

HB

1966

ALASKA STATE LEGISLATURE HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman

(907) 465-3004

Fax: (907) 465-2070

Representative Jay Ramras@legis.state.ak.us

1292 Sadler Way, Suite 324
Fairbanks, AK 99701



Committee Members:
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

Sponsor Statement HB 196

"An Act relating to the handling of matters after a person's death."

Existing Alaska law provides that a provision may be placed in a trust penalizing a person for contesting the trust even if probable cause exists for instituting proceedings. This bill provides for the same kind of provision in a will.

HB 196 also raises the limit of affidavit requirements on collection of personal property on a small estate. Currently, the affidavit requirements for a decedent's successor to collect personal property are limited in statute to \$15,000. This bill would raise the personal property limit to \$100,000 for vehicles and \$100,000 for personal property.

In addition, this bill provides that life insurance or retirement benefits payable at death are not subject to the claims of the creditors of the individual who is insured under the life insurance contract or who was a participant in the retirement plan, except for child and spousal support.

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State Capitol, Room 120
Juneau, Alaska 99801-1182

Sectional Summary

HB 196 "An Act relating to matters after a person's death"

Section 1. Amends AS 13.12.517 to provide that a penalty clause for contesting a will or instituting other proceedings apply even if probable cause exists for instituting the proceedings.

Section 2. Amends AS 13.16.680(a) to change one of the statements that must be contained in an affidavit to be used by a decedent's successor to collect personal property of the decedent from another person. The statement indicates that the value of the entire estate does not consist of more than certain specified amounts.

Section 3. Amends AS 13.16.700 to conform this section to the change made by this bill to AS 13.16.680(a).

Section 4 Adds new subsections to AS 13.33.101 (nonprobate transfers upon death)

Proposed AS 13.33.101(d) states that the benefits paid under a nonprobate provision are not subject to certain described debts or creditor claims.

Proposed AS 13.33.101(e) describes certain situations in which proposed AS 13.33.101(d) applies.

Proposed AS 13.33.101(f) establishes that proposed AS 13.33.101(d) does not limit the rights of the owner of a life insurance contract to pledge or assign the benefits as collateral for the owner's debts.

Proposed AS 13.33.101(g) defines "life insurance contract" and "retirement plan" for (d) of this section.

Section 5. Provides a transition section to indicate to which decedents and nonprobate transfer provisions certain provisions of the bill apply.



HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120
(907) 465-4990

COMMITTEE MEMBERS

Rep. Jay Ramras
Chairman
Room, 118
(907) 465-3004

Rep. Nancy Dahlstrom
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Rep. Ralph Samuels
Room 204
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Rep. Max Gruenberg
Room 110
(907) 465-4940

Rep. Lindsey Holmes
Room 405
(907) 465-4919

MEMORANDUM

Date: March 10, 2008

To: Senator Lesil McGuire
Chair Senate State Affairs Committee

From: Representative Jay Ramras
Chair House Judiciary Committee

Re: Changes made to HB 196 in Senate L&C

The following change was made in HB196 in the Senate Labor & Commerce committee:

Section 2 A person may claim to be a successor of the decedent and entitled to payment upon presenting an affidavit that the entire estate consists of personal property, exclusive of vehicles, with a total value of less than \$100,000. This amount was raised from the original amount in the bill of \$25,000.

Jane Pierson

From: Patty Krueger on behalf of Rep. Jay Ramras
Sent: Friday, February 22, 2008 10:33 AM
To: Jane Pierson
Subject: FW: HB 196

From: Stephen E. Greer [mailto:greer@ak.net]
Sent: Thursday, February 21, 2008 5:49 PM
To: Rep. Jay Ramras
Subject: HB 196

Dear Rep. Ramras- today I testified in support of HB 196 in Senate Labor and Commerce. As you know, this bill makes several changes to the Uniform Probate Code as enacted by Alaska in the early 80s. Section 2 and 3 of the bill raised the most questions. These sections raise the threshold in which a formal probate would not be required where the decedent dies with less than \$25,000 of personal property and less than \$100,000 of value in automobiles. Currently our law states that a formal probate proceeding can be only be avoided when the decedent dies with less than \$ 15,000 of personal property. It was suggested that the limit set forth in HB 196 be increased to even higher amounts than those set forth in the bill. I would certainly be willing to work with any legislator who wants to re-examine the amounts set forth in the bill but this should be done in a new bill next year. Due to the shortness of time remaining in the legislative session, if HB 196 does not become law during this session then Alaska residents will continue to be saddled with the present \$15,000 threshold, which everyone seems to agree is entirely too low.

If it is suggested that the threshold in which probate can be avoided be increased to an amount in excess of what the bill presently allows, one needs to be cautioned that there is always a flip side to an increased amount. For instance, let us take a situation where mom dies with a bank account of \$50,000. She has 2 sons, one who has been the good child and another child who has been particularly bad to her. Mom's will leaves everything to the good child. If the threshold amount in which probate would not be required were raised to \$ 50,000 there would be nothing to prevent the bad son from going to the bank prior to the good son and getting this amount from the bank and absconding with the funds. Setting forth a higher amount in which a formal probate would not be required also increases the potential for abuse. Although it was agreed by the drafters of this bill that the present \$15,000 was too low, the bill was also carefully tailored to prevent it from being used as a tool in which the small estate affidavit procedure could be abused.

