

**HOUSE BILL NO. 201**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FIFTH LEGISLATURE - FIRST SESSION

**BY REPRESENTATIVE LEDOUX**

**Introduced: 3/14/07**

**Referred: Judiciary, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the Uniform Disclaimer of Property Interests Act, to the disclaimer**  
2 **of property rights under the Uniform Probate Code, and to child support; and providing**  
3 **for an effective date."**

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

5 \* **Section 1.** AS 13 is amended by adding a new chapter to read:

6 **Chapter 70. Disclaimer of Property Interests.**

7 **Article 1. Uniform Disclaimer of Property Interests.**

8 **Sec. 13.70.010. Scope.** AS 13.70.010 - 13.70.195 applies to disclaimers of any  
9 interest in or power over property, whenever created.

10 **Sec. 13.70.020. Supplemented by other law.** (a) Unless displaced by a  
11 provision of AS 13.70.010 - 13.70.195, the principles of law and equity supplement  
12 AS 13.70.010 - 13.70.195.

13 (b) AS 13.70.010 - 13.70.195 do not limit any right of a person to waive,  
14 release, disclaim, or renounce an interest in or power over property under a law other

1 than AS 13.70.010 - 13.70.195.

2 **Sec. 13.70.030. Power to disclaim; general requirements; when**  
 3 **irrevocable.** (a) A person may disclaim, in whole or part, any interest in or power over  
 4 property, including a power of appointment. A person may disclaim the interest or  
 5 power even if its creator imposed a spendthrift provision or similar restriction on  
 6 transfer or a restriction or limitation on the right to disclaim.

7 (b) Except to the extent a fiduciary's right to disclaim is expressly restricted or  
 8 limited by another statute of this state or by the instrument creating the fiduciary  
 9 relationship, a fiduciary may disclaim, in whole or part, any interest in or power over  
 10 property, including a power of appointment, whether acting in a personal or  
 11 representative capacity. A fiduciary may disclaim the interest or power even if its  
 12 creator imposed a spendthrift provision or similar restriction on transfer or a restriction  
 13 or limitation on the right to disclaim, or an instrument other than the instrument that  
 14 created the fiduciary relationship imposed a restriction or limitation on the right to  
 15 disclaim.

16 (c) To be effective, a disclaimer must be in a writing or other record, declare  
 17 the disclaimer, describe the interest or power disclaimed, be signed by the person  
 18 making the disclaimer, and be delivered or filed in the manner provided in  
 19 AS 13.70.100. In this subsection,

20 (1) "record" means information that is inscribed on a tangible medium  
 21 or that is stored in an electronic or another medium and is retrievable in perceivable  
 22 form;

23 (2) "signed" means, with present intent to authenticate or adopt a  
 24 record, to

25 (A) execute or adopt a tangible symbol; or

26 (B) attach to or logically associate with the record an electronic  
 27 sound, symbol, or process.

28 (d) A partial disclaimer may be expressed as a fraction, percentage, monetary  
 29 amount, term of years, limitation of a power, or any other interest or estate in the  
 30 property.

31 (e) A disclaimer becomes irrevocable when it is delivered or filed under

1 AS 13.70.100 or when it becomes effective as provided in AS 13.70.040 - 13.70.090,  
2 whichever occurs later.

3 (f) A disclaimer made under AS 13.30.010 - 13.70.195 is not a transfer,  
4 assignment, or release.

5 **Sec. 13.70.040. Disclaimer of interest in property.** (a) Except for a disclaimer  
6 governed by AS 13.70.050 or 13.70.060, the following rules apply to a disclaimer of  
7 an interest in property:

8 (1) the disclaimer takes effect as of the time the instrument creating the  
9 interest becomes irrevocable, or, if the interest arose under the law of intestate  
10 succession, as of the time of the intestate's death;

11 (2) the disclaimed interest passes according to any provision in the  
12 instrument creating the interest providing for the disposition of the interest, should it  
13 be disclaimed, or of disclaimed interests in general;

14 (3) if the instrument does not contain a provision described in (2) of  
15 this subsection, the following rules apply:

16 (A) if the disclaimant is not an individual, the disclaimed  
17 interest passes as if the disclaimant did not exist;

18 (B) if the disclaimant is an individual, except as otherwise  
19 provided in (C) and (D) of this paragraph, the disclaimed interest passes as if  
20 the disclaimant had died immediately before the time of distribution;

21 (C) if by law or under the instrument, the descendants of the  
22 disclaimant would share in the disclaimed interest by any method of  
23 representation had the disclaimant died before the time of distribution, the  
24 disclaimed interest passes only to the descendants of the disclaimant who  
25 survive the time of distribution;

