

HB

392

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

Bill No. HB 392

Revision Date: \_\_\_\_\_ Department Affected: Alaska Court System  
 Title: An Act relating to nonprobate trans- BRU: Trial Courts  
fers and multiple-person accounts Components: \_\_\_\_\_  
 Sponsor: Ulmer  
 Requestor: Labor & Commerce COMPONENT SERIAL NO. 000 | 000 000 | 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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						
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REVENUE						
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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

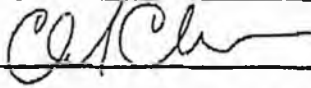
POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 264-8228  
 Division: Alaska Court System Date: 01/22/92

Approved by: Arthur H. Snowden, II, Administrative Director  Date: 01/22/92  
 Agency: Alaska Court System

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

## HB 392 - Nonprobate Transfers and Multiple-person Accounts

### Sectional Analysis

#### Section 1.

**Article 1. Sec. 13.33.101, Nonprobate transfers on death:** Declares that a provision for a nonprobate transfer on death in certain instruments is nontestamentary.

**Article 2.** Clarifies the law of joint tenancy and tenancy in common for deposit accounts, with or without the right of survivorship, and declares that pay-on-death (POD) clauses in the contracts that establish deposit accounts are non-testamentary.

**Sec. 13.33.201, Definitions:** Definition of terms, including "POD designation" for Article 2.

**Sec. 13.33.202, Limitation on scope:** Article 2 does not apply to an account established for a partnership, joint venture or organizations formed for business purposes, to certain unincorporated association, charitable, or civic organization accounts; Article 2 does not apply to fiduciary or trust accounts in which the relationship is established outside the terms of the account.

**Sec. 13.33.203, Types of account:** Allows single or multiple party accounts; accounts existing before or after January 1, 1994, are governed by Article 2 (AS 13.33.201 - 13.33.227).

**Sec. 13.33.204, Forms:** Lists the contents of the simple, check-off form to be used to designate the type of account and beneficiaries.

**Sec. 13.33.205, Designation of agent:** Allows an agent to be designated whose authority survives disability and incapacity of a party. Authority of an agent terminates on the death of the sole or last surviving party.

**Sec. 13.33.206, Applicability:** Defines the applicability of the provisions of AS.13.33.211-13.33.216.

**Sec. 13.33.211, Ownership during lifetime:** Defines ownership rights during the lifetime of the parties. In single party accounts, the account holder has all power over funds while alive; at death the POD beneficiary takes them. In multiple-party accounts, the account belongs to the parties in proportion to their net contributions.

**Sec. 13.33.212, Rights at death:** Defines the rights of surviving parties in multiple-party accounts; outlines rights of payment from multiple-party accounts with and without a POD designation.

**Sec. 13.33.213, Alteration of rights:** Rights at death are determined by the type of account at the death of the party; type of account may be altered by written notice to the financial institution. A right of survivorship or a POD designation may not be altered by will.

# Alaska State Legislature

## HOUSE OF REPRESENTATIVES



### REPRESENTATIVE FRAN ULMER

#### MEMORANDUM

February 10, 1992

TO: Rep. David Finkelstein, Chair  
House Labor and Commerce Committee

FROM: Rep. Fran Ulmer

Re: Questions regarding HB 392, non-probate transfers on death

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Attached is a list of questions and answers which address the basic issues relating to HB 392, non-probate transfers on death. I prepared this summary for those of my constituents who may not be familiar with probate law. Incorporated within the summary (#10) is the answer to Rep. Taylor's question regarding protection of the rights of a spouse and other legal heirs.

Briefly, HB 392 makes no changes to current protections for legal heirs. AS 13.11.070 - AS 13.11.100 protects the interest of the surviving spouse; no change is made to those protections. A POD transfer is not effective against the estate to the extent necessary to pay a surviving spouse and children the amounts allowed under law, such as the homestead allowance and the family allowances.

HB 392 provides a further protection in the proposed AS 13.33.226 in that, if a financial institution receives written notice from the surviving spouse or a legal representative of the estate that payment should not be made under the terms of the POD contract and the institution pays the POD beneficiary in spite of written notice, the institution is potentially liable.

Although there is no way for the law to prevent a person from naming someone other than the legal spouse as the POD beneficiary, protections in law appear to be adequate to protect the interests of the legal heirs. POD clauses have been in use for multiple-party accounts without any apparent problems of the type suggested by Rep. Taylor. The benefit accruing to the majority of beneficiaries from being able to avoid the expense and delay of probate outweighs the risk posed by the rare person who deliberately sets out to circumvent the rights of the legal heirs.

I hope this information is helpful.



