

HB

308

FISCAL NOTE

STATE OF ALASKA
 1996 LEGISLATIVE SESSION

Revision Date: 1/15/96 Dept. Affected: Department of Law
 Title: ...relating to the Uniform Probate Code, including BRU: Civil Division
nonprobate transfers, guardianships... Component: General Legal Services
 Sponsor: Representative Parnell
 Requester: House Judiciary Committee COMPONENT SERIAL NO. 2087

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill repeals and reenacts some of the state's laws on probate to conform to the Uniform Probate Code recommended by the National Conference of Commissioners on Uniform State Laws. The principal subject matter is succession to property at an owner's death, as controlled by will, intestacy statutes, and the probate process. Aspects of non-probate transfers at death by contract, trust, or other lifetime arrangement are also covered as are guardianships and other protective arrangements for minors and others incapable of self-management. The bill integrates nonprobate transfers with the Uniform Act, thus allowing the use of pay-on-death clauses in joint tenancy deposit account contracts, avoiding the expense and delay of probate. The probate procedures in the amended provisions were designed to meet the public's demand for quicker and less expensive settlements of decedents' estates. The bill will not have a fiscal impact on the Department of Law, because it primarily deals with matters between private parties and it should make the settlement of estates less expensive and simpler for survivors.

Prepared by: Richard I. Peques, Director
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: 1/15/96
 Date: 1/15/96

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SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 2/12/96

FURTHER:

~~Date of 5-Day Notice:~~
~~in accordance with Uniform Rule 23)~~

DATE TURNED
 INTO OFFICE: 3-29-96

The Judiciary Committee considered CS FOR HOUSE BILL NO. 308(JUD)

Relating to the Uniform Probate Code, including nonprobate transfers, guardianships, trusts, multiple-party accounts and relating to the Uniform Simultaneous Death Act.

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to the _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical title

new: SCR# _____

ENDING DQ PASS	DP	OTHER RECOMMENDATIONS	R	DNP	A
		<i>John Brennan</i>	<input checked="" type="checkbox"/>		
		<i>Nike Miller</i>	<input checked="" type="checkbox"/>		
CHAIR: <i>Adrian L. Taylor</i> ✓		CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
<i>Law - Civil Div</i>	<i>1/15/96</i>	<input checked="" type="checkbox"/>	

Alaska State Legislature

REPRESENTATIVE
SEAN R. PARNELL



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While in Juneau
STATE CAPITOL
JUNEAU, ALASKA 99801-1182
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HOUSE OF REPRESENTATIVES

SPONSOR STATEMENT House Bill 308

"An act relating to the Uniform Probate Code, including non probate transfers, guardianships, trusts, and multiple-party accounts; relating to the Uniform Simultaneous Death Act; amending Alaska Rule of Probate Procedure 5; and providing for an effective date."

In an effort to clear up confusion and alleviate unneeded litigation and legal fees to the public, the National Conference of Commissioners on Uniform State Law (NCCUSL) developed a Uniform Probate Code in 1969. Alaska Adopted this code in 1972. Since that time, the NCCUSL continued to study and improve existing uniform codes and in 1990 issued new recommendations for two sections (2 & 6) of the Uniform Probate Code, which have become dated through changes in societies financial and family practices (for example the proliferation of divorces and second families). Additionally, HB 308 repairs glitches in the code discovered since its' drafting in 1969.

HB 308 adopts the NCCUSL's newly revised Uniform Probate Code with a few modifications. The provisions contained in this bill were reviewed in depth by Alaska's uniform law commissioners and by the members of the Alaska Bar Association's Probate and Estate Planning Section. In drafting this legislation, any changes from current law which could not be agreed upon by interested parties were set aside for discussion in separate legislation.

Eight states (States with Community Property laws do not need this) have already adopted the new Uniform Probate Code and at least five others are considering them this year. The Alaska Code Commissioners and the members of the Alaska Bar Association's Probate and Estate Planning Section agreed on some changes so that the new code would dovetail with current Alaska Law. One issue could not be agreed on and lacking any consensus was left out.

I respectfully request your support.

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February 6, 1996

The Honorable Sean Parnell
Alaska House of Representatives
Room 515, State Capitol
Juneau, AK 99801-1182

HAND-DELIVERED

Re: CSHB 308 (JUD), Update of Uniform Probate Code, Art. II
(wills, intestacy, etc.) and Art. VI (non-probate transfers)

Dear Representative Parnell:

Since CSHB 308 (JUD) is scheduled for a floor vote in the House tomorrow, I wanted to express, on behalf of Alaska's uniform laws delegation, my strong support for the bill. It is an excellent measure, updating Alaska's Uniform Probate Code (UPC) in many significant ways. Here's a synopsis.

The bill is based on the amendments promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL)¹ and has been favorably studied by the Probate and Estate Planning Section of the Alaska Bar Association for three years. It is supported by the American Bar Association and the American Association of Retired Persons.

BACKGROUND:

In 1972, Alaska enacted the UPC, which had been promulgated in 1969 by the NCCUSL. Although there have been a few relatively minor amendments of it in the intervening decades, this bill presents the NCCUSL's first comprehensive updating of Article II and its revision of Article VI. Since Alaska has enacted the UPC, we need to keep up-to-date with national developments.

The national version of the UPC consists of seven "articles." In Alaska's numbering system, those articles have become "chapters." This bill amends Article II (AS 13.11, which the bill repeals and replaces with AS 13.12) and Article VI (AS 13.31, which the bill repeals and

¹ A nonpartisan organization in its 104th year, comprised of more than 300 state and federal judges, law professors, and governmental and private law practitioners representing all 50 states, Guam, Puerto Rico, and the District of Columbia. It drafts and promulgates Uniform Acts on subjects for which interstate uniformity is necessary.

replaces with AS 13.33). It includes some compatibility amendments in Article I (AS 13.06) and Article III (AS 13.16). The section numbers are the same in both versions. The subjects are:

- AS 13.06 -- General Provisions
- AS 13.12 -- Intestacy, Wills, and Donative Transfers
- AS 13.16 -- Probate of Wills and Administration
- AS 13.33 -- Nonprobate Transfers.

THE ARTICLE II CHANGES:

The bulk of the bill presents the Article II revision. In addition to the basic wills and intestacy provisions, Article II includes several components² that you might occasionally hear referred to independently.