26 (D) if the disclaimed interest would pass to the disclaimant's  
27 estate had the disclaimant died before the time of distribution, the disclaimed  
28 interest instead passes by representation to the descendants of the disclaimant  
29 who survive the time of distribution; if a descendant of the disclaimant does  
30 not survive the time of distribution, the disclaimed interest passes to those  
31 persons, including the state but excluding the disclaimant, and in the shares

1 that would succeed to the transferor's intestate estate under the intestate  
 2 succession law of the transferor's domicile had the transferor died at the time  
 3 of distribution; however, if the transferor's surviving spouse is living but is  
 4 remarried at the time of distribution, the transferor is considered to have died  
 5 unmarried at the time of distribution;

6 (4) upon the disclaimer of a preceding interest, a future interest held by  
 7 a person other than the disclaimant takes effect as if the disclaimant had died or ceased  
 8 to exist immediately before the time of distribution, but a future interest held by the  
 9 disclaimant is not accelerated in possession or enjoyment.

10 (b) In this section,

11 (1) "future interest" means an interest that takes effect in possession or  
 12 enjoyment, if at all, later than the time of its creation;

13 (2) "time of distribution" means the time when a disclaimed interest  
 14 would have taken effect in possession or enjoyment.

15 **Sec. 13.70.050. Disclaimer of rights of survivorship in jointly held**  
 16 **property.** (a) Upon the death of a holder of jointly held property, a surviving holder  
 17 may disclaim, in whole or part, the greater of

18 (1) a fractional share of the property determined by dividing the  
 19 number one by the number of joint holders alive immediately before the death of the  
 20 holder to whose death the disclaimer relates; or

21 (2) all of the property except that part of the value of the entire interest  
 22 attributable to the contribution furnished by the disclaimant.

23 (b) A disclaimer under (a) of this section takes effect as of the death of the  
 24 holder of jointly held property to whose death the disclaimer relates.

25 (c) An interest in jointly held property disclaimed by a surviving holder of the  
 26 property passes as if the disclaimant predeceased the holder to whose death the  
 27 disclaimer relates.

28 **Sec. 13.70.060. Disclaimer of interest by trustee.** If a trustee disclaims an  
 29 interest in property that otherwise would have become trust property, the interest does  
 30 not become trust property.

31 **Sec. 13.70.070. Disclaimer of power of appointment or other power not**

1 **held in fiduciary capacity.** If a holder disclaims a power of appointment or other  
2 power not held in a fiduciary capacity, the following rules apply:

3 (1) if the holder has not exercised the power, the disclaimer takes  
4 effect as of the time the instrument creating the power becomes irrevocable;

5 (2) if the holder has exercised the power and the disclaimer is of a  
6 power other than a presently exercisable general power of appointment, the disclaimer  
7 takes effect immediately after the last exercise of the power;

8 (3) the instrument creating the power is construed as if the power  
9 expired when the disclaimer became effective.

10 **Sec. 13.70.080. Disclaimer by appointee, object, or taker in default of**  
11 **exercise of power of appointment.** (a) A disclaimer of an interest in property by an  
12 appointee of a power of appointment takes effect as of the time the instrument by  
13 which the holder exercises the power becomes irrevocable.

14 (b) A disclaimer of an interest in property by an object or taker in default of an  
15 exercise of a power of appointment takes effect as of the time the instrument creating  
16 the power becomes irrevocable.

17 **Sec. 13.70.090. Disclaimer of power held in fiduciary capacity.** (a) If a  
18 fiduciary disclaims a power held in a fiduciary capacity that has not been exercised,  
19 the disclaimer takes effect as of the time the instrument creating the power becomes  
20 irrevocable.

21 (b) If a fiduciary disclaims a power held in a fiduciary capacity that has been  
22 exercised, the disclaimer takes effect immediately after the last exercise of the power.

23 (c) A disclaimer under this section is effective as to another fiduciary if the  
24 disclaimer so provides and the fiduciary disclaiming has the authority to bind the  
25 estate, trust, or other person for whom the fiduciary is acting.

26 **Sec. 13.70.100. Delivery or filing.** (a) Subject to (b) - (k) of this section,  
27 delivery of a disclaimer may be effected by personal delivery, first-class mail, or any  
28 other method likely to result in its receipt.

29 (b) In the case of an interest created under the law of intestate succession or an  
30 interest created by will, other than an interest in a testamentary trust,

31 (1) a disclaimer shall be delivered to the personal representative of the

1 decedent's estate; or

2 (2) if a personal representative is not then serving, it shall be filed with  
3 a court having jurisdiction to appoint the personal representative.

4 (c) In the case of an interest in a testamentary trust,

5 (1) a disclaimer shall be delivered to the trustee then serving, or if a  
6 trustee is not then serving, to the personal representative of the decedent's estate; or

7 (2) if a personal representative is not then serving, a disclaimer shall be  
8 filed with a court having jurisdiction to enforce the trust.

