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Technology & Innovation

Member
Senate Judiciary Committee
Joint Armed Services Committee

SENATOR LESIL MCGUIRE

SPONSOR STATEMENT

SB 60: Uniform Probate Code; Trusts, Wills

Inevitably, every family in Alaska must deal with handling the affairs of a deceased family member's estate or trust. The Uniform Probate Code (UPC) is the legal model Alaska has relied upon to handle these matters since it was first adopted back in 1969.

The Uniform Probate Code (UPC) is a uniform act drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) governing inheritance and the decedents' estates in the USA. The primary purpose of the act is to streamline the probate process and to standardize and modernize the various state laws governing wills, trusts, and intestacy.

SB 60 updates and clarifies Alaska statutes relating to the UPC with the aim of improving the ease of administration of estates and trusts for Alaska residents. SB 60 provides the following amendments to the Uniform Probate Code:

- Allows the settlor of a trust to designate a representative who can represent or bind an incapacitated person in future proceedings relating to the trust administration.
- Establishes that an augmented estate does not include property transferred to an irrevocable trust if the settlor is a discretionary beneficiary of the trust and if the transfer was made more than 30 days before marriage, or with the consent of the decedent's spouse.
- Creates a procedure for the establishment of will and trust validity before death. Situations arise where there is a question concerning a person's capacity to execute a will or trust, or whether the document was executed as the result of undue influence, duress, fraud, or mistake. The new procedure will allow these issues to be brought before the court while the testator or settlor is alive and when evidence is fresh.
- Provides for venue of a probate proceeding if the decedent was not domiciled in Alaska but significant assets are located within the state.

The State of Alaska has directly received millions of dollars of insurance premium tax dollars and many jobs have been created in the trust, banking, insurance, and legal professions thanks to the business attracted by our competitive and contemporary trust laws.

SB 60 is one of three bills introduced (SB 60, SB 62, and SB 63) that aim to update and clarify Alaska trust laws to make Alaska a better place for investors and families – both Alaskan and from other states – to invest their money in the competitive arena of trust management.

SENATE BILL NO. 60

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY SENATOR MCGUIRE

Introduced: 1/21/09

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Uniform Probate Code, including wills, trusts, nonprobate
2 transfers, augmented estates, personal representatives, and trustees; and amending
3 Rules 3 and 8, Alaska Rules of Civil Procedure, Rule 1, Alaska Rules of Probate
4 Procedure, and Rule 37.5, Alaska Rules of Administration."

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 * **Section 1.** AS 13.06.120 is amended to read:

7 **Sec. 13.06.120. Pleadings; when parties bound by orders; notice.** In any
8 proceedings involving trusts, nonprobate assets, or estates of decedents, minors,
9 protected persons, or incapacitated persons brought under AS 13.06 - AS 13.36 or
10 AS 13.38, including any judicially supervised settlements and any nonjudicial
11 proceedings and settlements, the following apply:

12 (1) interests to be affected shall be described in pleadings that give
13 reasonable information to owners by name or class, by reference to the instrument
14 creating the interests, or in other appropriate manner;

1 (2) persons are bound by orders binding others in the following cases:

2 (A) orders binding the sole holder or all co-holders of a power
3 of revocation or a general or nongeneral power of appointment, including one
4 in the form of a power of amendment, bind other persons to the extent their
5 interests (as objects, takers in default, or otherwise) are subject to the power;

6 (B) to the extent there is no conflict of interest between them or
7 among persons represented, orders binding a conservator bind the person
8 whose estate the conservator controls; orders binding a guardian bind the ward
9 if no conservator of the estate has been appointed; orders binding a trustee bind
10 beneficiaries of the trust in proceedings to probate a will establishing or adding
11 to a trust, to review the acts or accounts of a prior fiduciary and in proceedings
12 involving creditors or other third parties; orders binding a personal
13 representative bind persons interested in the undistributed assets of a
14 decedent's estate in actions or proceedings by or against the estate; and orders
15 binding an agent having authority to act with respect to the particular questions
16 or dispute bind the principal; if there is no conflict of interest and no
17 conservator or guardian has been appointed, a parent may represent the minor
18 child;

19 (C) an unborn person, a minor, an incapacitated person, or a
20 person whose identity or location is unknown or not reasonably ascertainable
21 who is not otherwise represented is bound by an order to the extent the interest
22 is adequately represented by another party having a substantially identical
23 interest in the proceeding;

24 (D) with regard to interests given upon the happening of a
25 certain event to persons who comprise a certain class, orders binding the living
26 persons who would constitute the class, if the event had happened immediately
27 before the commencement of the proceeding, bind all members of the class;

28 (E) with regard to an interest given to a living person when the
29 same interest or a share of the interest is to pass to the surviving spouse or to
30 persons who are or might be the distributees, devisees, heirs, or issue of the
31 living person upon the happening of a future event, orders binding the living

1 person bind the surviving spouse, distributees, devisees, heirs, or issue of the
2 living person;

3 (F) with regard to interests given to a person or a class of
4 persons, or to both, upon the happening of a future event, if the same interest
5 or a share of the interest is to pass to another person or class of persons, or to
6 both, upon the happening of an additional future event, orders binding the
7 living person or class of persons who would take the interest upon the
8 happening of the first event bind the persons and classes of persons who might
9 take on the happening of the additional future event;

10 (G) if a person is designated by a trust instrument to
11 represent and bind a born or unborn beneficiary of the trust and receive a
12 notice, information, accounting, or report for the beneficiary, then the
13 beneficiary is bound by an order binding the designated person; in this
14 subparagraph,

15 (i) the settlor may make the designation in the trust
16 instrument, in a separate document, or by a trust protector
17 authorized in the trust instrument to make the designation;

18 (ii) except as otherwise provided in this
19 subparagraph, a person designated under (i) of this subparagraph
20 may not represent or bind a beneficiary while the designated
21 person is serving as trustee;

22 (iii) except as otherwise provided in this
23 subparagraph, a person designated under (i) of this subparagraph
24 may not represent or bind another beneficiary if the designated
25 person also is a beneficiary, unless the designated person was
26 named by the settlor, is the beneficiary's spouse, or is a
27 grandparent or descendant of a grandparent of the beneficiary or
28 the beneficiary's spouse; in this sub-subparagraph, "spouse"
29 means the individual to whom the beneficiary is married and with
30 whom the beneficiary is living, and a physical separation primarily
31 for education, business, health, and similar reasons does not

1 prevent the individual from being considered to be living with the
 2 beneficiary;

3 (iv) a person designated under (i) of this
 4 subparagraph is not liable to the beneficiary whose interests are
 5 represented, or to a person claiming through that beneficiary, for
 6 an action or omission to act made in good faith;

7 (3) notice is required as follows:

