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STATE OF ALASKA
THE LEGISLATURE

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May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House Judiciary:

1988 ~ May 4

May 5

HOUSE COMMITTEE REPORT

(7)

Date referred: 4/25/88

FURTHER REFERRALS:

DATE: May 5, 1988

The Judiciary Committee has considered CSSB 320(Jud)

"An Act relating to damages for death of a minor and the distribution of a minor's estate."

RECOMMENDS:

- replace with HCS CSSB 320(HESS) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published 2/1/88
- zero with analysis

SIGNING DO PASS:

[Signature]

[Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature]

[Signature] (NO REC)

[Signature] (NO REC)

[Signature] - no rec

[Signature] no rec

[Signature]

Chairman's signature

4/21/88

SENATOR JIM DUNCAN

T E S T I M O N Y

CS SENATE BILL 320 (JUD)
DAMAGES FOR DEATH OF A MINOR AND DISTRIBUTION OF A
MINOR'S ESTATE

CS SENATE BILL 320 WILL PROHIBIT A PARENT OR OTHER HEIR OF A CHILD WHO CAUSED THEIR CHILD'S DEATH THROUGH A CRIMINAL ACT FROM RECOVERING DAMAGES FOR THAT DEATH THROUGH THE ESTATE OF THE CHILD. THE EXISTING LAWS OF INHERITANCE SOMETIMES PROVIDE A BIZARRE RESULT BECAUSE PARENTS ARE REWARDED FOR THEIR CRIMINAL ACTS WHICH RESULT IN THE DEATH OF THEIR CHILD.

AT PRESENT, EVEN IF A PARENT CAUSES THE DEATH OF THEIR CHILD THROUGH MANSLAUGHTER OR CRIMINAL NEGLIGENCE, THE LAWS OF INHERITANCE ALLOW THEM TO RECEIVE THE PROCEEDS OF THAT CHILD'S ESTATE. THIS RESULTS IN ESPECIALLY DISTRESSING OUTCOMES WHEN THIRD PARTY LAWSUITS, SUCH AS THOSE AGAINST THE STATE, ARE INVOLVED. THIS BILL WOULD REMOVE SUCH A PARENT OR PARENTS FROM THE LINE OF INHERITANCE AS IF THEY HAD PREDECEASED THE CHILD. THE PROCEEDS OF THE ESTATE WOULD THEN GO TO OTHER CHILDREN OR RELATIVES OF THE DECEASED. SECTION 2 MAKES THIS CHANGE TO THE CODE OF CIVIL PROCEDURES AND SECTION 3 CHANGES THE PORTION OF THE STATUTE DEALING WITH DECEDENT'S ESTATES.

THIS BILL DOES NOT ADDRESS AN IMAGINARY SITUATION, THERE
HAVE BEEN A NUMBER OF CASES IN ALASKA AND A RECENT CASE IN JUNEAU
WHICH WOULD BE AFFECTED BY THIS CHANGE TO THE STATUTES. THE BILL
IS SUPPORTED BY THE ATTORNEY GENERAL AND THE LOCAL DISTRICT
ATTORNEY.

I URGE YOU TO APPROVE THIS LEGISLATION AND CLOSE THIS
LOOPHOLE IN THE LAW.

*Rick Sobotny, local DistAtt.
Bill Mellow, Asst. Att. Gen'l.*

HOUSE COMMITTEE REPORT

(7)

Date referred: 2/24/88

FURTHER REFERRALS:

Judiciary

DATE: 4-26-88

The Health, Education and Social Services Committee has considered CSSB 320(Jud)

"An Act relating to damages for death of a minor and the distribution of a minor's estate."

RECOMMENDS:

- replace with HCS CSSB 320 (HESS) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

W. F. Kopona
Bill Woods
Miss Thunberg
H. Ellis
Robert Harvey
ROSE E. HARRIS

SIGNING OTHER RECOMMENDATIONS:

H. Ellis
 Co. Chairman's signature
W. F. Kopona

STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE

FEH 4 1988

CSB320(JUDICIARY)

REQUEST: _____

Bill Version:
Publish Date:

SENATE (2/12/88)
Alaska Court System
Trial Courts

Revision Date:
Title: An act to amend the Alaska Constitution to provide for the death of a person who is found guilty of a capital offense.
Sponsor: Duncan
Requestor: Senate Judiciary

Agency Affected:
Comments:

