

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 4, 2007

1:05 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Chair
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

Representative Nancy Dahlstrom, Vice Chair

COMMITTEE CALENDAR

HOUSE BILL NO. 196

"An Act relating to the handling of matters after a person's death."

- HEARD AND HELD

HOUSE BILL NO. 197

"An Act relating to the issuance of shares of professional corporations to a trust, to trusts, to trustees, to the removal of a trustee, to the compensation of a trustee and a person employed by a trustee, to a trustee's accepting or rejecting a trusteeship, to co-trustees, to a vacancy in a trusteeship, to the resignation of a trustee, to delivery of trust property by former trustees, to the reimbursement of trustee expenses, to the certification of a trust, to the suitability of a trustee, to the place of administration of a trust, to a trustee's power to appoint property to another trust, to a change of the percentage of trust property to be considered principal, to the determination of the value of a trust, and to a settlor's intent when transferring property in trust; amending Rules 54 and 82, Alaska Rules of Civil Procedure; and providing for an effective date."

- MOVED HB 197 OUT OF COMMITTEE

HOUSE BILL NO. 201

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

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 196

SHORT TITLE: HANDLING MATTERS AFTER A PERSON'S DEATH

SPONSOR(S): JUDICIARY

03/14/07 (H) READ THE FIRST TIME - REFERRALS
03/14/07 (H) JUD
04/04/07 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 197

SHORT TITLE: TRUSTS

SPONSOR(S): JUDICIARY

03/14/07 (H) READ THE FIRST TIME - REFERRALS
03/14/07 (H) JUD, FIN
04/04/07 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 201

SHORT TITLE: UNIFORM ACT: PROPERTY INTEREST DISCLAIMER

SPONSOR(S): REPRESENTATIVE(S) LEDOUX

03/14/07 (H) READ THE FIRST TIME - REFERRALS
03/14/07 (H) JUD, FIN
04/04/07 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

JANE W. PIERSON, Staff
to Representative Jay Ramras
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 196 on behalf of the sponsor, the House Judiciary Standing Committee; presented HB 197 on behalf of the sponsor, the House Judiciary Standing Committee.

DAVID G. SHAFTEL, Attorney at Law
Anchorage, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of HB 196; provided comments and

responded to questions during discussion of HB 197; provided comments and responded to questions during discussion of HB 201.

RICHARD S. THWAITES, JR., Attorney at Law
Anchorage, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of HB 196; provided comments and responded to questions during discussion of HB 197; provided a comment during discussion of HB 201.

MARY ELLEN BEARDSLEY, Assistant Attorney General
Commercial/Fair Business Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Responded to a question regarding HB 196; responded to questions regarding HB 201.

DOUGLAS J. BLATTMACHR, President and CEO
Alaska Trust Company
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 197.

STEPHEN E. GREER, Attorney at Law
Anchorage, Alaska

POSITION STATEMENT: Provided a comment regarding HB 196; provided a comment during discussion of HB 197; provided a comment during discussion of HB 201.

REPRESENTATIVE GABRIELLE LeDOUX
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 201.

SONYA HYMER, Staff
to Representative Gabrielle LeDoux
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 201 on behalf of the sponsor, Representative LeDoux.

LYNN E. LEVENGOOD, Commissioner
National Conference of Commissioners on Uniform State Laws
(NCCUSL)
Fairbanks, Alaska

POSITION STATEMENT: Provided comments and responded to a question during discussion of HB 201.

DEBORAH BEHR, Chief Assistant Attorney General
Legislation & Regulations Section
Civil Division (Juneau)
Department of Law (DOL);
Commissioner
National Conference of Commissioners on Uniform State Laws
(NCCUSL)
Juneau, Alaska

POSITION STATEMENT: Responded to comments during discussion of HB 201.

ACTION NARRATIVE

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at [1:05:36 PM](#). Representatives Lynn, Holmes, Coghill, Samuels, and Ramras were present at the call to order. Representative Gruenberg arrived as the meeting was in progress. Representative Dahlstrom was excused.