8 (A) notice as prescribed by AS 13.06.110 shall be given to
 9 every interested person or to one person who can bind an interested person as
 10 described in (2)(A), (B), or (D) - (F) of this section; notice may be given both
 11 to a person and to another person who may bind the person;

12 (B) notice is given to unborn persons, a minor, an incapacitated
 13 person, or a person whose identity or location is unknown or not reasonably
 14 ascertainable, and persons who are not represented under (2)(A) or (B) of this
 15 section, by giving notice to all known persons whose interests in the
 16 proceedings are substantially identical to those of the unborn persons, the
 17 minor, the incapacitated person, or the person whose identity or location is
 18 unknown or not reasonably ascertainable;

19 (4) at any point in a proceeding, a court may appoint a guardian ad
 20 litem to represent the interest of an unborn person, a minor, an incapacitated person, or
 21 a person whose identity or address is unknown or not reasonably ascertainable, if the
 22 court determines that representation of the interest otherwise would be inadequate; if
 23 not precluded by conflict of interests, a guardian ad litem may be appointed to
 24 represent several persons or interests; the court shall set out its reasons for appointing
 25 a guardian ad litem as a part of the record of the proceeding.

26 * **Sec. 2.** AS 13.12.201(b)(9) is amended to read:

27 (9) "transfer," as it relates to a transfer by or of the decedent, includes

28 (A) an exercise or release of a presently exercisable general
 29 power of appointment held by the decedent;

30 (B) a lapse at death of a presently exercisable general power of
 31 appointment held by the decedent; and

(C) an exercise, release, or lapse of

(i) a general power of appointment that the decedent created in self; and

(ii) a power described in AS 13.12.205(a)(2)(B) [AS 13.12.205(2)(B)] that the decedent conferred on a nonadverse party.

* **Sec. 3.** AS 13.12.205 is amended to read:

Sec. 13.12.205. Decedent's nonprobate transfers to others. The value of the augmented estate includes the value of the decedent's nonprobate transfers to others, not included under AS 13.12.204, of any of the following types, in the amount provided respectively for each type of transfer:

(1) property owned or owned in substance by the decedent immediately before death that passed outside probate at the decedent's death; property included under this category consists of

(A) property over which the decedent alone, immediately before death, held a presently exercisable general power of appointment; the amount included is the value of the property subject to the power, to the extent the property passed at the decedent's death, by exercise, release, lapse, default, or otherwise, to or for the benefit of a person other than the decedent's estate or surviving spouse;

(B) the decedent's fractional interest in property held by the decedent in joint tenancy with the right of survivorship; the amount included is the value of the decedent's fractional interest, to the extent that the fractional interest passed by right of survivorship at the decedent's death to a surviving joint tenant other than the decedent's surviving spouse;

(C) the decedent's ownership interest in property or accounts held in pay on death, transfer on death, or co-ownership registration with the right of survivorship; the amount included is the value of the decedent's ownership interest, to the extent the decedent's ownership interest passed at the decedent's death to or for the benefit of a person other than the decedent's estate or surviving spouse;

1 (D) proceeds of insurance, including accidental death benefits,
2 on the life of the decedent, if the decedent owned the insurance policy
3 immediately before death or if and to the extent the decedent alone and
4 immediately before death held a presently exercisable general power of
5 appointment over the policy or its proceeds; the amount included is the value
6 of the proceeds, to the extent the proceeds were payable at the decedent's death
7 to or for the benefit of a person other than the decedent's estate or surviving
8 spouse;

9 (2) property transferred in any of the following forms by the decedent
10 during marriage:

11 (A) an irrevocable transfer [, INCLUDING AN
12 IRREVOCABLE TRANSFER IN TRUST WITH A TRANSFER
13 RESTRICTION UNDER AS 34.40.110(a),] in which the decedent retained the
14 right to the possession or enjoyment of, or to the income from, the property, if
15 and to the extent the decedent's right terminated at or continued beyond the
16 decedent's death; the amount included is the value of the fraction of the
17 property to which the decedent's right related, to the extent the fraction of the
18 property passed outside probate to or for the benefit of a person other than the
19 decedent's estate or surviving spouse;

20 (B) a transfer in which the decedent created a power over the
21 income or property, exercisable by the decedent alone or in conjunction with
22 another person, or exercisable by a nonadverse party, to or for the benefit of
23 the decedent, the decedent's creditors, the decedent's estate, or creditors of the
24 decedent's estate; the amount included with respect to a power over property is
25 the value of the property subject to the power, and the amount included with
26 respect to a power over income is the value of the property that produces or
27 produced the income, to the extent the power in either case was exercisable at
28 the decedent's death to or for the benefit of a person other than the decedent's
29 surviving spouse or to the extent the property passed at the decedent's death, by
30 exercise, release, lapse, default, or otherwise, to or for the benefit of a person
31 other than the decedent's estate or surviving spouse; if the power is a power

1 over both income and property and the preceding provision defining the
 2 amount included produces different amounts, the amount included is the
 3 greater amount; and

4 (3) property that passed during marriage and during the two-year
 5 period next preceding the decedent's death as a result of a transfer by the decedent if
 6 the transfer was of any of the following types:

7 (A) property that passed as a result of the termination of a right
 8 or interest in, or power over, property that would have been included in the
 9 augmented estate under (1)(A), (B), or (C) or (2) of this section, if the right,
 10 interest, or power had not terminated until the decedent's death; the amount
 11 included is the value of the property that would have been included under
 12 (1)(A), (B), or (C) or (2) of this section, if the property were valued at the time
 13 the right, interest, or power terminated, and is included only to the extent the
 14 property passed upon termination to or for the benefit of a person other than
 15 the decedent or the decedent's estate, spouse, or surviving spouse; as used in
 16 this subparagraph, termination, with respect to a right or interest in property,
 17 occurs when the right or interest terminated by the terms of the governing
 18 instrument or the decedent transferred or relinquished the right or interest, and,
 19 with respect to a power over property, occurs when the power terminated by
 20 exercise, release, lapse, default, or otherwise, but, with respect to a power
 21 described in (1)(A) of this section, termination occurs when the power
 22 terminated by exercise or release, but not otherwise;

23 (B) a transfer of or relating to an insurance policy on the life of
 24 the decedent if the proceeds would have been included in the augmented estate
 25 under (1)(D) of this section had the transfer not occurred; the amount included
 26 is the value of the insurance proceeds to the extent the proceeds were payable
 27 at the decedent's death to or for the benefit of a person other than the
 28 decedent's estate or surviving spouse;

29 (C) a transfer of property, to the extent not otherwise included
 30 in the augmented estate, made to or for the benefit of a person other than the
 31 decedent's surviving spouse; the amount included is the value of the property

transferred to a person to the extent that the aggregate transfers to that person in either of the two years exceeded \$10,000.