The general thrust of the Article II changes is to update that article and to provide protection for surviving spouses in intestate succession. The NCCUSL summarizes the revision as follows:

This revision reflects a recommitment of the UPC to family protection, to reducing the risk of technical invalidation of wills, and to harmonization of rules of presumed intention for probate and nonprobate transfers of property at death. The 1969 UPC II served the first two of these three purposes; twenty years' experience with the original provisions and changes in the makeup of American families during recent decades have pointed the way to new improvements in earlier formulations.

Essentially, there are three motivations behind the revision: (1) over 20 years' experience with implementing the original version and dealing with a variety of interpretation questions that have arisen; (2) the statistics on the increasing number of American families involved in divorce, remarriage, and children with multiple families; and (3) evolving notions of how to provide for decedants' survivors.

THE ARTICLE VI CHANGES:

UPC Article VI, on nonprobate transfers, 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. This means that such clauses allow the payment of the money in an account to the beneficiary named in a POD clause even though the clause does not meet the formal requirements for a will. The

²

- Testamentary Additions to Trusts Act (1991), UPC sec. 2-511 (AS 13.12.511)
- Simultaneous Death Act (1991), UPC sec. 2-702 (AS 13.12.702);
- Disclaimer of Property Interests Act (1990), UPC sec. 2-801 (AS 13.12.801);
- International Wills Act (1977), UPC art. II, part 10 (AS 13.12.912 -- 13.12.921).

money is paid without passing through the estate of the decedent account holder. The expense, frustration, and delay of probate is thus avoided.

The amendments in this bill offer substantial improvements over the original version. In addition to improved pay-on-death deposit accounts, the amended article provides for transfer-on-death (TOD) investment securities -- stock, bonds, mutual fund shares, security accounts, and the like. They, too, are then nontestamentary and need not go through probate, thus further avoiding unnecessary expense, frustration, and delay.

CONCLUSION:

This bill makes a number of improvements, addresses the concerns that have developed in a changing society, and helps keep Alaska law current with that in the rest of the country¹. If you would like to have additional information, let me know. Or you could contact the leading national authority on the UPC, Professor Richard V. Wellman, of the University of Georgia School of law.

Sincerely,



Arthur H. Peterson
Uniform Law Commissioner
for Alaska

cc: Professor Richard V. Wellman
Rest of Alaska's ULC Delegation:
Hon. Jay A. Rabinowitz
W. Grant Callow, Esq.
Tamara Brandt Cook, Esq.
L. S. Kurtz, Jr., Esq.
Deborah E. Behr, Esq.

¹ CSHB 308 (JUD) contains nine variances (in addition to some minor wording changes to accommodate Alaska's drafting style and format requirements) from the national version -- seven incorporated into the original bill, and two adopted by the House Judiciary Committee. These variations appear at:

- proposed AS 13.06.050(29) (page 6 of the bill);
- proposed AS 13.12.202 (page 14);
- proposed AS 13.12.502(c) (deleted from page 31);
- proposed AS 13.12.503 (deleted from page 31);
- proposed AS 13.12.515, two changes (page 37);
- proposed AS 13.12.606(a)(5) and (6) (deleted from page 42);
- proposed AS 13.12.803 (page 60);
- proposed AS 13.33.101(b) (page 79).

Notwithstanding the desirability of complete uniformity, the NCCUSL and Alaska's uniform laws delegation warmly endorse this bill, containing these relatively minor variances.

HARTIG, RHODES, NORMAN, MAHONEY & EDWARDS

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October 13, 1995

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REPLY TO:
 Anchorage

Representative Brian Porter
 Chairman, House Judiciary Committee
 Alaska State Legislature
 716 West Fourth Avenue
 Anchorage, AK 99501

RE: Revisions to Alaska Uniform Probate Code
 H.B. 308

Dear Representative Porter:

It is my understanding that there will be a hearing at 1:00 p.m., Monday, October 16, 1995, to hear testimony regarding H.B. 308.

As past chairman of the Alaska Bar Association's Probate and Estate Planning Committee, a current director of the Anchorage Estate Planning Council, and a practitioner who practices exclusively in the estate planning, probate and tax areas, I would like to express my enthusiastic support for the changes incorporated by H.B. 308. The bill, as it is currently drafted, goes a long way to improving some of the concerns of the current probate code as adopted in Alaska.

If you have any question, please do not hesitate to contact me.

Sincerely,

HARTIG, RHODES, NORMAN,
 MAHONEY & EDWARDS, P.C.

By: 

Peter B. Brautigam

PBH:paz
 EXCHGAPPORTER.LTR

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October 3, 1995

Representative Sean Parnell
Alaska State Legislature
716 W. 4th Ave.
Anchorage, AK 99501

Re: Support for House Bill 308
Uniform Probate Code Revisions

Dear Representative Parnell:

Please consider this letter an expression of my support for the passage of House Bill 308. As an estate planning and probate legal practitioner in this State since 1977, I have noted a number of difficulties that clients have had through the years with the current Probate Code. House Bill 308 is the type of legislation that helps resolve some of those problems that have been encountered by families of decedents and at the same time relieves a decedent's heirs of a lot of aggravation and excessive expenditures by clearing up a number of problems that often led to protracted probate proceedings and/or litigation.

Although I am the current Chairperson of the Alaska State Bar Estate Planning and Probate Section, I write my letter of support of House Bill 308 solely as a private practitioner and not as a Chairperson or member of any Bar Section.

I appreciate your support of the Bill, as well as all of your efforts expended in these regards over the past several years.

Sincerely,

Law Offices of Russell A. Nogg

By: 
Russell A. Nogg

RAN:jn

Alaska Women's Lobby

416 Harris Street, Suite 208
Juneau, Alaska 99801
(907) 463-6744 phone/(907) 586-2680 fax

Representative Sean Parnell
Alaska House of Representatives
State Capitol, Room 515
Juneau, Alaska

January 30, 1996

Dear Representative Parnell,

This letter is in reference to HB308, the Uniform Probate Code and to urge you to consider an amendment to the Uniform law.

We are concerned about the changes proposed to the elective share of the surviving spouse. The Uniform law would change that share from one-third of the estate and homestead and jointly held property to a share percentage determined by the length of time the spouse and the decedent were married to each other.

