

S

B

7

9



Official Business

Alaska State Legislature

Senate

Committee on

Health, Education & Social Services

Charlie Parr, Chairman
Terry Stimson, Vice-Chairman
Vic Fischer
Tim Kelly
Mike Colletta

Touch V
State Capitol
Juneau, Alaska 99811

465-4907
465-4908

MEMORANDUM

April 10, 1981

TO: Kevin Bruce, Aide
Senate Judiciary Committee

FROM: Rocky Plotnick Weller, Aide
Senate HESS Committee

RE: SB 79

A handwritten signature in cursive script, appearing to read "Rocky", with a long horizontal flourish extending to the right.

The Anchorage Legislative Information Office called today and asked us to notify Paul Paslay when we scheduled SB 79. That bill is in Senate Judiciary, not Senate HESS. Here is his address and telephone number so you can notify him when the bill is scheduled.

Paul Paslay
213 East Fireweed Lane
Anchorage, Alaska 99503

272-9486

SENATE JUDICIARY COMMITTEE

Bill Number SB 79 Original Sponser(s) RULES FOR LEGISLATIVE COUNCIL

Title RELATING TO UNIFORM DISPOSITION OF CERTAIN PROPERTY RIGHTS AT DEATH

Originally Recieved From KERTTULA

Contact CODE REVISION COMMISSION Date 1-14-81
KATIE WALSH

Committee Recommendation (MAJORITY) _____

Report Attached yes no) Supporters _____
MINORITY _____

Report Attached yes no) Supporters _____

Object of Bill _____

Committee Amendments _____

Fiscal Impact _____

LAA Legal/Research Contact _____ Research/Information _____

Concerned Parties:	
Supporting	Opposing
<u>JOHN ABBOTT - KATIE WALSH</u> <u>COMMISSIONER L.S. KURTZ</u> <u>WILL PRESENT MATERIAL</u>	

CODE REVISION COMMISSION



COMMISSIONERS
JOHN W. ABBOTT - CHAIRMAN
SUSAN A. BURKE - VICE CHAIRMAN
PATRICK M. RODEY
FRED E. BROWN
L.S. KURTZ, JR.
WM. GRANT CALLOW

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 462 1878

EXECUTIVE SECRETARY
BILLY G BERRIER

January 19, 1981

The Honorable Patrick M. Rodey
Chairman, Judiciary Committee
Alaska State Senate
Pouch V, State Capitol
Juneau, Alaska 99811

Re: SB 79--Uniform disposition of certain
property rights at death

Dear Chairman Rodey:

The Alaska Code Revision Commission has submitted SB 79 regarding uniform disposition of certain property rights at death. The commission is extremely interested in securing passage of the bill during this legislative session, if possible. Further, a member of the commission will be available to present testimony on behalf of the bill upon notification.

In an effort to be of assistance, I am enclosing a copy of the commission's transmittal memorandum which briefly sets out the need for this revision along with a copy of the memorandum outlining the differences between existing law and proposed changes.

Commission secretary, Catherine Walsh, can be contacted at extension 4878 in order to coordinate testimony in the event hearings are scheduled in the near future.

We appreciate your attention to this matter and any assistance you can provide in securing SB 79's passage.

Very truly yours,

John W. Abbott
by: chw

John W. Abbott, Chairman
Alaska Code Revision Commission

JWA:chw

Enclosures

MEMORANDUM

TO: Chairman, Alaska Legislative Council

FROM: John W. Abbott, Chairman *John W. Abbott*
Alaska Code Revision Commission

DATE: January 9, 1981

RE: Uniform Disposition of Community Property Rights
at Death Act

Pursuant to the authority granted in AS 24.20.075(c), the Alaska Code Revision Commission has reviewed the proposed Uniform Disposition of Community Property Rights at Death Act. The proposed Act does not create community property in Alaska. It prescribes the rights at death of a married person who has community property acquired prior to a change in domicile to Alaska or property which is traceable to community property where the spouses have not indicated an intention that the community property rights be severed. Many Alaskans reside in a state which has community property rights before moving to Alaska. In order to have specific, uniform provisions for dealing with this property at death, the Alaska Code Revision Commission recommends that the attached bill be introduced.

The commission further requests that there be a change in the title to read: For an Act entitled: "An Act relating to the uniform disposition of certain property rights at death."

This bill was previously introduced to the Eleventh State Legislature as Senate Bill No. 58.

