

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 SENATE BILL NO. 140

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Uniform Probate Code; and
7 providing for an effective date."

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

9 * Section 1. AS 13.06.050(11) is amended to read:

10 (11) "estate" includes [MEANS ALL OF] the property of the
11 decedent, trust, or other person whose affairs are subject to this
12 code as originally constituted and as it exists from time to time
13 during administration;

14 * Sec. 2. AS 13.11.090(a) is amended to read:

15 (a) The surviving spouse may elect to take his elective share
16 in the augmented net estate by filing in the court and mailing or
17 delivering to the personal representative a petition for the elective
18 share within six months after the first publication of notice to
19 creditors for filing claims which arose before the death of the dece-
20 dent. The court may extend the time for election as it sees fit for
21 cause shown by the surviving spouse before the time for election has
22 expired.

23 * Sec. 3. AS 13.11.125 is amended to read:

24 ARTICLE 4. EXEMPT PROPERTY AND ALLOWANCES [HOMESTEAD AND
25 PERSONAL PROPERTY ALLOWANCES].

26 Sec. 13.11.125. HOMESTEAD ALLOWANCE. A surviving spouse of a
27 decedent who was domiciled in this state is entitled to a homestead
28 allowance of \$12,000. If there is no surviving spouse, each minor
29 child and each dependent child of the decedent is entitled to a

1 homestead allowance amounting to \$12,000 divided by the number of
2 minor and dependent children of the decedent. The homestead allowance
3 is exempt from and has priority over all claims against the estate.
4 Homestead allowance is in addition to any share passing to the surviving
5 spouse or minor or dependent child by the will of the decedent unless
6 otherwise provided, by intestate succession or by way of elective
7 share. [A TRAILER HOME, MOBILE HOME OR ANOTHER DWELLING OF LIKE
8 NATURE, WHICH IS OWNED BY A FAMILY OR ONE OF ITS MEMBERS AND IS USED
9 AS THE FAMILY'S ACTUAL ABODE, IS EXEMPT UP TO \$8,000, WHETHER OR NOT
10 THE DWELLING IS AFFIXED TO THE LAND, AND WHETHER OR NOT THE LAND IS
11 HELD IN FEE SIMPLE OR BY A LEASEHOLD OR SOME OTHER INTEREST IN LAND.]

12 * Sec. 4. AS 13.11.130 is amended to read:

13 Sec. 13.11.130. EXEMPT [PERSONAL] PROPERTY [ALLOWANCE]. In
14 addition to the homestead allowance, the surviving spouse of a decedent
15 who was domiciled in this state is entitled from the estate to value
16 not exceeding \$3,500 in excess of any security interests therein in
17 household furniture, automobiles, furnishings, appliances and personal
18 effects. If there is no surviving spouse, children of the decedent
19 are entitled jointly to the same value. If encumbered chattels are
20 selected and if the value in excess of security interests, plus that
21 of other exempt [PERSONAL] property, is less than \$3,500, or if there
22 is not \$3,500 worth of exempt [PERSONAL] property in the estate, the
23 spouse or children are entitled to other assets of the estate, if any,
24 to the extent necessary to make up the \$3,500 value. Rights to exempt
25 [PERSONAL] property and assets needed to make up a deficiency of exempt
26 [PERSONAL] property have priority over all claims against the estate,
27 except that the right to any assets to make up a deficiency of exempt
28 [PERSONAL] property shall abate as necessary to permit prior payment
of homestead allowance and family allowance. These rights are in

1 addition to any benefit or share passing to the surviving spouse or
2 children by the will of the decedent unless otherwise provided, by
3 intestate succession, or by way of elective share.

