

LEGAL SERVICES

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MEMORANDUM

May 11, 2021

SUBJECT: CSSB 11(JUD) relating to community property and community property trusts (Work Order No. 32-LS0132\G)

TO: Senator Roger Holland
Chair of the Senate Judiciary Committee
Attn: Ed King


FROM: Theresa Bannister
Legislative Counsel

This memo accompanies the bill described above.

Retroactive application: constitutional issue. The bill includes a provision that applies the amended AS 34.77.030(h) to all community property trusts in existence on or after May 23, 1998.

Although this date represents the date when the section originally took effect, the retroactive application of the amended AS 34.77.030(h) may cause serious problems for persons who acted under the current language. Applying the new language to trusts that pre-date the effective date of the new language may raise constitutional impairment of contracts issues under the state and federal constitutions¹ if the new language operates as a substantial impairment of a contractual relationship involved in the trusts.

To partially alleviate the potential problems caused by retroactivity, the bill includes a saving clause at the end which will protect a court action or proceeding begun before the effective date of this Act. However, the most recent amendment that was made to this bill removed the other part of the saving clause that protected accrued rights. This removal reduced the protection provided by the saving clause from a constitutional challenge based on the impairment of contracts.

If may be of further assistance, please advise.

TLB:lme
21-291.lme

Attachment

¹ Art. I, sec. 15, Constitution of the State of Alaska; art. I, sec. 10, U.S. Const.