HB 196 - HANDLING MATTERS AFTER A PERSON'S DEATH

[1:06:12 PM](#)

CHAIR RAMRAS announced that the first order of business would be HOUSE BILL NO. 196, "An Act relating to the handling of matters after a person's death."

[1:07:23 PM](#)

JANE W. PIERSON, Staff to Representative Jay Ramras, Alaska State Legislature, explained on behalf of the House Judiciary Standing Committee, sponsor of HB 196, that this legislation is one of three bills written with the intention of keeping Alaska competitive in the trust market. House Bill 196 provides that a will's penalty clause for contesting the will or instituting other proceedings applies even if probable cause exists; currently any such clause in a will is unenforceable. The bill also amends AS 13.16.680(a) such that the statement that must be contained in the affidavit used by a decedent's successor to collect personal property from another person shall indicate that the value of the entire estate does not consist of personal property valued at [more] than \$25,000 excluding vehicles that do not exceed a total value of \$100,000.

MS. PIERSON explained that HB 196 also adds new subsections to AS 13.33.101. Proposed subsection (d) pertains to non probate transfers after a person's death; this subsection will protect an individual's life insurance contract and retirement plan debts from the claims of creditors. Proposed subsection (e) describes situations in which proposed subsection (d) applies. Proposed subsection (f) stipulates that subsection (d) does not limit the rights of the owner of a life insurance contract to pledge or assign the benefits of that contract as collateral for his/her debts. Proposed subsection (g) defines the terms, "life insurance contract" and "retirement plan" as they apply to AS 13.33.101. Section 5 of the bill contains transitional provisions regarding applicability.

REPRESENTATIVE SAMUELS sought clarification regarding Section 1, which would allow a will to contain a provision penalizing an interested party for contesting the will even with probable cause.

[1:12:12 PM](#)

DAVID G. SHAFTEL, Attorney at Law, explained that there is a similar statutory provision pertaining to trusts; these types of clauses are common and are designed to ensure that beneficiaries don't challenge a will, particularly just for the purpose of placing themselves in a bargaining position - such persons won't be able to raise a challenge by filing a lawsuit without also running the risk of forfeiting the proceeds of the will. Many people feel that when they write a will or a trust, they don't want the beneficiaries to challenge the will or trust. The problem with including the aforementioned type of penalty provision in a will is that current statute says that if one has probable cause, then any penalty clause included in the will is unenforceable. He opined that this loophole creates more litigation. He then mentioned that if [a potential beneficiary] entices someone to write his/her will in a certain way, that could constitute duress or undue influence, and such a will could still be challenged even under the bill.

[Chair Ramras turned the gavel over to Representative Coghill.]

MR. SHAFTEL, in response to a question, said that if a family member drafts a will and then benefits from that will, there will be a strong presumption that the will is invalid and that the family member committed fraud or exerted undue influence. He posited that Section 1 will protect a person's will against frivolous challenges. In response to a question, he suggested

that [Section 1] will bring wills on par with trusts; currently, a similar penalty provision could be included in a trust and that trust could not then be challenged regardless of whether there is probable cause.

[Representative Coghill returned the gavel to Chair Ramras.]

1:20:30 PM

RICHARD S. THWAITES, JR., Attorney at Law, offered that the issue [of a potential beneficiary exerting undue influence on someone who is creating a will] has been complicated in recent years by elder law and disability law; many [estate law] practitioners, because of "special needs trusts," often find it necessary to include language in a will that disinherits a particular potential beneficiary from the main part of the will in order for the special needs trust to remain intact. Practitioners view such "disinheritance" language as a kind of penalty clause, and Section 1 would allow practitioners to safely create such special needs trusts, particularly for a disabled family member or a minor. There has been an increasing need for such a statutory provision as will and trust areas of the law evolve.

MR. SHAFTEL, in response to a question, offered his understanding that there are not specific statutes that address exerting undue influence on someone creating a will; instead, case law addresses that point. In response to a further question, he said he doesn't know of any litigation in Alaska regarding exerting undue influence. Penalty clauses for contesting a will are meant to preclude one from bringing a non-meritorious claim in an effort to obtain leverage; if one truly has a meritorious claim - for example, a claim of duress or undue influence or incapacity - the will or trust will be set aside.

