when this statute was passed.

Section 9: Repeals existing 42.30.225(c) which is superseded by Sections 2 and 6 in this bill

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

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

H. JUD.

4-15-87

1:30 p.m.

HOUSE COMMITTEE REPORT

Date referred:

4/13/87

FURTHER REFERRALS: Finance

DATE:

4-15-87

in Judiciary

Committee has considered

HB 196

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

RECOMMENDS:

replace with CS HB 196

the same title

attached amendment(s)

a new title

do pass

do not pass

no recommendation

individual recommendations

additional referral to the _____ Committee

NOTES: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

fiscal impact

same as previous fiscal note published _____

zero fiscal note

same as previous zero fiscal note published _____

zero with analysis

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

[Handwritten signatures]

[Handwritten signature]
Chairman's signature

Alaska State Legislature



April 15, 1987

House of Representatives

House Judiciary Committee

LETTER OF INTENT

CSHB 65 (JUD)


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

Existing laws apparently do not permit the dissolution of a city government unless that community suffers drastic reductions in its population or economy. The legislature recognizes that there are other circumstances under which the dissolution of a city government may be warranted. Such circumstances include those where:

1. the residents of a community have abandoned their city government;
2. alternative entities exist through which essential services may be delivered in the absence of city government; and
3. dissolution would not be adverse to the interest of the region in which the city is located and the state (e.g., dissolving primarily to avoid a viable tax base, returning education function to the state).

It may be considered to be in the best interest of the state, under the provision of Section 2 of this Act, for any city to be dissolved where such circumstances exist.

Definition of "essential services": Basic municipal services provided for the health, safety, and welfare of the residents, such as police and fire protection services and maintenance of public facilities, e.g., water and waste disposal systems, community buildings, etc.


Representative John Sund
Chairman, House Judiciary Committee

Alaska State Legislature



House of Representatives House Judiciary Committee

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

April 15, 1987

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


Dear Mr. Speaker:

The House Judiciary Committee has considered Governor Cowper's appointments to the Commission on Judicial Conduct. The committee recommends that the full body confirm the following qualified individuals:

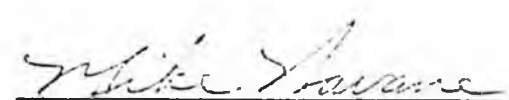
Patrick T. Brown
Georgianna Lincoln
Charles D. Weiler

James L. Hanley
Vincent P. Vitale

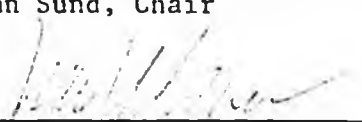
Sincerely,



Rep. John Sund, Chair



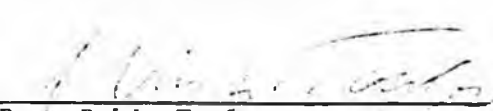
Rep. Mike Navarre



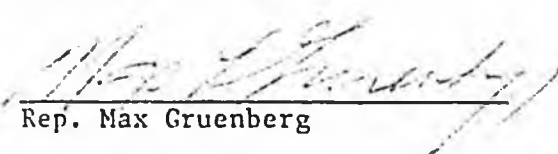
Rep. Fran Ulmer, Vice Chair

Rep. Ramona Barnes

Rep. Sam Cotten



Rep. Robin Taylor



Rep. Max Gruenberg

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	[19.0]	[8.8]	[8.8]	[8.8]	[8.8]

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

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

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

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

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

Distribution (by preparer):

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

5782W41487a

STATE OF ALASKA 1987 LEGISLATIVE SESSION FISCAL NOTE

REQUEST: _____

Bill Version: HB 196

Publish Date: _____

Revision Date: _____

Title: Act relating to air carriers

Agency Affected: DCED

BRU: Consumer Protection

Sponsor: House Transportation

Requestor: _____

Components: Measurement Standards

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE	-0-	-19,000	-19,000	-19,000	-19,000	-19,000
----------------	------------	----------------	----------------	----------------	----------------	----------------

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Joe Swanson, Director

Division: Measurement Standards

Phone: 345-7750

Date: March 31, 1987

Approved by Commissioner: J. Anthony Smith

Agency: Commerce and Economic Development

Date: March 31, 1987

Distribution (by preparer):