JWA:bgb:chw

cc: Hon. Jay S. Hammond, Governor
Hon. Jay A. Rabinowitz, Chief Justice
Myrton R. Charney, Executive Director
Legislative Affairs Agency

Attachments

Property
Rights ,
(disposition
of)

SENATE BILL NO. 79, by the Rules Committee by request of the Legislative Council (for the Code Revision Commission). Adds new chapter to AS 13 relating to the disposition at death of certain property acquired by a married person. Lists rebuttable presumptions to be used in determining whether chapter applies to specific property. Outlines procedures for disposition of property at death. States: "Upon death of a married person, one-half of the property to which chapter applies is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws of succession of this state. The other half of the property . . . is the property of the decedent and is subject to testamentary disposition . . . With respect to property to which this chapter applies, the one-half of the property which is the property of the decedent is not subject to the surviving spouse's right to elect against the will." Other sections include: Perfection of title of surviving spouse; Perfection of title of personal representative, heir or devisee; Purchaser for value or lender; Creditor's rights; Acts of married persons; Limitations on testamentary disposition; and uniformity of application and construction. Chapter to be cited as the "Uniform Disposition of Community Property Rights at Death Act."
Does not provide for effective date.

Introduced January 14 and referred to Judiciary.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99801
907 455 3600

MEMORANDUM

November 16, 1978

SUBJECT: Uniform Disposition Community
Property Rights at Death Act
(Work Order #5748)

TO: Code Revision Commission

FROM: Kenneth M. Rosenstein
Legislative Counsel *KMR*

Attached please find a draft of the Uniform Disposition of Community Property Rights at Death Act prepared for introduction at the next session of the legislature. The act is intended to prescribe the rights, at death, of a married person who has community property acquired prior to a change in domicile to Alaska, or which is traceable to community property, where the spouses have not indicated an intention that their community rights be severed.

AS 13.41.005 defines the property which is subject to disposition under chapter 41. Subsection 1 covers all personal property acquired by the spouses while domiciled in a community property state to the extent that property would have been treated as community property at the time of acquisition under the laws of that state and in which the spouses have expressed no intent to sever their community rights. Also included would be property which the spouses have agreed to treat as community property. Subsection 2 covers real property in the state (real property located in other states would be treated under the laws of those states) to the extent that it can be traced to a community source.

AS 13 41.010 establishes rebuttable presumptions intended to assist a court in applying the definitions of sec. 5. The

presumptions are that (1) property acquired by a married person while domiciled in a community property state is and remains community property, and (2) property acquired by a married person while domiciled in a common law state, title to which included a right of survivorship, is not community property.

AS 13.41.015 requires that one-half of a deceased married person's property to which the chapter applies, i.e. community property or property traceable to it, becomes the property of the surviving spouse and is not subject to testamentary or intestate disposition. The other half is subject to the applicable manner of disposition. The one-half of the property to which the chapter applies is made not subject to the surviving spouse's elective share.

AS 13.41.020 provides a method for the perfection, by means of a court order, of the title to property passing to the surviving spouse under the provisions of this chapter. It is intended to protect the personal representative from liability for failing to search the decedant's estate for property to which the chapter applies. The personal representative's duty may be reinstated by written demand of the surviving spouse or his successor in interest.

AS 13.41.025 provides a method whereby the personal representative, heir, or devisee may institute an action to perfect the surviving spouse's title to property to which the chapter applies. It is a corollary to sec. 20.

AS 13.41.030 protects purchasers and lenders taking a security interest, who acquire such interest for value, after the spouse's death, from liability to a person who appears to have title to property to which the chapter applies. It is intended to permit reliance upon apparent title and facilitate both ascertainment of title and disposition of assets where adequate consideration is paid.

AS 13.41.035 merely states that the rights of creditors in property to which the chapter applies is not affected.

AS 13.41.040 makes clear that the rights of spouses to sever their community property interests or to create a form of ownership not subject to this chapter are in no way limited by the chapter.

Code Revision Commission
Page 3
November 16, 1978

AS 13.41.045 provides that the chapter does not authorize the testamentary disposition of property which is otherwise prevented from such disposition.

AS 13.41.050 and 13.41.055 provide for uniform construction and application and for citation for short title, respectively.

KMR:jdm

Attachment

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAP.TOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 28, 1981

SUBJECT: Disposition of community property rights
at death (SB 79)

TO: Senate Judiciary Committee

FROM: Billy G. Berrier *BGB*
Director
Division of Legal Services

At the committee meeting held Monday, January 26th, to consider SB 79, Senator Parr inquired about the differences in language in Sec. 13.41.010(1) and (2) describing property affected. I stated that it appeared the difference was designed to follow the rules of the state of domicile concerning ownership between spouses. Senator Parr requested this be checked.

This assumption is supported by the official comment by the National Conference of Commissioners on Uniform State Laws published with the Act in 1971. A copy of this comment is enclosed. Sec. 2 of the proposed act is identical with Sec. 13.41.010.