We would oppose that change and in fact have supported increasing spousal entitlement from one-third to one-half in contested wills. A proposal to do that was introduced by the Governor for the Alaska Women's Commission in 1985.

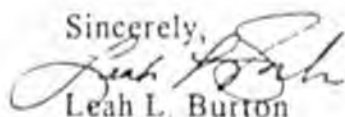
Historically, it is women more than men who have been disinherited since men more often than women have controlled the bulk of economic wealth in a marriage. Women are also most likely to find themselves in poverty as they grow older. Women over the age of 65 have the highest incidence of poverty of any age group of either sex.

Marriage is a mutual undertaking. The contributions a spouse provides to a marriage such as time, labor, emotional support, financial income, and other resources, should not be diminished because the partner has died.

We believe the surviving spouse has an inherent economic interest in the other spouse's estate and should receive at least one-half of the remaining estate that they built together.

We hope that you will consider amending the bill to delete the proposed schedule of payments based on the length of time the spouses were married and consider instead providing complete equity to the surviving spouse.

Sincerely,



Leah L. Burton

for the Alaska Women's Lobby

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Juneau, Alaska 99801-2105

MEMORANDUM

January 31, 1996

SUBJECT: Sectional summary of CSHB 308(JUD) revising the Uniform Probate Code (Work Order No. 9-LS0898F)

TO: Representative Sean Parnell
Attn: Richard

FROM: *TB*
Theresa L. Bannister
Legislative Counsel

The following is a sectional summary of the above described bill draft. As a preliminary matter, note that a sectional summary of a draft should not be considered an authoritative interpretation of the draft and the draft itself is the best statement of its contents.

Section 1. Establishes six rules to be used in addition to the Alaska Rules of Evidence to determine death and status

Section 2. Provides definitions for certain terms in the state's probate code.

Section 3. Adds a new chapter to the state's probate code to replace AS 13.11, the current chapter on intestate succession and wills, which is repealed by sec. 9 of the bill. The chapter relates to intestacy, wills, and donative transfers. Article 1. Sections 13.12.101 - 13.12.114 relate to intestate succession.

Sec. 13.12.101 states that a decedent's estate that is not effectively disposed of by will passes by intestate succession to the decedent's heirs under the state's probate code, except as modified by the decedent's will. Authorizes the use of a will to exclude or limit the persons to inherit the property passing by intestate succession, and indicate how the property passes in that situation.

Sec. 13.12.102 indicates how much of the intestate estate, including inalienable Native corporation stock, that the spouse of a decedent receives in various situations

Sec. 13.12.103 indicates when and how much of an intestate estate the heirs other than the spouse receive in various situations

Representative Sean Parnell

January 31, 1996

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Sec. 13.12.104 requires an individual to survive the decedent by 120 hours to be considered an heir for the purposes of homestead allowance, exempt property, and intestate succession. Requires the survival to be established by clear and convincing evidence. Prevents these requirements from applying if the result is that the state takes the intestate estate.

Sec. 13.12.105 gives property in the intestate estate to the state if there isn't a taker under this chapter, subject to statutes on unclaimed property and escheated real property.

Sec. 13.12.106 establishes the rules for determining the heirs and allocating shares of an intestate estate when the estate passes "by representation" to the decedent's descendants or to the descendants of the decedent's deceased parents or grandparents.

Sec. 13.12.107 states that relatives of the half-blood inherit as if they were of the whole blood.

Sec. 13.12.108 treats an individual in gestation at a particular time as living at that time if the individual lives 120 hours or more after birth.

Sec. 13.12.109 states that property given to an heir before the decedent's death is not charged as an advance against the heir's share in the decedent's intestate estate unless certain evidence exists to that effect. Establishes how "advanced" property is valued. Prevents, with one exception, the advance from being taken into account for the intestate estate if the recipient of the advanced property does not survive the decedent.

Sec. 13.12.110 states that a debt owed to a decedent is not charged against the intestate share of anyone but the debtor. States that the debt is not considered when computing the intestate share of the debtor's descendants if the debtor fails to survive the decedent.

Sec. 13.12.111 states that being an alien or claiming a share through an alien does not disqualify an individual to take as an heir.

Sec. 13.12.113 states that an individual related to the decedent through two lines takes only a single share, which is based on the relationship that yields the larger share.

Sec. 13.12.114 considers, for the purpose of intestate succession by, through, or from a person, that an individual is the child of the individual's natural parents--without regard to their marital status--except as provided otherwise in the section. Provides that the parent and child relationship may be established under AS 25.20.050. States that an adopted child is the child of the adopting parents and not the natural parents, except as provided in the section when the child is adopted by the spouse of a natural parent. Precludes inheritance from or through a child by the natural parents or their kindred unless the natural parents satisfy certain conditions. This section governs if it conflicts with two other statutes relating to legitimation and the effect of adoption decrees.

Representative Sean Parnell

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Article 2. Secs. 13.12.201 - 13.12.214 relate to the elective share of a surviving spouse.

Sec. 13.12.201 defines terms for the article.

Sec. 13.12.202 entitles a surviving spouse to take an elective share amount equal to one-third of the augmented intestate estate. The election is subject to the limitations and conditions in Article 2. Provides for a supplemental elective share if the result of certain calculations is less than a certain amount. Provides that the surviving spouse's homestead allowance, exempt property, and family allowance are in addition to the elective share and supplemental elective share. Makes the right to take an elective share of property in this state subject to the law of the decedent's domicile at death, if the decedent dies domiciled in another state.

Sec. 13.12.203 explains what property constitutes the augmented estate: the net probate estate, nonprobate transfers to others, nonprobate transfers to the surviving spouse, the surviving spouse's property, and the surviving spouse's nonprobate transfers to others.

Sec. 13.12.204 states that the net probate estate is included in the augmented estate and identifies what property the net probate estate covers.

Sec. 13.12.205 states that the decedent's nonprobate transfers to others are included in the augmented estate and lists what property is included in this category.

Sec. 13.12.206 states that the decedent's nonprobate transfers to the surviving spouse are included in the augmented estate and identifies what property is included in this category.

Sec. 13.12.207 states that the surviving spouse's property and nonprobate transfers to others are included in the augmented estate and identifies what property is included in this category. Indicates how and when the property is valued and what reductions are allowed.

