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IN THE SENATE

BY THE JUDICIARY COMMITTEE

SENATE BILL NO. 39

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRD LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to decedents' estates; and providing for an effective date."

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

* Section 1. AS 13.05.010 is amended to read:

Sec. 13.05.010. WHO MAY MAKE. Every person of sound mind who is 19 [21] or more years of age may devise by last will all his property, real or personal, under the rules and limitations provided by law.

* Sec. 2. AS 13.05 is amended by adding a new section to read:

Sec. 13.05.105. ELECTION TO SURVIVING HUSBAND OR WIFE.

(a) If a testator or testatrix leaving a surviving wife or husband bequeaths or devises away from the surviving wife or husband more than two-thirds of his or her net estate, the surviving wife or husband, in his or her option and notwithstanding the will, may take and receive one-third of the net estate of the testator or testatrix. The right to receive one-third of the net estate may be waived in writing in a premarital or submarital agreement.

(b) The surviving wife or husband must exercise the option by filing in the court in which the will is admitted to probate, within six months thereafter, his or her election, in writing, to take and receive one-third of the net estate. Upon the filing of the election within that time,

1 the will is inoperative as to that one-third of the net
2 estate. The failure to make and file the election within the
3 six-month period is conclusive evidence of the consent of the
4 surviving wife or husband to the provisions of the will.

5 (c) If the surviving spouse is incompetent, the court
6 shall make the election for the spouse which the court finds
7 to be more advantageous to the spouse and the election is
8 considered as effectual as if made by a competent spouse.

9 (d) The election set out in this section may be made
10 and filed within six months from the admission to probate
11 of any will admitted to probate before the effective date of
12 this section. Failure to make and file the election within
13 the period of six months is conclusive evidence of the con-
14 sent of the surviving wife or husband to the provisions of
15 the will.

16 * Sec. 3. AS 13.20.010(2) is amended to read:

17 (2) minors under 19 years of age, except as pro-
18 vided in sec. 20 of this chapter;

19 * Sec. 4. AS 13.20.020 is amended to read:

20 Sec. 13.20.020. NONRESIDENTS AND MINORS AS EXECUTORS

21 If a person is named in a will as executor who is a nonresi-
22 dent of the state or a minor under 19 years of age, upon the
23 removal of the disability he is entitled to qualify as the
24 executor, if he applies within 30 days from the removal of
25 the disability, if he is otherwise competent. If in the
26 meantime an administrator with the will annexed has been ap-
27 pointed, his powers and duties cease with the qualification
28 of the executor. If another executor has qualified and is
29 acting as such they become joint executors. However, a

1 person named as executor who is a resident at the time of his
2 appointment but thereafter becomes a nonresident, or a person
3 who is a nonresident at the time of his appointment as an
4 executor and does not thereafter become a resident, may
5 qualify to serve or to continue to serve as executor, as the
6 case may be, by filing a bond to be approved by the judge,
7 and in addition, the executor shall appoint a lawyer who
8 practices law in the judicial district in which the estate is
9 being probated upon whom service of all papers may be made.
10 The appointment shall be in writing and shall be filed in the
11 court with all other papers of the estate.

12 * Sec. 5. AS 13.20.030 is amended to read:

13 Sec. 13.20.030. LETTERS TESTAMENTARY AND LETTERS OF
14 ADMINISTRATION WITH WILL ANNEXED. When a will is proven,
15 letters testamentary are issued to the person, persons,
16 corporation, or national or state banking association therein
17 named as executor or executors, or to such of them as give
18 notice of their acceptance of the trust and are qualified.
19 If all the persons, corporations, or national or state
20 banking associations therein named decline to accept or are
21 disqualified, letters of administration, with the will
22 annexed, are issued to the person to whom the administration
23 would have been granted if there had been no will.

24 * Sec. 6. AS 13.20.040(3) is amended to read:

25 (3) any other person, corporation, or national
26 or state banking association competent and qualified whom
27 the court may select.

28 * Sec. 7. AS 13.20 is amended by adding a new section to
29 art. 4 to read:

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Sec. 13.20.325. VARIANCE WITH UNIFORM ACT. Secs. 270 - 320 of this chapter govern, notwithstanding a conflict between these sections and the Uniform Partnership Act (AS 32.05).

