

HB

181

Adopted

April 20, 2001

Amendment # 1

To: Amy Erickson
To: Dave Shaftel

Faxed: (907) 465-2293

HB 181

Dear Amy:

I noticed one small change and it only being done to conform the bill to our existing statute.

A new section needs to be added: Logically this should follow Section 3.

AS 34.77.120(e) is amended to read:

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.

Steve

22-LS0567L
Bannister
4/19/01

*Adopted
4.21.01*

CS FOR HOUSE BILL NO. 181()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION**

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES MURKOWSKI, McGuire

new title

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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (B) an ancestor of either spouse;

5 (C) a descendant of either spouse;

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

8 * Sec. 4. AS 34.77 is amended by adding a new section to read:

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

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

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

25 * Sec. 5. AS 34.77.070(a), 34.77.070(c), 34.77.070(d), and 34.77.070(e) are repealed.

26 * Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to
27 read:

28 **INDIRECT COURT RULE AMENDMENT.** AS 34.77.120(b)(8), enacted by sec. 3
29 of this Act, amends Rule 301, Alaska Rules of Evidence, by changing the rule's general
30 criteria for the evidence that must be introduced to satisfy the burden of proof to rebut the
31 presumptions established by AS 34.77.120(b)(5) or (7). AS 34.77.120(b)(8) provides that the

1 testimony of a spouse is sufficient to satisfy the burden without having to apply the rule's
2 requirement that the evidence be sufficient to permit reasonable minds to conclude that the
3 presumed fact does not exist.

4 * **Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).

ALASKA STATE LEGISLATURE

Chair:
LABOR AND COMMERCE

Member:
MILITARY AND VETERANS AFFAIRS
COMMUNITY AND REGIONAL AFFAIRS
LEGISLATIVE COUNCIL
JOINT ARMED SERVICES



REPRESENTATIVE LISA MURKOWSKI
Government Hill • Elmendorf • East Anchorage


Session:
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-3783
FAX: (907) 465-2293
Representative_Lisa_Murkowski@legis.state.ak.us

Interim:
716 WEST 4TH AVENUE
ANCHORAGE, AK 99501-2133
PHONE: (907) 269-0174
FAX: (907) 269-0177

Memorandum

Date: March 23, 2001

To: Representative Norman Rokeberg
Chairman, House Judiciary Committee

From: Representative Lisa Murkowski 

Subject: Scheduling HB 181

MAR 23 2001

House Bill 181, "Community Property" makes four minor adjustments to Alaska's community property act: First, HB 181 provides that a creditor of a debtor spouse may only reach the separate property of that spouse and that spouse's jointly held property. Next, HB 181 allows property such as life insurance and IRAs to be transferred to a community property trust by designating the trust as a beneficiary of the property. Third, HB 181 clarifies the sources of funds used to purchase life insurance and expands the category of family members to include ancestors or descendants of either spouse. Finally, HB 181 clarifies that on the death of a spouse, different property items can be allocated to the spouse's shares, as long as each spouse's share receives half of the total value of the community property.

Attached you will find a copy of House Bill 181, sponsor statement, and sectional analysis. Please schedule HB 181 at your earliest convenience.

ALASKA STATE LEGISLATURE

Chair:
LABOR AND COMMERCE

Member:
MILITARY AND VETERANS AFFAIRS
COMMUNITY AND REGIONAL AFFAIRS
LEGISLATIVE COUNCIL
JOINT ARMED SERVICES



REPRESENTATIVE LISA MURKOWSKI
Government Hill • Elmendorf • East Anchorage

Session:
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-3783
FAX: (907) 465-2293
Representative_Lisa_Murkowski@legis.state.ak.us

Interim:
716 WEST 4TH AVENUE
ANCHORAGE, AK 99501-2133
PHONE: (907) 269-0174
FAX: (907) 269-0177

Sponsor Statement HB 181 Community Property

In 1998, the legislature passed Alaska's community property act, which allows married couples to characterize some or all of their assets as community property. Since the enactment of Alaska's community property act, experts, through experience and application of community property and trust planning, have identified certain statutes requiring improvement and adjustment. House Bill 181 makes these improvements and adjusts Alaska's community property statutes in four ways:

The extent to which a creditor can reach a couple's community property. Section 1 provides that a creditor of a debtor spouse may only reach the separate property of that spouse and that spouse's half of the jointly held property. If only one spouse is the debtor, then the creditor can reach half of the community property. If both spouses are debtors, then the creditor can reach all of the community property.

Transfers of property to a community property trust by beneficiary designation. This new provision allows property such as life insurance policies and IRAs to be transferred to a community property trust by designating the trust as the beneficiary of the property. This will assist nonresidents of Alaska in using Alaska community property trusts.