Sec. 13.12.208 indicates when property is excluded from the decedent's nonprobate transfers to others. Provides some guidelines for reducing and including property in the augmented estate and for handling property covered by overlapping provisions.

Sec. 13.12.209 prioritizes the property sources from which the surviving spouse's elective share is payable.

Sec. 13.12.210 identifies which recipients of the decedent's nonprobate transfers to others and which donees of the recipients are liable to make a contribution toward the satisfaction of the elective share and how the contribution may be made. Explains what happens if a provision of this Article 2 is preempted by federal law with respect to property included in the decedent's nonprobate transfers to others.

Representative Sean Parnell

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Sec. 13.12.211 establishes the procedure, including time limitations and notices, for making and enforcing the election. Allows the surviving spouse to obtain an extension of the time for making the election. Allows the surviving spouse to withdraw a demand for an elective share until a set time.

Sec. 13.12.212 limits the right of election to a surviving spouse who is living when the petition for the elective share is filed in the court. Authorizes the exercise of the right by a conservator, guardian, or agent of the surviving spouse. Directs that certain elective share property be placed in a custodial trust for the benefit of the surviving spouse, if the spouse is incapacitated. Establishes certain exceptions to the operation of the Alaska Uniform Custodial Trust Act (AS 13.60) for this situation.

Sec. 13.12.213 authorizes a surviving spouse to waive the right of election and other rights, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the surviving spouse. Establishes when a waiver is not enforceable.

Sec. 13.12.314 provides that a third party is not liable for a good faith payment or transfer of property claimed under an election, if the payment or transfer is made before the third party receives written notice from the surviving spouse about the election. Holds that the third party is liable for payments made or other actions taken after receiving written notice about the election. Establishes procedures relating to the notice, to third party payment or deposit of the property in court, and to court handling of property deposited with it.

Article 3. Sections 13.12.301 - 13.12.302 relate to the situation where the spouse and children are not provided for in the will.

Sec. 13.12.301 provides that a surviving spouse who married the testator after the execution of the testator's will is entitled to receive not less than the share the spouse would have received if the testator had died intestate as to a certain identified portion of the estate, except in certain circumstances. Establishes that devises made by the will to the testator's surviving spouse are applied first to satisfy the share provided by this section, and that certain other devises abate as provided in AS 13.16.540.

Sec. 13.12.302 establishes how children born or adopted after the execution of the will share in the estate if the testator failed to provide for them in the will. Provides that a child not provided for in the will because the testator believed that the child was dead is entitled to share in the estate as if the child were an omitted after-born or after-adopted child.

Article 4. Sections 13.12.401 - 13.12.405 address exempt property and allowances.

Sec. 13.12.401 indicates that Article 4 applies only to the estate of a decedent who dies domiciled in this state. Provides that rights to homestead allowance, exempt property, and

Representative Sean Parnell

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family allowance for a decedent who dies not domiciled in this state are governed by the law of the decedent's domicile at death.

Sec. 13.12.402 provides a homestead allowance to the surviving spouse or, if there is not a surviving spouse, to the minor and dependent children of the decedent. Exempts from and gives priority to the homestead allowance over all claims against the estate. Makes the homestead allowance in addition to other shares passing to the surviving or minor or dependent children by the decedent's will, except as otherwise provided, by intestate succession, or by elective share.

Sec. 13.12.403 states that, in addition to the homestead allowance, the surviving spouse or, if there is no surviving spouse, the surviving children are also entitled from the estate a certain value in certain property. Gives this exempt property priority over all other claims against the estate, but allows for abatement under certain conditions. Indicates that the exempt property rights under this section are in addition to a benefit or share passing to the spouse or children by the will, unless otherwise provided, by intestate succession, or by way of elective share.

Sec. 13.12.404 provides the surviving spouse and certain minor children with a reasonable allowance from the estate for their maintenance during the administration of the estate. The family allowance may not last longer than one year if the estate is inadequate to discharge allowed claims. Establishes how the allowance may be paid and to whom it is paid. Exempts the allowance from and gives it priority over all claims except the homestead allowance. Provides that the family allowance is not chargeable against the share of the surviving spouse or children by the decedent's will, unless otherwise provided, by intestate succession, or by way of elective share. Death terminates the right to what has not yet been paid.

Sec. 13.12.405 establishes, with one exception, that the surviving spouse, guardians of minor children, or adult children may select property of the estate to satisfy the homestead allowance and the exempt property entitlement. Authorizes the personal representative to execute the appropriate documents to distribute the selected property. Authorizes the personal representative to determine the family allowance in a lump sum up to a certain amount or periodic installments not exceeding a certain monthly amount for a year. Authorizes the personal representative to disburse funds for the homestead allowance and the family allowance. Allows the personal representative or an aggrieved person to petition the court for appropriate relief.

Article 5. Secs. 13.12.501 - 13.12.517 address wills, will contracts, and the custody and deposit of wills.

Sec. 13.12.501 establishes who may make a will

Representative Sean Parnell

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Sec. 13.12.502 establishes the requirements for a will, including its execution and witnessing. Validates a noncomplying will as a holographic will under certain conditions.

Sec. 13.12.504 provides for a will to be simultaneously executed, attested, and made self-proving. Provides the form that the will must be substantially in order to qualify. Allows an attested will to be made self-proved after its execution at any time by the acknowledgment of the will by the testator and the affidavits of the witnesses in substantially the form provided in the section. Validates certain signatures affixed to a self-proving affidavit attached to the will.

Sec. 13.12.505 provides that an individual who is generally competent to be a witness may witness a will. Prevents the invalidation of a will or a provision of a will because an interested person signed the will.

Sec. 13.12.506 validates a will if it is executed in compliance with AS 13.12.502 or with the law of another jurisdiction having a specified relationship to the execution of the will or to the decedent.

Sec. 13.12.507 indicates what actions and writings revoke or supplement a will.

Sec. 13.12.508 provides, with certain exceptions, that a change of circumstances does not revoke all or part of a will.

Sec. 13.12.509 establishes the principles for determining when all or part of a revoked will is revived.

Sec. 13.12.510 authorizes the incorporation of a writing into a will by the will's reference to the writing if the language of the will manifests this intent and if the will sufficiently describes the writing.