EXPENDITURES/REVENUES: (Thousands of Dollars)						
	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
Personal Services	••••	••••	••••	••••	••••	••••
Travel	••••	••••	••••	••••	••••	••••
Contractual	••••	••••	••••	••••	••••	••••
Supplies	••••	••••	••••	••••	••••	••••
Equipment	••••	••••	••••	••••	••••	••••
Land & Structures	••••	••••	••••	••••	••••	••••
Grants & Claims	••••	••••	••••	••••	••••	••••
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	••••	••••	••••	••••	••••	••••
REVENUE	••••	••••	••••	••••	••••	••••

FUNDING: (Thousands of Dollars)						
General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	••••	••••	••••	••••	••••	••••
Other	••••	••••	••••	••••	••••	••••
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:						
Full-time	••••	••••	••••	••••	••••	••••
Part-time	••••	••••	••••	••••	••••	••••
Temporary	••••	••••	••••	••••	••••	••••

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: *Jan Strandberg*
Jan Strandberg, General Counsel
Division: Alaska Court System
Approved by: *Stephanie Cole, for*
Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System

Phone: 264-8228
Date: 2-1-88
Date: 2-1-88

- Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management & Budget
- Impacted Agency(ies)
- Senate Secretary

Legislative Intent. — The intent of the legislature inferred from the 1949 amendment to predecessor statute, in that actions no longer abate when the wrongdoer dies, but do abate when the injured party succumbs from noncausally connected matters. *O'Dey v. Maloon*, 17 Alaska 763 (1958).

Section 43-3-10, ACLA 1949, did not repeat by implication this section and AS 13.20.340. *Anderson v. Pacific S.S. Co.*, 2 Alaska 291 (1931).

Joinder of parents as third party defendants. — In an action for the wrongful death of a minor without dependents brought by the parents of the minor in their representative capacity, the parents could be joined in the individual capacity as third party defendants and were liable for their negligent supervision of the child. *Macey v. United States*, 454 F.

Supp. 684 (D. Alaska 1974).

No portion of settlement attributable to survivorship claim. — The superior court correctly determined that no portion of the total settlement should be attributed to the survivorship claim for relief where there was nothing in the record which indicated that any pain and suffering which decedent may have suffered was other than momentary. *Horsford v. Estate of Horsford*, Sup. Ct. Op. No. 1394 (File No. 2653), 631 P.2d 722 (1977).

Applied in *Anderson v. Edwards*, Sup. Ct. Op. No. 2274 (File No. 4586), 625 P.2d 282 (1981).

Cited in *Larman v. Kudink Elec. Ass'n*, Sup. Ct. Op. No. 950 (File No. 1827), 514 P.2d 1275 (1973); *State Farm Mut. Ins. Co. v. Wainwright*, 439 F. Supp. 840 (D. Alaska 1977).

Collateral references. — 1 Am. Jur. 2d, Abatement, Survival, and Revival, § 1 et seq.

1 C.J.S., Abatement and Revival, § 1 et seq.

Liability for additions to deficiencies for fraud, imposed by income tax laws, as surviving taxpayer's death, 15 ALR2d 1036.

Conflict of laws as to survival or revival of wrongful death actions against estate of personal representative of wrongdoer, 17 ALR2d 690.

Constitutionality and construction of statute authorizing continuation of pending action against foreign representative of deceased nonresident driver of motor vehicle, arising out of accident occurring in state, 18 ALR2d 544.

Survival of action based on delay in passing upon application for insurance, 32 ALR2d 537.

Claim for negligently damaging or destroying personal property as surviving tortfeasor's death, 40 ALR2d 533.

Statutory liability for physical injuries inflicted by animal as surviving defendant's death, 40 ALR2d 543.

Survival of obligation of guaranty, 41 ALR2d 1243.

Conflict of laws as regards survival of cause of action and revival of pending

action upon death of party, 42 ALR2d 1170.

Beneficiary's death as affecting right of action under death statute, 43 ALR2d 1291.

Medical malpractice action as abating upon death of either party, 50 ALR2d 1445.

Action or claim for punitive damages as surviving death of person wronged, 63 ALR2d 1327.

Death as terminating coexecutor's, administrator's, or testamentary trustee's liability for defaults or wrongful acts of fiduciary in handling, 65 ALR2d 1126.

Abatement or survival of action for attorney's malpractice or negligence upon death of either party, 65 ALR2d 1211.

Effect, on proceedings below, of death of defendant pending appeal from criminal conviction, 83 ALR2d 864.