* **Sec. 4.** AS 13.12.205 is amended by adding a new subsection to read:

(b) Notwithstanding the other provisions of this section, the augmented estate does not include property transferred to an irrevocable trust with a transfer restriction under AS 34.40.110(a) if the decedent's spouse consented to the transfer or did not file an action to set all or part of the transfer aside within four years after the transfer was made.

* **Sec. 5.** AS 13.12.206(3) is amended to read:

(3) all other property that would have been included in the augmented estate under AS 13.12.205(a)(1) or (2) [AS 13.12.205(1) OR (2)] had it passed to or for the benefit of a person other than the decedent's spouse, the decedent's surviving spouse, the decedent, or the decedent's creditors, estate, or estate creditors.

* **Sec. 6.** AS 13.12.207(b) is amended to read:

(b) Property included under this section is valued at the decedent's death, taking the fact that the decedent predeceased the spouse into account, but, for purposes of (a)(1)(A) and (B) of this section, the values of the spouse's fractional and ownership interests are determined immediately before the decedent's death if the decedent was then a joint tenant or a co-owner of the property or accounts. For purposes of (a)(2) of this section, proceeds of insurance that would have been included in the spouse's nonprobate transfers to others under AS 13.12.205(a)(1)(D) [AS 13.12.205(1)(D)] are not valued as if the spouse were deceased.

* **Sec. 7.** AS 13.12.209(b) is amended to read:

(b) If, after the application of (a) of this section, the elective share amount is not fully satisfied or the surviving spouse is entitled to a supplemental elective share amount, amounts included in the decedent's probate estate and in the decedent's nonprobate transfers to others, other than amounts included under AS 13.12.205(a)(3)(A) or (C) [AS 13.12.205(3)(A) OR (C).] are applied first to satisfy the unsatisfied balance of the elective share amount or the supplemental elective share amount. The decedent's probate estate and that portion of the decedent's nonprobate transfers to others shall be applied so that liability for the unsatisfied

balance of the elective share amount or for the supplemental elective share amount is equitably apportioned among the recipients of the decedent's probate estate and of that portion of the decedent's nonprobate transfers to others in proportion to the value of the recipients' interests in the decedent's probate estate and that portion of the decedent's nonprobate transfers to others.

* **Sec. 8.** AS 13.12 is amended by adding new sections to read:

Article 5A. Establishment of Will and Trust Validity before Death.

Sec. 13.12.530. Establishment of will validity before death. A testator or a person who is nominated in a will to serve as a personal representative may petition the court to determine before the testator's death that the will is a valid will subject only to subsequent revocation or modification.

Sec. 13.12.535. Establishment of trust validity before death. If at least one of the trustees of a trust is a qualified person, the settlor or a trustee of the trust may petition the court to determine before the settlor's death that the trust is valid and enforceable under its terms, subject only to a subsequent revocation or modification of the trust.

Sec. 13.12.540. Venue. (a) The venue for a petition under AS 13.12.530 is

(1) the judicial district of this state where the testator is domiciled; or

(2) if the person who executed the will is not domiciled in this state,

and the will expressly directs or authorizes the will to be admitted to original probate in this state, in any judicial district of this state.

(b) The venue for a petition under AS 13.12.535 is the judicial district of this state where the qualified person acting as trustee is domiciled, or, if the trustee is not a natural person, where the trustee's principal office is located.

Sec. 13.12.545. Contents of petition for will validity. A petition under AS 13.12.530 must contain

(1) a statement that a copy of the will has been filed with the court;

(2) a statement that the will is in writing;

(3) a statement that the will was signed by the testator, or was signed in the testator's name by another person in the testator's conscious presence and at the testator's direction;

(4) in the case of a witnessed will, a statement that the will was signed by at least two individuals, each of whom signed within a reasonable time after witnessing the signing of the will or the testator's acknowledgment of the signature on the will;

(5) in the case of a holographic will, a statement that the signature and material portions of the will are in the testator's handwriting;

(6) a statement that the will was executed with testamentary intent;

(7) a statement that the testator had testamentary capacity;

(8) a statement that the testator was free from undue influence and duress and executed the will in the exercise of the testator's free will;

(9) a statement that the execution of the will was not the result of fraud or mistake;

(10) the names and addresses of the testator, the testator's spouse, the testator's children, the testator's heirs, the personal representatives nominated in the will, and the devisees under the will;

(11) if minors, the ages of the testator's children, the testator's heirs, the personal representatives nominated in the will, and the devisees under the will, as far as known or ascertainable with reasonable diligence by the petitioner;

(12) a statement that the will has not been revoked or modified;

(13) a statement that the testator is familiar with the contents of the will; and

(14) a copy of the will.

Sec. 13.12.550. Contents of petition for trust validity. A petition for trust validity under AS 12.16.535 must contain

(1) a statement that a copy of the trust has been filed with the court;

(2) a statement that the trust is in writing and was signed by the settlor;

(3) a statement that the trust was executed with the intent that it be enforceable in accordance with its terms;

(4) a statement that the settlor had the legal capacity to enter into and establish the trust;

(5) a statement that the settlor was free from undue influence and

1 duress and executed the trust in the exercise of free will;

2 (6) a statement that execution of the trust was not the result of fraud or
3 mistake;

4 (7) the names and addresses of the settlor, the settlor's spouse, the
5 settlor's children, the settlor's heirs, and the parties in interest as defined in
6 AS 13.36.390;

7 (8) the ages of the settlor's children, the settlor's heirs, and the parties
8 in interest as defined in AS 13.36.390 who are minors so far as known or ascertainable
9 with reasonable diligence by the petitioner;

10 (9) a statement that the trust has not been revoked or modified;

11 (10) a statement that the settlor is familiar with the contents of the
12 trust; and

13 (11) a copy of the trust.

14 **Sec. 13.12.555. Declaration by court.** (a) The court may declare a will or trust
15 to be valid and make other findings of fact and conclusions of law that are appropriate
16 under the circumstances. After the testator's death, unless the will is modified or
17 revoked after the declaration, the will has full legal effect as the instrument of the
18 disposition of the testator's estate and shall be admitted to probate upon request.

19 (b) If a will is declared to be valid under (a) of this section, the will and a
20 court-certified copy of the court's declaration of the will's validity shall be deposited
21 with the court under AS 13.12.515.

22 **Sec. 13.12.560. Binding effect of declaration.** Notwithstanding AS 13.06.120,
23 a person, whether the person is known, unknown, born, or not born at the time of a
24 proceeding under AS 13.12.530 - 13.12.590, including a person who is represented by
25 another person under AS 13.06.120, is bound by the declaration under AS 13.12.555
26 even if by the time of the testator's death the representing person has died or would no
27 longer be able to represent the person represented in the proceeding under
28 AS 13.12.530 - 13.12.590.