Sec. 13.12.511 allows a will to validly devise property to certain qualifying trusts. Provides that such a devise is not invalid because the trust is amendable or revocable or because the trust is amended after the will's execution or the testator's death. Provides that, unless provided otherwise by the will, the devised property becomes part of the trust and is administered under the trust's governing instrument. States that, unless the will provides otherwise, the revocation or termination of the trust before the testator's death causes the devise to lapse.

Sec. 13.12.512 allows a will to refer to dispose of property by reference to acts and events, including the execution or revocation of another individual's will, that have significance apart from their effect on the will.

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Sec. 13.12.513 allows a will to devise property by referring to a written statement or list disposing of the items, except money. Establishes how a writing qualifies for this purpose.

Sec. 13.12.514 indicates how a contract to make a will or a devise, or not to revoke a will or devise, or to die intestate is established. States that the execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will(s).

Sec. 13.12.515 allows a will to be deposited with a court for safekeeping, under the rules of the court. Establishes certain rules for the confidentiality, delivery, and examination of the will.

Sec. 13.12.516 directs the custodian of a will, after the testator's death and on request of an interested person, to deliver the will with reasonable promptness to a person able to secure its probate or, absent such a person, to the appropriate court. Holds a person who wilfully fails to so deliver the will liable for damages. Subjects to contempt of court a person who wilfully refuses or fails to deliver a will after a court order.

Sec. 13.12.517 states that a penalty clause for contesting a will is unenforceable if probable cause exists for the contest.

Article 6 - Secs. 13.12.601 - 13.12.609 address the rules of construction applicable only to wills.

Sec. 13.12.601 states that certain rules of construction control the construction of a will in the absence of a finding of a contrary intent.

Sec. 13.12.602 states that a will may pass all property that the testator owned at death and all property acquired by the estate after the testator's death.

Sec. 13.12.603 establishes the rules for the passage of property when certain devisees fail to survive the testator.

Sec. 13.12.604 provides that, with certain exceptions, a devise that fails becomes part of the residuary estate. Establishes how the residuary estate passes when the share of a residuary devisee fails, if the residue is devised to two or more persons.

Sec. 13.12.605 provides that if a testator's will devises securities then owned by the testator, the devise includes certain additional securities owned by the testator at death if acquired after the will's execution as a result of the testator's ownership of the original securities. States that pre-death cash distributions with respect to a described security are not part of the devise.

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Sec. 13.12.606 provides that a specific devisee is entitled to the specifically devised property and to certain property connected with the specifically devised property, except in certain circumstances. Provides for the devisee to receive a general cash devise rather than the specific property under certain conditions.

Sec. 13.12.607 provides that a specific devise passes subject to any mortgage interest, without the right of exoneration, even if the will contains a general directive to pay debts.

Sec. 13.12.608 states that, absent a requirement that a power of appointment be exercised by a reference or by an express or specific reference to the power, a general residuary clause or a general disposition of all the testator's property expresses an intention to exercise the testator's power of appointment only under certain conditions.

Sec. 13.12.609 provides that property given by a testator during the testator's lifetime satisfies a devise only under certain circumstances. Establishes a valuation date when there is partial satisfaction. Indicates how the gift is treated if the devisee fails to survive the testator.

Article 7. Secs. 13.12.701 - 13.12.711 address the rules of construction applicable to wills and other governing instruments.

Sec. 13.12.701 indicates which rules of construction control the construction of a governing instrument.

Sec. 13.12.702 requires that, except for certain listed situations, an individual must survive an event, which includes the death of an individual, by 120 hours in order to be considered to have survived the event. The survival must be established by clear and convincing evidence. Establishes other rules relating to survivorship. Establishes when a third party is liable for payments or transfers made to persons not entitled to the payment or transfer or for having taken other action in reliance on a beneficiary's apparent entitlement. Establishes the procedure for handling a claimed lack of entitlement under this section. Establishes when a purchaser or recipient is required to return the payment, property, or benefit, or is personally liable for the amount of the payment or the value of the property or benefit. Indicates how to proceed if all or part of this section is preempted by federal law with respect to a payment, an item of property, or a benefit.

Sec. 13.12.703 provides that, except in certain situations, the meaning and legal effect of a governing instrument is governed by the local law of the state selected in the instrument.

Sec. 13.12.704 establishes a presumption relating to the intention of the donor of a power of appointment.

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Sec. 13.12.705 provides that adopted individuals and individuals born out of wedlock, and their respective descendants if appropriate to the class, are included in class gifts and other terms of relationship in accordance with the rules for intestate succession. Indicates what certain terms of relationship include and exclude. Indicates which children are included in certain dispositive provisions made by persons who are not the natural or adopting parents of the children.

Sec. 13.12.706 establishes certain rules governing inheritance when certain beneficiaries fail to survive the decedent. Establishes when a payor is liable for making a payment under the terms of the beneficiary designation when a substitute gift is claimed under the section. Establishes the procedure to be followed for the handling of claims to substitute gifts. Establishes when a purchaser of property or a recipient of a payment or other property is obligated to return the payment, property, or benefit, or liable for the amount of the payment, or value of the property or benefit when there is a claimant for a substitute gift. Establishes what happens if all or a part of this section is preempted by federal law with respect to particular property.

Sec. 13.12.707 states that a future interest under the terms of a trust is contingent on the beneficiary surviving the distribution date. Establishes certain rules for inheritance if the person fails to survive.

Sec. 13.12.708 provides that if a class gift using certain words does not specify the manner of distribution, the property is distributed among the class members who are living when the interest is to take effect in such shares as they would receive if the designated ancestor had died intestate owning the property.

Sec. 13.12.709 provides the rules for distributing property "by representation," "per capita at each generation," or "per stirpes."

Sec. 13.12.710 abolishes the "worthier title" doctrine. Provides that certain language does not create a reversionary interest in the transferor.

Sec. 13.12.711 provides how certain present or future distributions or interests are to pass.

Article 8. Sections 13.12.801 - 13.12.804 supply general provisions concerning probate and nonprobate transfers.

