

SENATE BILL NO. 60

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - SECOND 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

1 (C) an exercise, release, or lapse of

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

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

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

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

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

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

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

26 (C) the decedent's ownership interest in property or accounts
27 held in pay on death, transfer on death, or co-ownership registration with the
28 right of survivorship; the amount included is the value of the decedent's
29 ownership interest, to the extent the decedent's ownership interest passed at the
30 decedent's death to or for the benefit of a person other than the decedent's
31 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 **Sec. 13.12.540. Venue.** (a) The venue for a petition under AS 13.12.530 is
 18 (1) the judicial district of this state where the testator is domiciled; or
 19 (2) if the person who executed the will is not domiciled in this state,
 20 and the will expressly directs or authorizes the will to be admitted to original probate
 21 in this state, in any judicial district of this state.

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

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

27 (1) a statement that a copy of the will has been filed with the court;
 28 (2) a statement that the will is in writing;
 29 (3) a statement that the will was signed by the testator, or was signed
 30 in the testator's name by another person in the testator's conscious presence and at the
 31 testator's direction;

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

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

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

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

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

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

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

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

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

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

22 (14) a copy of the will.

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

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

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

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

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

31 (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;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (c) AS 13.12.550, enacted by sec. 8 of this Act, has the effect of amending Rule 1,
 30 Alaska Rules of Probate Procedure, by establishing special hearing and notice requirements
 31 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 uncodified 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.