Clarification of sources of funds used to purchase life insurance. Community property funds may be used by a couple to purchase life insurance, and where the primary beneficiaries are family members, then it is presumed that both spouses consented to the choice of such beneficiaries. The existing statute already creates the presumption for the parent or child of either spouse. This amendment expands the category of family members to include ancestors or descendants of either spouse, or a trust for the benefit of those persons. In order to minimize estate taxes, it is presumed that a spouse who buys life insurance has used his or her own property to purchase the life insurance.

Division of community property at death. Section 4 clarifies that on the death of a spouse, half of the community property reflects the share of the decedent and the other half reflects the share of the surviving spouse. However, each item of the community property does not have to be divided equally. Rather, different items can be allocated to the spouse's shares, as long as each spouse's share receives half of the total aggregate value of the community property. This added flexibility will allow for better income and estate tax planning for couples using Alaska community property.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 17, 2001

SUBJECT: Sectional Summary of HB 181 relating to the property and obligations of spouses (Work Order No. 22-LS0567\J)

TO: Representative Lisa Murkowski
Attn: Amy

FROM: *JB*
Theresa L. Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. AS 34.77.070(j) and (k). Establishes from what property an obligation incurred by only one spouse can be satisfied. Establishes from what property an obligation incurred during marriage by both spouses may be satisfied.

Section 2. AS 34.77.100. Establishes that nonprobate transfers on death of property under AS 13.33.101 can be transferred to a community property trust.

Section 3. AS 34.77.120(b). In (b)(5), establishes a presumption that a designation of certain persons or a certain trust as the beneficiaries of an insurance policy has been made with the consent of the other spouse. Adds under (b)(7) a presumption relating to the community property interests of spouses in an insurance policy on the life of one of the spouses and owned by an irrevocable trust.

Section 4. AS 34.77.155. Adds a new section establishing rules to govern the division of community property upon the death of a spouse.

Section 5. Repeals certain sections.

Section 6. Gives the Act an immediate effective date.

If I may be of further assistance, please advise.

TLB:glc
01-250.glc

FISCAL NOTE

**STATE OF ALASKA
2001 LEGISLATIVE SESSION**

Fiscal Note Number: _____
 Bill Version: HB 181
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act relating to the obligations of spouses, to BRU Civil Division
the insurance policies of spouses, to the nonprobate transfer ..." Component Fair Business Practices
 Sponsor Representative Murkowski
 Requester House Judiciary Component No. 2206

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
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						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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 (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 HB 181 repeals four sections of the Alaska Community Property Act and replaces them with a general rule that an obligation incurred by a spouse can only be satisfied from that spouse's non-community property and that spouse's interest in the community property, no matter when the obligation was incurred. In addition, the bill provides for how community property is to be divided upon the death of a spouse, and how it is to be distributed; allows for transfers of community property to a community property trust; and makes changes to how community property relates to life insurance purchases.

 Passage of HB 181 will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson Phone 465-5370
 Division: Attorney General's Office Date/Time 4/19/01 3:42 PM
 Approved by: Kathryn Daughhettee for Bruce M. Botelho, Attorney General Date 4/19/01
 Agency: Department of Law

For distribution information, call the Governor's Legislative Office



HUGHES THORSNESS POWELL
HUDDLESTON & BAUMAN LLC
ATTORNEYS AT LAW

March 29, 2001

VIA FACSIMILE
(907) 465-2293

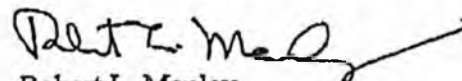
Representative Lisa Murkowski
State of Alaska
Juneau, Alaska

Re: HB 181

Dear Lisa:

As you know I am in estate planning attorney in Anchorage and am a member of the estate planning section of the Alaska Bar Association. I want to express my support for passage of HB 181. This bill would accomplish important amendments to our Alaska Community Property Act and will benefit the residents of Alaska.

