

# 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 16, 2009

**SUBJECT:** Sectional summary of CSSB 60( ) relating to the Uniform Probate Code (Work Order No. 26-LS0302\E)

**TO:** Senator Lesil McGuire  
Attn: Trevor Fulton

**FROM:**  Theresa 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.** Amends AS 13.06.120(2), which lists the situations when persons are bound by orders binding others in proceedings under the Uniform Probate Code. Allows a person designated by a trust instrument to represent and bind a born or unborn trust beneficiary. Allows the settlor to designate the person in the trust in various ways. Generally does not allow a designated person serving as a trustee to represent and bind the beneficiaries. Generally does not allow the designated person to represent and bind a beneficiary if the designated person is also a beneficiary.

Also provides that certain persons who represent other persons under AS 13.06.120(2) (A) - (F) are not liable for good faith acts and omissions to the beneficiaries whose interests are represented or to persons claiming through those beneficiaries.

**Section 2.** Amends AS 13.12.201(b)(9). Makes grammatical and conforming amendments to the definition of "transfer" for certain provisions of the Uniform Probate Code that relate to the elective share of a surviving spouse.

**Section 3.** Amends AS 13.12.205, which relates to a decedent's nonprobate transfers to other persons. Deletes an irrevocable transfer in trust with a transfer restriction from the property that is included in the augmented estate.

**Section 4.** Adds AS 13.12.205(b). Provides that the augmented estate does not include property transferred to an irrevocable trust with a transfer restriction if two conditions relating to the trust's settlor and the transfer's timing are met.

**Section 5.** Makes a conforming amendment for bill sec. 4 to a cross-reference in AS 13.12.206(3).

**Section 6.** Makes a conforming amendment for bill sec. 4 to a cross-reference in AS 13.12.207(b).

**Section 7.** Makes a conforming amendment for bill sec. 4 to a cross-reference in AS 13.12.209(b).

**Section 8.** Adds a new set of sections that provide for establishing the validity of wills and trusts before death.

Sec. 13.12.530. Allows certain persons to petition the court to determine the validity of a will before the testator's death.

Sec. 13.12.535. Allows certain persons to petition the court to determine the validity of a trust before the settlor's death.

Sec. 13.12.540. Establishes the venue for a petition to determine will or trust validity.

Sec. 13.12.545. Identifies what a petition for will validity must contain.

Sec. 13.12.550. Identifies what a petition for trust validity must contain.

Sec. 13.12.555. Authorizes a court to declare a will or trust to be valid. Declares that the will has full legal effect and must be admitted to probate on request after the testator's death, unless modified or revoked after the court's declaration.

Sec. 13.12.560. Makes the court's validity declaration binding on other persons.

Sec. 13.12.565. Directs the court to hold a hearing after a petition is filed. Requires the petitioner to notify the spouse, children, and heirs of the testator or settlor. For a will, also requires the petitioner to notify the testator, the personal representatives nominated in the will, and the devisees under the will. For a trust, also requires the petitioner to notify the settlor and parties in interest.

Sec. 13.12.570. Establishes the burden of proof for the petitions.

Sec. 13.12.575. Allows a testator to modify or revoke the will after the court's declaration.

Sec. 13.12.580. Allows a trust to be modified, terminated, revoked, or reformed after the court's declaration.

Senator Lesil McGuire

March 16, 2009

Page 3

Sec. 13.12.585. Establishes which records related to a petition are public, which are available only to certain persons, and which are confidential. Allows the court to order confidential records to be made available to other persons when good cause is shown.

Sec. 13.12.590. Defines terms for the new article.

**Section 9.** Amends AS 13.16.055(a). When decedents are not domiciled in this state, allows the first informal or formal testacy or appointment proceedings to be held in the judicial district where certain fiduciaries reside or have a principal place of business.

**Section 10.** Amends AS 13.16.410. Allows personal representatives to consider discretionary distributions to a beneficiary as being made from capital gains realized during the year.

**Section 11.** Amends AS 13.36.109. Allows trustees to consider discretionary distributions to a beneficiary as being made from capital gains realized during the year.

**Section 12.** Indicates how certain provisions in the bill amend the court rules.

**Section 13.** States that those sections that amend the court rules only take effect if bill section 12 is approved by a two-thirds vote.

If I may be of further assistance, please advise.

TLB:plm

09-177.plm

# 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, 2009

**SUBJECT:** Identification of changes between CSSB 60( ) (26-LS0302\E) and 26-LS0302\A (Work Order No. 26-LS0302\E)

**TO:** Senator Lesil McGuire  
Attn: Trevor Fulton

**FROM:**  Theresa Bannister  
Legislative Counsel

This memo is an identification of the changes between W.O. 26-LS0302\A and W.O. 26-LS0302\E. Unless specified otherwise, the references are to the "E" version.

**Section 1.** In AS 13.06.120(2)(G)(ii) and (iii), "represent or bind" replaces "represent and bind." In AS 13.06.120(3), you'll find a modified version of the non-liability language that was in version A's AS 13.06.120(2)(G)(iv); the E language adds a reference to extend the non-liability to "a person representing another person under (2)(A) - (F) of this section." In AS 13.06.120, the numbering of paragraphs (3) and (4) is changed to (4) and (5). In AS 13.06.120(4), the cross references are changed.

**Section 2.** In AS 13.12.201(b)(9)(C)(i), "the decedent" replaces "self."

**Section 3.** No difference.

**Section 4.** In new sec. 13.12.205(b), the conditions are changed for when the augmented estate does not include property transferred to an irrevocable trust with a transfer restriction. See page 8, lines 7 - 9.

**Section 5.** No difference.

**Section 6.** No difference.

**Section 7.** No difference.

**Section 8.** In sec. 13.12.530, adds another category to the persons who may petition the court: an interested party with the testator's consent.

In sec. 13.12.540, removes language from (a)(2) and changes the venue rules in (b).

Senator Lesil McGuire

March 17, 2009

Page 2

In sec. 13.12.545, removes language from (11) and removes (14) from version A.

In sec. 13.12.550, removes (11) from version A.

In sec. 13.12.555, removes (b) from version A.

In sec. 13.12.560, removes "Notwithstanding AS 13.06.120" at the beginning.

In sec. 13.12.565(c), removes the reference to AS 13.36 and the last sentence of version A, requiring giving notice to certain other persons. Adds a definition of "party in interest."

In sec. 13.12.585, rewrites (a).

**Section 9.** New section.

**Section 10.** New bill section number.

**Section 11.** New bill section number.

**Section 12.** New bill section number. In (a), adds a description of how the new bill section 9 changes a court rule. In (e), changes the description how AS 13.12.585 changes a court rule.

**Section 13.** New bill section number. Adds a reference to the new bill section 9.

If I may be of further assistance, please advise.

TLB:ljw

09-164.ljw