

SB

293

SENATE AMENDMENT

By The Judiciary Committee

To: Amend SENATE BILL No. 293

To: _____ HOUSE BILL No. _____

PAGE: 1

LINE: 13

INSERT "SECRET" in word "Board and Herod"

[Faint handwritten notes and bleed-through text, including the word "SECRET" and other illegible words.]



District Court

State of Alaska

**FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 400
KETCHIKAN, ALASKA
99901**

CHAMBERS OF

H. C. KEENE, Jr., JUDGE

June 29, 1979

Hon. Robert H. Ziegler, Sr.
Alaska State Senate
Ziegler, Cloudy, Smith, King & Brown
307 Bawden Street
Ketchikan, Alaska 99901

Re: Repeal of Alaska Enoch Arden Law or Presumption of
Death After Six Continuous Years of Disappearance

Dear Senator Ziegler:

Pursuant to our conversation of 28 June, 1979 relative to the holding of Presumptive Death Hearing, I have gathered the material concerning repeal of A.S. 20.05.130 which provided that a person missing for six continuous years was presumed to be dead and his estate was to be administered in accordance with the law applicable to the administration of the estate of deceased persons. (Exh. A)

It is noted that this provision was located under Title 20, Infants and Incompetents, and specifically with those sections dealing with Guardianship. Title 20 was deleted out of existence or otherwise amended by the Uniform Probate Code enactment in 1972. This particular section was disposed of by the very last sentence on the last page, 121, of the 1972 Session Laws, Chapter 78, in a most summary manner. (Exh. B)

The above action was noted in the Alaska Statutes Supplement to Title 20 solely with respect to the appointment of a guardian for a missing person. (Exh. C)

Declaration of Death for persons who are missing and presumed to have died without the location of their body is covered under the Code of Civil Procedure, Title 9. Specifically, Sections 09.55.020 - 09.55.060 cover the subject. (Exh. D)

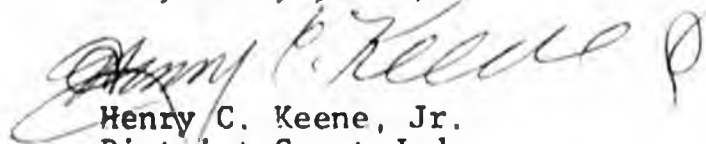
Hon. Robert H. Ziegler, Sr.
June 29, 1979
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It is my assumption from studying the various statutes and legislative action that the provision for the declaration of death for a person who had been continuously missing for more than six years was inadvertently swept away with the introduction of the Uniform Probate Code. It is felt that this provision should be effective as I indicated when you recently posed questions relative to a Presumptive Death Hearing for a person who had been last seen in 1928 when he went into the woods hunting.

My particular interest in the matter has not been too great since having been relieved of the duties of Coroner some years past. Coroners who have mentioned this to me apparently have not gone further with the subject.

It is my recommendation that a statutory provision be enacted into the Code of Civil Procedure providing that a person missing for a considerable period of time such as six years be presumed dead and a Declaration of Presumptive Death be entered. This would fill the void created by the deletion of this provision from the Guardianship Section, where it really did not belong, and would enable the survivors to administer the estate of the missing person.

Very truly yours,



Henry C. Keene, Jr.
District Court Judge

HCK:ri

Enclosures

February 4, 1980

The Honorable Henry C. Keene, Jr.,
District Court Judge
State of Alaska
First Judicial District
415 Main Street, Room 400
Ketchikan, Alaska 99901

Dear Henry:

Senate Bill 293 (presumptive death) passed the Senate with no dissenting votes on February 1.

I suspect it would be in order for you to write a letter to Charles Parr, Chairman of House Judiciary Committee, much akin to that letter you wrote me when you first called the problem to my attention.

It might be a good idea to send blind copies of your letter to Oral and Terry, both of whom are in a position to expedite House action.

Regards,

Robert H. Ziegler, Sr.

RHZ:lk

February 1, 1980

Clem V. Tillion,
President of the Senate
Room 101 Capital Building
Juneau, Alaska

Re: SB 293.

Dear Mr. President:

When the Senate Judiciary Committee considered the captioned bill at its regularly scheduled hearing on January 29, 1980, Donald P. Koch of the Division of Insurance testified before us, advising us that the Division was not opposed to the legislation.

However, Mr. Koch stated that there had been an occasion when a life insurance company, notwithstanding the double indemnity provision for accidental death contained in its policy, had paid the beneficiary only the face amount of the policy.

It is the intent of the Senate Judiciary Committee that a presumptive death certificate shall have the same force and effect as a regularly issued death certificate insofar as ascertaining the amount of insurance proceeds payable is concerned.