* Sec. 8. AS 13.30 is amended by adding new sections to read:

Sec. 13.30.002. COLLECTION OF PERSONAL PROPERTY BY DISTRIBUTEES. The distributees of an estate are entitled to the personal property of the estate without awaiting the appointment of a personal representative or the probate of a will if

(1) no petition for the appointment of a personal representative is pending or has been granted, and

(2) 30 days have elapsed since the death of the decedent, and

(3) the value of the entire assets of the estate does not exceed \$2,000, and

(4) there are no known creditors, and no inheritance tax is due, and

(5) there is furnished to any person owing money to the estate or having custody of property or evidence of interest in property of the estate, an affidavit showing the existence of the conditions set out in this section and the right of the distributees to receive the money or property or to have the evidences transferred.

Sec. 13.30.003. DETERMINATION OF TITLE TO REAL PROPERTY. (a) The distributees of an estate are entitled to the real property of the estate and may make record evidence of title without the appointment of a personal representative if

- 1 (1) no petition for the appointment of a personal
- 2 representative is pending or has been granted, and
- 3 (2) 30 days have elapsed since the death of the
- 4 decedent, and
- 5 (3) the value of the entire assets of the estate
- 6 does not exceed \$2,000, and
- 7 (4) there are no known creditors, and no inheri-
- 8 tance tax is due, and
- 9 (5) there is furnished to any person having
- 10 custody of real property of the estate or acting as registra-
- 11 or transfer agent of any evidence of interest, property or
- 12 right in the estate an affidavit showing the existence of
- 13 the conditions set out in (1) - (4) of this section and the
- 14 right of the distributees to receive the property or to have
- 15 the evidence transferred, and
- 16 (6) there is recorded in the office of the re-
- 17 corder of each recording district where the real property is
- 18 situated, an affidavit executed by any person having know-
- 19 ledge of the facts showing the existence of the conditions
- 20 set out in (1) - (5) of this section, describing the real
- 21 property, naming the persons entitled to the property and
- 22 showing their right to succeed to the property, and stating
- 23 that there are no unsecured claims against the decedent or
- 24 his estate including the expenses of the funeral and last
- 25 illness, and
- 26 (7) a notice is published in a newspaper of
- 27 general circulation in each judicial district in which the
- 28 property is located not less than once a week for four
- 29 successive weeks; the notice shall describe the real pro-

1 perty, state that an affidavit has been recorded on behalf
2 of the persons who claim to be entitled to succeed to the
3 real property showing the names of the distributees and their
4 right to succeed to the property, and notify all persons hav-
5 ing claims against the decedent or his estate to file a
6 petition for the appointment of a personal representative
7 within three months after the first publication of the notice
8 or be barred from asserting a right or claim against the real
9 property described, and

10 (8) there is recorded in the office of the re-
11 corder in each recording district in which the property is
12 situated, proof of publication of the notice, and

13 (9) no petition for the appointment of a personal
14 representative is filed within three months after the first
15 publication of the notice.

16 (b) The occurrence of the conditions in (a) of this
17 section has the same effect in establishing the right of
18 distributees to succeed to the real property as if complete
19 administration had occurred; but nothing in this section
20 affects the rights of secured creditors with respect to any
21 real property or the right of the state to collect inheri-
22 tance taxes.

23 Sec. 13.30.004. EFFECT OF AFFIDAVIT. The person
24 making payment, delivery, transfer, or issuance under the
25 affidavit described in secs. 2 and 3 of this chapter is re-
26 leased to the same extent as if the person had made payment,
27 delivery, transfer, or issuance to a personal representative
28 of the decedent. The person is not required to see to the
29 application of the payment, delivery, transfer, or issuance,

1 or to inquire into the truth of any statement in the affi-
2 davit. The distributees to whom payment, delivery, transfer,
3 or issuance is made are answerable to any person having a
4 prior right and are accountable to any personal representa-
5 tive subsequently appointed.

6 Sec. 13.30.005. SUIT BY DISTRIBUTEES. If the person
7 to whom the affidavit described in secs. 2 and 3 of this
8 chapter is delivered refuses to pay, deliver, transfer, or
9 issue the property as provided in secs. 2 - 4 of this
10 chapter, it may be recovered or compelled in an action
11 brought for that purpose by or on behalf of the distributees
12 entitled to it upon proof of the facts required to be stated
13 in the affidavit.