Sec. 13.12.801 allows a person to disclaim the receipt of property by delivering or filing a written disclaimer under this section. Establishes a time limit and procedure for handling the disclaimer in testamentary and nontestamentary situations. Addresses disclaimers by joint tenants and tenants by the entirety. If the disclaimed property is real property or an interest in real property, allows a copy of the disclaimer to be recorded. Indicates what a disclaimer must contain and that it must be signed. Indicates how a disclaimed interest, testamentary

or nontestamentary, passes. Establishes that a disclaimer or a written waiver of the right to disclaim binds the disclaimant or person waiving and all persons claiming through or under either of them. Indicates that certain activities bar the right to disclaim. Indicates that this section does not abridge the right of a person to waive, release, disclaim, or renounce property under another statute. Provides a transition section for disclaiming certain property interests existing on the effective date of this Act

Sec. 13.12.802 establishes how a divorce, annulment, or decree of separation affects the establishment of a "surviving spouse." Excludes certain persons from the status of "surviving spouse."

Sec. 13.12.803 establishes the effect of homicide on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designations.

Provides that an individual who feloniously kills the decedent forfeits all benefits under this chapter with respect to the decedent's estate. If the decedent died intestate, the estate passes as if the killer disclaimed the killer's intestate share.

States that felonious killing revokes certain revocable dispositions, provisions, and nominations, and severs the interests of the decedent and the killer in certain jointly held property. Provides that a severance doesn't affect the rights of certain third parties acquiring the property.

Provides that provisions of a governing instrument are given effect as if the killer disclaimed all provisions revoked by this section or, in a certain case, as if the killer predeceased the decedent

States that a wrongful acquisition of property or interest by a killer not covered by this section is to be treated under the principle that a killer may not profit from the killer's wrong

States that, after exhaustion of appeals, a conviction establishing criminal accountability for the felonious killing of the decedent conclusively establishes the convicted individual as the decedent's killer for the purposes of this section. Without a conviction, the court is to determine upon request whether the individual would be found criminally accountable for the felonious killing, and, if so, the individual is considered the decedent's killer for the purposes of this section.

Establishes when a payor or other third party is liable for having made a payment or transferred an item of property or other benefit to a beneficiary designated in a governing instrument affected by a felonious killing, or for having taken other action in reliance on the validity of the instrument. Establishes when a person who purchases property or receives a payment or other property in satisfaction of a legally enforceable obligation is obligated

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to return the payment, property, or benefit, or is liable for the amount of the payment or value of the property or benefit, to the person entitled to it under this section.

Establishes the procedure for handling claims of a forfeiture or revocation under this section. Establishes what happens when this section is preempted by federal law with respect to a payment, or to property or other benefit, covered by this section.

Allows a court, under certain circumstances, to set aside certain provisions of this section in the case of a felonious killing that was unintentional.

Sec. 13.12.804 establishes, except in certain circumstances, that a divorce or an annulment revokes certain dispositions, provisions, and nominations, and severs the interests of the former spouses in property held by the spouses as joint tenants with the right of survivorship. Indicates that a severance does not affect certain third-party interests in property acquired under certain conditions. States that provisions are given effect as if the former spouse and relatives of the former spouse disclaimed all the provisions revoked by this section, or, in a certain case, died immediately before the divorce or annulment. States that provisions revoked solely by this section are revived by remarriage to the former spouse or nullification of the divorce or annulment. States that a change of circumstances other than as described in this section and in sec. 13.12.805 does not effect a revocation. Establishes the liability of property payors, payees, transferors, and transferees in these circumstances. Establishes the procedure for handling claims under this section based on divorce, annulment, or remarriage. Indicates the effect of federal preemption on the section.

Article 9 Sections 13.12.907 - 13.12.921 contain provisions relating to honorary trusts, trusts for pets, and international wills.

Sec. 13.12.907 authorizes the performance of certain honorary trusts for 21 years. Validates, except as otherwise provided in this section, trusts for the care of a domestic or pet animal and the animal's offspring, indicates when a trust for a pet terminates, and provides for a liberal construction of the governing instrument. Establishes some rules for honorary and pet trusts.

Sec. 13.12.912 validates as to form a will that is made in the form of an international will complying with secs. 13.12.912 - 13.12.921, irrespective of where the will is made, where the assets are located, and the nationality, domicile, or residence of the testator. States that the invalidity of a will as an international will does not affect its formal validity as a will of another kind. States that the sections on international wills do not apply to the form of testamentary dispositions made by two or more persons in one instrument.

Sec. 13.12.913 establishes the formal requirements for an international will.

Sec. 13.12.914 establishes additional formal requirements for international wills.

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Sec. 13.12.915 requires the authorized person to attach to an international will a certificate to be signed by the authorized person establishing that the requirements of secs. 13.12.912 - 13.12.921 for valid execution of an international will have been complied with. Requires the person to keep a copy of the certificate and to deliver another to the testator. Establishes the form that the certificate must substantially comply with.

Sec. 13.12.916 establishes that, in the absence of contrary evidence, the certificate of the authorized person is conclusive of the formal validity of the will. Indicates that the absence or irregularity of the certificate does not affect the formal validity of the will.

Sec. 13.12.917 states that an international will is subject to the ordinary rules of revocation of wills.

Sec. 13.12.918 describes the source and desired construction of the international will provisions.

Sec. 13.12.919 indicates which individuals qualify as authorized persons for the purposes of international wills.

Sec. 13.12.920 provides for the registration of information on international wills. Directs the Department of Commerce and Economic Development to establish the registry system. Establishes certain rules regarding the registry system, what information may be registered, and the confidentiality and communication of the information.

Sec. 13.12.921 provides definitions for the sections on international wills.

Section 4. States that a will must be declared to be valid in certain ways in order for it to be effective to prove the transfer of property or to nominate an executor.

Section 5. Establishes a time limit for starting probate, testacy, and appointment proceedings. Provides certain exceptions to the time limit. States that the time limits do not apply to construe probated wills or to determine the heirs of an intestate person.

Section 6. Makes conforming and technical amendments.

Section 7. Makes technical amendments.

Section 8. Makes a conforming amendment.

Section 9. Makes conforming and technical amendments. Also provides under certain circumstances for the distribution of the residuary estate in any equitable manner.

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Section 10. Alters one reference to cover any "governing instrument," not just probated wills.

Section 11. Makes technical amendments.

