

HOUSE BILL NO. 287

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES RAMRAS AND GRUENBERG

Introduced: 1/19/10

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the adoption of the Uniform Disclaimer of Property Interests Act,**
2 **and to the disclaimer of property rights under the Uniform Probate Code."**

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

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

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

6 **Sec. 13.70.010. Scope.** This chapter applies to disclaimers of any interest in or
7 power over property, whenever created.

8 **Sec. 13.70.020. Supplemented by other law.** (a) Unless displaced by a
9 provision of this chapter, the principles of law and equity supplement this chapter.

10 (b) This chapter does not limit any right of a person to waive, release,
11 disclaim, or renounce an interest in or power over property under a law other than this
12 chapter.

13 **Sec. 13.70.030. Power to disclaim; general requirements; when**
14 **irrevocable.** (a) A person may disclaim, in whole or part, conditionally or

1 unconditionally, any interest in or power over property, including a power of
 2 appointment. A person may disclaim the interest or power even if its creator imposed a
 3 spendthrift provision or similar restriction on transfer or a restriction, prohibition, or
 4 limitation on the right to disclaim. A disclaimer shall be considered to be
 5 unconditional and not subject to modification or revocation unless the disclaimant
 6 explicitly provides otherwise in the disclaimer.

7 (b) With court approval, a fiduciary may disclaim, in whole or part, any
 8 interest in or power over property, including a power of appointment. Without court
 9 approval, a fiduciary may not disclaim, in whole or in part, any interest in or power
 10 over property, including a power of appointment, except that

11 (1) a fiduciary may disclaim, in whole or in part, any interest in or
 12 power over property, including a power of appointment, if and to the extent that the
 13 instrument creating the fiduciary relationship explicitly grants the fiduciary the right to
 14 disclaim;

15 (2) in the absence of a court-appointed guardian, notwithstanding a
 16 provision in AS 13.26 to the contrary, a natural guardian may disclaim on behalf of a
 17 minor child of the natural guardian, in whole or in part, any interest in or power over
 18 property, including a power of appointment, that the minor child is to receive solely as
 19 a result of another disclaimer, but only if the interest or power disclaimed by the
 20 natural guardian does not pass to or for the benefit of the natural guardian as a result of
 21 the disclaimer.

22 (c) To determine who is a natural guardian of a child under (b)(2) of this
 23 section, the following rules apply:

24 (1) except as provided in (3) - (5) of this subsection, the mother and
 25 father of a child are each the natural guardian of the child;

26 (2) if a parent of a child dies, the surviving parent is the sole natural
 27 guardian of the child even if the surviving parent remarries;

28 (3) if the parents of the child divorce or if the marriage between the
 29 parents is dissolved, annulled, or voided,

30 (A) the parent to whom custody of the child is awarded is the
 31 natural guardian; or

(B) the parents are each the natural guardian of the child, if the parents are awarded joint custody of the child;

(4) if the parents of the child divorce or if the marriage between the parents is dissolved, annulled, or voided, but neither parent is given custody of the child, neither parent is the natural guardian of the child;

(5) if the child is born to an unmarried woman, the mother is the natural guardian of the child, unless a court enters an order stating otherwise.

(d) To be effective, a disclaimer must be in a writing, declare that the writing is a disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, and be delivered or filed in the manner provided in AS 13.70.100.

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

(f) A disclaimer becomes irrevocable when

(1) any conditions to which the disclaimant has made the disclaimer subject are satisfied; and

(2) the disclaimer is delivered or filed under AS 13.70.100, or becomes effective as provided in AS 13.70.040 - 13.70.090, whichever occurs later.

(g) A disclaimer made under this chapter is not a transfer, assignment, or release.

Sec. 13.70.040. Disclaimer of interest in property. (a) Except for a disclaimer governed by AS 13.70.050 - 13.70.065, the following rules apply to a disclaimer of an interest in property:

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

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

(3) if the instrument does not contain a provision described in (2) of

1 this subsection, the following rules apply:

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

4 (B) if the disclaimant is an individual, except as otherwise
5 provided in (C) and (D) of this paragraph, the disclaimed interest passes as if
6 the disclaimant had died immediately before the interest was created, unless
7 under the governing instrument or other applicable law the disclaimed interest
8 is contingent on surviving to the time of distribution, in which case the
9 disclaimed interest passes as if the disclaimant had died immediately before the
10 time for distribution;

11 (C) if by law or under the instrument, the descendants of the
12 disclaimant would share in the disclaimed interest by any method of
13 representation had the disclaimant died before the time of distribution, the
14 disclaimed interest passes only to the descendants of the disclaimant who
15 survive the time of distribution;

16 (D) if (B) and (C) of this paragraph do not provide for an
17 alternative disposition for an interest or power of appointment disclaimed
18 during the benefactor's lifetime, the interest or power of appointment reverts to
19 the benefactor;

20 (4) on the disclaimer of a preceding interest, a future interest held by a
21 person other than the disclaimant takes effect as if the disclaimant had died or ceased
22 to exist immediately before the time of distribution, but a future interest held by the
23 disclaimant is not accelerated in possession or enjoyment as a result of the disclaimer.

24 (b) For the purposes of (a)(3) of this section, a disclaimed interest

25 (1) is created at

26 (A) the death of the benefactor; or

27 (B) an earlier time, if any, when the benefactor's transfer of the
28 interest is a completed gift for federal gift tax purposes; and

29 (2) in a revocable trust is treated as if the interest had been created
30 under a will.