# Alaska State Legislature

## HOUSE OF REPRESENTATIVES

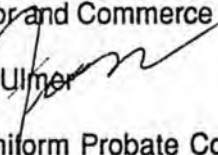


### REPRESENTATIVE FRAN ULMER

#### MEMORANDUM

January 21, 1992

TO: Rep. David Finkelstein, Chair  
House Labor and Commerce Committee

FROM: Rep. Fran Ulmer 

RE: HB 392, Uniform Probate Code amendments

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HB 392 makes amendments to Article VI of the Uniform Probate Code which simplify transfers of property on death to avoid probate. This legislation was modeled after legislation provided by the Joint Editorial Board for Uniform Probate Code which is comprised of representatives from the Uniform Law Commissioners, the American Bar Association, the American College of Trust and Estate Counsel, and the State Courts and Law School Liaisons.

In brief, the bill does the following:

1. Article VI clarifies the law of joint tenancy and tenancy in common for deposit accounts, with or without the right of survivorship, and declares that pay-on-death (POD) clauses in the contracts that establish deposit accounts are non-testamentary. Funds will be paid to the beneficiary named in the POD clause even though the clause does not meet the requirements for a will. Money is paid without passing through the estate of the decedent. The expense and delay of probate is thereby avoided.

-In single party accounts, the account holder has all power over the funds while alive. At death, the POD beneficiary takes them. In a multiple-party situation, there are options but, in all options, the multiple parties have power over the fund during their lives. If there is any POD beneficiary, his or her rights begin upon the death of the last party to the account.

-Code revisions provide an easy to use statutory form that allows selection of any option with a simple check-off for the type of account and thus definitively establish their intent.

-The revisions treat all agency powers as durable powers, surviving the incapacity of the account holder, unless there is specific language limiting them (agency powers are only implied in the original Article VI) and eliminates any ambiguity regarding these accounts.

-Financial institutions may deal with parties, agents and POD beneficiaries according to the terms of the contract, and may take representations of rights to funds in deposit accounts on their face.



2. Article VI also provides for transfer-on-death (TOD) investment securities. The transfers, like POD deposit accounts, are nontestamentary thus making a whole new echelon of property which can be kept out of the probate estate. A TOD clause, naming a beneficiary, registered in the appropriate place for the type of security, accomplishes distribution. If the last owner (in the case of multiple owners) of a security dies, then the ownership of the security transfers to the named beneficiary without probate. TOD designation may be made only by a sole owner or multiple owners with right of survivorship. Securities held by tenants in common cannot be registered with a TOD designation ( in order to preclude fractional ownership rights). A securities issuer, like a financial institution, is subject to the contract and is entitled to deal with parties on the face of any representations made. No issuer is forced to register TOD designations.

-Certificated securities: TOD terms and the name of the beneficiary on the certificate are adequate for transfer.

-Uncertificated securities: TOD designation must be on the records of the issuing entity.

-Security Accounts: Brokerage customers can register TOD beneficiaries on their accounts for nontestamentary disposition at death.

I believe there will be a positive response from the consumer, as well as the legal and financial communities, to the provisions of HB 392. These revisions both simplify and clarify the law.

**Sec. 13.33.214, Accounts and transfers nontestamentary:** Except as otherwise provided, transfers under AS 13.33.212 are not testamentary.

**Sec. 13.33.215, Rights of creditors:** If other assets of the estate are insufficient, a payment resulting from a right of survivorship or a POD designation may not take place until all claims against the estate are satisfied.

**Sec. 13.33.216, Community property and tenancy by the entireties:** Community property deposited in an account does not alter community rights in the property.

**Sec. 13.33.221, Authority of financial institution:** Authorizes financial institutions to enter into a contract of deposit for multiple party accounts and may provide for a POD designation.

**Sec. 13.33.222, Payment on multiple-party account:** Authorizes financial institutions to pay sums on deposit in multiple-party accounts to one or more of the parties, or to personal representatives, heirs or devisees of the last surviving party upon proof of death, unless the account is without right of survivorship.

**Sec. 13.33.223, Payment on POD designation:** Allows financial institutions to pay sums on account with a POD designation to one or more of the parties, beneficiaries, personal representatives or heirs.

**Sec. 13.33.224, Payment to designated agent:** Allows a financial institution to make payment, on request, to an agent under an agency designation for an account.

**Sec. 13.33.225, Payment to minor:** Allows financial institutions to make payment to a minor who is designated a beneficiary.

**Sec. 13.33.226, Discharge:** Payment made in accordance with the type of account discharges the financial institution from all claims for amounts so paid, unless notified in writing to the effect that payment should not be permitted.

**Sec. 13.33.227, Setoff:** If a party is indebted to a financial institution, the institution has a right to setoff against the portion of the account to which the party is beneficially entitled.