MR. THWAITES offered that [AS 13.12.501] says, "An individual 18 or more years of age who is of sound mind may make a will.", and that the accompanying notes speak to the issues of undue influence, old age, debility, sickness, and presumptions. Furthermore, under AS 13.12.504, which pertains to self proving wills, witnesses to the execution of the will are required, via an affidavit, to swear to the fact that they witnessed the will in the presence and hearing of the person signing the will, and that to the best of the witnesses' knowledge the person signing the will at the time was 18 years of age or older, was of sound mind, and was under no constraint or undue influence.

1:27:26 PM

REPRESENTATIVE HOLMES questioned whether such a clause would cause a person to not bring even a meritorious claim forward simply because of the risk of losing his/her inheritance.

MR. SHAFTEL acknowledged that possibility, but pointed out that the decision of whether to include such a clause rests with the client. He offered his belief that if there really is something wrong, a potential beneficiary will go ahead and contest the will. In response to a question, he explained that the group of attorneys, when they recommended adding a similar provision to Alaska's trust law, simply overlooked having such a provision added to Alaska's laws regarding wills; the addition of such a provision should have been made to both laws at the same time.

REPRESENTATIVE GRUENBERG asked what the interplay is between "these statutes" and the normal penalties for frivolous lawsuits as provided for under the Alaska Rules of Civil Procedure.

MR. SHAFTEL opined that probate litigation is more vulnerable to abuse and delay. Furthermore, the person challenging a will may not be able to pay the prevailing party's attorney fees and so those court rules may not really act as a deterrent. He surmised that that is why almost every state has similar statutory language regarding such penalty clauses.

REPRESENTATIVE SAMUELS [referring to proposed AS 13.33.101(d)] questioned whether this provision could be used to hide money from creditors.

MR. THWAITES [instead offered the following comment regarding proposed AS 13.16.680(a):] The monetary limits included therein were carried through in the probate code without any adjustments to date, and were meant to be applied to smaller estates.

REPRESENTATIVE GRUENBERG [referring to proposed AS 13.33.101(d)] asked whether that provision could be used to immunize one's self from child support claims; for example, if one put all of one's assets into a life insurance or annuity policy.

MR. THWAITES offered his understanding that child support "has something referred to as a 'super lien,'" wherein money owed for child support would not be available to other creditors.

REPRESENTATIVE GRUENBERG expressed concern about child support and taxes owed.

CHAIR RAMRAS offered his belief that "this" only applies to small estates, and all other estates would be subject to child support claims. In response to a comment, he remarked that the bill may not cover every potential situation.

REPRESENTATIVE HOLMES offered her understanding that if back child support is due, then a super lien will take into account that important exception. She suggested that the committee receive more guidance on that issue, but acknowledged that it might already be addressed in some other fashion.

[1:43:01 PM](#)

MARY ELLEN BEARDSLEY, Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Anchorage), Department of Law (DOL), relayed that she would research that issue further, adding that she would like to have the issue addressed if in fact there is a need to do so.

MR. SHAFTEL remarked that proposed AS 13.16.680(a) will alter existing statute, which currently contains a \$15,000 exemption allowing the avoidance of a probate procedure; under the bill, the amount would be raised to \$25,000.

CHAIR RAMRAS acknowledged that point, but relayed that the committee is seeking to remedy a possible oversight regarding child support claims.

REPRESENTATIVE GRUENBERG said he isn't sure that proposed AS 13.33.101(d) only applies to small estates. Referring to AS 13.16.680(a), he questioned whether it would permit people who owe child support to simply purchase personal property in order to avoid paying child support.

MS. BEARDSLEY said she will provide the committee with an answer to the issue of child support claims within a day.

REPRESENTATIVE GRUENBERG suggested that if the bill is held over in order to address the issue of child support claims, the committee could move quickly on it the next time it is heard.