Survivability of cause of action created by civil rights statute, 83 ALR2d 1153.

Survival of cause of action under liquor dealer's bond, 94 ALR2d 1145.

Validity of exception for specific kind of tort action in survival statute, 77 ALR3d 1349.

Effect of death of beneficiary upon right of action under death statute, 13 ALR4th 1060.

Sec. 09.55.580. Action for wrongful death. (a) When the death of a person is caused by the wrongful act or omission of another, the personal representatives of the former may maintain an action therefor against the latter, if the former might have maintained an action, had the person lived, against the latter for an injury done by the same act or omission. The action shall be commenced within two years after the death, and the damages therein shall be the damages the court or jury may consider fair and just. The amount recovered, if any, shall be exclusively for the benefit of the decedent's spouse and children when the decedent is survived by a spouse or children, or other dependents. When the decedent is survived by no spouse or children or other dependents, the amount recovered shall be administered as other personal property of the decedent but shall be limited to pecuniary loss. When the plaintiff prevails, the trial court shall determine the allowable costs and expenses of the action and may, in its discretion, require notice and hearing thereon. The amount recovered shall be distributed only after payment of all costs and expenses of suit and debts and expenses of administration.

(b) The damages recoverable under this section shall be limited to those which are the natural and proximate consequence of the negligent or wrongful act or omission of another.

(c) In fixing the amount of damages to be awarded under this section, the court or jury shall consider all the facts and circumstances and from them fix the award at a sum which will fairly compensate for the injury resulting from the death. In determining the amount of the award, the court or jury shall consider but is not limited to the following:

(1) deprivation of the expectation of pecuniary benefits to the beneficiary or beneficiaries, without regard to age thereof, that would have resulted from the continued life of the deceased and without regard to probable accumulations of what the deceased may have saved during the lifetime of the deceased;

(2) loss of contributions for support;

(3) loss of assistance or services irrespective of age or relationship of decedent to the beneficiary or beneficiaries;

(4) loss of consortium;

(5) loss of prospective training and education;

(6) medical and funeral expenses.

(d) The death of a beneficiary or beneficiaries before judgment does not affect the amount of damages recoverable under this section.

(e) The right of action granted by this section is not abated by the death of a person named or to be named the defendant. (§ 4 ch 78 SLA 1972)

Editor's notes. — This section was taken from § 61-7-3, ACLA taken from former AS 13.20.340 which, in turn, was taken from § 61-7-3, ACLA 1949, as amended.

A commentary on ch. 51 SLA 1984 (SB 513) which amended this section, appears in the 1984 House and Senate Joint Journal Supp. No. 21, at pp. 5 - 6.

NOTES TO DECISIONS

Quoted in *Linck v. Barokas & Martin*, Sup. Ct. Op. No. 2701 (File No. 6786), 667 P.2d 171 (1983).

Sec. 13.11.300. Effect of divorce, annulment and decree of separation. (a) A person who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, the person is married to the decedent at the time of death. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.

(b) For purposes of AS 13.11.005 — 13.11.140 and AS 13.16.065, a surviving spouse does not include

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

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

(3) a person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights. (§ 1 ch 78 SLA 1972; am § 10 ch 56 SLA 1973)

Legislative history reports. For report on ch. 56, SLA 1973 (HCS SB 140), see 1973 Senate Journal Supplement No. 9, 1973 House Journal, p. 819.
Collateral references. Annulment of marriage; prior institution of annulment proceedings or other attack on validity of one's marriage as barring or estopping one from entitlement to property rights as surviving spouse. 31 ALR4th 1190.

Sec. 13.11.305. Effect of homicide on intestate succession, wills, joint assets, life insurance and beneficiary designations. (a) A surviving spouse, heir or devisee who feloniously and intentionally kills the decedent is not entitled to any benefits under the will or under this chapter, and the estate of the decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.

(b) A joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent

so that the share of the decedent passes as the decedent's property and the killer has no rights by survivorship. This provision applies to joint tenancies and tenancies by the entirety in real and personal property, joint and multiple-party accounts in banks, savings and loan associations, credit unions and other institutions, and any other form of co-ownership with survivorship incidents.

(c) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.

(d) Any other acquisition of property or interest by the killer shall be treated in accordance with the principles of this section.

(e) A final judgment of conviction of felonious and intentional killing is conclusive for purposes of this section. In the absence of a conviction of felonious and intentional killing the court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of this section.