### **Article 3, Uniform Transfer-on-Death Security Registration Act**

**Sec. 13.33.301, Definitions:** Defines terms used in Article 3.

**Sec. 13.33.302, Registration in beneficiary form; sole or joint tenancy ownership:** Only persons demonstrating sole ownership of a security, or persons showing multiple ownership with right of survivorship rather than as tenants in common, may obtain registration in beneficiary form.

**Sec. 13.33.303, Registration in beneficiary form; applicable law:** Allows a security to be registered in beneficiary form if it is authorized by this or a similar

TOD statute in the appropriate state; a registration governed by a law in which TOD legislation is not in force is nevertheless valid and authorized as a matter of contract law.

**Sec. 13.33.304, Origination of registration in beneficiary form:** A security is registered in beneficiary form when the registration designates a beneficiary.

**Sec. 13.33.305, Form of registration in beneficiary form:** Registration in beneficiary form may be shown by the words "transfer on death" or "TOD," or by the words "pay on death" or "POD."

**Sec. 13.33.306, Effect of registration in beneficiary form:** Designation of a TOD beneficiary has no effect on ownership until the owner's death; may be cancelled or changed at any time.

**Sec. 13.33.307, Ownership on death of owner:** Upon the owner(s)'s death, securities registered in beneficiary form pass to the beneficiary. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole, or last of multiple, owner.

**Sec. 13.33.308, Protection of registering entity:** A registering entity is not required to register securities in beneficiary form but, if it does offer such registration, it agrees that the registration will be implemented; the registering entity shall receive the protections granted under AS 13.33.301-310.

**Sec. 13.33.309, Nontestamentary transfer on death:** A transfer resulting from a registration in beneficiary form is effective by reason of the contract regarding registration and is not testamentary.

**Sec. 13.33.310, Terms, conditions, and forms for registration:** A registering entity may establish the terms and conditions under which it will register securities in beneficiary form; includes illustrations of registrations in beneficiary form.

**Section 2. Definition.** Provides a revised definition of "trust" because AS 13.31 is repealed and AS 13.33 does not contain a definition of "trust account."

**Section 3. Sec. 13.16.260, Bond amount; security; procedure; reduction.** Outlines procedures to be used if a bond is required.

**Section 4. Repeals AS 13.31,** relating to nonprobate transfers.

**Section 5. Transition provisions:** Describes the dates on which this act applies to the various circumstances relevant to the provisions of the bill.

**Section 6. Effective date:** Takes effect January 1, 1994.

## HB 392 - Non-Probate Transfers

### Questions and Answers

1. Q: What is the purpose of HB 392?

A: The purpose of HB 392 is to simplify the transfer of property when the owner dies and thus avoid the delay and expense of probate court. HB 392 affects deposit accounts in banks and other financial institutions, and securities and security accounts. Transfer of deposit accounts and securities is affected by the law of "joint tenancy" and "tenancy in common."

2. Q: What is the law of joint tenancy and tenancy in common?

A: A "joint tenant" has a right of survivorship which means that, when one of the owners of an account dies, the surviving owners of the account inherit the dead person's share. "Tenancy in common" means that when one of the owners of an account dies, the deceased person's heirs inherit the decedent's share.

3. Q: How does HB 392 clarify the law of joint tenancy and tenancy in common for deposit accounts?

A: Current law presumes a right of survivorship in multiple-party accounts unless there is "clear and convincing evidence of a different intention when the account was created." HB 392 provides a simple, easy to use form that allows a definitive selection of any type of account, with or without POD designation, and with or without the right of survivorship.

4. Q: How does HB 392 add to non-probate transfer provisions in current law?

- A: (1) HB 392 clarifies current law by clearly allowing POD clauses for single party accounts as well as multiple-party accounts.  
(2) HB 392 provides for an account with an "agency" designation. An agent acts for the principal or account holder and can make deposits or withdrawals.  
(3) HB 392 adds "transfer on death" (TOD) provisions for investment securities.

5. Q: Why is the inclusion of "agency" powers an improvement to current law?

A: HB 392 treats all agency powers as "durable" powers which survive the incapacity of the account holder unless there is specific language limiting them. HB 392 eliminates any ambiguity regarding agency powers.

6. Q: HB 392 allows pay-on-death clauses in deposit accounts to be "non-testamentary." What does "non-testamentary" mean?

A: "Non-testamentary" means that the the funds in the account may be paid to the beneficiary named in the pay-on-death clause even though the clause does not meet the formal

TOD statute in the appropriate state; a registration governed by a law in which TOD legislation is not in force is nevertheless valid and authorized as a matter of contract law.

**Sec. 13.33.304, Origination of registration in beneficiary form:** A security is registered in beneficiary form when the registration designates a beneficiary.

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**Section 5. Transition provisions:** Describes the dates on which this act applies to the various circumstances relevant to the provisions of the bill.

**Section 6. Effective date:** Takes effect January 1, 1994.

requirements for a will. The money is paid out without going through the estate (going through probate court) of the deceased account holder.