Very truly yours,


Robert L. Manley

RLM/mjm

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

LAW OFFICES OF
DAVID G. SHAFTEL
A PROFESSIONAL CORPORATION
550 West Seventh Avenue, Suite 705
Anchorage, Alaska 99501

(907) 276-6015
FAX (907) 278-6015
E-MAIL: info@shaftellaw.com

Legal Assistants
Leanna D. Dreher, J.D. ●
Linda J. Durr, PLS

Attorneys:
David G. Shaftel, J.D., LL.M. (Taxation) ♦ ●
Caroline P. Wanamaker, J.D. ♦ +
Donna Marie, J.D. ♦ ●
Michael D. Shaffer, J.D. ♦ ●
Bhree Roumagoux, J.D. ♦

♦ Admitted in AK
● Admitted in CA
+ Admitted in WA
■ Admitted in MA

March 26, 2001

SENT VIA FACSIMILE TO (907) 465-2293

Representative Lisa Murkowski
Alaska State Legislature
State Capitol, Room 406
Juneau, AK 99801-1182

Re: House Bill 181, Alaska Community Property Act Amendments

Dear Representative Murkowski:

Thank you very much for introducing House Bill 181. Our firm emphasizes estate planning and estate and trust administration. This bill adds important amendments to the Alaska Community Property Act. These provisions will enable Alaskans, and nonresidents using Alaska's Act, to take advantage of estate planning approaches now used by residents of other community property states.

Sincerely,



David G. Shaftel

DGS/cf

STEPHEN E. GREER
ATTORNEY AT LAW

P.O. BOX 24-2903
ANCHORAGE, ALASKA 99524-2903

4041 "B" STREET, STE. 205
ANCHORAGE, AK 99503

TEL: (907) 561-5520
FAX: (907) 563-5020

APR 23 2001

April 9, 2001

To: Rep. Norman Rokeberg - faxed: (907) 465-2040

HB 181
(The Community Property Bill)

Dear Representative Rokeberg:

At the hearing on HB 181 you requested that I send you written testimony concerning Section 3 of this bill.

Under our existing statute if the premiums on a life insurance policy are paid by community property, the proceeds of the policy are considered to be owned in part by the insured spouse and in part by the non-insured spouse, based upon the proportion of each person's separate property and 1/2 of each person's community property used to pay the premiums.

This result defeats a primary estate planning and tax objective of the couple, which is to keep the insurance out of both of their estates. To achieve the estate planning and tax result that both spouses would desire, the non-insured spouse must be presumed to have relinquished that spouse's interest in the policy. This section creates such a presumption in 2 different situations.

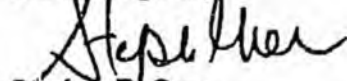
The first of these is contained in proposed AS 34.77.120(b)(5). At the present time AS 34.77.120(b)(5) creates a presumption by stating if a parent or child of either spouse is the beneficiary of the policy then it is presumed that the non-insured spouse relinquished that spouse's interest in the policy. Under Section 3 of this bill, AS 34.77.120(b)(5)(A) expands the list of permissible beneficiaries to include the surviving spouse and any ancestor and descendant of either spouse. In addition, under AS 34.77.120(b)(5)(B), the proceeds don't have to be distributed outright to the aforementioned beneficiaries, instead the proceeds can be transferred in trust for the benefit of the aforementioned beneficiaries. Thus under a typical estate plan, at the death of the insured spouse, the proceeds can be made payable to a credit shelter trust which

comes into being at the death of the insured spouse. Typically the credit shelter trust will provide the surviving spouse a lifetime interest in the trust, but the trust assets are protected from estate tax at the death of surviving spouse because the trust is not considered owned by the surviving spouse for estate tax purposes. If instead, a portion of the proceeds were payable directly to the surviving spouse as a result of that spouse's ownership interest, that portion would be included in the surviving spouse's taxable estate. This section creates a presumption which avoids that result.

34.77.120(b)(7) works in the same way but in the context where the policy is owned an irrevocable life insurance trust established by an insured spouse. If the policy is owned and made payable to the trust at the death of the insured spouse, the proceeds can be excluded from both spouse's estates, even though the non-insured spouse might have a lifetime interest in the trust. However, to exclude the proceeds from the surviving non-insured spouse's estate, she must have relinquished any ownership interest in the assets contributed to the trust.

All Section 3 does is create a presumption whereby the life insurance policy or any assets used to purchase a policy by an irrevocable trust can be considered the separate property of the insured spouse. The issue for the surviving spouse is the insured spouse might take community funds and use the funds to purchase insurance policies which benefit individuals other than the surviving spouse. In fact if the proceeds are directed to a trust it is inevitable that individuals other than the spouse will have interest in the trust. Most trusts provide for other beneficiaries, if not in the surviving spouse's lifetime, eventually at the surviving spouse's death. Note, however under 34.77.120(b)(8), the presumption can always be overcome by the surviving spouse's own testimony. Thus this bill accomplishes a tax result that both the insured and non-insured spouse would want. If the non-insured surviving spouse did not want this tax result, then the presumption created by this section can always be overcome by that spouse's own testimony. Thus this bill is a win-win bill for all concerned.

Kindest regards,



Stephen E. Greer

cc: Rep. Lisa Murkowski- faxed: (907) 465-2293