4 * Sec. 5. AS 13.11.135(a) is amended to read:

5 (a) In addition to the right to homestead allowance and exempt
6 [PERSONAL] property allowance, if the decedent was domiciled in this
7 state, the surviving spouse and minor children whom the decedent was
8 obligated to support and children who were in fact being supported by
9 him are entitled to a reasonable allowance in money out of the estate
10 for their maintenance during the period of administration, which allow-
11 ance may not continue for longer than one year if the estate is
12 inadequate to discharge allowed claims. The allowance may be paid as
13 a lump sum or in periodic installments. It is payable to the surviving
14 spouse, if living, for the use of the surviving spouse and minor and
15 dependent children; otherwise to the children, or persons having their
16 care and custody; but in case any minor child or dependent child is
17 not living with the surviving spouse, the allowance may be made partially
18 to the child or his guardian or other person having his care and
19 custody, and partially to the spouse, as their needs may appear. The
20 family allowance is exempt from and has priority over all claims but
21 not over the homestead allowance.

22 * Sec. 6. AS 13.11.140 is amended to read:

23 Sec. 13.11.140. SOURCE, DETERMINATION AND DOCUMENTATION. If the
24 estate is otherwise sufficient, property specifically devised is not
25 used to satisfy rights to homestead and exempt [PERSONAL] property
26 allowance. Subject to this restriction, the surviving spouse, the
27 guardians of the minor children, or children who are adults may select
28 property of the estate as homestead allowance and exempt [PERSONAL]
29 property allowance. The personal representative may make these

1 selections if the surviving spouse, the children or the guardians of
2 the minor children are unable or fail to do so within a reasonable time
3 or if there are no guardians of the minor children. The personal
4 representative may execute an instrument or deed of distribution to
5 establish the ownership of property taken as homestead allowance or
6 exempt [PERSONAL] property allowance. He may determine the family
7 allowance in a lump sum not exceeding \$6,000 or periodic installments
8 not exceeding \$500 per month for one year, and may disburse funds of
9 the estate in payment of the family allowance and any part of the
10 homestead allowance payable in cash. The personal representative or
11 any interested person aggrieved by any selection, determination, pay-
12 ment, proposed payment, or failure to act under this section may
13 petition the court for appropriate relief, which relief may provide a
14 family allowance larger or smaller than that which the personal
15 representative determined or could have determined.

16 * Sec. 7. AS 13.11.150 is amended to read:

17 Sec. 13.11.150. WHO MAY MAKE A WILL. Any person 18 [19] or more
18 years of age who is of sound mind may make a will.

19 * Sec. 8. AS 13.11.173 is repealed.

20 * Sec. 9. AS 13.11.225 is amended to read:

21 Sec. 13.11.225. CHOICE OF LAW AS TO MEANING AND EFFECT OF WILLS.
22 The meaning and legal effect of a disposition in a will shall be
23 determined by the local law of a particular state selected by the
24 testator in his instrument unless the application of that law is con-
25 trary to the provisions relating to the elective share described in
26 secs. 70 - 100 of this chapter, the provisions relating to exempt
27 property and allowances described in secs. 125 - 140 of this chapter,
28 or any other public policy of this state otherwise applicable to the
29 disposition.

1 * Sec. 10. AS 13.11.300(b) is amended to read:

2 (b) For purposes of secs. 5 - 140 of this chapter and AS 13.16.-
3 065, a surviving spouse does not include

4 (1) a person who obtains or consents to a final decree or
5 judgment of divorce from the decedent or an annulment of their marriage,
6 which decree or judgment is not recognized as valid in this state,
7 unless they subsequently participate in a marriage ceremony purporting
8 to marry each to the other, or subsequently live together as man and
9 wife;

10 (2) a person who, following a decree or judgment of divorce
11 or annulment obtained by the decedent, participates in a marriage
12 ceremony with a third person; or

13 (3) a person who was a party to a valid proceeding concluded
14 by an order purporting to terminate all marital property rights.

15 * Sec. 11. AS 13.16.065(c) is amended to read:

16 (c) A person entitled to letters under (a)(2) - (5) of this
17 section, and a person aged 18 [19] and over who would be entitled to
18 letters but for his age, may nominate a qualified person to act as
19 personal representative. Any person aged 18 [19] and over may renounce
20 his right to nominate or to an appointment by appropriate writing
21 filed with the court. When two or more persons share a priority, those
22 of them who do not renounce must concur in nominating another to act
23 for them, or in applying for appointment.