Section 12. Establishes a new chapter on nonprobate transfers. Sec. 13.33.101 is Article 1. Secs. 13.33.201 - 13.33.227 are Article 2, which relates to multiple-person accounts. Secs. 13.33.301 - 13.33.310 are Article 3, the Uniform Transfer-on-Death Security Registration Act.

Sec. 13.33.101 states that provisions for nonprobate transfer of property on death in certain written documents are not testamentary. Identifies certain provisions that are covered by the section. Allows certain non-testamentary documents to designate a trustee named or to be named in a will as a beneficiary, payee, or owner. Allows the designation to be made before or after the will is made. States that it is not necessary to have an existing trust corpus. Declares that the section does not limit the rights of creditors under other laws of this state.

Sec. 13.33.201 defines some terms for the article on multiple-person accounts.

Sec. 13.33.202 describes certain accounts that are not covered by Article 2.

Sec. 13.33.203 states that an account with a financial institution may be for single or multiple parties and that a multiple-party account may be with or without a right of survivorship. Allows, subject to sec. 13.33.212(c), a single-party or multiple-party account, to have a pay-on-death designation, an agency designation, or both. Describes the application of Article 2.

Sec. 13.33.204 provides that contracts of deposit containing provisions in substantially the form established in the section establishes the type of account provided, and the account is governed by the Article 2 provisions applicable to an account of that type. Provides for Article 2 coverage for contracts of deposit that don't contain provisions substantially in the form provided by this section.

Sec. 13.33.205 allows the parties on an account to designate a person other than a party to the account as the agent for the parties on the account. States that the agent's authority survives disability and incapacity of a party to the account unless the agency designation provides otherwise. Allows an agent to act for a disabled or incapacitated party until the agent's authority is terminated. Provides that the death of the sole party to the account or of the last surviving party to the account terminates the agent's authority.

Sec. 13.33.206 establishes applicability of secs. 13.33.211 - 13.33.216 and secs. 13.33.221 - 13.33.227.

Sec. 13.33.211 ties the ownership of an account during the lifetime of all parties to the proportionate net contribution of each party to the account, unless clear and convincing evidence establishes a different intent. For parties married to each other, presumes each contributed equally, unless there is proof otherwise. States that a beneficiary in an account having a pay on death designation is not entitled to deposited sums during the lifetime of any party. States that an agent in an account with an agency designation does not have a beneficial right to sums on deposit.

Sec. 13.33.212 establishes the ownership rights to account money at a party's death for the various types of accounts covered by Article 2. Also addresses the liability of a surviving party or beneficiary for unpaid requests for payments.

Sec. 13.33.213 establishes that rights at death under the previous section are determined by the terms of the account. Allows the parties to change the terms of the account and establishes the procedure for doing so. States that a right of survivorship created in certain ways may not be altered by will.

Sec. 13.33.214 states that, with exceptions, a transfer resulting from the application of sec. 13.33.212 is not testamentary or subject to certain sections of the state's uniform probate code.

Sec. 13.33.215 provides that, under certain conditions, a transfer resulting from a right of survivorship or a pay on death designation under Article 2 is not effective against an estate if needed to pay certain claims against the estate. States that surviving parties or beneficiaries who receive payments after the death of a party to the account are liable to account to the personal representative for certain amounts. Establishes a condition for beginning a proceeding to assert the liability of the party or beneficiary, and the time by which the proceeding must be begun. Authorizes a surviving party or beneficiary to join in the proceeding a surviving party or beneficiary of another account of the decedent. States that sums recovered by the personal representative are administered as part of the decedent's estate. Indicates how this section relates to sec. 13.33.226.

Sec. 13.33.216 establishes that deposit of community property in an account does not change the community character of the property or community rights in the property, but prohibits changing by will certain express rights of survivorship for the account between married parties. States that Article 2 doesn't affect the law governing tenancy by the entirety.

Sec. 13.33.221 authorizes a financial institution to enter into a contract of deposit for a multiple-party account and to provide for pay on death and agency designations in both single-party and multiple-party accounts. Provides that the institution doesn't have to inquire as to the source of a deposit to an account or the proposed application of a payment from an account.

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Sec. 13.33.222 indicates to whom a financial institution, on request, is authorized to pay money from a multiple-party account.

Sec. 13.33.223 indicates to whom a financial institution, on request, may pay money in an account with a payment on death designation.

Sec. 13.33.224 authorizes a financial institution, on request, to pay to an agent under an agency designation for an account the money in the account whether or not certain described conditions exist.

Sec. 13.33.225 authorizes a financial institution to make a payment under AS 13-46, if the payment to a minor beneficiary is required or permitted under Article 2.

Sec. 13.33.226 states that payment made under Article 2 in accordance with the terms of the account discharges the financial institution from all claims for the money paid, whether or not the payment is consistent with the beneficial ownership of the account. Authorizes payment whether or not a party, beneficiary, or agent is disabled, incapacitated, or deceased. Limits this section's protection in certain circumstances. Authorizes a financial institution to refuse, without incurring liability, to make payments in accordance with the terms of the account in certain circumstances. States that the protection under this section does not affect the rights of certain disputing parties relating to the beneficial ownership of account moneys.

Sec. 13.33.227 authorizes a financial institution to receive a setoff against the account for an indebtedness of a party to the financial institution. Describes the extent of the setoff.

Secs. 13.33.301 - 13.33.310 are Article 3, the Uniform Transfer-on-Death Security Registration Act.

Sec. 13.33.301 defines terms for Article 3.

Sec. 13.33.302 establishes who can obtain registration of a security in beneficiary form. Establishes how multiple owners can hold a security registered in beneficiary form.

Sec. 13.33.303 authorizes the registration of a security in beneficiary form if the form is authorized by this or a similar TOD statute in states having certain specified connections with the issuer, registering entity, the registering entity's transfer agent, or the owner. Establishes a presumption of validity for other registrations.

Sec. 13.33.304 establishes when a security is considered to be registered in beneficiary form

Sec. 13.33.305 establishes the language that can be used to show registration in beneficiary form

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Sec. 13.33.306 states that the designation of a transfer-on-death beneficiary on the registration of a security does not affect ownership until the owner's death. Authorizes the cancellation or change of a registration in beneficiary form at any time without the beneficiary's consent.