**7. Q: How do POD clauses work for deposit accounts?**

**A: Single-party accounts:** The account holder controls the funds while alive; the POD beneficiary takes them when the account holder dies.

**Multiple-party accounts:** There are several options available under HB 392:

- (a) The parties may have a right of survivorship and designate a POD beneficiary who receives ownership when the last surviving party to the account dies.
- (b) The parties may have a right of survivorship and not bother with any POD beneficiary so that ownership passes to the surviving parties.
- (c) The parties can have an account without any right of survivorship. If this is the case, the decedent's share falls into the estate.

**8. Q: How does HB 392 affect banks and other financial institutions offering deposit accounts?**

**A:** HB 392 does not change the law or have any new effect on banks and other financial institutions except that, in addition to being authorized to provide POD clauses on multiple-party deposit accounts, financial institutions may also include POD clauses on single-party accounts as well. However, HB 392 does not require banks to provide POD accounts. If a bank does offer POD accounts, it may deal with parties, agents, and POD beneficiaries according to the terms of the POD statutes and the bank's contract which sets out the type of account, names the beneficiaries, etc.

**9. Q: What protections are in place for creditors should the decedent's estate be insufficient to pay all claims against it?**

**A:** No change is made to current protections for creditors. The bill states that if the estate is not sufficient to pay claims against it, a transfer is not effective against the estate and the person to whom the funds are transferred (POD beneficiary) is liable to the extent of the decedent's share of the account and to the extent necessary to pay the claims. The creditor may bring suit to recover monies due.

**10. Q: What protections are available to legal heirs, such as a spouse, should an account holder name a third party as POD beneficiary?**

**A:** No change is made to current protections for legal heirs. A POD transfer under HB 392 is not effective against an estate to the extent necessary to pay a surviving spouse and children the amounts allowed under law (e.g. homestead allowance, etc.). However, there is nothing in the law which prevents a person from attempting to give his or her property to whomever he/she wishes, either as an outright cash gift or by naming someone as a joint tenant in the ownership of property. Thus, although legal heirs may bring suit to enforce their legal rights against a POD beneficiary, there is no effective way to prevent this situation from arising.

11. Q: How do "transfer on death" (TOD) clauses work for investment securities?

A: A TOD clause has the same function for securities that a POD clause has for a deposit account; the ownership of the security transfers to the named beneficiary without going through probate.

12. Q: Can a TOD designation be made for all securities?

A: No. Securities held by tenants in common cannot be registered with a TOD designation in order to prevent fractional ownership rights. A TOD designation may be made only by a sole owner or multiple owners with right of survivorship.

13. Q: How can a TOD designation be made?

A: **Certificated securities:** TOD terms and the name of the beneficiary are listed on the certificate.

**Uncertificated securities:** TOD designations must be on the records of the issuing entity.

**Security Accounts:** TOD beneficiaries may be registered on the account.

14. Q: How does HB 392 affect a securities issuer?

A: No issuer is forced to register TOD designations. However, if an issuer does register TOD designations, he may set the rules for accepting them and is entitled to deal with parties on the face of any representations made. There is no obligation to look beyond such representations to guarantee their authenticity.

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March 2, 1992

Representative Dave Donley  
Chairman, House Judiciary Committee  
House of Representative  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

RE: HB 392: Revising Article  
VI, Uniform Probate Code.

Dear Representative Donley,

Representative Fran Ulmer's office has suggested that I write to you about the reasons for the preference for a surviving spouse described in the second sentence of proposed 13.33.212. The preference surfaces only in the case of a multiple party account on which three or more individuals are named as joint depositors and two of the persons named are married to one another. A typical situation would be one in which a husband and wife account was turned into a three or more party account by the addition of one or more children to the arrangement. The usual understanding regarding such an account would be that it was to be the parents' account, but that the children named could help with account business if the parents became unable to do for themselves, and the surviving children would take when both parents had passed.

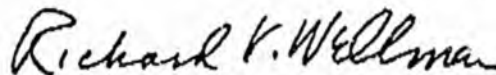
In the version of UPC Article VI presently in your statute, the comparable section divides the beneficial ownership of a deceased equally among two or more survivors. In the case of the husband's death in the case just supposed, whatever part of the account balance at his death attributable to his net contributions would be split between his widow and the one or more children who were also parties. When we considered revisions of the uniform law, we received a number of suggestions that the surviving spouse should be preferred over other survivors in the case supposed. Under modern intestacy laws, the

spouse inherits all or most of a decedent spouse's intestate property to the exclusion of other heirs. That model and the fact that spouses sharing a joint account reflecting the savings of a marital partnership almost universally intend and assume that the account balance will be wholly owned by the survivor of them when one dies, lead us to insert the spousal preference sentence. In short, the sentence aligns the law of joint accounts to what most depositors intend or would prefer.