CHAIR RAMRAS, in response to a comment, remarked that if an amendment is needed to address that issue, it would be more appropriate to consider it in the House Judiciary Standing

Committee rather than in either the House Rules Standing Committee or on the House floor.

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on HB 196, and relayed that the bill would be held over.

[STEPHEN E. GREER, Attorney at Law, later in the meeting, during discussion of another bill, remarked that HB 196, particularly the provision pertaining to life insurance benefits and retirement plans, "is meant to protect the little guy."]

[HB 196 was held over.]

HB 197 - TRUSTS

[1:50:22 PM](#)

CHAIR RAMRAS announced that the next order of business would be HOUSE BILL NO. 197, "An Act relating to the issuance of shares of professional corporations to a trust, to trusts, to trustees, to the removal of a trustee, to the compensation of a trustee and a person employed by a trustee, to a trustee's accepting or rejecting a trusteeship, to co-trustees, to a vacancy in a trusteeship, to the resignation of a trustee, to delivery of trust property by former trustees, to the reimbursement of trustee expenses, to the certification of a trust, to the suitability of a trustee, to the place of administration of a trust, to a trustee's power to appoint property to another trust, to a change of the percentage of trust property to be considered principal, to the determination of the value of a trust, and to a settlor's intent when transferring property in trust; amending Rules 54 and 82, Alaska Rules of Civil Procedure; and providing for an effective date."

[1:51:46 PM](#)

JANE W. PIERSON, Staff to Representative Jay Ramras, Alaska State Legislature, offered on behalf of the House Judiciary Standing Committee, sponsor of HB 197, that a "trust" is defined [in part in Black's Law Dictionary] as:

... a property interest held by one person (the trustee) at the request of another (the settlor) for the benefit of a third party (the beneficiary). ...
"[A] trust involves three elements, namely, (1) a trustee, who holds the trust property and is subject

to equitable duties to deal with it for the benefit of another; (2) a beneficiary, to whom the trustee owes equitable duties to deal with the trust property for his benefit; (3) trust property, which is held by the trustee for the beneficiary."

MS. PIERSON said the goal of HB 197 is to make Alaska the premier place for trust and estates, adding that it is important that Alaska stay competitive with other states that do not have a personal income tax. The trust industry is important to the state of Alaska in that it provides employment for accountants, attorneys, insurance agents, bankers, and their support staff; for example, there is between \$30 million and \$70 million on deposit with Alaska banks through the Alaska Trust Company alone. Furthermore, there are [approximately] 1,000 clients with trusts in Alaska, having chosen Alaska because of its unique trust laws. Since 1997, Alaska has passed over 15 pieces of legislation designed to keep Alaska's trust industry vibrant and competitive.

MS. PIERSON explained that under HB 197, shares in a professional corporation may be held by the trustees of the [professional corporation's] revocable trust. The bill also expands the coverage of AS 13.36.157, which allows the trustee of a trust to transfer trust assets to a similar trust; this expansion will only occur if the trust has an Alaskan trustee and the trust has its primary administration in Alaska. House Bill 197 allows the Alaska trustee of a charitable trust to change the percentage of the value of the trust that will be considered income whenever the trustee determines that the new percentage is necessary and prudent. The bill clarifies that a settlor's express intention to protect trust assets from the beneficiary's potential future creditors is not evidence of an intent to defraud. House Bill 197 [adds necessary default] provisions relating to trustees, provisions pertaining to: compensation, accepting or declining trusteeship, co-trustees, vacancy, resignation, removal, delivery of property by a former trustee, reimbursement of expenses, and certification of the trust.

[1:54:19 PM](#)

DOUGLAS J. BLATTMACHR, President and CEO, Alaska Trust Company, reiterated portions of Ms. Pierson's explanation of the provisions of HB 197.

[1:56:28 PM](#)

STEPHEN E. GREER, Attorney at Law, offered his understanding that HB 197 has been thoroughly vetted by Alaska's estate planning attorneys. He then provided a comment regarding HB 196.