31 (c) In this section,

(1) "benefactor" means the creator of the interest that is subject to a disclaimer;

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

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

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

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

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

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

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

Sec. 13.70.060. Disclaimer of interest in property held as a tenancy by the entirety. (a) The survivorship interest in property that is held as a tenancy by the entirety and to which the survivor succeeds by operation of law on the death of the cotenant may be disclaimed as provided in this chapter. For the purposes of this chapter only, the deceased tenant's interest in property held as a tenancy by the entirety is considered to be an undivided one-half interest.

(b) A disclaimer under (a) of this section takes effect as of the death of the deceased tenant to whose death the disclaimer relates.

(c) The survivorship interest in property held as a tenancy by the entirety and disclaimed by the surviving tenant passes as if the disclaimant had predeceased the tenant to whose death the disclaimer relates.

Sec. 13.70.065. Disclaimer of interest by trustee. If a trustee who has the

1 power to disclaim under a court order or under the instrument creating the fiduciary
 2 relationship disclaims an interest in property that otherwise would have become trust
 3 property, the interest does not become trust property.

4 **Sec. 13.70.070. Disclaimer of power of appointment or other power not**
 5 **held in fiduciary capacity.** If a holder disclaims a power of appointment or other
 6 power not held in a fiduciary capacity, the following rules apply:

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

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

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

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

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

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

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

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

30 **Sec. 13.70.100. Delivery or filing.** (a) Subject to (b) - (l) of this section,
 31 delivery of a disclaimer may be effected by personal delivery, first class mail, or any

1 other method likely to result in its receipt. A disclaimer sent by first class mail is
 2 considered to have been delivered on the date it is postmarked. Delivery by personal
 3 delivery or any other method is effective on receipt by the person to whom the
 4 disclaimer is to be delivered under this section.

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

7 (1) a disclaimer shall be delivered to the personal representative of the
 8 decedent's estate; or

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

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

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

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

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

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

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

20 (3) if the disclaimer is made before the time the instrument creating the
 21 trust becomes irrevocable, the disclaimer shall be delivered to the settlor of a
 22 revocable trust or the transferor of the interest, or the legal representative of the settlor
 23 or transferor.

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

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

30 (g) In the case of a disclaimer by a surviving holder of jointly held property, or
 31 by the surviving tenant of property held as a tenancy by the entirety, the disclaimer

1 shall be delivered to the person to whom the disclaimed interest passes, or, if the
 2 person cannot reasonably be located by the disclaimant, the disclaimer shall be
 3 delivered as provided by (b) of this subsection.

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

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

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

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

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

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

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

20 (k) In the case of a disclaimer of a power by an agent, except a power
 21 exercisable by a fiduciary over a trust or estate, the disclaimer shall be delivered to the
 22 principal or the principal's representative.

23 (l) When a disclaimer of an interest in or relating to real property is recorded
 24 in the judicial district where the real property is located, there is a rebuttable
 25 presumption that the disclaimer has been delivered.

26 (m) In this section, "beneficiary designation" means an instrument, other than
 27 an instrument creating or amending a trust, naming the beneficiary of

28 (1) an annuity or insurance policy;

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

30 (3) a security registered in beneficiary form;

31 (4) a pension, profit-sharing, retirement, or other employment-related

benefit plan; or

(5) any other nonprobate transfer at death.

Sec. 13.70.110. When disclaimer permitted, barred, or limited. (a) A disclaimer is permitted unless barred under (b) - (f) of this section. A disclaimer is permitted even though the disclaimant is insolvent.

(b) A disclaimer is barred by a written waiver of the right to disclaim.

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

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

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

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

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

(e) A disclaimer, in whole or part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

(f) A disclaimer of an interest in or power over property under this chapter is barred and is not effective

(1) to the extent the disclaimant is in arrears in child support payments;

or

(2) if the disclaimant is involved in a pending court or administrative proceeding to establish or modify the disclaimant's child support obligation or to establish whether the disclaimant is the biological father or mother of a child.

(g) A disclaimer of a power over property that is barred by this section is ineffective. A disclaimer of an interest in property that is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under this chapter had the disclaimer not been barred.

Sec. 13.70.120. Tax qualified disclaimer. (a) Notwithstanding any other provision of this chapter, if, as a result of a disclaimer or transfer, the disclaimed or

transferred interest is treated under the provisions of 26 U.S.C. (Internal Revenue Code) as never having been transferred to the disclaimant, then the disclaimer or transfer is effective as a disclaimer under this chapter. In this section, "26 U.S.C. (Internal Revenue Code)" includes 26 U.S.C. as amended, any successor statute to 26 U.S.C. or 26 U.S.C. as amended, and regulations adopted under 26 U.S.C., 26 U.S.C. as amended, and any successor statute to 26 U.S.C. or 26 U.S.C. as amended.

(b) 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. Recording of disclaimer. If an instrument transferring an interest in or power over property subject to a disclaimer is required or permitted by law to be filed, recorded, or registered, the disclaimer may be filed, recorded, or registered as required or permitted by law. Failure to file, record, or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

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

Sec. 13.70.190. Definitions. In this chapter,

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

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

(3) "disclaimer" means the refusal to accept an interest in or power over property and includes a renunciation;

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

(5) "jointly held property"

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

(B) does not include property held as a tenancy by the entirety;

(6) "person" means an individual, whether the individual is ascertained or unascertained, whether the individual is living or not living, and whatever the basis, including intestacy, for the individual's being entitled to an interest in property; a corporation; a business trust; an estate; a trust; a partnership; a limited liability company; an association; a joint venture; a government; a governmental subdivision, agency, or instrumentality; a public corporation; or any other legal or commercial entity;

(7) "trust"

(A) means

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

(ii) a trust created under a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust;

(B) does not include a constructive trust or a resulting trust.

Sec. 13.70.195. Short title. This chapter may be cited as the Uniform Disclaimer of Property Interests Act.

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