29 **Sec. 13.12.565. Hearing and notice.** (a) After the petition under AS 13.12.530
30 or 13.12.535 is filed, the court shall fix a time and place for a hearing. The petitioner
31 shall notify the spouse, the children, and the heirs of the testator or settlor in the

1 manner established by AS 13.06.110.

2 (b) In addition to the notice required by (a) of this section, in proceedings
3 involving a petition under AS 13.12.530, the petitioner shall notify the testator, the
4 personal representatives nominated in the will, and the devisees under the will in the
5 manner established by AS 13.06.110.

6 (c) In addition to the notice required by (a) of this section, in proceedings
7 involving a petition under AS 13.12.535, the petitioner shall notify the settlor and the
8 parties in interest under AS 13.36 in the manner established by AS 13.06.110. Notice
9 may be given to other persons. In addition, the petitioner shall give notice by
10 publication to all unknown persons and to all known persons whose addresses are
11 unknown who have an interest in the proceedings.

12 **Sec. 13.12.570. Burden of proof.** A petitioner under AS 13.12.530 or
13 13.12.535 has the burden of establishing prima facie proof of the execution of the will
14 or trust. A person who opposes the petition has the burden of establishing the lack of
15 testamentary intent, lack of capacity, undue influence, fraud, duress, mistake, or
16 revocation. A party to the proceeding has the ultimate burden of persuasion as to the
17 matters for which they have the initial burden of proof.

18 **Sec. 13.12.575. Change to will after declaration.** After a declaration of the
19 validity of a will under AS 13.12.555, a testator may modify a will by a later will or
20 codicil executed according to the laws of this state or another state, and the will may
21 be revoked or modified under AS 13.12.507, 13.12.508, or another applicable law.

22 **Sec. 13.12.580. Change to trust after declaration.** After a declaration of
23 validity under AS 13.12.555, a trust may be modified, terminated, revoked, or
24 reformed under AS 13.36.340 - 13.36.365, or another applicable law.

25 **Sec. 13.12.585. Confidentiality.** (a) The court records relating to a petition
26 under AS 13.12.530 or 13.12.535, including the petition, the original will or trust, and
27 the copy of the will or trust attached to the petition, are confidential and may be made
28 available to a person only as provided in (b) and (c) of this section.

29 (b) The records that are confidential under (a) of this section may be made
30 available to

31 (1) the petitioner and the petitioner's attorney;

(2) interested persons who have appeared in the proceedings, interested persons who have otherwise submitted to the jurisdiction of the court, and the attorneys, guardians, and conservators of the interested persons;

(3) the judge hearing or reviewing the matter; and

(4) a member of the clerical or administrative staff of the court if access is essential for authorized internal administrative purposes.

(c) For good cause shown, the court may order the records that are confidential under (a) of this section to be made available to a person who is not listed in (b) of this section.

Sec. 13.12.590. Definitions. In AS 13.12.530 - 13.12.590,

(1) "qualified person" has the meaning given in AS 13.36.390;

(2) "testator" means a person who executes a will as a testator;

(3) "trust" means a revocable or irrevocable trust.

* **Sec. 9.** AS 13.16.410 is amended by adding a new paragraph to read:

(28) consider discretionary distributions to a beneficiary as being made from capital gains realized during the year.

* **Sec. 10.** AS 13.36.109 is amended by adding a new paragraph to read:

(29) to consider discretionary distributions to a beneficiary as being made from capital gains realized during the year.

* **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to read:

INDIRECT COURT RULE AMENDMENTS. (a) AS 13.16.540, enacted by sec. 8 of this Act, has the effect of amending Rule 3, Alaska Rules of Civil Procedure, by establishing special venue rules for a petition under AS 13.12.530 or 13.12.535, enacted by sec. 8 of this Act.

(b) AS 13.12.545 and 13.12.550, enacted by sec. 8 of this Act, have the effect of amending Rule 8, Alaska Rules of Civil Procedure, by establishing special requirements for the contents of petitions under AS 13.12.530 and 13.12.535, enacted by sec. 8 of this Act.

(c) AS 13.12.550, enacted by sec. 8 of this Act, has the effect of amending Rule 1, Alaska Rules of Probate Procedure, by establishing special hearing and notice requirements for a hearing to determine the validity of a will or a trust under AS 13.12.530 and 13.12.535,

1 enacted by sec. 8 of this Act.

2 (d) AS 13.12.585, enacted by sec. 8 of this Act, has the effect of amending Rule 37.5,
3 Alaska Rules of Administration, by requiring that the court records and the original will or
4 trust related to a petition under AS 13.12.530 or 13.12.535, enacted by sec. 8 of this Act, be
5 kept confidential and only released as indicated in AS 13.12.585.

6 * **Sec. 12.** The uncoded law of the State of Alaska is amended by adding a new section to
7 read:

8 **CONDITIONAL EFFECT.** AS 13.12.540, 13.12.545, 13.12.550, and 13.12.585,
9 enacted by sec. 8 of this Act, take effect only if sec. 11 of this Act receives the two-thirds
10 majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB 60
() Publish Date: _____

Identifier (file name): SB 60-LAW-CIV-03-20-09
Title An Act relating to the Uniform Probate Code.
Dept. Affected: Law
RDU Civil
Sponsor Labor and Commerce
Requester Senator McGuire
Component Com. And Fair Business
Component Number 2717

Expenditures/Revenues

(Thousands of Dollars)

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

	Appropriation Required	Information					
OPERATING EXPENDITURES	FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
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	0.0

CAPITAL EXPENDITURES							
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CHANGE IN REVENUES ()							
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2009) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This bill provides conformity between Alaska's elective share and testamentary proof provisions in Alaska's Uniform Probate Code with those adopted in the 2009 amendments to the official Uniform Probate Code. It ensures that irrevocable trusts with transfer restrictions are excluded from the augmented estate. Finally, it allows petitioners to determine the validity of wills and trusts prior to the death of the settler and establishes the procedures to be followed in accomplishing this.

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Department of Law

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Date/Time 3/20/09 12:00 AM
Date 3/20/2009

ALASKA STATE LEGISLATURE

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Co-Chair
Senate Resources Committee

Chair
Senate Special Committee on Energy
Senate Special Committee on World Trade,
Technology & Innovation

Member
Senate Judiciary Committee
Joint Armed Services Committee

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.