9 (d) In the case of an interest in an inter vivos trust,

10 (1) a disclaimer shall be delivered to the trustee then serving;

11 (2) if a trustee is not then serving, a disclaimer shall be filed with a  
12 court having jurisdiction to enforce the trust; or

13 (3) if the disclaimer is made before the time the instrument creating the  
14 trust becomes irrevocable, the disclaimer shall be delivered to the settlor of a  
15 revocable trust or the transferor of the interest.

16 (e) In the case of an interest created by a beneficiary designation made before  
17 the time the designation becomes irrevocable, a disclaimer shall be delivered to the  
18 person making the beneficiary designation.

19 (f) In the case of an interest created by a beneficiary designation made after  
20 the time the designation becomes irrevocable, a disclaimer shall be delivered to the  
21 person obligated to distribute the interest.

22 (g) In the case of a disclaimer by a surviving holder of jointly held property,  
23 the disclaimer shall be delivered to the person to whom the disclaimed interest passes.

24 (h) In the case of a disclaimer by an object or taker in default of exercise of a  
25 power of appointment at any time after the power was created,

26 (1) the disclaimer shall be delivered to the holder of the power or to the  
27 fiduciary acting under the instrument that created the power; or

28 (2) if a fiduciary is not then serving, the disclaimer shall be filed with a  
29 court having authority to appoint the fiduciary.

30 (i) In the case of a disclaimer by an appointee of a nonfiduciary power of  
31 appointment,

1 (1) the disclaimer shall be delivered to the holder, the personal  
2 representative of the holder's estate, or to the fiduciary under the instrument that  
3 created the power; or

4 (2) if a fiduciary is not then serving, the disclaimer shall be filed with a  
5 court having authority to appoint the fiduciary.

6 (j) In the case of a disclaimer by a fiduciary of a power over a trust or estate,  
7 the disclaimer shall be delivered as provided in (b) - (d) of this section, as if the power  
8 disclaimed were an interest in property.

9 (k) In the case of a disclaimer of a power by an agent, the disclaimer shall be  
10 delivered to the principal or the principal's representative.

11 (l) In this section, "beneficiary designation" means an instrument, other than  
12 an instrument creating a trust, naming the beneficiary of

13 (1) an annuity or insurance policy;

14 (2) an account with a designation for payment on death;

15 (3) a security registered in beneficiary form;

16 (4) a pension, profit-sharing, retirement, or other employment-related  
17 benefit plan; or

18 (5) any other nonprobate transfer at death.

19 **Sec. 13.70.110. When disclaimer barred or limited.** (a) A disclaimer is  
20 barred by a written waiver of the right to disclaim.

21 (b) A disclaimer of an interest in property is barred if any of the following  
22 events occurs before the disclaimer becomes effective:

23 (1) the disclaimant accepts the interest sought to be disclaimed;

24 (2) the disclaimant voluntarily assigns, conveys, encumbers, pledges,  
25 or transfers the interest sought to be disclaimed or contracts to assign, convey,  
26 encumber, pledge, or transfer the interest sought to be disclaimed;

27 (3) a judicial sale of the interest sought to be disclaimed occurs.

28 (c) A disclaimer, in whole or part, of the future exercise of a power held in a  
29 fiduciary capacity is not barred by its previous exercise.

30 (d) A disclaimer, in whole or part, of the future exercise of a power not held in  
31 a fiduciary capacity is not barred by its previous exercise unless the power is

1 exercisable in favor of the disclaimant.

2 (e) A disclaimer is barred or limited if barred or limited by law other  
3 AS 13.70.010 - 13.70.195.

4 (f) A disclaimer of a power over property that is barred by this section is  
5 ineffective. A disclaimer of an interest in property that is barred by this section takes  
6 effect as a transfer of the interest disclaimed to the persons who would have taken the  
7 interest under AS 13.70.010 - 13.70.195 had the disclaimer not been barred.

8 **Sec. 13.70.120. Tax qualified disclaimer.** Notwithstanding any other  
9 provision of AS 13.70.010 - 13.70.195, if, as a result of a disclaimer or transfer, the  
10 disclaimed or transferred interest is treated under the provisions of 26 U.S.C. (Internal  
11 Revenue Code) as never having been transferred to the disclaimant, then the  
12 disclaimer or transfer is effective as a disclaimer under AS 13.70.010 - 13.70.195. In  
13 this section, "26 U.S.C. (Internal Revenue Code)" includes 26 U.S.C. as amended, any  
14 successor statute to 26 U.S.C. or 26 U.S.C. as amended, and regulations adopted under  
15 26 U.S.C., 26 U.S.C. as amended, and any successor statute to 26 U.S.C. or 26 U.S.C.  
16 as amended.