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

HOUSE COMMITTEE REPORT

(7)

Date referred: 3/20/87

FURTHER REFERRALS: Judiciary

DATE: April 1, 1987

The Transportation Committee has considered HB 196

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

RECOMMENDS:

- replace with CS for HB 196 CS 11/2/86 (Tvsp) the same title
- attached amendment(s) a new title:
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

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

SIGNING TO PASS:

[Handwritten signatures]

SIGNING OTHER RECOMMENDATIONS:

[Handwritten signature: Betty Cato]

Chairman's signature

HB

198

STATE OF ALASKA THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

H. JUD.	4-12-88	6:30 p.m.
H. JUD.	4-7-88	1:30 p.m.
H. JUD.	4-6-88	1:30 p.m.
H. JUD.	4-29-88	1:30 p.m.
H. JUD.	2-4-88	1:30 p.m.
H. JUD.	5-7-88	1:30 p.m.

HOUSE COMMITTEE REPORT

(7)

Date referred: 4/29/87

FURTHER REFERRALS:

DATE: April 12, 1988

The Judiciary Committee has considered SSHB 198

"An Act relating to the permissive and nonpermissive use of land."

RECOMMENDS:

- replace with CS HB 198 (Jud) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

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

SIGNING DO PASS:

[Signature]

[Signature]

[Signature]

[Signature]

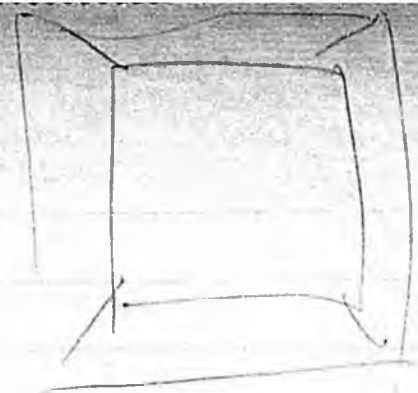
SIGNING OTHER RECOMMENDATIONS:

[Signature]

Chairman's signature

H3198

- ① Sec 3 change to 'if 2 and (A or B)
- ② "Compensation" too broad P2, L10
- ③ "owner" too broad P2, L15
- ④ P1, L22 [OWNER] lessee



Page 1 line 22-26.

(4)

major definitional problems.

State of limitations

In 2 pr line 26

def of geotechnical

Mike Schneider P Atty

Why is this bill needed?

Open access on a negligent legislator
as opposed to

11.46

↳ moves expense of petitioning from
Private to Public sector

2/4/88.

Larry Kimball

W3148 Permissive & Nonpermissive

Transfer liability to user for right
to use the land for recreational use
of ~~the~~ the land.

Issues

① What is current law?

Bryan Boyer:

4 of A 200,000 acres.

small ~~parcels~~
parcels around the state.

Answer p 2 line 12

Rich Union

Wk Railroad

Richard Swanson - Sealaska

Original sponsors: Hoffman and Wallis

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 198 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the permissive and nonpermissive
7 use of land."

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

9 * Section 1. AS 09.45.730 is amended by adding a new subsection to
10 read:

11 (b) A person who trespasses upon the land of another to gather
12 geotechnical data or take mineral resources is liable to the owner of
13 the land for treble the amount of damages that may be assessed in a
14 civil action. If the trespass is unintentional or involuntary or the
15 defendant had probable cause to believe that the land on which the
16 trespass was committed was the defendant's own or that of the person
17 in whose service or by whose direction the act was done, only actual
18 damages may be recovered.

19 * Sec. 2. AS 09.45.795 is amended to read:

20 Sec. 09.45.795. CIVIL LIABILITY FOR PERSONAL INJURIES OR DEATH
21 OCCURRING ON UNIMPROVED LAND. An owner of unimproved land is not
22 liable in tort, except for an act or omission that constitutes gross
23 negligence or reckless or intentional misconduct, for damages for the
24 injury to or death of a person who enters onto or remains on the
25 unimproved portion of land if

26 (1) the injury or death resulted from a natural condition
27 of the unimproved portion of the land or the person entered onto the
28 land for recreation [PROPERTY]; and

29 (2) the person had no responsibility to compensate the

1 owner for the person's use or occupancy of the land [PROPERTY].