14 Sec. 13.30.006. ADMINISTRATION DIRECTED BY COURT.
15 When a judge receives information that a person has died in
16 his judicial district leaving an estate of \$2,000 or less
17 and no qualified person has appeared to take charge of the
18 assets, the judge may immediately appoint some person,
19 corporation, or attorney to administer the estate in the
20 manner provided for in administration of estates of \$2,000
21 or less.

22 * Sec. 9. AS 13.30.010 is amended to read:

23 Sec. 13.30.010. NOTICE TO CREDITORS. If in the ad-
24 ministration of the estate of a deceased person in the state
25 the appraisal of the property shows the value of all of the
26 property of the estate is \$6,000 or less [THAN \$1,000], the
27 judge may in his discretion order that no notice to creditors
28 be published as is required by law in the administration of
29 estates of deceased persons, and the judge may order that

1 the notices to creditors be posted instead in three public
2 places in the judicial district in which the estate is being
3 administered. The posted notices shall require all persons
4 having claims against the estate to present them to the execu-
5 tor or administrator with proper vouchers within 60 days from
6 the date of posting the notices.

7 * Sec. 10. AS 13.30.020 is amended by adding a subsection (c)
8 to read:

9 (c) The judge may permit the executor or administrator
10 to lease or mortgage any property of the estate if he con-
11 sidered it in the best interest of the estate.

12 * Sec. 11. AS 13.30.030(a) is amended to read:

13 (a) At the expiration of 60 days from the date of
14 posting the notices to creditors the executor or adminis-
15 trator shall file in court his final report and account with
16 proper vouchers. The report and account shall be in the
17 form and contain the same information as is required by law
18 in estates having the value of more than \$6,000 [\$1,000].
19 Upon the filing of the report and account the judge shall
20 require that notice of it be given by posting notices to
21 that effect in three public places in the judicial district.
22 The notices shall also state that at a certain time not less
23 than 10 days after the date of posting the notices a hearing
24 will be had by said judge upon the final report and account
25 and of any objections thereto.

26 * Sec. 12. AS 13.30.050 is amended to read:

27 Sec. 13.30.050. NOTICE OF HEARING ON FINAL REPORT AND
28 ACCOUNT NOT REQUIRED. If [WHERE] estates are valued at
29 \$6,000 or less [THAN \$1,000], as provided in sec. 10 of this

1 chapter, it is not necessary to publish a notice of hearing
2 upon the final report and account of the executor or adminis-
3 trator as is required in other cases. Upon the report of the
4 executor or administrator, showing that the order or decision
5 of the judge on the final report and account has been com-
6 plied with, the executor or administrator may be discharged.

7 * Sec. 13. AS 13.30.100 is amended to read:

8 Sec. 13.30.100. PRESERVATION OF PROPERTY BEFORE AD-
9 MINISTRATION. The judge is empowered within his judicial
10 district, when the occasion requires, to take charge of and
11 preserve, before administration, the property and estates of
12 a deceased person subject to administration under secs.
13 1 - 100 [10 - 100] of this chapter. Upon the appointment of
14 an executor or an administrator of the estate of a decedent
15 which may have been taken in charge by a judge hereunder, the
16 judge shall deliver all of the property of the estate which
17 has come into his possession to the executor or administrator,
18 together with a statement of his expense, if any, in con-
19 nection with the care and preservation of the property and
20 estate. All necessary expenses incurred by a judge for the
21 care and preservation of an estate under this section are a
22 charge against the estate and shall be paid by the executor or
23 administrator as a part of the expenses of the administration.

24 * Sec. 14. AS 13.30 is amended by adding a new section to
25 read:

26 Sec. 13.30.111. PROCEDURE IN NONINTERVENTION WILLS. If
27 the last will and testament of a deceased provides that the
28 estate shall be settled without the intervention of any court,
29 title of the decedent passes to the devisees or heirs on

1 death. It is only necessary that the executor, or person or
2 corporation nominated in his place if he fails to serve, sub-
3 mit the will to the court, prove it, secure letters testamen-
4 tary, file an inventory, and submit proof of solvency. There-
5 after the estate shall be managed and settled without the
6 intervention of any court. However, notice to creditors re-
7 quiring them to submit their claims within three months shall
8 be published once each week for four weeks in a newspaper of
9 general circulation in the judicial district where the will
10 is probated. The party probating the will may file a final
11 account with the court if he desires and he shall make a re-
12 port of any inheritance tax due the state or the United
13 States and pay the same from estate funds.