26-LS0302\E
Bannister
2/17/09

CS FOR SENATE BILL NO. 60()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): SENATOR MCGUIRE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the Uniform Probate Code, including wills, trusts, nonprobate**
2 **transfers, augmented estates, personal representatives, and trustees; and amending**
3 **Rules 3 and 8, Alaska Rules of Civil Procedure, Rule 1, Alaska Rules of Probate**
4 **Procedure, and Rule 37.5, Alaska Rules of Administration."**

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 *** Section 1.** AS 13.06.120 is amended to read:

7 **Sec. 13.06.120. Pleadings; when parties bound by orders; notice.** In any
8 proceedings involving trusts, nonprobate assets, or estates of decedents, minors,
9 protected persons, or incapacitated persons brought under AS 13.06 - AS 13.36 or
10 AS 13.38, including any judicially supervised settlements and any nonjudicial
11 proceedings and settlements, the following apply:

12 (1) interests to be affected shall be described in pleadings that give
13 reasonable information to owners by name or class, by reference to the instrument
14 creating the interests, or in other appropriate manner;

1 (2) persons are bound by orders binding others in the following cases:

2 (A) orders binding the sole holder or all co-holders of a power
3 of revocation or a general or nongeneral power of appointment, including one
4 in the form of a power of amendment, bind other persons to the extent their
5 interests (as objects, takers in default, or otherwise) are subject to the power;

6 (B) to the extent there is no conflict of interest between them or
7 among persons represented, orders binding a conservator bind the person
8 whose estate the conservator controls; orders binding a guardian bind the ward
9 if no conservator of the estate has been appointed; orders binding a trustee bind
10 beneficiaries of the trust in proceedings to probate a will establishing or adding
11 to a trust, to review the acts or accounts of a prior fiduciary and in proceedings
12 involving creditors or other third parties; orders binding a personal
13 representative bind persons interested in the undistributed assets of a
14 decedent's estate in actions or proceedings by or against the estate; and orders
15 binding an agent having authority to act with respect to the particular questions
16 or dispute bind the principal; if there is no conflict of interest and no
17 conservator or guardian has been appointed, a parent may represent the minor
18 child;

19 (C) an unborn person, a minor, an incapacitated person, or a
20 person whose identity or location is unknown or not reasonably ascertainable
21 who is not otherwise represented is bound by an order to the extent the interest
22 is adequately represented by another party having a substantially identical
23 interest in the proceeding;

24 (D) with regard to interests given upon the happening of a
25 certain event to persons who comprise a certain class, orders binding the living
26 persons who would constitute the class, if the event had happened immediately
27 before the commencement of the proceeding, bind all members of the class;

28 (E) with regard to an interest given to a living person when the
29 same interest or a share of the interest is to pass to the surviving spouse or to
30 persons who are or might be the distributees, devisees, heirs, or issue of the
31 living person upon the happening of a future event, orders binding the living

1 person bind the surviving spouse, distributees, devisees, heirs, or issue of the
2 living person;

3 (F) with regard to interests given to a person or a class of
4 persons, or to both, upon the happening of a future event, if the same interest
5 or a share of the interest is to pass to another person or class of persons, or to
6 both, upon the happening of an additional future event, orders binding the
7 living person or class of persons who would take the interest upon the
8 happening of the first event bind the persons and classes of persons who might
9 take on the happening of the additional future event;

10 (G) if a person is designated by a trust instrument to
11 represent and bind a born or unborn beneficiary of the trust and receive a
12 notice, information, accounting, or report for the beneficiary, then the
13 beneficiary is bound by an order binding the designated person; in this
14 subparagraph,

15 (i) the settlor may make the designation in the trust
16 instrument, in a separate document, or by a trust protector
17 authorized in the trust instrument to make the designation;

18 (ii) except as otherwise provided in this
19 subparagraph, a person designated under (i) of this subparagraph
20 may not represent and bind a beneficiary while the designated
21 person is serving as trustee;

22 (iii) except as otherwise provided in this
23 subparagraph, a person designated under (i) of this subparagraph
24 may not represent and bind another beneficiary if the designated
25 person also is a beneficiary, unless the designated person was
26 named by the settlor, is the beneficiary's spouse, or is a
27 grandparent or descendant of a grandparent of the beneficiary or
28 the beneficiary's spouse; in this sub-subparagraph, "spouse"
29 means the individual to whom the beneficiary is married and with
30 whom the beneficiary is living, and a physical separation primarily
31 for education, business, health, and similar reasons does not

1 prevent the individual from being considered to be living with the
2 beneficiary;

3 (3) a person representing another person under (2)(A) - (F) of this
4 section and a person designated under (2)(G)(i) of this section are not liable to the
5 beneficiary whose interests are represented, or to a person claiming through that
6 beneficiary, for an action or omission to act made in good faith;

7 (4) notice is required as follows:

8 (A) notice as prescribed by AS 13.06.110 shall be given to
9 every interested person or to one person who can bind an interested person as
10 described in (2)(A), (B), or ~~(D) - (G)~~ [(D) - (F)] of this section; notice may be
11 given both to a person and to another person who may bind the person;

12 (B) notice is given to unborn persons, a minor, an incapacitated
13 person, or a person whose identity or location is unknown or not reasonably
14 ascertainable, and persons who are not represented under ~~2(A), (B), or (D) -~~
15 ~~(G)~~ [(2)(A) OR (B)] of this section, by giving notice to all known persons
16 whose interests in the proceedings are substantially identical to those of the
17 unborn persons, the minor, the incapacitated person, or the person whose
18 identity or location is unknown or not reasonably ascertainable;

19 (5) [(4)] at any point in a proceeding, a court may appoint a guardian
20 ad litem to represent the interest of an unborn person, a minor, an incapacitated
21 person, or a person whose identity or address is unknown or not reasonably
22 ascertainable, if the court determines that representation of the interest otherwise
23 would be inadequate; if not precluded by conflict of interests, a guardian ad litem may
24 be appointed to represent several persons or interests; the court shall set out its reasons
25 for appointing a guardian ad litem as a part of the record of the proceeding.

26 * Sec. 2. AS 13.12.201(b)(9) is amended to read:

27 (9) "transfer," as it relates to a transfer by or of the decedent, includes

28 (A) an exercise or release of a presently exercisable general
29 power of appointment held by the decedent;

30 (B) a lapse at death of a presently exercisable general power of
31 appointment held by the decedent; and

(C) an exercise, release, or lapse of

(i) a general power of appointment that the decedent created in the decedent [SELF]; and

(ii) a power described in AS 13.12.205(a)(2)(B) [AS 13.12.205(2)(B)] that the decedent conferred on a nonadverse party.