17 **Sec. 13.70.130. Recording of disclaimer.** If an instrument transferring an  
18 interest in or power over property subject to a disclaimer is required or permitted by  
19 law to be filed, recorded, or registered, the disclaimer may be filed, recorded, or  
20 registered as required or permitted by law. Failure to file, record, or register the  
21 disclaimer does not affect its validity as between the disclaimant and persons to whom  
22 the property interest or power passes by reason of the disclaimer.

23 **Sec. 13.70.140. Application to existing relationships.** Except as otherwise  
24 provided in AS 13.70.110, an interest in or power over property existing on the  
25 effective date of AS 13.70.010 - 13.70.195 as to which the time for delivering or filing  
26 a disclaimer under law superseded by AS 13.70.010 - 13.70.195 has not expired may  
27 be disclaimed after the effective date of AS 13.70.010 - 13.70.195.

28 **Sec. 13.70.150. Relation to the Electronic Signatures in Global and**  
29 **National Commerce Act.** AS 13.70.010 - 13.70.195 modifies, limits, and supersedes  
30 15 U.S.C. 7001 - 7031 (Electronic Signatures in Global and National Commerce Act)  
31 but does not modify, limit, or supersede 15 U.S.C. 7001(c) or authorize electronic

1 delivery of any of the notices described in 15 U.S.C. 7003(b).

2 **Sec. 13.70.160. Uniformity of application and construction.** In applying and  
3 construing AS 13.70.010 - 13.70.195, consideration must be given to the need to  
4 promote uniformity of the law with respect to its subject matter among states that  
5 enact it.

6 **Sec. 13.70.190. Definitions.** In AS 13.70.010 - 13.70.195,

7 (1) "disclaimant" means the person to whom a disclaimed interest or  
8 power would have passed had the disclaimer not been made;

9 (2) "disclaimed interest" means the interest that would have passed to  
10 the disclaimant had the disclaimer not been made;

11 (3) "disclaimer" means the refusal to accept an interest in or power  
12 over property;

13 (4) "fiduciary" means a personal representative, a trustee, an agent  
14 acting under a power of attorney, or another person authorized to act as a fiduciary  
15 with respect to the property of another person;

16 (5) "jointly held property" means property held in the name of two or  
17 more persons under an arrangement in which all holders have concurrent interests and  
18 under which the last surviving holder is entitled to the whole of the property;

19 (6) "person" means an individual; a corporation; a business trust; an  
20 estate; a trust; a partnership; a limited liability company; an association; a joint  
21 venture; a government; a governmental subdivision, agency, or instrumentality; a  
22 public corporation; or any other legal or commercial entity;

23 (7) "state" means a state of the United States, the District of Columbia,  
24 the Commonwealth of Puerto Rico, the United States Virgin Islands, and any territory  
25 or possession subject to the jurisdiction of the United States; in this paragraph "state"  
26 includes an Indian tribe or band, or Alaska Native village recognized by federal law or  
27 formally acknowledged by a state;

28 (8) "trust" means

29 (A) an express trust, charitable or noncharitable, with additions  
30 to the express trust, whenever and however created; and

31 (B) a trust created under a statute, judgment, or decree that

1 requires the trust to be administered in the manner of an express trust.

2 **Sec. 13.70.195. Short title.** AS 13.70.010 - 13.70.195 may be cited as the  
3 Uniform Disclaimer of Property Interests Act.

4 **Article 2. Disclaimer to Avoid Child Support.**

5 **Sec. 13.70.300. Disclaimer barred.** (a) A disclaimer of an interest in or power  
6 over property under AS 13.70.010 - 13.70.195 is barred and is not effective if the  
7 disclaimant

8 (1) is in arrears in child support payments; or

9 (2) is involved in a pending court or administrative proceeding to  
10 establish or modify the disclaimant's child support obligation.

11 (b) In this section, "disclaimer" and "disclaimant" have the meanings given in  
12 AS 13.70.190.

13 \* **Sec. 2.** AS 13.12.801 is repealed.

14 \* **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to  
15 read:

16 **TRANSITION.** Notwithstanding AS 13.70, enacted by sec. 1 of this Act,

17 (1) a disclaimer made under AS 13.12.801, repealed by sec. 2 of this Act,  
18 remains effective under AS 13.12.801 on and after the effective date of this Act, and  
19 AS 13.12.801 continues to apply to the disclaimer on and after the effective date of this Act;  
20 and

21 (2) if a nine-month delivery or filing date for a disclaimer is running under  
22 AS 13.12.801 immediately before the effective date of this Act, then the delivery or filing  
23 date continues to apply under AS 13.12.801 on and after the effective date of this Act, and  
24 AS 13.12.801 continues to apply to the disclaimer on and after the effective date of this Act.

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