14 * Sec. 15. AS 13.30.150 is amended to read:

15 Sec. 13.30.150. AWARD OF ENTIRE ESTATE. No other or
16 further awards to the widow and children shall be made from
17 the estate of the deceased for her or their maintenance and
18 support except that, should the value of the estate not exceed
19 \$500 [\$200] over and above \$8,000 [\$4,000], the judge may,
20 upon petition filed for that purpose, by decree provide that
21 the whole estate, after payment of funeral expenses, expenses
22 of last illness, and of administration, be set apart for the
23 widow and minor children in like manner and with like effect
24 as in other cases under secs. 120 - 150 of this chapter pro-
25 viding for the support of the widow and minor children.

26 * Sec. 16. AS 13.30.250 is amended to read:

27 Sec. 13.30.250. NOTICE TO CREDITORS. Every executor or
28 administrator shall, immediately after his appointment, pub-
29 lish a notice thereof in some newspaper published in the

1 judicial district, if there is one, or otherwise in such
2 paper as may be designated by the judge, as often as once a
3 week for four successive weeks [AND OFTENER IF THE JUDGE
4 DIRECTS]. In case of publication in a paper published out-
5 side the judicial district, the executor or administrator
6 shall also post a notice in at least three public places, to
7 be designated by the judge in his order, one of which shall
8 be at or immediately adjacent to the post office nearest the
9 residence of the decedent at the time of his death. The
10 notice shall require all persons having claims against the
11 estate to present them, with the proper vouchers, within
12 three [SIX] months from the date of the notice, to the
13 executor or the administrator, at a place within the judicial
14 district specified. Before the expiration of the three [SIX]
15 months, a copy of the notice as published, with the proper
16 proof of publication, shall be filed with the judge.

17 * Sec. 17. AS 13.30.260 is amended to read:

18 Sec. 13.30.260. TIME FOR PRESENTING CLAIMS. A claim
19 not presented within three [SIX] months after the first pub-
20 lication of the notice is not barred, but it cannot be paid
21 until the claims presented within that period have been
22 satisfied, and if the claim is not then due, or if it is
23 contingent, it shall nevertheless be presented as any other
24 claim. Until the administration has been completed a claim
25 against the estate not barred by the statute of limitations
26 may be presented, allowed, and paid out of any assets then
27 in the hands of the executor or administrator not otherwise
28 appropriated or liable.

29 * Sec. 18. AS 13.30.340 is amended to read:

1 Sec. 13.30.340. ORDER OF PAYMENT. The charges and
2 claims against the estate which have been presented and
3 allowed, or presented and disallowed but subsequently estab-
4 lished by judgment within the first three [SIX] months after
5 the date of the notice of appointment of the executor or
6 administrator , except when a longer period is allowed if the
7 claim is in litigation, shall be paid in the following order,
8 and those presented and allowed or established in like manner
9 and with each succeeding period of three [SIX] months there-
10 after during the continuance of the administration in the
11 same manner:

12 (1) funeral charges and expenses of last illness;

13 (2) taxes of whatever nature due the United States
14 for which lien claim has been filed for record in accordance
15 with AS 43.10.090;

16 (3) taxes of whatever nature due the state for
17 which it holds a prior, paramount lien;

18 (4) all other taxes of whatever nature to whomso-
19 ever due and all debts which at decedent's death were a lien
20 upon his property or any right or interest therein according
21 to the respective priority of the several liens of the taxes
22 and debts;

23 (5) debts preferred by the bankruptcy laws of the
24 United States and debts due employees of decedent for wages
25 earned within the 90 days immediately preceding the death of
26 the decedent;

27 (6) all other claims against the estate.

28 * Sec. 19. AS 13.30.360 is amended to read:

29 Sec. 13.30.360. PRORATION. Except as specially

1 provided in secs. 340 and 350 of this chapter, if the estate
2 is insufficient to pay all the claims and charges of any one
3 class, payable within any period of three [SIX] months during
4 the administration, as provided in sec. 340 of this chapter,
5 each creditor of such class is paid in proportion to the
6 amount of his claim, and not otherwise.