24 * Sec. 12. AS 13.16.080(1) is amended to read:

25 (1) Every application for informal probate of a will or for
26 informal appointment of a personal representative other than a special
27 [, ANCILLARY] or successor representative, shall contain the following:

28 (A) a statement of the interest of the applicant;

29 (B) the name, and date of death of the decedent, his

1 age, and the judicial district and state of his domicile at the
2 time of death, and the names and addresses of the spouse, children,
3 heirs and devisees and the ages of any who are minors so far as
4 known or ascertainable with reasonable diligence by the applicant;

5 (C) if the decedent was not domiciled in the state at
6 the time of his death, a statement showing venue;

7 (D) a statement identifying and indicating the address
8 of any personal representative of the decedent appointed in this
9 state or elsewhere whose appointment has not been terminated;

10 (E) a statement indicating whether the applicant has
11 received a demand for notice, or is aware of any demand for notice
12 of any probate or appointment proceeding concerning the decedent
13 that may have been filed in this state or elsewhere.

14 * Sec. 13. AS 13.16.115(b) is amended to read:

15 (b) Unless sec. 300 of this chapter controls, the application
16 must be denied if it indicates that a personal representative who has
17 not filed a written statement of resignation as provided in sec. 290(c)
18 of this chapter has been appointed in a [THIS OR ANOTHER] judicial
19 district of this state, that (unless the applicant is the domiciliary
20 personal representative or his nominee) the decedent was not domiciled
21 in this state and that a personal representative whose appointment has
22 not been terminated has been appointed by a court in the state of
23 domicile, or that other requirements of this section have not been met.

24 * Sec. 14. AS 13.16.255 is repealed and re-enacted to read:

25 Sec. 13.16.255. BOND REQUIRED; EXCEPTIONS. A personal
26 representative shall execute and file a bond with the registrar unless

27 (a) the estate is testate and the will expressly waives surety
28 bond as to the person qualifying as personal representative;

29 (b) the devisees or the heirs file written waiver of surety bond;

1 (c) the personal representative is a qualified corporate fiduciary
2 or

3 (d) the personal representative, pursuant to statute, has
4 deposited cash or collateral with an agency of the state to secure
5 performance of his duties.

6 * Sec. 15. AS 13.16.420 is amended to read:

7 Sec. 13.16.420. CO-REPRESENTATIVES: WHEN JOINT ACTION REQUIRED.

8 If two or more persons are appointed co-representatives and unless the
9 will provides otherwise, the concurrence of all is required on all acts
10 connected with the administration and distribution of the estate. This
11 restriction does not apply when any co-representative receives and
12 gives a receipt [RECEIPTS] for property due the estate, when the con-
13 currence of all cannot readily be obtained in the time reasonably
14 available for emergency action necessary to preserve the estate, or
15 when a co-representative has been delegated to act for the others.
16 Persons dealing with a co-representative if actually unaware that
17 another has been appointed to serve with him or if advised by the
18 personal representative with whom they deal that he has authority to
19 act alone for any of the reasons mentioned herein, are as fully pro-
20 tected as if the person with whom they dealt has been the sole personal
21 representative.

22 * Sec. 16. AS 13.16.470(a) is repealed and re-enacted to read:

23 (a) if the applicable assets of the estate are insufficient to
24 pay all claims in full, the personal representative shall make payment
25 in the following order:

- 26 (1) costs and expenses of administration,
27 (2) reasonable funeral expenses;
28 (3) debts and taxes with preference under federal law,
29 (4) reasonable and necessary medical and hospital expenses

1 of the last illness of the decedent, including compensation of persons
2 attending him,

3 (5) debts and taxes with preference under other laws of this
4 state,

5 (6) all other claims.

6 * Sec. 17. AS 13.16.610(f) is amended to read:

7 (f) In any action to recover from any person interested in the
8 estate the amount of the tax apportioned to the person in accordance
9 with this code the determination of the court in respect thereto shall
10 be [IS] prima facie correct.

11 * Sec. 18. AS 13.21.010 is repealed.

