

Sponsor Statement for SB 126

Right of Action for Legal Separation

An Act establishing a right of action for a legal separation; and amending Rule 42(a), Alaska Rules of Civil Procedure.

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Contact: Senator Gary Wilken at (907) 465-3709

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

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

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

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

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

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

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