Respectfully submitted,



SENATOR ZIEGLER, CHAIRMAN



SENATOR BENNETT, MEMBER

SENATOR RAY, MEMBER



SENATOR MELAND, MEMBER



SENATOR DANKWORTH, MEMBER



District Court

State of Alaska

FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 400
KETCHIKAN, ALASKA
99901

CHAMBERS OF
H. C. KEENE, Jr., JUDGE

January 21, 1980

Hon. Robert H. Ziegler, Sr.
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: Presumptive Death

Dear ^{Bob}~~Senator Ziegler~~:

This is in reply to your letter of January 16, 1980.

First and foremost, I must admit that the section pointed out by Mr. Vassar probably escaped my notice although I have considered it in the past.

However, I do not think it will fit the bill. Sec. 13.06.035 is a rule of evidence only. My evaluation is that this is not sufficient for the average magistrate or judge handling presumptive death certificates to act upon. A provision which is more in the nature of a directive or authority for specific action is needed.

I, therefore, feel that Senate Bill No. 293 is still necessary. This evaluation is based on discussions with other judicial officers and my own experience.

Very truly yours,

Henry C. Keene, Jr.
District Court Judge

HCK:ri

Enclosures

STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 15, 1980

SUBJECT: Presumptive Death
(Work Order Number 7316)

TO: Senator Robert H. Ziegler, Sr.

FROM: Kenneth E. Vassar
Legislative Counsel 

Enclosed is the letter from Judge Keene with back-up "exhibits". I have found in the Uniform Probate Code (AS 13.06 - 13.36) a section which is substantially similar to the repealed section referred to in Judge Keene's letter and to the provisions of SB 293. That section is AS 13.06.035(3), which provides:

Sec. 13.06.035. EVIDENCE AS TO DEATH OR STATUS. In proceedings under this code, the rules of evidence in courts of general jurisdiction including any relating to simultaneous deaths, are applicable unless specifically displaced by the code. In addition, the following rules relating to determination of death and status are applicable:

* * *

(3) a person who is absent for a continuous period of five years, during which he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead; his death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

I regret not having seen this section previously. It appears to accomplish Judge Keene's goal.

KEV:ljb

Enclosures

MEMORANDUM

State of Alaska

TO: Honorable Robert Ziegler, Chairman
Senate Judiciary Committee

DATE: January 31, 1980

THRU: Kenneth C. Moore
Director

FILE NO:

TELEPHONE NO:

FROM: Donald P. Koch
Chief of Market Surveillance
Division of Insurance
Department of Commerce
and Economic Development

SUBJECT: Presumptive Death Certificates
Senate Bill 293

(Handwritten initials: DPK, KCM)

On January 29, 1980, I appeared before your committee concerning Senate Bill 293, an Act relating to presumptive death. After our testimony you requested that we provide information to you in memo form. The information follows.

The Division of Insurance is not opposed to this legislation, but we do have some concerns relating to the impact of a presumptive death certificate under AS 09.55.020-060.

The primary concern relates to the effect of a presumptive death certificate on the contractual obligation of a life insurer to discharge the coverage amount on its policy with the issue of a presumptive death certificate. AS 09.55.050 states, in part:

Upon the entry of the order and the recording and filing of the "presumptive death certificate" as herein provided, the missing person is presumed to be dead, and his estate may be administered in accordance with the then existing provisions of law applicable to the administration of the estates of deceased persons.

The phrase "may be administered" raises the question of whether an insurer must discharge its coverage amount in the absence of a phrase "shall be administered." We are not suggesting that this language change be made since there are other reasons for the use of that particular permissive language rather than mandatory language. The loophole created, however, for insurers is one that should be sealed.

We have no evidence that insurers are failing to respond upon issuance of a presumptive death certificate, but we are aware of at least one situation where an amount was paid which may not have been the correct amount, which brings us to our second concern. Some policies have a provision whereby the death benefit is doubled or tripled if the death is accidental. About eight years ago, a presumptive death certificate was issued when a fisherman was presumed dead after the wreckage of his fishing boat was found. No body was ever recovered. The insurer paid the face amount of its policy, \$10,000, but refused to consider the double indemnity provision even though the circumstances surrounding the issuance of the certificate suggests that the loss of life had to have been accidental.

Honorable Robert Ziegler

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January 31, 1980

The proposed amendment is not disturbing to the division since there is the six year requirement. While it may be possible that the person presumed deceased is actually a deserter, that situation could exist under the present law and is not a real concern. In checking with the Bureau of Vital Statistics, the State Registrar, Joan Brooks, advises that there has never been a case in Alaska where a presumptive death certificate has been reversed because the person was later found to be alive.

We believe that some legislative clarification or statement of intent would be useful and an aid to the public. We appreciate your interest in this issue, and we will be happy to assist you in whatever way you feel would be helpful.

DPK/sa