Sec. 13.33.307 establishes who owns the security when the sole owner or the last of multiple owners dies, and allows reregistration in the names of the surviving beneficiaries. Provides that multiple beneficiaries surviving the death of all of the owners hold their interests as tenants in common until the security is divided after the death of all the owners. Provides that the estate of the deceased sole owner, or of the last to die of all multiple owners, owns the security if a beneficiary does not survive the sole owner or the multiple owners.

Sec. 13.33.308 provides that a registering entity is not required to provide registration of a security in beneficiary form. If the entity does offer this registration, the owner is considered to have assented to the protections provided to the entity under Article 3. If the entity accepts a request for the registration, the entity agrees that the registration will be implemented on the owner's death as provided in Article 3. Discharges the registering entity from all claims by certain persons if, in good faith reliance on Article 3, on the registration, or on certain information, it registers a transfer of the security in accordance with AS 13.33.307. Limits the extent of the protections provided by Article 3. States that the Article 3 protections provided to the registering entity do not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred, its value, or its proceeds.

Sec. 13.33.309 declares that a transfer on death resulting from a registration in beneficiary form is not testamentary. States that Article 3 does not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this state.

Sec. 13.33.310 authorizes a registering entity to establish the terms and conditions under which it will receive and implement registrations in beneficiary form. Indicates what the terms may provide, including substitution of beneficiaries. Provides some illustrations of registrations in beneficiary form that a registering entity may authorize.

Section 13. Amends the Uniform Custodial Trust Act (AS 13.60) to make certain trust termination provisions subject to the Uniform Probate Code

Section 14. Amends the Uniform Custodial Trust Act (AS 13.60) to make certain trust administration provisions subject to the Uniform Probate Code.

Section 15. Amends the Uniform Custodial Trust Act (AS 13.60) to make certain trust expenditure provisions subject to the Uniform Probate Code

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Section 16. Amends the Uniform Custodial Trust Act (AS 13.60) to make certain trust property expenditure provisions subject to the Uniform Probate Code.

Section 17. Makes a conforming amendment.

Section 18. Repeals three current chapters on intestate succession and wills, nonprobate transfers, and the uniform simultaneous death act.

Section 19. Provides transition provisions for the bill.

Section 20. Makes the Act effective January 1, 1997.

If I may be of further assistance, please advise.

TLB:lmb:klb
96-031 lmb

ATTACHMENT NO. 1

JANE BRYANT QUINN, INSURANCE PLOY CAN LEAVE SPOUSE PENNILESS¹

Washington Post Writers Group, Released November 16, 1995

Published in Over 200 U.S. Newspapers

NEW YORK—The life insurance industry loves to show pictures of good-looking men buying life insurance to save their grateful wives from the poorhouse.

Guess what? In most states, those good-looking men can also use life insurance to disinherit their wives (and wives can disinherit their husbands). You just dump your savings into a cash-value policy and leave that policy to someone else.

A number of states are considering laws to prevent this from happening. But the powerful insurance lobby is obstructing change. Only three states have blocked disinheritance-by-insurance (Kansas, Minnesota and South Dakota). Other states have rolled over when the lobbyists came to call.

In an attack on the laws, Jerry O'Leary, former senior counsel of the American Council on Life Insurance (ACLI) and now retired, wrote the following last year: "I believe we can all agree that the surviving spouse should be protected, but many question whether the surviving spouse should be 'canonized' and protected to the detriment of the insurance policy beneficiary. . . ."

At issue is a change proposed in probate law. It's part of the Uniform Probate Code (UPC), developed by a committee of lawyers to improve and simplify the process of leaving property to heirs. States decide individually what to accept from the UPC.

Probate assures that, when you die, the property you've left by will goes to the people you designate. But state law makes one exception: You're not allowed to disinherit a spouse unless the spouse consents.

In the nine states (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, Wisconsin) with community property

laws, spouses own one-half of the marital property. In most of the other states, they get at least one-third or one-half of their spouse's property at death.

If you write a will that leaves your spouse too small a share, he or she can demand the full portion owed by law. Spouses, however, can give up their share voluntarily, by signing an agreement to do so.

Spousal-support laws have a valid public purpose. No married spouse should be allowed to leave a penniless mate, who might have to go on welfare.

You're pretty well protected in a community property state, where half of the marital property is yours by law, says Los Angeles attorney Charles Collier. In most of the states, however, huge loopholes exist, which can be used to cut a spouse out.

That's because the spousal share applies only to the property that's left by will. Billions of dollars in assets pass outside the will: through joint ownership and the named beneficiaries of living trusts, annuities, Individual Retirement Accounts or life insurance policies. In non-community property states, you can generally leave this property to anyone you want—even if your spouse winds up without a dime.

The new UPC would stop all that. It says that, when a married person dies, all the assets of both spouses must be added up, including life-insurance proceeds. The surviving spouse gets a share of the entire pot but no less than \$50,000 (unless the spouse has formally waived his or her rights). Spouses in long marriages get a larger share than spouses in short ones.

Seven states have adopted this idea

so far. But life insurance has been excluded in four of them (Colorado, Montana, North Dakota and West Virginia), as well as New York, which reformed along different lines from the UPC. There, a spouse can still be shortchanged, says Professor Lawrence Waggoner of The University of Michigan Law School.

Insurers think that the person who buys the coverage should decide where it goes, says Michael Bartholomew, managing counsel for the ACLI. Bartholomew also claimed that, if a spouse could challenge the contract, insurers would have to go to court to figure out who to pay.

That's not true, however. The UPC says that insurers can pay the policy's named beneficiary, if the spouse hasn't entered a contrary claim. If the spouse makes a claim, the payment goes to a court with no proceedings necessary for the insurance company. In both cases, the insurer has no further liability.

Bartholomew backpedaled in a second interview. He knows of no state that requires a court proceeding. I mention this incident because some of the information used by the insurance lobby to defeat the UPC is similarly misleading.

Bartholomew says that there's no proof that life insurance is used to disinherit a spouse. He's right that no data exist. But Denver attorney James Wade is sure that it's done. "It's a strategy discussed in estate-planning programs," he says.

If the UPC ends other ways of disinheriting spouses, why should life insurance be exempt?

1. Each newspaper writes its own headline. The above came from the Chicago Tribune, Sunday, Nov. 10, 1995, (p. 5, at 3).