If you are persuaded that the commissioners were wrong on this point, the removal of the second sentence of the section would leave Alaska law on the point unchanged and would enable the many more important improvements proposed by the Bill to move forward.

Please call or write if I can be of any further assistance.

Sincerely,

A handwritten signature in cursive script that reads "Richard V. Wellman".

Richard V. Wellman  
Executive Director



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(907) 586-6680

March 2, 1992

Mr. Art Peterson  
P.O. Box 20444  
Juneau, Alaska 99802

Dear Mr. Peterson

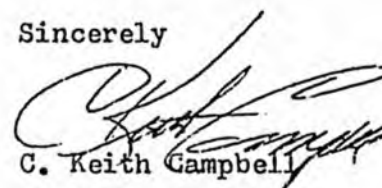
The State Legislative Committee of AARP would like to go on record in support of HB 392. In its present form, the proposed legislation meets the goals as set forth in AARP policy guidelines.

The act relating to nonprobate transfer and multiple person accounts simplifies the probate process at death and therefore meets the AARP goals.

We will have a member of our organization monitor the progress of HB 392. Thank you for bringing this piece of legislation to our attention.

c.c. slc  
cctf  
Myriam Marquez

Sincerely



C. Keith Campbell

LAW OFFICES  
DILLON & FINDLEY  
ONE SEALASKA PLAZA, SUITE 202  
JUNEAU, ALASKA 99801

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February 10, 1992

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Hon. David Finkelstein, Chair  
House Labor and Commerce Committee  
Alaska State Legislature  
P. O. Box V  
Juneau, Alaska 99811

Re: HB 392, Uniform Probate Code, art. VI  
(non-probate transfers)

Dear Rep. Finkelstein:

This letter is a follow-up to my January 28, 1992 letter to you. That letter, setting out seven points of explanation, addressed a question that arose at your committee's January 23, 1992 hearing on this bill. I would like to add a general observation in support of HE 392.

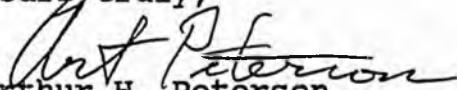
The bill does two beneficial things for Alaska law:

1. It updates part of Alaska's Uniform Probate Code, in line with the national recommendations of the National Conference of Commissioners on Uniform State Laws.
2. It provides an option, for deposit accounts and for investment securities, for people to use to help assure that their intended beneficiaries receive the intended property without the expense and delay of the probate courts.

In achieving the second feature, the bill creates no new concept, but relies on existing law. Although a person bent on disinheriting his wife and rewarding his sweetheart could apply this law toward that end (the illustration for the January question), present law already provides a variety of means for accomplishing that end, as explained in my January 28 letter. This bill, however, alone and in combination with existing law, includes a number of protections for surviving spouses.

To deny the benefits of this bill to the overwhelming majority of Alaska's population simply because someone might use its options in an undesirable way would indeed be to allow the tail to wag the dog. I urge your committee's favorable action.

Yours truly,

  
Arthur H. Peterson  
Uniform Law Comr. for Ak.

cc: Rep. Fran Ulmer

LAW OFFICES  
DILLON & FINDLEY  
ONE SEALASKA PLAZA, SUITE 202  
JUNEAU, ALASKA 99801  
TELEPHONE (907) 586-4000  
FACSIMILE (907) 586-3777

DENNIS C. BAILEY  
CAROLINE B. CRENNNA  
PAUL L. DILLON  
THOMAS W. FINDLEY  
RICHARD D. MONKMAN  
ARTHUR H. PETERSON

January 28, 1992

SITKA OFFICE:  
514 LAKE STREET  
SITKA, ALASKA 99835  
TELEPHONE (907) 747-3900  
FACSIMILE (907) 747-3990

Hon. David Finkelstein, Chair  
House Labor and Commerce Committee  
Alaska State Legislature  
P. O. Box V  
Juneau, Alaska 99811

Re: HB 392, Uniform Probate Code, art. VI  
(non-probate transfers)

Dear Rep. Finkelstein:

At your committee's hearing on this bill last Thursday, January 23, a question arose regarding the protection of creditors and spouses in the case of a person who dies after opening a deposit account with a "pay on death" (POD) clause in the account agreement. Specifically, the example was given of a married man who names his extramarital sweetheart as the POD beneficiary; upon his death, she withdraws the money from the account.

After reviewing the bill and current law again, and after talking with Professor Richard Wellman, Executive Director of the Joint Editorial Board for the Uniform Probate Code, I offer the following:

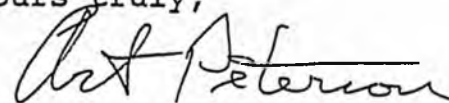
1. The bill's proposed AS 13.33.214 refers to the current law's provisions on the elective share of a surviving spouse (AS 13.11.070 -- 13.11.100), and thus protects that interest. If the sweetheart grabs the money and leaves town, she is still liable to the estate and thus to the spouse. Nevertheless, if she gets away with it, her situation is not really any different from the present one. Nothing in the law prevents a person from giving his property to his sweetheart, as an outright cash gift or by naming her as a joint tenant in the ownership of some property. There are some relationships against which the law just does not protect.

