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SENATOR LESIL MCGUIRE

SECTIONAL ANALYSIS

SB 60: Uniform Probate Code; Trusts, Wills

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 relates 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 section 4 to a cross-reference in AS 13.12.206(3).

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

Section 7. Makes a conforming amendment for bill section 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 the testator's 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 will before the testator'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 will 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 of 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.

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 used in the new article.

Section 9. 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 10. 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 11. Indicates how certain provisions in the bill amends court rules.

Section 12. States that those sections that amend the court rules only take effect if the bill section 11 is approved by a two-thirds vote.