* **Sec. 3.** AS 13.12.205 is amended to read:

Sec. 13.12.205. Decedent's nonprobate transfers to others. The value of the augmented estate includes the value of the decedent's nonprobate transfers to others, not included under AS 13.12.204, of any of the following types, in the amount provided respectively for each type of transfer:

(1) property owned or owned in substance by the decedent immediately before death that passed outside probate at the decedent's death; property included under this category consists of

(A) property over which the decedent alone, immediately before death, held a presently exercisable general power of appointment; the amount included is the value of the property subject to the power, to the extent the property passed at the decedent's death, by exercise, release, lapse, default, or otherwise, to or for the benefit of a person other than the decedent's estate or surviving spouse;

(B) the decedent's fractional interest in property held by the decedent in joint tenancy with the right of survivorship; the amount included is the value of the decedent's fractional interest, to the extent that the fractional interest passed by right of survivorship at the decedent's death to a surviving joint tenant other than the decedent's surviving spouse;

(C) the decedent's ownership interest in property or accounts held in pay on death, transfer on death, or co-ownership registration with the right of survivorship; the amount included is the value of the decedent's ownership interest, to the extent the decedent's ownership interest passed at the decedent's death to or for the benefit of a person other than the decedent's estate or surviving spouse;

1 (D) proceeds of insurance, including accidental death benefits,
2 on the life of the decedent, if the decedent owned the insurance policy
3 immediately before death or if and to the extent the decedent alone and
4 immediately before death held a presently exercisable general power of
5 appointment over the policy or its proceeds; the amount included is the value
6 of the proceeds, to the extent the proceeds were payable at the decedent's death
7 to or for the benefit of a person other than the decedent's estate or surviving
8 spouse;

9 (2) property transferred in any of the following forms by the decedent
10 during marriage:

11 (A) an irrevocable transfer [, INCLUDING AN
12 IRREVOCABLE TRANSFER IN TRUST WITH A TRANSFER
13 RESTRICTION UNDER AS 34.40.110(a),] in which the decedent retained the
14 right to the possession or enjoyment of, or to the income from, the property, if
15 and to the extent the decedent's right terminated at or continued beyond the
16 decedent's death; the amount included is the value of the fraction of the
17 property to which the decedent's right related, to the extent the fraction of the
18 property passed outside probate to or for the benefit of a person other than the
19 decedent's estate or surviving spouse;

20 (B) a transfer in which the decedent created a power over the
21 income or property, exercisable by the decedent alone or in conjunction with
22 another person, or exercisable by a nonadverse party, to or for the benefit of
23 the decedent, the decedent's creditors, the decedent's estate, or creditors of the
24 decedent's estate; the amount included with respect to a power over property is
25 the value of the property subject to the power, and the amount included with
26 respect to a power over income is the value of the property that produces or
27 produced the income, to the extent the power in either case was exercisable at
28 the decedent's death to or for the benefit of a person other than the decedent's
29 surviving spouse or to the extent the property passed at the decedent's death, by
30 exercise, release, lapse, default, or otherwise, to or for the benefit of a person
31 other than the decedent's estate or surviving spouse; if the power is a power

1 over both income and property and the preceding provision defining the
2 amount included produces different amounts, the amount included is the
3 greater amount; and

4 (3) property that passed during marriage and during the two-year
5 period next preceding the decedent's death as a result of a transfer by the decedent if
6 the transfer was of any of the following types:

7 (A) property that passed as a result of the termination of a right
8 or interest in, or power over, property that would have been included in the
9 augmented estate under (1)(A), (B), or (C) or (2) of this section, if the right,
10 interest, or power had not terminated until the decedent's death; the amount
11 included is the value of the property that would have been included under
12 (1)(A), (B), or (C) or (2) of this section, if the property were valued at the time
13 the right, interest, or power terminated, and is included only to the extent the
14 property passed upon termination to or for the benefit of a person other than
15 the decedent or the decedent's estate, spouse, or surviving spouse; as used in
16 this subparagraph, termination, with respect to a right or interest in property,
17 occurs when the right or interest terminated by the terms of the governing
18 instrument or the decedent transferred or relinquished the right or interest, and,
19 with respect to a power over property, occurs when the power terminated by
20 exercise, release, lapse, default, or otherwise, but, with respect to a power
21 described in (1)(A) of this section, termination occurs when the power
22 terminated by exercise or release, but not otherwise;

23 (B) a transfer of or relating to an insurance policy on the life of
24 the decedent if the proceeds would have been included in the augmented estate
25 under (1)(D) of this section had the transfer not occurred; the amount included
26 is the value of the insurance proceeds to the extent the proceeds were payable
27 at the decedent's death to or for the benefit of a person other than the
28 decedent's estate or surviving spouse;

29 (C) a transfer of property, to the extent not otherwise included
30 in the augmented estate, made to or for the benefit of a person other than the
31 decedent's surviving spouse; the amount included is the value of the property

transferred to a person to the extent that the aggregate transfers to that person in either of the two years exceeded \$10,000.

* **Sec. 4.** AS 13.12.205 is amended by adding a new subsection to read:

(b) Notwithstanding the other provisions of this section, the augmented estate does not include property transferred to an irrevocable trust with a transfer restriction under AS 34.40.110(a) if

(1) the settlor is a discretionary beneficiary of the trust; and

(2) the transfer was made more than 30 days before the marriage, or the decedent's spouse consented to the transfer under AS 13.12.208(a)(2).

* **Sec. 5.** AS 13.12.206(3) is amended to read:

(3) all other property that would have been included in the augmented estate under AS 13.12.205(a)(1) or (2) [AS 13.12.205(1) OR (2)] had it passed to or for the benefit of a person other than the decedent's spouse, the decedent's surviving spouse, the decedent, or the decedent's creditors, estate, or estate creditors.

* **Sec. 6.** AS 13.12.207(b) is amended to read:

(b) Property included under this section is valued at the decedent's death, taking the fact that the decedent predeceased the spouse into account, but, for purposes of (a)(1)(A) and (B) of this section, the values of the spouse's fractional and ownership interests are determined immediately before the decedent's death if the decedent was then a joint tenant or a co-owner of the property or accounts. For purposes of (a)(2) of this section, proceeds of insurance that would have been included in the spouse's nonprobate transfers to others under AS 13.12.205(a)(1)(D) [AS 13.12.205(1)(D)] are not valued as if the spouse were deceased.

* **Sec. 7.** AS 13.12.209(b) is amended to read:

(b) If, after the application of (a) of this section, the elective share amount is not fully satisfied or the surviving spouse is entitled to a supplemental elective share amount, amounts included in the decedent's probate estate and in the decedent's nonprobate transfers to others, other than amounts included under AS 13.12.205(a)(3)(A) or (C) [AS 13.12.205(3)(A) OR (C).] are applied first to satisfy the unsatisfied balance of the elective share amount or the supplemental elective share amount. The decedent's probate estate and that portion of the decedent's

1 nonprobate transfers to others shall be applied so that liability for the unsatisfied
2 balance of the elective share amount or for the supplemental elective share amount is
3 equitably apportioned among the recipients of the decedent's probate estate and of that
4 portion of the decedent's nonprobate transfers to others in proportion to the value of
5 the recipients' interests in the decedent's probate estate and that portion of the
6 decedent's nonprobate transfers to others.

