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697

FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 697
 Title: "...disposition of certain property rights at death."
 Sponsor: House Rules/Code Rev. Comm
 Requestor: House Judiciary
 Date of Request: 3/13/84

FISCAL DETAIL

Agency Affected: Department of Law
 Program Category Affected: General Government
 Program or Subprogram(s) Affected: Legal Services Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pegues Director Phone: 465-3672
 Division: Administrative Services Division Date: 3-13-84
 Approved by Commissioner: Norman C. Gorsuch Date: 3-13-84
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

12/1/83

This bill was requested 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.

The Act codifies what the Code Revision Commission believes is now common law in Alaska. The Act should help eliminate the necessity of stating that common law through litigation, thus saving private parties some litigation expense and reducing court costs. Because the bill deals only with private estate interests, it will not have a fiscal impact on state government operations, other than slightly reducing crowded court calendars.

HOUSE AND SENATE JOINT
JOURNAL SUPPLEMENT

March 1, 1984

No. 21

ALASKA CODE REVISION COMMISSION



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EXECUTIVE SECRETARY
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March 1, 1984

Senator Bill Ray, Chairman
Alaska Legislative Council
Pouch V, State Capitol
Juneau, Alaska 99811

- RE: (1) a bill relating to principal and income of trusts; (HB 693/SB 511)
(2) a bill relating to administration of decedents' estates; (HB 694/SB 512)
(3) a bill relating to renunciation of rights in decedents' estates; (HB 695/SB 513)
(4) a bill relating to married persons' rights in a family home; and (HB 696/SB 514)
(5) a bill relating to the uniform disposition of certain property rights at death (HB 697/SB 515)

Dear Senator Ray:

Pursuant to AS 24.20, the Alaska Code Revision Commission has prepared the enclosed bills and respectfully asks that they be introduced in the legislature.

They are technical bills the commission has been working on with the probate committee of the Alaska Bar Association. They relate generally to rights at death and to property arrangements that usually have their inception in death.

At its last meeting, the Legislative Council agreed to introduce the bills.

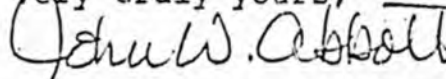
One of the bills, the bill on disposition of certain property rights at death, was previously in the legislature but received little notice. It is revived at the request of the probate committee of the Alaska Bar Association, and that

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committee has advised the commission that it will actively support the bill.

A commentary on each bill is enclosed.

Very truly yours,



John W. Abbott, Chairman
Alaska Code Revision Commission

JWA:chw

Enclosures

cc: Hon. Bill Sheffield
Hon. Edmond W. Burke, Chief Justice
Myrton R. Charney, Executive Director
Legislative Affairs Agency

-- COVERS IDENTICAL BILLS: HB 697 & SB 515 --

ALASKA CODE REVISION COMMISSION
COMMENTARY TO ACCOMPANY BILL ON
UNIFORM DISPOSITION OF CERTAIN PROPERTY RIGHTS AT DEATH ACT

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.

The Act codifies what the code revision commission believes is now the common law in Alaska. The Act is intended to eliminate the necessity of stating that common law through litigation.

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 (e.g., was purchased with the proceeds of community property).

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 decedent'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 that spouse's 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 to 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.

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.

Nine states have adopted the 1971 uniform Act.