12 * Sec. 19. AS 13.21.015 is amended to read:

13 Sec. 13.21.015. PAYMENT OF DEBT [DEBTS LESS THAN \$2,000] AND DELIVERY
14 OF PROPERTY TO DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE WITHOUT LOCAL
15 ADMINISTRATION [WORTH LESS THAN \$2,000]. At any time after the expiration
16 of 60 days from the death of a nonresident decedent, any person indebted
17 to the estate of the nonresident decedent [IN AN AMOUNT LESS THAN \$2,000]
18 or having possession or control of personal property, or of an instru-
19 ment evidencing a debt, obligation, stock or chose in action, [WORTH LESS
20 THAN \$2,000] belonging to the estate of the nonresident decedent may pay
21 the debt, and deliver the personal property, or the instrument evidencing
22 the debt, obligation, stock or chose in action, to the domiciliary foreign
23 personal representative of the nonresident decedent upon being presented
24 with proof of his appointment and an affidavit made by or on behalf of
25 the representative stating:

26 (1) the date of the death of the nonresident decedent;

27 (2) that no local administration, or application or petition
28 therefor, is pending in this state;

29 (3) that the domiciliary foreign personal representative is

1 entitled to payment or delivery.

2 * Sec. 20. AS 13.21.020 is amended to read:

3 Sec. 13.21.020. PAYMENT OR DELIVERY DISCHARGES. Payment or
4 delivery made in good faith under the provisions of sec. [SECS. 10 AND]
5 15 of this chapter releases the debtor or person having possession of
6 the personal property to the same extent as if payment of delivery had
7 been made to a local personal representative.

8 * Sec. 21. AS 13.21.055 is amended to read:

9 Sec. 13.21.055. JURISDICTION BY ACT OF FOREIGN PERSONAL REPRESENTATIVE.
10 A foreign personal representative submits personally [HIMSELF]
11 to the jurisdiction of the courts of this state in any proceeding
12 relating to the estate by (1) filing authenticated copies of his
13 appointment as provided in sec. 30 of this chapter, (2) receiving
14 payment of money or taking delivery of personal property under sec. 15
15 of this chapter, or (3) doing any act as a personal representative in
16 this state which would have given the state jurisdiction over him as
17 an individual. Jurisdiction under (2) of this section is limited to
18 the money or value of personal property collected.

19 * Sec. 22. AS 13.26.035 is amended to read:

20 Sec. 13.26.035. TESTAMENTARY APPOINTMENT OF GUARDIAN OF MINOR.
21 The parent of a minor may appoint by will a guardian of an unmarried
22 minor. Subject to the right of the minor under sec. 40 of this chapter
23 a testamentary appointment becomes effective upon filing the guardian's
24 acceptance in the court in which the will is probated, if before
25 acceptance, both parents are dead or the surviving parent is adjudged
26 incapacitated. If both parents are dead, an effective appointment by
27 the parent who died later has priority. This state recognizes a testa-
28 mentary appointment effected by filing the guardian's acceptance under
29 a will probated in another state which is the testator's domicile.

1 Upon acceptance of appointment, written notice of acceptance must be
2 given by the guardian to the minor and to the person having his care,
3 or to his nearest adult relation.

4 * Sec. 23. AS 13.26.040 is amended to read:

5 Sec. 13.26.040. OBJECTION BY MINOR OF 14 OR OLDER TO TESTAMENTARY
6 APPOINTMENT. A minor of 14 or more years may prevent an appointment
7 of his testamentary guardian from becoming effective, or may cause a
8 previously accepted appointment to terminate, by filing with the court
9 in which the will is probated a written objection to the appointment
10 before it is accepted or within 30 days after notice of its acceptance.
11 An objection may be withdrawn. An objection does not preclude appoint-
12 ment by the court in a proper proceeding of the testamentary nominee,
13 or any other suitable person.

14 * Sec. 24. AS 13.26.045 is amended to read:

15 Sec. 13.26.045. COURT APPOINTMENT OF GUARDIAN OF MINOR: CONDITIONS
16 FOR APPOINTMENT. The court may appoint a guardian for an unmarried
17 minor if all parental rights of custody have been terminated or sus-
18 pended by circumstances or prior court order. A guardian appointed by
19 will as provided in sec. 35 of this chapter whose appointment has not
20 been prevented or nullified under sec. 40 of this chapter has priority
21 over any guardian who may be appointed by the court but the court may
22 proceed with an appointment upon a finding that the testamentary
23 guardian has failed to accept the testamentary appointment within 30
24 days after notice of the guardianship proceeding [OR HAS FAILED TO
25 PROPERLY EXERCISE HIS DUTIES AS A GUARDIAN].

