

(LIMITED RUN SHOWING ALL ADDITIONAL SPONSORSHIPS)

**CS FOR HOUSE BILL NO. 181(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered: 4/21/01**

**Referred: Rules**

**Sponsor(s): REPRESENTATIVES MURKOWSKI, McGuire, Wilson**

**SENATOR Davis**

**A BILL**

**FOR AN ACT ENTITLED**

1   **"An Act relating to the obligations of spouses, to insurance policies of spouses, to the**  
2   **nonprobate transfer of property on death to a community property trust, to the division**  
3   **of the community property of spouses at death, and to the Alaska Community Property**  
4   **Act; amending Rule 301, Alaska Rules of Evidence; and providing for an effective date."**

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

6    \* **Section 1.** AS 34.77.070 is amended by adding new subsections to read:

7           (j) An obligation incurred by only one spouse before or during marriage may  
8           be satisfied only from the property of that spouse that is not community property and  
9           from that spouse's interest in community property. This subsection does not apply to  
10          an obligation described in (b) of this section.

11          (k) An obligation incurred during marriage by both spouses may be satisfied  
12          from property of each spouse that is not community property and from the community  
13          property.

14   \* **Sec. 2.** AS 34.77.100 is amended by adding a new subsection to read:

(i) In addition to other transfers of property to a community property trust, property will be considered transferred to a community property trust if the property is subject to a nonprobate transfer on death under AS 13.33.101 and the community property trust is designated as the beneficiary to receive the property under the transfer.

\* **Sec. 3.** AS 34.77.120(b) is amended to read:

(b) Except as provided in (c) - (e) of this section,

(1) the ownership interest in and proceeds of a policy that insures the life of one of the spouses and that has been classified by a community property agreement or a community property trust as community property are community property without regard to the classification of property used to pay premiums on the policy;

(2) the ownership interest in and proceeds of a policy that is owned by one spouse and that has not been classified by a community property agreement or a community property trust as community property are mixed property if all or part of a premium on the policy is paid from community property after the determination date; the community property component of the ownership interest and proceeds is the part resulting from multiplying the entire ownership interest and proceeds by a fraction that consists of a numerator that is the sum of the net premiums and portions of net premiums paid from community property and a denominator that is the sum of the net premiums paid;

(3) the ownership interest in and proceeds of a policy issued during marriage that designates the spouse of the insured as the owner are the individual property of the owner without regard to the classification of property used to pay premiums on the policy;

(4) the ownership interest in and proceeds of a policy that designates a person other than either of the spouses as the owner are not affected by this chapter if a premium on the policy is not paid from community property after the determination date; if all or part of a premium on the policy is paid from community property after the determination date, the ownership interest and proceeds of the policy are in part property of the designated owner of the policy and in part community property of the

spouses without regard to the classification of property used to pay premiums on the policy after the initial payment of a premium on the policy from community property; the community property component of the ownership interest and proceeds is the part resulting from multiplying the entire ownership interest and proceeds by a fraction that consists of a numerator that is the sum of the net premiums and portions of net premiums paid from community property and a denominator that is the sum of the net premiums paid;

(5) written consent by a spouse to the designation of another person as the beneficiary of the proceeds of a policy is effective to relinquish that spouse's interest in the ownership interest and proceeds of the policy without regard to the classification of property used by a spouse or another person to pay premiums on the policy; a designation **of any of the following persons or trusts as the beneficiary of a policy is presumed to have been made with the consent of the other** [BY EITHER] spouse;

**(A) [OF A PARENT OR CHILD OF EITHER OF THE SPOUSES AS THE BENEFICIARY OF THE PROCEEDS OF A POLICY IS PRESUMED TO HAVE BEEN MADE WITH THE CONSENT OF] the other spouse or an ancestor or descendant of either spouse; or**

**(B) a trust, to the extent that its beneficiaries consist of one or more of the persons named in (A) of this paragraph;**

(6) unless the spouses provide otherwise in a community property agreement or community property trust, designation of a trust as the beneficiary of the proceeds of a policy with a community property component does not reclassify the component;

**(7) unless the spouses provide otherwise, if an irrevocable trust owns a life insurance policy insuring the life of one spouse and the spouse whose life is not insured by the policy is provided a beneficial interest in the trust, then, before a contribution of assets to the trust, the spouse whose life is not insured by the policy is presumed to have relinquished any community property interest that the spouse whose life is not insured by the policy may have had in the assets contributed to the trust; the presumption in this paragraph applies only to the**

**extent that the beneficiaries of the trust consist of one or more of the following persons:**

**(A) the spouse whose life is not insured;**

**(B) an ancestor of either spouse;**

**(C) a descendant of either spouse;**

**(8) the testimony of the spouse whose life is not insured is sufficient to rebut a presumption in (5) or (7) of this subsection.**

\* **Sec. 4.** AS 34.77.120(e) is amended to read:

(e) This section does not affect the ownership interest or proceeds of a policy unless a spouse **or a trust described in (b)(7) of this section** is designated as an owner in the policy or on the records of the policy issuer and community property is used to pay a premium on the policy.

\* **Sec. 5.** AS 34.77 is amended by adding a new section to read:

**Sec. 34.77.155. Division of community property at death.** (a) Upon the death of a spouse, one-half of the aggregate value of the community property owned by the spouses and by any community property trust established by the spouses reflects the share of the surviving spouse and the other one-half reflects the share of the decedent.

(b) Upon the death of a spouse, the deceased spouse's personal representative and the trustee of a community property trust each have the power to distribute community property in divided or undivided interests and to adjust resulting differences in valuation. A distribution of community property in kind may be made on the basis of a non pro rata division of the aggregate value of the community property, on the basis of a pro rata division of each individual item or asset of community property, or by using both methods.

(c) Notwithstanding (a) and (b) of this section, spouses may agree in writing to divide their community property on the basis of a non pro rata division of the aggregate value of the community property or on the basis of a pro rata division of each individual item or asset of community property, or by using both methods.

\* **Sec. 6.** AS 34.77.070(a), 34.77.070(c), 34.77.070(d), and 34.77.070(e) are repealed.

\* **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2       INDIRECT COURT RULE AMENDMENT. AS 34.77.120(b)(8), enacted by sec. 3  
3 of this Act, amends Rule 301, Alaska Rules of Evidence, by changing the rule's general  
4 criteria for the evidence that must be introduced to satisfy the burden of proof to rebut the  
5 presumptions established by AS 34.77.120(b)(5) or (7). AS 34.77.120(b)(8) provides that the  
6 testimony of a spouse is sufficient to satisfy the burden without having to apply the rule's  
7 requirement that the evidence be sufficient to permit reasonable minds to conclude that the  
8 presumed fact does not exist.

9       \* **Sec. 8.** This Act takes effect immediately under AS 01.10.070(c).