[2:00:29 PM](#)

DAVID G. SHAFTEL, Attorney at Law, offered his belief that HB 197 will address what he characterized as a big void in the law dealing with trustees; currently there are not default rules outlined in statute, and the aforementioned default provisions will help protect those who might not have a thorough estate plan.

REPRESENTATIVE GRUENBERG referred to proposed AS 13.36.157, and asked whether [a trustee] could use that provision to set up another trust in order to escape a creditor who is attempting to get at the assets of a particular trust.

MR. SHAFTEL opined that doing so would be considered a fraudulent transfer and therefore such a trust would be set aside.

REPRESENTATIVE GRUENBERG referred to the Alaska Uniform Transfers to Minors Act, and questioned whether HB 197 would allow a custodial trust to be set up such that it needn't be terminated even when the beneficiary reached the age of 25 if the beneficiary is still not capable of handling the trust's assets; if the bill doesn't allow such flexibility, perhaps an amendment to address that sort of situation should be forthcoming. He disclosed that he is having to consider just such a situation as it pertains to his son.

[2:04:32 PM](#)

RICHARD S. THWAITES, JR., Attorney at Law, relayed that he would have concerns with such an amendment because of Internal Revenue Service (IRS) gifting restrictions. He suggested, therefore, that the committee review any such amendment carefully before modifying the bill in that fashion.

REPRESENTATIVE GRUENBERG agreed to do so.

MR. SHAFTEL remarked that that is a controversial and complex area of the law, and therefore it may take some time to develop a solution.

REPRESENTATIVE GRUENBERG remarked that he may consider addressing that point via separate legislation.

MR. THWAITES explained that Alaska allows the establishment of what he termed "holographic wills" - such wills essentially allow someone to leave all of his/her assets in trust, adding that HB 197 "goes a huge distance towards stretching over that gap."

REPRESENTATIVE GRUENBERG surmised, then, that HB 197 will help people effectuate "that desire."

MR. THWAITES concurred.

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on HB 197.

REPRESENTATIVE GRUENBERG indicated that he might have the interested parties talk to each other regarding the aforementioned possible amendment.

CHAIR RAMRAS indicated that if such an amendment proves necessary, he would be willing to help with it.

[2:08:24 PM](#)

REPRESENTATIVE LYNN moved to report HB 197 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 197 was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 2:09 p.m. to 2:10 p.m.

HB 201 - UNIFORM ACT: PROPERTY INTEREST DISCLAIMER

[2:10:51 PM](#)

CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 201, "An Act relating to the Uniform Disclaimer of Property Interests Act, to the disclaimer of property rights under the Uniform Probate Code, and to child support; and providing for an effective date." [Included in members' packets was a proposed committee substitute (CS) for HB 201, Version 25-LS0615\E, Bannister, 3/31/07.]

[2:10:57 PM](#)

REPRESENTATIVE GABRIELLE LeDOUX, Alaska State Legislature, sponsor, said that HB 201 would enact the Uniform Disclaimer of Property Interests Act, and that her staff would be presenting the bill.

[2:11:34 PM](#)

SONYA HYMER, Staff to Representative Gabrielle LeDoux, Alaska State Legislature, relayed on behalf of the sponsor, Representative LeDoux, that HB 201 would enact the Uniform Disclaimer of Property Interests Act, which has been approved by the American Bar Association and enacted in 13 other [jurisdictions] to date, and that Representative LeDoux agreed to sponsor the bill at the request of the National Conference of Commissioners on Uniform State Laws (NCCUSL). Remarking that a disclaimer extinguishes an interest as if it never existed, Ms. Hymer explained that HB 201 sets up a clear procedure by which beneficiaries of interests received via inheritance, will, or trust can disclaim those interests as if they had never existed. For example, if a person leaves the family farm to his three adult children, but two of them don't live on the farm anymore and want to leave their interests in the farm to the third adult child who is still living and working on the farm, the two children could disclaim their interests and thereby leave the farm in its entirety to the third child.