26 * Sec. 25. AS 13.26.070(4) is amended to read:

27 (4) A guardian must report the condition of his ward and
28 of the ward's estate which has been subject to his possession or
29 control, as ordered by court on petition of any person interested in

1 the minor's welfare or as required by court rule [AT LEAST ONCE A YEAR
2 UNLESS ORDERED SOONER BY THE COURT].

3 * Sec. 26. AS 13.26.120 is amended to read:

4 Sec. 13.26.120. TERMINATION OF GUARDIANSHIP FOR INCAPACITATED
5 PERSON. The authority and responsibility of a guardian for an inca-
6 pacitated person terminates upon the death of the guardian or ward,
7 the determination of incapacity of the guardian, or upon removal or
8 resignation as provided in sec. 125 of this chapter. Testamentary
9 appointment under an informally probated will terminates if the will
10 is later denied probate in a formal proceeding. Termination does not
11 affect his liability for prior acts nor his obligation to account for
12 funds and assets of his ward.

13 * Sec. 27. AS 13.26.150(a)(4)(B) is amended to read:

14 (B) receive money and tangible property deliverable to
15 the ward and apply the money and property for support, care and
16 education of the ward; but, he may not use funds from his ward's
17 estate for room and board which he, his spouse, parent, or child
18 have furnished the ward unless a charge for the service is approved
19 by order of the court made upon notice to at least one of the next
20 of kin of the [INCOMPETENT] ward, if notice is possible; he must
21 exercise care to conserve any excess for the ward's needs;

22 * Sec. 28. AS 13.26.280(a) is amended to read:

23 (a) A conservator has all of the powers conferred herein and any
24 additional powers conferred by law on trustees in this state. In addi-
25 tion, a conservator of the estate of an unmarried minor under the age
26 of 18 [19] years, as to whom no one has parental rights, has the duties
27 and powers of a guardian of a minor described in sec. 70 of this
28 chapter until the minor attains the age of 18 [19] or marries, but the
29 parental rights so conferred on a conservator do not preclude appoint-

1 ment of a guardian as provided by secs. 30 - 85 of this chapter.

2 * Sec. 29. AS 13.26.280(c)(7) and (22) are amended to read:

3 (7) acquire or dispose of an estate asset including land in
4 another state for cash or on credit, at public or private sale; and to
5 manage, develop, improve, exchange, partition, change the character of,
6 or abandon an estate asset [FOR A TERM WITHIN OR EXTENDING BEYOND THE
7 TERM OF THE CONSERVATORSHIP IN CONNECTION WITH THE EXERCISE OF ANY
8 POWER VESTED IN THE CONSERVATOR];

9 (22) pay any sum distributable to a protected person or his
10 [A] dependent [OF THE PERSON WHO IS A MINOR OR INCOMPETENT], without
11 liability to the conservator, by paying the sum to the distributee or
12 by paying the sum for the use of the distributee either to his guardian
13 of if none, to a relative or other person with custody of his person;

14 * Sec. 30. AS 13.26.300(a) is repealed and re-enacted to read:

15 (a) A conservator shall pay from the estate all just claims
16 against the estate and against the protected person arising before or
17 after the conservatorship upon their presentation and allowance. A
18 claim is considered presented on the first to occur of receipt of the
19 written statement of claim by the conservator, or the filing of the
20 claim with the court. A presented claim is allowed if it is not dis-
21 allowed by written statement mailed by the conservator to the claimant
22 within 60 days after its presentation. The presentation of a claim
23 tolls any statute of limitations relating to the claim until 30 days
24 after its disallowance. A claim may be presented by either of the
25 following methods:

26 (1) the claimant may deliver or mail to the conservator a
27 written statement of the claim indicating its basis, the name and
28 address of the claimant and the amount claimed.

