

SB

166

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 166

Revision Date/Time (Note if correction) _____	Dept. Affected _____	Law _____
Title <u>"An Act relating to the amendment and revocation</u>	BRU _____	Civil Division _____
<u>of spouse's community property agreements and ..."</u>	Component _____	Commercial _____
Sponsor <u>Senate Judiciary Committee by Request</u>		
Requester <u>Senate Judiciary Committee</u>	Component Serial No. _____	<u>2211</u>

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: _____

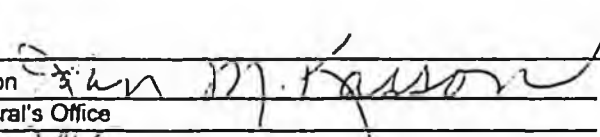
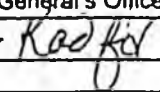
POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

SB 166 makes technical corrections to the Community Property Act passed in 1998. The bill relates to amending the community property agreement with regard to disposition of the surviving spouse's property after the death of the first spouse.

This bill will have no fiscal impact on the Department of Law.

Prepared by Joan M. Kasson 
 Division Attorney General's Office
 Approved by Commissioner Rodolfo  Bruce M. Botelho, Attorney General
 Agency Department of Law

Phone 465-5370
 Date/Time 5/6/99, 9:16 AM
 Date 5/6/99

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SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 4/28/99

FURTHER:

Date of 5-Day Notice: 24-hour rule in effect
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 5/12/99

Judiciary Committee considered

SENATE BILL NO. 166

"An Act relating to the amendment and revocation of spouses' community property agreements and community property trusts; and providing for an effective date."

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to the _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical title

new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		<i>[Handwritten Signature]</i>			
		<i>[Handwritten Signature]</i>	✓		
CHAIR: <i>[Handwritten Signature]</i>		CHAIR:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

LAW	5/0	✓	

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

Alaska State Legislature

Chairman,
Judiciary Committee
Administrative Regulations
Revenue Committee

Vice Chairman,
Resources Committee



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Senator Robin L. Taylor

REQUESTOR STATEMENT

SB 166

"An Act relating to the amendment and revocation of spouses' community property agreements and community property trusts; and providing for an effective date."

The Alaska Community Property Act is based upon the Uniform Marital Property Act. One new feature added by UMPA is the ability of a couple to make a non-testamentary disposition under a community property agreement. Alaska enacted the same provision which is applicable to both community property agreements and community property trusts. Further, the Alaska Act provides that such instruments may not be amended or revoked unless the agreement or trust itself provides for revocation "on a particular date or on the occurrence of a particular event," or unless the agreement or trust is amended or revoked by a later community property agreement or trust.

The above-described provisions may create an argument that the surviving spouse makes a completed taxable gift at the first spouse's death. The following history explains this issue. The Uniform Marital Property Act was previously enacted in Wisconsin. Subsequently, the decision in *Pyle v. United States*, 766 F.2d 1141 (7th Cir. 1985) was decided. This case involved an Illinois joint will. The court held that after the death of the first spouse, the surviving spouse could not change the will. Therefore, at that time, the surviving spouse made a taxable gift to the residuary beneficiaries who would inherit after the surviving spouse's death. As a result, transfer tax was payable at the death of the first spouse, which otherwise would have been deferred until the death of the surviving spouse.

Wisconsin practitioners became concerned, and the Wisconsin legislature amended its community property statute to create a default rule that a surviving spouse may unilaterally amend a community property agreement with respect to property to be disposed of at the death of the surviving spouse. Such a provision would prevent application of the decision of *Pyle v. United States* because the amendment would prevent the gift from being completed until the death of the surviving spouse.

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The proposed amendments to A.S. 34.75.090 and .100 are similar to the amendments enacted by the Wisconsin Legislature. They state that if a community property agreement or trust provides for the non-testamentary disposition of property, without probate, at the death of the second spouse, at any time after the death of the first spouse the surviving spouse may amend the community property agreement or trust with respect to trust provides otherwise. The purpose of this language is to prevent a community property agreement or trust from inadvertently creating a completed gift at the death of the first spouse which would require the payment of federal transfer tax, which otherwise would be deferred until the death of the surviving spouse.

AS 34.75.090. Community property agreement. ***

- (c) A community property agreement may not be amended or revoked unless the agreement itself provides for revocation on a particular date or on the occurrence of a particular event, or unless the agreement is amended or revoked by a later community property agreement. To amend or revoke the agreement, the later community property agreement is not required to declare any property of the spouses as community property. The amended agreement or the revocation is enforceable without consideration. However, if a community property agreement provides for the non-testamentary disposition of property, without probate, at the death of the first spouse the second spouse, at any time after the death of the first spouse the surviving spouse may amend the community property agreement with regard to property to be disposed of at his or her death unless the community property agreement expressly provides otherwise.

AS 34.75.100. Community property trust. ***

- (c) A community property trust may not be amended or revoked unless the agreement itself provides for revocation on a particular date or on the occurrence of a particular event or unless the agreement is amended or revoked by a later community property trust. To amend or revoke the trust, the later community property trust is not required to declare any property held by the trustee as community property. The amended trust or revocation is amended without consideration. However, if a community property trust provides for the non-testamentary disposition of property, without probate, at the death of the second spouse, at any time after death of the first spouse the surviving spouse may amend the community property trust with regard to property to be disposed of at his or her death unless the community property trust expressly provides otherwise.