

SENATE BILL NO. 289

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

BY SENATOR HUGGINS

Introduced: 2/22/10

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, to
2 the exemption from creditors of certain retirement plan interests, and to the disclaimer
3 of property rights under the Uniform Probate Code."

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

5 * **Section 1.** AS 09.38.017(e)(2) is amended to read:

6 (2) "individual" means an individual who is a participant in, an owner
7 of, a beneficiary of, or an alternate payee of a retirement plan; in this paragraph,
8 "beneficiary" includes an individual, trust, or trustee who has, before or after the
9 death of the participant, owner, or alternate payee, a direct or indirect beneficial
10 interest in a retirement plan that is qualified under 26 U.S.C. 408;

11 * **Sec. 2.** AS 09.38.017 is amended by adding a new subsection to read:

12 (f) Notwithstanding another provision of this section or another law of this
13 state, the owner of or a participant in a retirement plan that is qualified under 26
14 U.S.C. 408 may make a voluntary transfer or assignment of the owner's or participant's

1 interest in the retirement plan.

2 * **Sec. 3.** AS 13 is amended by adding a new chapter to read:

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

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

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

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

11 **Sec. 13.70.030. Power to disclaim; general requirements; when**
12 **irrevocable.** (a) A person may disclaim, in whole or part, conditionally or
13 unconditionally, any interest in or power over property, including a power of
14 appointment. A person may disclaim the interest or power even if its creator imposed a
15 spendthrift provision or similar restriction on transfer or a restriction, prohibition, or
16 limitation on the right to disclaim. A disclaimer shall be considered to be
17 unconditional and not subject to modification or revocation unless the disclaimant
18 explicitly provides otherwise in the disclaimer.

19 (b) With court approval, a fiduciary may disclaim, in whole or part, any
20 interest in or power over property, including a power of appointment. Without court
21 approval, a fiduciary may not disclaim, in whole or in part, any interest in or power
22 over property, including a power of appointment, except that

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

27 (2) in the absence of a court-appointed guardian, notwithstanding a
28 provision in AS 13.26 to the contrary, a natural guardian may disclaim on behalf of a
29 minor child of the natural guardian, in whole or in part, any interest in or power over
30 property, including a power of appointment, that the minor child is to receive solely as
31 a result of another disclaimer, but only if the interest or power disclaimed by the

1 natural guardian does not pass to or for the benefit of the natural guardian as a result of
2 the disclaimer.

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

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

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

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

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

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

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

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

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

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

27 (f) A disclaimer becomes irrevocable when

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

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

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

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

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

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

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

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

16 (B) if the disclaimant is an individual, except as otherwise
17 provided in (C) and (D) of this paragraph, the disclaimed interest passes as if
18 the disclaimant had died immediately before the interest was created, unless
19 under the governing instrument or other applicable law the disclaimed interest
20 is contingent on surviving to the time of distribution, in which case the
21 disclaimed interest passes as if the disclaimant had died immediately before the
22 time for distribution;

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

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

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

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

6 (1) is created at

7 (A) the death of the benefactor; or

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

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

12 (c) In this section,

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

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

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

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

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

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

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

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

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

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

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

12 **Sec. 13.70.065. Disclaimer of interest by trustee.** If a trustee who has the
 13 power to disclaim under a court order or under the instrument creating the fiduciary
 14 relationship disclaims an interest in property that otherwise would have become trust
 15 property, the interest does not become trust property.

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

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

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

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

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

30 (b) A disclaimer of an interest in property by an object or taker in default of an
 31 exercise of a power of appointment takes effect as of the time the instrument creating

1 the power becomes irrevocable.

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

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

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

11 **Sec. 13.70.100. Delivery or filing.** (a) Subject to (b) - (l) of this section,
12 delivery of a disclaimer may be effected by personal delivery, first class mail, or any
13 other method likely to result in its receipt. A disclaimer sent by first class mail is
14 considered to have been delivered on the date it is postmarked. Delivery by personal
15 delivery or any other method is effective on receipt by the person to whom the
16 disclaimer is to be delivered under this section.

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

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

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

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

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

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

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

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

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

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

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

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

11 (g) In the case of a disclaimer by a surviving holder of jointly held property, or
12 by the surviving tenant of property held as a tenancy by the entirety, the disclaimer
13 shall be delivered to the person to whom the disclaimed interest passes, or, if the
14 person cannot reasonably be located by the disclaimant, the disclaimer shall be
15 delivered as provided by (b) of this subsection.

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

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

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

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

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

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

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

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

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

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

9 (1) an annuity or insurance policy;

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

11 (3) a security registered in beneficiary form;

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

14 (5) any other nonprobate transfer at death.

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

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

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

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

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

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

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

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

31 (f) A disclaimer of an interest in or power over property under this chapter is

1 barred and is not effective

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

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

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

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

19 (b) A tax-qualified disclaimer under 26 U.S.C. (Internal Revenue Code) is
20 subject to the time limits under 26 U.S.C., as amended, even though time limits are not
21 specified under this chapter.

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

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

1 effective date of this chapter.

2 **Sec. 13.70.190. Definitions.** In this chapter,

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

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

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

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

12 (5) "jointly held property"

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

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

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

24 (7) "trust"

25 (A) means

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

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

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

- 1 **Sec. 13.70.195. Short title.** This chapter may be cited as the Uniform
- 2 Disclaimer of Property Interests Act.
- 3 * **Sec. 4.** AS 13.12.801 is repealed.