7 * Sec. 20. AS 13.30 is amended by adding a new section to
8 art. 6 to read:

9 Sec. 13.30.675. REQUEST BY HEIRS TO SELL REAL PROPERTY.
10 When all claims, debts, and expenses have been paid and real
11 property remains in the hands of the executor or administra-
12 tor, he may sell the real property if the heir or heirs so
13 direct in a written request which has been acknowledged as in
14 a deed and filed in the court having the probate of the
15 estate.

16 * Sec. 21. AS 13.30.680 is amended to read:

17 Sec. 13.30.680. EXECUTOR OR ADMINISTRATOR. An executor
18 or administrator shall, within three [SIX] months from the
19 date of the notice of his appointment, and within every six
20 months thereafter until the administration is completed and
21 he is discharged from his trust, render an account, verified
22 by his own oath, and file the same with the judge, showing
23 the amount of money received and expended by him, from whom
24 received and to whom paid, with the proper vouchers for the
25 payments; the amount of the claims presented against the
26 estate and allowed or disallowed, and the name of the claim-
27 ants of each; and any other matter necessary to show the
28 condition of the affairs thereof.

29 * Sec. 22. AS 13.30.700 is amended to read:

1 Sec. 13.30.700. ORDER TO PAY CLAIMS AND EXPENSES.

2 Within 30 days after the filing of the first [SEMIANNUAL]
3 account, and at each semiannual account thereafter, the judge
4 shall ascertain and determine if the estate is sufficient to
5 satisfy the claims allowed by the executor or administrator,
6 within the first three [SIX] months or any succeeding period
7 within six months thereafter, after the date of the notice of
8 his appointment, after paying the funeral charges and ex-
9 penses of administration; and if so, he shall so order and
10 direct. If the estate is insufficient for that purpose, he
11 shall ascertain what per cent of the claims it is sufficient
12 to satisfy, and order and direct accordingly.

13 * Sec. 23. AS 13.30.710(a) is amended to read:

14 (a) Except in a nonintervention will, when [WHEN] the
15 estate is fully administered it is the duty of the executor
16 or administrator to file his final account. The account shall
17 be verified and contain a detailed statement of the amount of
18 money received and expended by him, from whom received and to
19 whom paid, and refer to the vouchers for the payments, and
20 the amount of money and property, if any, remaining unexpended
21 or unappropriated. Upon the filing of the final account, the
22 judge shall make an order setting the time and place for
23 hearing objections to the final account, and directing notice
24 of hearing to be given by publishing the order one time in a
25 newspaper of general circulation in the judicial district and
26 posting notices in three public places in the judicial dis-
27 trict for not less than 30 days [THEREOF TO BE GIVEN IN THE
28 SAME MANNER AS A NOTICE OF AN APPOINTMENT OF AN EXECUTOR OR
29 ADMINISTRATOR AND APPOINT A DAY NOT LESS THAN 60 DAYS

1 THEREAFTER FOR THE HEARING OF OBJECTIONS TO THE FINAL ACCOUNT
2 AND THE SETTLEMENT THEREOF].

3 * Sec. 24. AS 13.30.870 is amended to read:

4 Sec. 13.30.870. PARTIAL DISTRIBUTION. At any time
5 after the filing of the first [SEMIANNUAL] account an heir,
6 devisee, or legatee may apply to the judge by petition for
7 an order that he have the possession and rents and profits
8 thereof of the portion of the real property to which he may
9 be entitled, and that payment be made to him of his legacy
10 or distributive share of the personal property of the estate,
11 as the case may be.

12 * Sec. 25. AS 13.10.140, 13.15.010(8), 13.15.020, 13.15.040,
13 13.20.070, 13.20.080, 13.30.060 - 13.30.090, 13.30.110, 13.30.920
14 13.30.940, 13.40.010 - 13.40.030, and AS 13.35 are repealed.

15 * Sec. 26. This Act takes effect subject to the following pro-
16 visions:

17 (1) All wills made under the law of this state as it
18 existed before the effective date of this Act are valid if valid
19 under that former law. However, if the will is amended, revoked,
20 or added to after the effective date of this Act, the validity of
21 the entire will is governed by this Act.

22 (2) The provisions of this Act govern all proceedings
23 in probate brought after the effective date of this Act and also
24 all further procedure in proceedings in probate then pending. How-
25 ever, if the application of this Act in proceedings or parts
26 thereof commenced under the law of this state as it existed be-
27 fore the effective date of this Act would not be feasible or
28 would work injustice, the court may apply the former statutory
29 provisions.