

LEGAL SERVICES

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MEMORANDUM

January 28, 2010

SUBJECT: Sectional summary of HB 287 relating to the adoption of the Uniform Disclaimer of Property Interests Act (Work Order No. 26-LS1300\R)

TO: Representative Max Gruenberg
Attn: Gretchen Staff

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. This bill section creates a new chapter dealing with the disclaimer of property interests. This new chapter is based on the Uniform Disclaimer of Property Interests Act.

Sec. 13.70.010. States that AS 13.70 applies to the disclaimer of any interest in property. It does not matter when the disclaimer was created.

Sec. 13.70.020. States that, unless displaced by this chapter, the principles of law and equity apply. States that this chapter doesn't limit a person's right to waive, release, disclaim, or renounce an interest in or power over property under another law.

Sec. 13.70.030. States that a person may disclaim, in whole or part, conditionally or unconditionally, any interest in, or power over, property, including a power of appointment. Allows the disclaimer even if there is a spendthrift provision, a provision similar to a spendthrift provision, or a restriction, prohibition, or limitation on the right to disclaim. Provides that a disclaimer is unconditional and not subject to modification or revocation, unless the disclaimant expressly provides otherwise in the disclaimer.

Allows, if the fiduciary has court approval, a fiduciary to disclaim, in whole or part, any interest in or power over property. Indicates that, without court approval, a fiduciary may not disclaim, except under certain described circumstances, one of which involves natural guardians. Indicates how to determine who is the natural guardian.

Describes the formal requirements for a disclaimer. The disclaimer must be contained in a writing, declare that it is a disclaimer, describe the interest or power disclaimed, be

signed by the person making the disclaimer, and delivered or filed as required by AS 13.70.100. Indicates how the portion of property disclaimed by a partial disclaimer may be described (e.g., fraction, percentage, amount, term of years, etc.).

Indicates when a disclaimer becomes irrevocable. States that a disclaimer is not a transfer, assignment, or release.

Sec. 13.70.040. Establishes, except for disclaimers governed by sec. 13.70.050 - 13.70.065 (relating to jointly held property, tenancies by the entirety, and trustee disclaimers), four rules that relate to when a disclaimer becomes effective and how a disclaimer passes.

A disclaimer takes effect when the instrument creating the interest becomes irrevocable, or at the intestate's death, if related to intestate succession. The disclaimed interest passes according to a provision in the instrument that created the interest. If there is no provision, the disclaimed interest passes under one of four listed alternatives. Establishes how certain future interests take effect when there is a disclaimer of a preceding interest; clarifies that the disclaimer does not accelerate the possession and enjoyment of a future interest held by the disclaimant.

Sec. 13.70.050. Establishes rules for disclaiming interests in jointly held property. Establishes what interest one surviving holder may disclaim on the death of another holder of jointly held property. Indicates when the disclaimer takes effect. States that the disclaimed interest passes as if the disclaimant predeceased the deceased interest holder.

Sec. 13.70.060. Allows for a disclaimer of a survivorship interest in property held as a tenancy by the entirety. The deceased tenant's interest is considered to be an undivided one-half interest. Indicates when the disclaimer takes effect. States that the disclaimed interest passes as if the disclaimant predeceased the deceased cotenant.

Sec. 13.70.065. Addresses the situation of a trustee who is allowed, by court order or the fiduciary instrument, to receive property into a trust. States that if the trustee disclaims an interest that would otherwise have become trust property, the interest does not become trust property.

Sec. 13.70.070. Establishes some general rules for disclaimers of a power of appointment or other power not held in a fiduciary capacity. These rules relate to when the disclaimer takes effect, and directs that the instrument creating the power be construed as if the power expired when the disclaimer became effective.

Sec. 13.70.080. Indicates when disclaimers by persons who may or do receive an interest in property through the exercise of a power of appointment take effect.

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Sec. 13.70.090. Indicates when a disclaimer takes effect if a fiduciary disclaims a power held in a fiduciary capacity. Indicates the conditions when the disclaimer may be effective as to another fiduciary.

Sec. 13.70.100. Indicates how delivery of a disclaimer may be effected in general and in listed specific situations.

Sec. 13.70.110. Indicates that a disclaimer is permitted unless barred under this section. Permits a disclaimer even if the disclaimant is not solvent. States that a disclaimer is barred by a written waiver of the right to disclaim. States that a disclaimer is barred if certain listed events occur before the disclaimer occurs.

States that a disclaimer of the future exercise of a power held in a fiduciary capacity is not barred by a previous exercise of the power. A disclaimer of the future exercise of a power not held in a fiduciary capacity is not barred by the previous exercise of the power, unless the power is exercisable in favor of the disclaimant.

A disclaimer is barred and not effective to the extent that the disclaimant is in arrears in child support payments, or if the disclaimant is involved in a child support proceeding or in a proceeding to establish paternity of maternity. Indicates that a disclaimer that is barred by this section is ineffective. States that a barred disclaimer takes effect as a transfer of the interest to the persons who would have taken the interest under this chapter if the disclaimer had not been barred.

Sec. 13.70.120. Provides that a disclaimer or transfer is effective as a disclaimer under this chapter if, as a result of the disclaimer or transfer, the disclaimed or transferred interest is treated under federal tax law as never having been transferred to the disclaimant. Provides that a tax-qualified disclaimer under 26 U.S.C. (Internal Revenue Code) is subject to the time limits under 26 U.S.C., as amended, even though time limits are not specified under this chapter.

Sec. 13.70.130. Provides for a disclaimer to be filed, recorded, or registered as required or permitted by law if a transferring instrument (for the interest in or power over property) is required or permitted by law to be filed, recorded, or registered. But a failure to do this does not affect the disclaimer's validity as between the disclaimant and the persons to whom the interest or power passes under the disclaimer.

Sec. 13.70.140. Generally provides that an existing interest or power may be disclaimed after the effective date of this chapter if the time for delivering or filing the disclaimer under law superseded by this chapter has not expired.

Sec. 13.70.190. Defines terms for the new chapter.

Sec. 13.70.195. Gives the chapter the short title of "Uniform Disclaimer of Property Interests Act."

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Section 2. Repeals AS 13.12.801, which is the current statute that deals with the disclaimer of property interests.

If I may be of further assistance, please advise.

TLB:ljw
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