29 (2) the claimant may file a written statement of the claim,

1 in the form prescribed by rule, with the clerk of the court and deliver
2 or mail a copy of the statement to the conservator.

3 * Sec. 31. AS 13.26 is amended by adding a new section to read:

4 Sec. 13.26.320. FOREIGN CONSERVATORS. If no local conservator
5 has been appointed and no petition in a protective proceeding is pending
6 in this state, a domiciliary foreign conservator may file with a court
7 in this state in a judicial district in which property belonging to
8 the protected person is located, authenticated copies of his appointment
9 and of any official bond he has given. Thereafter, he may exercise as to
10 assets in this state all powers of a local conservator and may maintain
11 actions and proceedings in this state subject to any conditions imposed
12 upon nonresident parties generally.

13 * Sec. 32. AS 13.31.030 is amended to read:

14 Sec. 13.31.030. ACCOUNTS AND TRANSFERS NONTESTAMENTARY. Any
15 transfers resulting from the application of sec. 20 of this chapter are
16 effective by reason of the account contracts involved [AND THIS STATUTE]
17 and are not to be considered as testamentary or subject to AS 13.06.005
18 AS 13.21.075.

19 * Sec. 33. AS 09.55.570 is amended to read:

20 Sec. 09.55.570. ALL CAUSES OF ACTION SURVIVE. All causes of
21 action by one person against another, whether arising on contract or
22 otherwise, except those involving defamation of character, survive to
23 the personal representatives of the former and against the personal
24 representatives of the latter, but this shall not be construed so as
25 to abate an action for a wrong where any party has died after the
26 verdict or to defeat or prejudice the right of action given by AS 09.-
27 15.010. The personal representatives [EXECUTORS OR ADMINISTRATORS] may
28 maintain an action thereon against the party against whom the cause of
29 action accrued, or, after his death, against his personal representatives.

1 * Sec. 34. AS 13.11.045(1) is amended to read:

2 (1) an adopted person is the child of an adopting parent and
3 not of the natural parents [EXCEPT THAT AN ADOPTED CHILD AND HIS ISSUE
4 HAVE THE RIGHTS OF INHERITANCE FROM THE NATURAL PARENTS AND THEIR
5 RESPECTIVE KIN UNLESS THE DECREE OF ADOPTION SPECIFICALLY PROVIDES FOR
6 TERMINATION OF THOSE RIGHTS OF INHERITANCE AND] except that adoption of
7 a child by the spouse of a natural parent has no effect on the relation-
8 ship between the child and that natural parent;

9 * Sec. 35. Except as provided elsewhere in the Uniform Probate Code, on
10 the effective date of this code:

11 (1) the Uniform Probate Code applies to any wills of decedents
12 dying after December 31, 1972;

13 (2) the Uniform Probate Code applies to any proceedings in court
14 then pending or thereafter commenced regardless of the time of the death of
15 the decedent, except to the extent that the supreme court, by rule, shall
16 make available to any parties the right to elect whether to proceed under the
17 laws as they existed before the effective date of this code or under this
18 code;

19 (3) every personal representative including a person administering
20 an estate of a minor or incompetent holding an appointment on that date,
21 continues to hold the appointment but has only the powers conferred by this
22 code and is subject to the duties imposed with respect to any act occurring
23 or done thereafter;

24 (4) an act done before the effective date in any proceedings and
25 any accrued right is not impaired by this code; if a right is acquired,
26 extinguished or barred upon the expiration of a prescribed period of time
27 which has commenced to run by the provisions of any statute before the effec-
28 tive date, the provisions shall remain in force with respect to that right;

29 (5) any rule of construction or presumption provided in this code

1 applies to instruments executed and multiple party accounts opened before
2 the effective date unless there is a clear indication of a contrary intent;

3 (6) any action arising before the effective date of this code
4 shall be, at the discretion of the parties, and with the approval of the
5 court, treated as though the laws pertaining to it before the effective date
6 of this code were still in force.

7 * Sec. 36. This Act takes effect on the day after its passage and approval
8 or on the day it becomes law without approval.

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