MS. HYMER said that the NCCUSL drafted the original version of the bill, and that members' packets include a sectional analysis written by the NCCUSL. In response to a question, she offered her understanding that once someone accepts the property, it cannot then be disclaimed.

[2:14:09 PM](#)

MARY ELLEN BEARDSLEY, Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Anchorage), Department of Law (DOL), added that if all beneficiaries submit a disclaimer, the property could ultimately escheat to the state, though such rarely happens.

[2:15:30 PM](#)

REPRESENTATIVE COGHILL moved to adopt the proposed committee substitute (CS) for HB 201, Version 25-LS0615\E, Bannister, 3/31/07, as the work draft.

REPRESENTATIVE GRUENBERG objected for the purpose of discussion.

MS. HYMER explained that the original bill contained a transitional provision that was meant to address the bill's proposed repeal of the existing disclaimer law - AS 13.12.801. However, that transitional provision was later found to be unnecessary - because the proposed repeal is addressed in the NCCUSL's official comments regarding this proposed uniform Act - and so it was removed from Version E.

REPRESENTATIVE GRUENBERG opined that requiring someone to look at a uniform Act's "comments" in order to determine a transitional effect sets a dangerous precedent.

MS. BEARDSLEY explained that initially the drafter felt there was a need for the transitional provision but was then persuaded otherwise. She referred to the language on page 8, lines 23-27 - proposed AS 13.70.140, which pertains to "Application to existing relationships" - and said that the DOL's interpretation was that "that actually deals with this issue, and that the transition language in Section 3 [of the original bill] was basically redundant and unnecessary." Therefore, Version E no longer contains that transitional provision.

REPRESENTATIVE GRUENBERG removed his objection.

CHAIR RAMRAS announced that Version E was before the committee.

REPRESENTATIVE GRUENBERG referred to proposed Article 2 [which bars a disclaimer by anyone in arrears in child support payments or involved in a proceeding to establish or modify a child support obligation], and suggested that the committee include spousal support in that provision. He offered his understanding that the Child Support Services Division (CSSD) has jurisdiction over spousal support, and relayed that he would be offering a possible amendment to add spousal support.

[2:19:28 PM](#)

LYNN E. LEVENGOOD, Commissioner, National Conference of Commissioners on Uniform State Laws (NCCUSL), explained that although the proposed uniform Act has been adopted in 13 other jurisdictions, Version E of HB 201 was drafted by the administration and has been approved as written by the NCCUSL. Version E contains language that is very, very close to the language in the uniform Act, and contains Alaska-specific provisions to which Ms. Beardsley can speak. Mr. Levengood said

he is the point of contact for the NCCUSL on this legislation, adding that should members have any specific technical questions regarding the language, he would have to take those issues back to the NCCUSL to get a detailed response.

REPRESENTATIVE GRUENBERG offered his understanding that an amendment to change proposed Article 2 as he's suggested would not affect the language of the uniform Act. He suggested also that the title be narrowed such that it read in part, "and to disclaimers relating to child and spousal support". He then asked whether the language on page 10, lines 9-10, would also apply if there is "no child support proceeding pending to a potential paternity action." He said he wants to be sure that one couldn't file a disclaimer just to avoid being named in a paternity suit.

MS. BEARDSLEY indicated that the language in Article 2 was drafted by the DOL in consultation with the CSSD, adding that the primary concern of the CSSD pertained to child support and [so] spousal support was not addressed. She ventured, however, that whether the language in Article 2 applies would depend on whether an action regarding paternity has been initiated and whether a child support determination has been made. She said she would research that issue further and provide an answer to the committee.

REPRESENTATIVE GRUENBERG said he could envision people in pending divorces using the disclaimer provided for via HB 201 as part of their divorce plan just to get out of possibly having to pay child support.