7 * **Sec. 8.** AS 13.12 is amended by adding new sections to read:

8 **Article 5A. Establishment of Will and Trust Validity before Death.**

9 **Sec. 13.12.530. Establishment of will validity before death.** A testator, a
10 person who is nominated in a will to serve as a personal representative, or, with the
11 testator's consent, an interested party may petition the court to determine before the
12 testator's death that the will is a valid will subject only to subsequent revocation or
13 modification.

14 **Sec. 13.12.535. Establishment of trust validity before death.** If at least one
15 of the trustees of a trust is a qualified person, the settlor or a trustee of the trust may
16 petition the court to determine before the settlor's death that the trust is valid and
17 enforceable under its terms, subject only to a subsequent revocation or modification of
18 the trust.

19 **Sec. 13.12.540. Venue.** (a) The venue for a petition under AS 13.12.530 is

20 (1) the judicial district of this state where the testator is domiciled; or

21 (2) if the person who executed the will is not domiciled in this state,
22 any judicial district of this state.

23 (b) The venue for a petition under AS 13.12.535 is the judicial district where
24 the trust is registered. The venue for proceedings involving a trust that is not registered
25 in this state is

26 (1) any place in this state where the trust could have been properly
27 registered; or

28 (2) the location established by the rules of court.

29 **Sec. 13.12.545. Contents of petition for will validity.** A petition under
30 AS 13.12.530 must contain

31 (1) a statement that a copy of the will has been filed with the court;

(2) a statement that the will is in writing;

(3) a statement that the will was signed by the testator, or was signed in the testator's name by another person in the testator's conscious presence and at the testator's direction;

(4) in the case of a witnessed will, a statement that the will was signed by at least two individuals, each of whom signed within a reasonable time after witnessing the signing of the will or the testator's acknowledgment of the signature on the will;

(5) in the case of a holographic will, a statement that the signature and material portions of the will are in the testator's handwriting;

(6) a statement that the will was executed with testamentary intent;

(7) a statement that the testator had testamentary capacity;

(8) a statement that the testator was free from undue influence and duress and executed the will in the exercise of the testator's free will;

(9) a statement that the execution of the will was not the result of fraud or mistake;

(10) the names and addresses of the testator, the testator's spouse, the testator's children, the testator's heirs, the personal representatives nominated in the will, and the devisees under the will;

(11) if minors, the ages of the testator's children, the testator's heirs, and the devisees under the will, as far as known or ascertainable with reasonable diligence by the petitioner;

(12) a statement that the will has not been revoked or modified; and

(13) a statement that the testator is familiar with the contents of the will.

Sec. 13.12.550. Contents of petition for trust validity. A petition for trust validity under AS 12.16.535 must contain

(1) a statement that a copy of the trust has been filed with the court;

(2) a statement that the trust is in writing and was signed by the settlor;

(3) a statement that the trust was executed with the intent that it be enforceable in accordance with its terms;

(4) a statement that the settlor had the legal capacity to enter into and establish the trust;

(5) a statement that the settlor was free from undue influence and duress and executed the trust in the exercise of free will;

(6) a statement that execution of the trust was not the result of fraud or mistake;

(7) the names and addresses of the settlor, the settlor's spouse, the settlor's children, the settlor's heirs, and the parties in interest as defined in AS 13.36.390;

(8) the ages of the settlor's children, the settlor's heirs, and the parties in interest as defined in AS 13.36.390 who are minors so far as known or ascertainable with reasonable diligence by the petitioner;

(9) a statement that the trust has not been revoked or modified; and

(10) a statement that the settlor is familiar with the contents of the trust.

Sec. 13.12.555. Declaration by court. The court may declare a will or trust to be valid and make other findings of fact and conclusions of law that are appropriate under the circumstances. After the testator's death, unless the will is modified or revoked after the declaration, the will has full legal effect as the instrument of the disposition of the testator's estate and shall be admitted to probate upon request.

Sec. 13.12.560. Binding effect of declaration. A person, whether the person is known, unknown, born, or not born at the time of a proceeding under AS 13.12.530 - 13.12.590, including a person who is represented by another person under AS 13.06.120, is bound by the declaration under AS 13.12.555 even if by the time of the testator's death the representing person has died or would no longer be able to represent the person represented in the proceeding under AS 13.12.530 - 13.12.590.

Sec. 13.12.565. Hearing and notice. (a) After the petition under AS 13.12.530 or 13.12.535 is filed, the court shall fix a time and place for a hearing. The petitioner shall notify the spouse, the children, and the heirs of the testator or settlor in the manner established by AS 13.06.110.

(b) In addition to the notice required by (a) of this section, in proceedings

1 involving a petition under AS 13.12.530, the petitioner shall notify the testator, the
2 personal representatives nominated in the will, and the devisees under the will in the
3 manner established by AS 13.06.110.

4 (c) In addition to the notice required by (a) of this section, in proceedings
5 involving a petition under AS 13.12.535, the petitioner shall notify the settlor and the
6 parties in interest in the manner established by AS 13.06.110. Notice may be given to
7 other persons. In this subsection, "party in interest" has the meaning given in
8 AS 13.36.390.

9 **Sec. 13.12.570. Burden of proof.** A petitioner under AS 13.12.530 or
10 13.12.535 has the burden of establishing prima facie proof of the execution of the will
11 or trust. A person who opposes the petition has the burden of establishing the lack of
12 testamentary intent, lack of capacity, undue influence, fraud, duress, mistake, or
13 revocation. A party to the proceeding has the ultimate burden of persuasion as to the
14 matters for which they have the initial burden of proof.

15 **Sec. 13.12.575. Change to will after declaration.** After a declaration of the
16 validity of a will under AS 13.12.555, a testator may modify a will by a later will or
17 codicil executed according to the laws of this state or another state, and the will may
18 be revoked or modified under AS 13.12.507, 13.12.508, or another applicable law.

19 **Sec. 13.12.580. Change to trust after declaration.** After a declaration of
20 validity under AS 13.12.555, a trust may be modified, terminated, revoked, or
21 reformed under AS 13.36.340 - 13.36.365, or another applicable law.

22 **Sec. 13.12.585. Confidentiality.** (a) A notice of the filing of a petition under
23 AS 13.12.530 - 13.12.580, a summary of all formal proceedings under AS 13.12.530 -
24 13.12.580, and a dispositional order or a modification or termination of a dispositional
25 order relating to a proceeding under AS 13.12.530 - 13.12.580 shall be available for
26 public inspection. Except as provided in (b) and (c) of this section, all other
27 information contained in the court records relating to a proceeding under
28 AS 13.12.530 - 13.12.580 is confidential.