BGB:ljb

Enclosure

varying approaches which could be taken, depending upon the state, suggest that the matter simply be left to court decision as to what portion would, under applicable choice of law rules, be treated as community property. The principle suggested is that at least a portion should be treated as community, if the appropriate law so treated it. Ordinarily, such questions should not arise if the problem is foreseen and effective planning takes place prior to death of a spouse.

1 SECTION 2. [*Rebuttable Presumptions.*] In determining whether
2 this Act applies to specific property the following rebuttable pre-
3 sumptions apply:

4 (1) property acquired during marriage by a spouse of that
5 marriage while domiciled in a jurisdiction under whose laws
6 property could then be acquired as community property; is pre-
7 sumed to have been acquired as or to have become, and re-
8 mained, property to which this Act applies; and

9 (2) real property situated in this State and personal property
10 wherever situated acquired by a married person while domiciled
11 in a jurisdiction under whose laws property could not then be
12 acquired as community property, title to which was taken in a
13 form which created rights of survivorship, is presumed not to be
14 property to which this Act applies.

COMMENT

The purposes of the rebuttable presumptions are simply to assist a court in applying the definitions in Section 1, through a process of tracing the property to a community property origin.

Subsection (1)

Subsection (1) of Section 2 deals with property acquired by the spouses while domiciled in a community property state. It thus provides that if one of the spouses acquired property while so domiciled, such property is "presumed" (a rebuttable presumption) to have been and remained community. It may be shown, of course, that such property was the separate property of the spouse and the law of the state of domicile may furnish the rule. For example the law of community domicile may provide the rule that property acquired in the name of the wife shall be deemed to be her separate property or that a particular subsequent act effectively severed the community property interests.

Example 1. H, married to W and domiciled in California, acquired stock; later H and W became domiciled in Michigan. Such property, if retained, is presumed to be property subject to this Act. By operation of Section 1 the proceeds of sale or exchange of such stock, and property acquired with the proceeds or income of such stock, would be deemed subject to the Act. If, however, upon the death of H, H's personal representative rebutted the presumption by evidence that the stock was acquired by H with his separate property (or by inheritance) neither the stock nor property acquired with that property or the income therefrom (unless the income itself would be subject to the Act because, under the applicable law, income from separate property is deemed to be community property) would be subject to this Act. Similarly the presumption may be rebutted by showing that such property, though originally community property, was effectively severed by an act of the spouses. It should be emphasized that the

presumption is simply one of procedural convenience and neither changes the nature of the property interests nor prevents an interested person from showing the separate nature of the property.

Subsection (2)

Subsection (2) sets up a rebuttable presumption that where a domiciliary of a common law state acquired property in such form as to indicate that title was in joint tenancy, tenancy by the entireties, or some other form of joint ownership with right of survivorship, it will be presumed that the property is not subject to the Act. This presumption was deemed appropriate as expressing the normal expectations of the spouses and to facilitate ascertainment of title to real property located in the enacting state, as well as personal property wherever located.

Example 2. John and Mary Jones, formerly domiciled in California, became domiciled in Illinois and purchased a residence, taking title in the names of "John and Mary Jones as joint tenants, and not as tenants in common, with right of survivorship." Regardless of the source of the funds, the Illinois residence would be presumed to be held in joint tenancy and not subject to this Act.

1 SECTION 3. [*Disposition upon Death.*] Upon death of a mar-
2 ried person, one-half of the property to which this Act applies is
3 the property of the surviving spouse and is not subject to testa-
4 mentary disposition by the decedent or distribution under the laws
5 of succession of this State. One-half of that property is the prop-
6 erty of the decedent and is subject to testamentary disposition
7 or distribution under the laws of succession of this State. With
8 respect to property to which this Act applies, the one-half of the
9 property which is the property of the decedent is not subject to the
10 surviving spouse's right to elect against the will [and no estate of
11 dower or curtesy exists in the property of the decedent].

COMMENT

This section deals with the dispositive rights, at death, of (1) a married person domiciled in the enacting state as to personal property and (2) of any married person, including a nondomiciliary of the enacting state, as to real property located in the enacting state; it also sets forth rules for intestate succession to property subject to this Act.

Testate Disposition

The dispositive pattern is the usual one encountered in the community property states; the deceased spouse may dispose of his one-half of the community property, subject to the provisions of Section 9.

Example. H and W were formerly domiciled in California and are now domiciled in Michigan. All of their property was community property prior to the move from California to Michigan. At H's death he held title to a home in Michigan which had been purchased with the proceeds of the sale of a home in California which had been community property. Stock acquired as community property in California was held in his name in safety deposit boxes located in Illinois and Michigan. H and W had acquired a cottage in California as community property, held in H's name, and it was so held at the time of his death. H and W acquired a Michigan resort condominium, taking title as tenants by the