2 * Sec. 3. AS 09.45.795 is amended by adding a new subsection to read:

3 (b) In this section, "unimproved land" includes land that con-
4 tains

5 (1) a trail; or

6 (2) a road built to provide access for natural resource
7 extraction, but which is no longer maintained or used.

8 * Sec. 4. AS 11.46.350 is amended by adding a new subsection to read:

9 (c) A notice against trespass is given if the notice

10 (1) is printed legibly in English;

11 (2) is at least 144 square inches in size;

12 (3) contains the name and address of the person under whose
13 authority the property is posted and the name and the address of the
14 person who is authorized to grant permission to enter the property;

15 (4) is placed at each roadway and at each way of access
16 onto the property that is known to the landowner;

17 (5) in the case of an island, is placed along the perimeter
18 at each cardinal point of the island; and

19 (6) states any specific prohibition that the posting is
20 directed against, such as "no trespassing," "no hunting," "no fish-
21 ing," "no digging," or similar prohibitions.

5-0758N
Bradley
4/8/88

Original sponsors: Hoffman and Wallis

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 198 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the permissive and nonpermissive
7 use of land."

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

9 * Section 1. AS 05 is amended by adding a new chapter to read:

10 CHAPTER 40. RECREATIONAL USE OF LAND.

11 Sec. 05.40.010. NONLIABILITY OF LANDOWNER FOR RECREATIONAL USE

12 OF LAND. A person who uses land in the possession or control of

13 another for recreation with or without permission and without compen-

14 sation uses the land without an assurance from the landowner that the

15 land is safe for any purpose. A landowner does not owe a recreational

16 user a duty of care with respect to the condition of the land except

17 that a landowner is liable to a recreational user for an injury to

18 person or damage to property resulting from an act or omission that

19 constitutes gross negligence or reckless or intentional misconduct.

20 Sec. 05.40.020. LAND TITLE UNAFFECTED. (a) This chapter does

21 not affect the title or ownership of land within the state.

22 (b) The use of land for recreation does not create nor grant an

23 easement or right in the user or in the public to enter onto or cross

24 the land in order to use the land for recreation.

25 * Sec. 2. AS 09.45.730 is amended by adding a new subsection to read:

26 (b) A person who trespasses upon the land of another to gather

27 geotechnical data or take mineral resources is liable to the owner of

28 the land for treble the amount of damages that may be assessed in a

29 civil action. If the trespass is unintentional or involuntary or the

1 defendant had probable cause to believe that the land on which t
2 trespass was committed was the defendant's own or that of the pers
3 in whose service or by whose direction the act was done, only actu
4 damages may be recovered.

5 * Sec. 3. AS 09.45.795 is amended to read:

6 Sec. 09.45.795. CIVIL LIABILITY FOR PERSONAL INJURIES OR DEATH
7 OCCURRING ON UNIMPROVED LAND. An owner of unimproved land is no
8 liable in tort, except for an act or omission that constitutes gross
9 negligence or reckless or intentional misconduct, for damages for th
10 injury to or death of a person who enters onto or remains on th
11 unimproved portion of land if

12 (1) the injury or death resulted from a natural conditic
13 of the unimproved portion of the land or the person entered onto th
14 land for recreation [PROPERTY]; and

15 (2) the person had no responsibility to compensate th
16 owner for the person's use or occupancy of the land [PROPERTY].

17 * Sec. 4. AS 09.45.795 is amended by adding a new subsection to read:

18 (b) In this section, "unimproved land" includes land that con
19 tains

20 *walking*
21 (1) a trail; or
22 (2) a road built to provide access for natural resource
23 extraction, but which is no longer maintained or used.

24 * Sec. 5. AS 11.46.350 is amended by adding a new subsection to read:

25 (c) A notice against trespass is given if the notice
26 (1) is printed legibly in English;
27 (2) is at least 144 square inches in size;
28 (3) contains the name and address of the person under whose
29 authority the property is posted and the name and the address of the
person who is authorized to grant permission to enter the property;

and adopted

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

(4) is placed at each roadway and at each way of access onto the property that is known to the landowner;

(5) in the case of an island, is placed along the perimeter at each cardinal point of the island; and

(6) states any specific prohibition that the posting is directed against, such as "no trespassing," "no hunting," "no fishing," "no digging," or similar prohibitions.