[2:27:00 PM](#)

DAVID G. SHAFTEL, Attorney at Law, explained that these disclaimers are very central to trust and estate law, adding, "We're dealing with assets that a person inherits, not assets that they already own." Therefore if one's father dies and leaves one \$10,000, one can disclaim that \$10,000 - but for federal tax purposes it has to be disclaimed within nine months - and then it would be as if one had died before his/her father. Again, such disclaimers are very central and important in estate and trust administration, and they are used all the time. He went on to express a concern that he and the other members of the informal group of attorneys who've been working on trust and estate legislation since 1997 have not yet had a chance to review the proposed uniform law; he asked that the members of this informal group be given a chance to review the proposed

uniform law in order to ensure that it contains advantageous provisions for Alaska and that those provisions are consistent with existing law.

CHAIR RAMRAS asked how much time such a review would require.

MR. SHAFTEL suggested that it could take a great deal of time, offered his belief that current law is sufficient for the time being, and opined that it would be wise to research the proposed uniform law further.

REPRESENTATIVE LeDOUX offered her understanding, however, that Deborah Behr from the Department of Law has already vetted the bill with numerous members of the estate bar.

MR. LEVENGOOD, in response to a question, said that the language from the NCCUSL was provided to estate attorneys in December 2006, and that HB 201 was then provided to them in March 2007. Mr. Levengood mentioned that the only person to provide him with feedback was Mr. Shaftel and that feedback was provided only yesterday.

[2:32:56 PM](#)

STEPHEN E. GREER, Attorney at Law, said he is very active in the estate planning section of the Alaska Bar Association (ABA) and attends their meetings regularly, and he's not seen this language come up as a topic of discussion. Passage of HB 201, he opined, will create a plethora of lawsuits because the nine-month period is being eliminated. He too recommended that he and the other members of the aforementioned informal group of attorneys be allowed to review the proposed uniform law more thoroughly.

RICHARD S. THWAITES, JR., Attorney at Law, added that he likewise had not had an opportunity to consider this bill until this morning. He mentioned that he has been active in the estate planning community as an attorney and as chair of the estate planning section and the elder law section [of the ABA], and that he actively uses disclaimer provisions in all of the estate planning he does. Furthermore, he remarked, he has played an active role in the promulgation of Alaska's current trust law. In conclusion, Mr. Thwaites said he concurs with Mr. Shaftel.

REPRESENTATIVE COGHILL suggested that the committee look at the similarities and dissimilarities between the proposed uniform

law and those that have been adopted in the 13 other jurisdictions, perhaps via a side-by-side comparison.

REPRESENTATIVE GRUENBERG said he wants the opportunity to research Article 2 of the bill further.

REPRESENTATIVE LeDOUX said she wants to ensure that everyone's concerns are addressed before the legislation is moved from committee.

[2:36:32 PM](#)

DEBORAH BEHR, Chief Assistant Attorney General, Legislation & Regulations Section, Civil Division (Juneau), Department of Law (DOL); Commissioner, National Conference of Commissioners on Uniform State Laws (NCCUSL), characterized Representative Gruenberg's ideas as good ones, and said she would be happy to assist in the development of appropriate language. She also mentioned that Mr. Levengood did send out letters to individuals in the "trust community" informing them of the bill, and that she herself had called individuals but received no response and so she'd assumed that there were no problems with the bill. She surmised that if there are problems with the bill, then the proponents of the proposed uniform law will want to address them so as to have a law that works for the state.

MR. SHAFTEL, in response to the question of how long a further review of the bill might take, suggested that in addition to the issues that have arisen today, other issues might arise as well that would be of concern. He remarked that none of the trust and estate law practitioners that have repeatedly come before the legislature with suggestions for changes to current law over the last 10 years appear to have been notified about the proposed uniform law at an early date, adding that he doesn't see any urgency to move the bill since existing law will suffice until the bill is reviewed further.

CHAIR RAMRAS asked Mr. Shaftel to put his concerns with the bill in writing so that the committee could review them.

REPRESENTATIVE COGHILL suggested that the committee may also wish to consider the question of what types of lawsuits might be engendered by passage of the bill.

CHAIR RAMRAS asked Mr. Greer to provide information on that issue in writing.

[Following was a brief discussion on the possibility of having information brought to the committee regarding other uniform laws that the legislature might wish to consider.]

[HB 201, Version E, was held over.]

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:44 p.m.