2. Current Alaska law, in AS 13.31 (enacted in 1972), provides for POD clauses for multiple-party accounts. That law does not appear to have caused any problem for unfortunate spouses and creditors. This bill merely extends the benefits of the POD arrangement (avoiding the expense and delay of probate) to single-party accounts.
3. A POD beneficiary is, in some respects, like a joint tenant in the ownership of property. A "joint tenant" has a "right of survivorship," meaning that, upon the death of one of the owners, the survivors own the dead person's share. Joint tenancy with a right of survivorship is an ancient concept in Anglo-American law. It was not created by the Uniform Probate Code.
4. The bill's proposed AS 13.33.215 provides protections to creditors and others in the case of assets outside the POD account being insufficient.
  - Subsection (a) says that a transfer resulting from a right of survivorship or POD designation is not effective against the estate in such a situation.
  - Subsection (b) makes the surviving party or beneficiary who has already been paid liable to the estate to the extent necessary to discharge any claims and allowances.
  - The one-year time limit for starting a proceeding for a claim or allowance facilitates wrapping up the estate, and is consistent with existing statutory limits for filing claims (e.g., AS 13.16.460's four-month limit).
5. The bill's proposed AS 13.33.226 provides further protection. If the financial institution has received written notice from a party, from the personal representative of the estate, or from the surviving spouse that payment under the terms of the account agreement should not be made, and the institution pays anyway, it is potentially liable.

6. Current AS 13.16.450 provides that notice to creditors must be published once a week for three successive weeks in a newspaper of general circulation in the judicial district. The bill does not change that standard notice provision. Although it is possible that the sweetheart will beat the creditor to the money in the account, she would have to be fast, since public notice will be given.
7. The bill does not require financial institutions to provide POD accounts. They retain all current options, such as joint accounts using "or" between the names of the owners of the account (so that payment may be made to A or B or C). The bill merely provides statutory answers to questions that can arise in connection with this type of account. And it does so in the form recommended by the National Conference of Commissioners on Uniform State Laws, the body that promulgated the Uniform Probate Code itself.

Thank you for considering these comments. I hope that you find them helpful, and I urge a "Do Pass" from your committee, for HB 392.

Yours truly,



Arthur H. Peterson  
Uniform Law Commissioner  
for Alaska

cc: Rep. Fran Ulmer

LAW OFFICES  
DILLON & FINDLEY  
ONE SEALASKA PLAZA, SUITE 202  
JUNEAU, ALASKA 99801  
TELEPHONE (907) 586-4000  
FACSIMILE (907) 586-3777

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Hon. David Finkelstein, Chair  
House Labor & Commerce Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Re: HB 392, amending Uniform Probate Code, art. VI,  
nonprobate transfers

Dear Rep. Finkelstein:

As a uniform law commissioner for Alaska, I support Rep. Fran Ulmer's HB 392, proposing the revised art. VI of the Uniform Probate Code (UPC).

The bill updates a part of Alaska's UPC in line with the proposal of the National Conference of Commissioners on Uniform State Laws (NCCUSL). Since Alaska has enacted the UPC, it is important to keep it up to date and to maintain the desired uniformity among the various states.

At the risk of duplicating what Rep. Ulmer has told you about the bill, I will offer a few comments.

Current Alaska law provides for the rights of survivorship at the death of a party to a multiple-person deposit account with a "pay on death" (POD) clause in the account agreement. HB 392 does two things:

1. it improves (by reorganizing, clarifying, and simplifying) art. VI's POD provisions and adds language dealing with POD clauses in single-party accounts;
2. it adds "transfer on death" (TOD) provisions for investment securities.

The purpose of both POD and TOD clauses is to achieve the parties' intended passing of the decedent's interest, without the expense

Hon. David Finkelstein, Chair  
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and delay of probate proceedings. Our current law and this bill are directed at that same purpose.

In Alaska's statute-numbering system, UPC, art. VI, currently is AS 13.31. This bill replaces AS 13.31 with AS 13.33. While the title, chapter, part, and article designations differ between our system and the Uniform Act, the section numbers are the same; for example, AS 13.33.101 is the same as UPC Section 6-101.

This bill meticulously follows the text of the official NCCUSL version. I understand from the Legislative Affairs Agency attorney who prepared the bill for Alaska introduction that the only changes are those necessitated by Alaska's style and format requirements, with a very slight rewording of sec. 6-303 (AS 13.33.303) for clarity, and the addition of definitions of "POD" and "TOD" in AS 13.33.301; no substantive change is intended.