29 (b) The records that are confidential under (a) of this section may be made
30 available to

31 (1) the petitioner and the petitioner's attorney;

(2) interested persons who have appeared in the proceedings, interested persons who have otherwise submitted to the jurisdiction of the court, and the attorneys, guardians, and conservators of the interested persons;

(3) the judge hearing or reviewing the matter; and

(4) a member of the clerical or administrative staff of the court if access is essential for authorized internal administrative purposes.

(c) For good cause shown, the court may order the records that are confidential under (a) of this section to be made available to a person who is not listed in (b) of this section.

Sec. 13.12.590. Definitions. In AS 13.12.530 - 13.12.590,

(1) "qualified person" has the meaning given in AS 13.36.390;

(2) "testator" means a person who executes a will as a testator;

(3) "trust" means a revocable or irrevocable trust.

* **Sec. 9.** AS 13.16.055(a) is amended to read:

(a) Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is

(1) in the judicial district where the decedent was domiciled at the time of death; or

(2) if the decedent was not domiciled in this state, in any judicial district where

(A) property of the decedent was located at the time of death;

or

(B) a fiduciary who is subject to the laws of this state and who comes into the control of property owned by the decedent at the time of death resides or has its principal place of business.

* **Sec. 10.** AS 13.16.410 is amended by adding a new paragraph to read:

(28) consider discretionary distributions to a beneficiary as being made from capital gains realized during the year.

* **Sec. 11.** AS 13.36.109 is amended by adding a new paragraph to read:

(29) to consider discretionary distributions to a beneficiary as being made from capital gains realized during the year.

1 * **Sec. 12.** The uncoded law of the State of Alaska is amended by adding a new section to
2 read:

3 INDIRECT COURT RULE AMENDMENTS. (a) AS 13.16.055(a), as amended by
4 sec. 9 of this Act, has the effect of amending Rule 3, Alaska Rules of Civil Procedure, by
5 establishing a special venue rule for the first informal or formal testacy or appointment
6 proceedings after a decedent's death when the decedent was not domiciled in this state.

7 (b) AS 13.16.540, enacted by sec. 8 of this Act, has the effect of amending Rule 3,
8 Alaska Rules of Civil Procedure, by establishing special venue rules for a petition under
9 AS 13.12.530 or 13.12.535, enacted by sec. 8 of this Act.

10 (c) AS 13.12.545 and 13.12.550, enacted by sec. 8 of this Act, have the effect of
11 amending Rule 8, Alaska Rules of Civil Procedure, by establishing special requirements for
12 the contents of petitions under AS 13.12.530 and 13.12.535, enacted by sec. 8 of this Act.

13 (d) AS 13.12.550, enacted by sec. 8 of this Act, has the effect of amending Rule 1,
14 Alaska Rules of Probate Procedure, by establishing special hearing and notice requirements
15 for a hearing to determine the validity of a will or a trust under AS 13.12.530 and 13.12.535,
16 enacted by sec. 8 of this Act.

17 (e) AS 13.12.585, enacted by sec. 8 of this Act, has the effect of amending Rule 37.5,
18 Alaska Rules of Administration, by requiring that certain information contained in court
19 records related to a petition under AS 13.12.530 or 13.12.535, enacted by sec. 8 of this Act,
20 be kept confidential and only released as indicated in AS 13.12.585.

21 * **Sec. 13.** The uncoded law of the State of Alaska is amended by adding a new section to
22 read:

23 CONDITIONAL EFFECT. Section 9 of this Act and AS 13.12.540, 13.12.545,
24 13.12.550, and 13.12.585, enacted by sec. 8 of this Act, take effect only if sec. 12 of this Act
25 receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution
26 of the State of Alaska.

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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).

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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

Uniform Probate Code

The Uniform Probate Code (UPC) is a comprehensive statute that unifies, clarifies, and modernizes the laws governing the affairs of decedents and their estates, certain transfers accomplished other than by a will, and trusts and their administration. The UPC was originally approved by the National Conference of Commissioners on Uniform State Laws and the House of Delegates of the [American Bar Association](#) in 1969. The purpose of the UPC is to modernize probate law and probate administration and to encourage uniformity through the adoption of the code by all fifty states. The UPC, which has been amended numerous times, has been adopted in its entirety by sixteen states: Alaska, Arizona, Colorado, Florida, Hawaii, Idaho, Maine, Michigan, Minnesota, Montana, Nebraska, New Mexico, North Dakota, South Carolina, South Dakota, and Utah. The other thirty-four states have adopted parts of the UPC, but in general the UPC has not succeeded in providing a uniform body of substantive and procedural probate law.

The UPC contains seven substantive articles. Article I contains general provisions, definitions, and jurisdictional topics. Article II governs wills and intestate succession, which occurs when a person dies without leaving a will. Article III deals with the probate of wills and the administration of estates, article IV concerns the probating of estates in states other than the domicile of the decedent, article V extends protection to persons under disability and their property, and article VI governs nonprobate transfers of property. Article VII contains comprehensive provisions on trust administration.

The prime objective of the UPC is to simplify the probate process. For example, article III provides for supervised and unsupervised administration of probate. For estates with few assets and no disputes among the beneficiaries, the UPC allows unsupervised administration. In this case the executor of the will, who is called a [Personal Representative](#) in the UPC, handles the probating of the estate without direct supervision by the probate court. The personal representative handles every step of the probate process by filing a series of simple forms with the probate court. Unsupervised administration reduces the cost of probate and speeds up the process. Probate courts are freed from dealing with routine matters and may concentrate their efforts on estates with substantial assets or contested matters, where supervised administration is necessary.

The adoption of the UPC by state legislatures has been fought both by attorneys, who are opposed to unsupervised administration and to the overturning of current state laws governing probate, and by bonding companies, which stand to lose business because unsupervised probate does not require the posting of a bond. In light of this opposition, the Commissioners on Uniform State Laws have developed freestanding acts from similar provisions integrated into the UPC. This technique permits provisions, such as those involving powers of attorney and guardianship, to become law without disturbing other parts of a state's probate code.

Further readings

Averill, Lawrence H., Jr. 2001. *Uniform Probate Code in a Nutshell*. 5th ed. St. Paul, Minn.: West Group.

———. 1992. "An Eclectic History and Analysis of the 1990 Uniform Probate Code." *Albany Law Review* 55 (summer).

Stimmel, Andrew. 2002. "Mediating Will Disputes: A Proposal to Add a Discretionary Mediation Clause to the Uniform Probate Code." *Ohio State Journal on Dispute Resolution* 18 (fall).