(f) This section does not affect the rights of any person who, before rights under this section have been adjudicated, purchases from the killer for value and without notice property which the killer would have acquired except for this section, but the killer is liable for the amount of the proceeds or the value of the property. Any insurance company, bank or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless before payment it has received at its home office or principal address written notice of a claim under this section. (§ 1 ch 78 SLA 1972; am § 1 ch 36 SLA 1979)

Collateral references. Constitutionality of statute precluding inheritance by murderer of decedent. 6 ALR 1408.
Disqualification of heir who murdered intestate as affecting rights of others in respect of the intestate estate. 156 ALR 623, 161 ALR 118.
Homicide as precluding taking under will or by intestacy. 25 ALR4th 787.

13.11.310 . . .

be considered in determining recklessness with regard to circumstances surrounding one's conduct. *Neitzel v. State*, Ct. App. Op. No. 172 (File No. 6243), 655 P.2d 325 (1982).

Assault with a dangerous weapon. — The supreme court declined to hold that

intoxication ought to be considered with respect to the general criminal intent necessary to the commission of the former crime of assault with a dangerous weapon. *Menard v. State*, Sup. Ct. Op. No. 1623 (File No. 2865), 578 P.2d 966 (1978), decided under former AS 11.70.C30.

Collateral references. — Drunkenness as affecting murder in second degree, 8 ALR 1052.

Intoxication as affecting deliberation, 79 ALR 901.

Modern status of rules as to voluntary intoxication as defense to criminal charge, 8 ALR3d 1236.

Drug addiction or related mental state as defense to criminal charge, 73 ALR3d 16.

When intoxication deemed voluntary as to constitute a defense to criminal charge, 73 ALR3d 195.

Sec. 11.81.640. Application of AS 11.81.600 — 11.81.630. AS 11.81.600 — 11.81.630 apply only to this title. (§ 10 ch 166 SLA 1978)

NOTES TO DECISIONS

Stated in *Neitzel v. State*, Ct. App. Op. No. 172 (File No. 6243), 655 P.2d 325 (1982).

Article 6. Definitions.

Section
900. Definitions

Sec. 11.81.900. Definitions. (a) For purposes of this title, unless the context requires otherwise,

(1) a person acts "intentionally" with respect to a result described by a provision of law defining an offense when the person's conscious-objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective;

(2) a person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance;

(3) a person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which the person would have been aware had that person not been intoxicated acts recklessly with respect to that risk;

(4) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when the person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

(b) In this title, unless otherwise specified or unless the context requires otherwise,

(1) "affirmative defense" means that

(A) some evidence must be admitted which places in issue the defense; and

(B) the defendant has the burden of establishing the defense by a preponderance of the evidence;

(2) "benefit" means a present or future gain or advantage to the beneficiary or to a third person pursuant to the desire or consent of the beneficiary;

(3) "building", in addition to its usual meaning, includes any propelled vehicle or structure adapted for overnight accommodation of persons or for carrying on business; when a building consists of separate units, including apartment units, offices, or rented rooms, each unit is considered a separate building;

(4) "cannabis" has the meaning ascribed to it in AS 11.71.900(10), (11), and (14);

(5) "conduct" means an act or omission and its accompanying mental state;

(6) "controlled substance" has the meaning ascribed to it in AS 11.71.900(4);

(7) "correctional facility" means premises, or a portion of premises, used for the confinement of persons under official detention;

(8) "credit card" means any instrument or device, whether known as a credit card, credit plate, courtesy card, or identification card or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining property or services on credit;

(9) "crime" means an offense for which a sentence of imprisonment is authorized; a crime is either a felony or a misdemeanor;

HOUSE COMMITTEE REPORT

9726

Date referred: 4/13/88

FUT REFERRALS:

Judiciary
Finance

DATE: 4-26-88

The Health, Education and Social Services Committee has considered CSSB 371(Fin)

"An Act relating to alcoholic beverages in an area that has prohibited or restricted the sale of alcoholic beverages by local option election; and to delivery, purchase, and municipal regulation of alcoholic beverages."

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

[Handwritten signatures: Bill Hudak, Rick E. Kelly, J. Ellis]

[Handwritten notes: Bruce Hanley - no Rec, Measurement - do pass with amendment to section six]

[Handwritten signature: J. Ellis]
Co Chairman's signature
[Handwritten signature: Rick E. Kelly]