A copy of an NCCUSL four-page synopsis of the art. VI changes is attached. The official publication of the new art. VI includes the NCCUSL's detailed section-by-section commentary. I believe that Rep. Ulmer has already furnished you a brief section-by-section description of the bill, and I will not duplicate it.

This bill reflects the continuing national effort to keep the UPC current and to improve it. HB 334, now pending in the House Judiciary Committee, proposes the Uniform Statutory Rule Against Perpetuities, and is another part of that effort. Also, I believe that the NCCUSL's revision of UPC, art. II, on wills and intestacy, will be presented to the Alaska Legislature.

For the general benefit of the people of this state, I urge your favorable action on HB 392 (as well as on those other UPC changes when they come before you).

Thank you for your consideration.

Yours truly,



Arthur H. Peterson  
Uniform Law Commissioner  
for Alaska

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# UNIFORM LAW COMMISSIONERS

676 N. St. Clair Street

Chicago, Illinois 60611

(312) 915-0195

## AMENDMENTS TO UNIFORM PROBATE CODE ARTICLE VI

### UNIFORM NONPROBATE TRANSFERS ON DEATH ACT

### UNIFORM MULTIPLE-PERSON ACCOUNTS ACT

### UNIFORM TOD SECURITY REGISTRATION ACT

#### INTRODUCTION

The Uniform Probate Code (UPC) was promulgated in 1969. One of its most popular features has been Article VI, which is entitled Nonprobate Transfers. Article VI clarifies the law of joint tenancy and tenancy in common for deposit accounts, with or without right of survivorship, and declares that pay-on-death (POD) clauses in the contracts that establish deposit accounts are nontestamentary. What this latter means is that such clauses allow the payment of the funds in an account to the beneficiary named in a POD clause even though the clause does not meet the formal requirements for a will. Further, the money is paid without passing through the estate of the decedent account holder. The expense and delay of probate is thereby avoided. Article VI has stimulated legislative activity well beyond the states that have adopted the whole UPC. Over half the states have adopted provisions in their law analogous to Article VI.

In 1989, significant amendments to Article VI of the UPC have been promulgated by the Uniform Law Commissioners (ULC).

The amendments offer substantial improvements to Article VI over the 1969 version. In addition to improved pay-on-death deposit accounts, the amended Article VI provides for transfer-on-death (TOD) investment securities - stocks, bonds, mutual fund shares, security accounts, and the like. Such securities can be transferred on death to named beneficiaries. The transfers, like POD deposit accounts, are nontestamentary and do not fall into the probate estate of the deceased holder of these securities. A whole new echelon of property can be kept out of the probate estate, therefore, and estate planning for the purpose of avoiding probate becomes easier.

These amendments to Article VI of the UPC are also presented as separate uniform acts that can be adopted independently, even if a state has not adopted the UPC. Three acts are actually created from these amendments to Article VI. They are the UNIFORM NON-PROBATE TRANSFERS ON DEATH ACT (UNPTODA), UNIFORM MULTIPLE-PERSON ACCOUNTS ACT (UMPACA) and the UNIFORM TOD SECURITY REGISTRATION ACT (UTODSRA). Some explanation, however, is necessary as to the

arrangement of these three acts. UNPTODA is the whole UPC Article VI, and contains both UMPACA and UTODSRA within it. UMPACA and UTODSRA are set out, separately, to allow states to pick up the act not duplicated in existing law. The ULC would encourage every state to adopt the full text of UNPTODA, but leaves options for states that have parallel law to any part of UNPTODA.

UPC ARTICLE VI, PARTS 1 AND 2,  
(UNPTODA) (UMPACA)

Article VI of the UPC deals primarily with multiple-party accounts in the original 1969 version. In the 1969 UPC, a "multiple party account" was defined as "any of the following types of account: (1) joint account, (ii) a P.O.D. account, or (iii) a trust account." Original Article VI governs ownership of such accounts during life, rights of survivorship at death of a party, the effect of pay-on-death provisions, creditors' rights, and the rights and liabilities of financial institutions pertaining to such accounts.

UPC Article VI, Parts 1 and 2, also known as UMPACA governs the same topics. Original Article VI is reorganized and considerably clarified, however. It also makes the use of multiple-party accounts simpler. The definition of "multiple-party account" in UMPACA for example, is different, "an account payable on request to one or more of two or more parties, whether or not mention is made of a right of survivorship." A POD account is not, therefore, automatically a multiple-party account, as it is under original Article VI. POD becomes a disposition that can be made in

either single-party or multiple-party accounts. Under original Article VI, that was not so clear.

Under UMPACA both single-party and multiple-party accounts can have POD provisions. In a single-party account, the account holder has all power over the account funds while alive. At death, the POD beneficiary takes them. In a multiple-party situation, there are options. The parties may have a right of survivorship that precedes a POD beneficiary. They may have right of survivorship and not bother with any POD beneficiary. They also can have a multiple-party account without any right of survivorship. If a party dies when there is no right of survivorship, his or her share falls into the estate. In all cases, the multiple parties have power over the funds during their lives. If there is any POD beneficiary, his or her rights commence upon the death of the last party to the account.

Original Article VI presumed right of survivorship in a multiple-party account unless there is "clear and convincing evidence of a different intention at the time the account is created." UMPACA takes a slightly different approach. It provides an easy-to-use statutory form that allows selection of any option, from a simple single-party account to a multiple-party account with or without POD designation, and, with or without right of survivorship. By checking the form, the parties choose their type of account, definitively establishing their intent.

UMPACA explicitly provides for an account with an agency desig-

nation, something that is only implied in original Article VI. An agent is a person appointed to act for the person who opens the account. An agent acts in the place of the principal who appoints the agent and binds the principal by his or her actions. UMPACA treats all agency powers as durable powers, surviving the incapacity of the account holder, unless there is specific language limiting them. When the powers of an agent are durable, they continue when the principal (account holder) becomes incapable of exercising his or her own powers. UMPACA eliminates any ambiguity as to the applicability of Article VI to such accounts.

UMPACA puts financial institutions in much the same position that they were in under original Article VI. They may deal with parties, agents, and POD beneficiaries according to the terms of the contract, and may take representations of rights to funds in deposit accounts on their face. These are the principal features of UMPACA both as a separate act and as a part of the new Article VI of the UPC, and UNPTODA.

UPC ARTICLE VI, PART 3 (UNPTODA)  
(UTODSRA)

The principal addition to new Article VI is also the subject matter of the separate UTODSRA. Prior to UTODSRA there has been no simple way to make nontestamentary dispositions of investment securities to designated beneficiaries when their owner dies. The TOD designation authorized in UTODSRA provides the simple mechanism. A TOD clause, naming a beneficiary, registered in the appropriate place vis-a-vis the particular kind of in-

vestment security accomplishes such a distribution. If the last owner (there may be multiple ownership of securities, also) of a security dies, then the ownership of the security transfers to the named beneficiary without probate.

Investment securities come in a number of different forms, and what steps become a registration is dependent upon that form. A "security" is defined in UTODSRA as "a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account." This definition should not be confused with other definitions for other purposes.

In practice there are three kinds of securities, certificated securities, uncertificated securities, and security accounts. Traditionally, stocks and bonds are represented by a certificate and appropriate transfer of the certificate transfers the security. If there is a certificate, registration means issuance of a certificate showing its ownership - if in TOD form, with the terms TOD or equivalent and the name of the beneficiary.

Some securities are traditionally uncertificated, and some, like corporate stock may be either certificated or uncertificated. Examples of commonly uncertificated securities are mutual fund shares, options contracts, and U.S. Treasury bonds. Registration with respect to these kinds of securities is accomplished by putting the TOD desig-

nation on the records of the issuing entity.

Registering TOD designations on certificates or on the books of the issuer is not a practical solution for many investors. Most investors use brokers and brokerage accounts, and never see any evidence of their ownership of securities, except in the form of brokerage statements. So it is important that the definition of "security" in UTODSRA includes "security account." This means that brokerage customers can register TOD beneficiaries on their accounts for an effective, nontestamentary disposition at death. Probably most people will use the TOD designation on their brokerage accounts as the most expeditious and efficient way to accomplish desired estate planning.

There are some other aspects of TOD registration that should be mentioned. A TOD designation may be made only by a sole owner or multiple owners with right of survivorship. Securities held by tenants in common cannot be registered with a TOD designation. This restriction is to preclude difficulty with fractional ownership rights. Like a financial institution with multiple party accounts, a securities issuer is subject to the contract and is entitled to deal with parties on the face of any representations made. There is no obligation to look beyond such representations to guarantee their authenticity. The issuer sets the rules for accepting TOD designations. No issuer is forced to register TOD designations.

## CONCLUSION

These are the principal provisions of amended UPC Article VI, and the new acts, UNPTODA, UMPACA and UTODSRA, which are derived from Article VI. Adoption in the complete form as part of the UPC or in the free-standing form of UNPTODA is the most desirable. But the existence of UMPACA and UTODSRA, separately, expands options. The full benefits of POD and TOD designations cannot be achieved unless the law in every state recognizes them in the same way. Uniformity is demanded.

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Founded in 1892, the National Conference of Commissioners on Uniform State Laws is a confederation of state commissioners on uniform laws. Its membership is comprised of 300 practicing lawyers, judges, and law professors who are appointed by each of the 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands to draft uniform and model state laws and work toward their enactment.

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