I sent this message to all committee members requesting their support of the bill. It is certainly an improvement over the current law. If a legislator desires to re-examine these amounts next year I would be all too glad to assist in that endeavor and of course answer any question that a legislator might have.

Thank you for your consideration in this matter

Stephen E. Greer Esq
P O Box 242903
Anchorage AK 99524
(907) 561-5520 work
(907) 563-5020 fax

Physical address:
1225 E. Int. Airport Rd #100
Anchorage AK 99518

Facsimile: (907) 334-9958
E-Mail Address: bob@mb.law.pro

----- Original Message -----

From: Robert L. Manley
To: 'Senator Johnny Ellis@legis.state.ak.us'
Sent: 2/21/2008 3:34PM
Subject: HB 196 - Act Relating to the Handling of Matters After a Person's Death

Dear Senator Ellis:

Thank you and the Labor and Commerce Committee for considering HB 196 at the February 21 hearing. Senator Bunde inquired about the selection of the new limit of \$25,000 for use of the probate waiver affidavit on non-motor vehicle assets. The probate waiver affidavit procedure is a Uniform Probate Code Provision and the shift to \$25,000 is basically a consumer price index adjustment. While some states have established higher limits, the thinking behind the \$25,000 limit is that like any abbreviated and non-court supervised procedure there is some risk of abuse. If a person improperly uses the procedure, cash assets are generally disposed of promptly while automobiles are traceable assets which are less subject to abuse even at the \$100,000 level.

This is not an attempt to retain more money for lawyers by running small probates. If that was the goal then the informal working group on this legislation would not have proposed the change at all. If the Committee wants to increase the general limit I suggest that it be done by separate legislation because an amendment at this point is likely to doom HB 196 for this year. At best an amendment would effectively kill the other good provisions of HB 196 in return for making a small part of the legislation better if the bill is reintroduced in the next Legislature. I know you have heard this before, but given the short session, I respectfully request that you release HB 196 so it can be considered by the State Affairs and Judiciary Committees. If any Committee members would like to discuss this further please contact me.

Robert L. Manley
Manley and Brautigam p.c.
845 K Street
Anchorage, AK 99501

Telephone: (907) 334-5600
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2/22/2008

Jane Pierson

From: Douglas Blattmachr [dblattmachr@alaskatrust.com]
Sent: Friday, February 22, 2008 9:48 AM
To: Jane Pierson
Subject: FW: HB 196

From: Blattmachr, Jonathan [mailto:JBlattmachr@milbank.com]
Sent: Friday, February 22, 2008 3:32 AM
To: Senator_Johnny_Ellis@legis.state.ak.us
Cc: bob@mb.law.pro; greer@ak.net; Douglas Blattmachr; bchapman@faulknerbanfield.com; dshaftel@shaftellaw.com; rich@hompesch.com; lhulbert@gci.net
Subject: HB 196

Dear Senator Ellis:

I have been a member of the Alaska bar for 20 years and was the principal drafter of the Alaska Trust Act which became law in 1997 and participated in the drafting of HB 196.

I practice primarily in New York and California, almost exclusively in the areas of estate planning and administration. Probably, 8 out of 10 of my clients choose to use Alaska as the jurisdiction to govern at least a portion of their estate planning documents. This has been so successful for Alaska (bringing jobs and funds to the state) that several other states (including Delaware, Florida, Utah, Rhode Island and others) have copied many of Alaska's trust and related laws.

In my opinion, HB 196 will continue to keep Alaska in the forefront of the estate planning world. I respectfully request that it be enacted.

Respectfully yours,

Jonathan Blattmachr

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Jane Pierson

From: lhulbert [lhulbert@gci.net]
Sent: Monday, April 23, 2007 10:32 AM
To: Jane Pierson
Subject: HB's 195, 196, 197

Representative Ramras,

I would like to support House Bills 195, 196 and 197. I have been in the insurance industry for the last 16 years and have worked closely with legislature including the AK Trust Act, Com. Property Act and the Change to the State Premium Tax. I support these three House Bills as it will improve estate planning opportunities for alaskans and bring new business and revenue to the State.

Linda Hulbert
Agent
New York Life Insurance Company
110 Cushman St.
Fairbanks, AK 99701
907-452-4400
Registered Representative offering securities through NYLIFE Securities Inc. (member NASD/SIPC)

New York Life Insurance Company
701 West 8th Ave., Ste.900
Anchorage, AK 99501
907-279-6471

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New York Life Insurance Co., 51 Madison Ave, New York, NY 10010

AS 13.12.517

ALASKA STATUTES

Title 13. Decedents' Estates, Guardianships, Transfers, and Trusts.

Chapter 12. Intestacy, Wills, and Donative Transfers.

Article 5. Wills, Will Contracts, and Custody and Deposit of Wills.

Sec. 13.12.517 Penalty clause for contest.

A provision in a will purporting to penalize an interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

(§ 3 ch 75 SLA 1996)

A. S. 13.12.517, AK ST § 13.12.517

Current through all 2006 Legislation, Annotations current through Opinions

Decided as of July 1, 2006.

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AS 13.16.680

ALASKA STATUTES

Title 13. Decedents' Estates, Guardianships, Transfers, and Trusts.

Chapter 16. Probate of Wills and Administration.

Article 12. Collection of Personal Property by Affidavit and Summary Administration Procedure.

Sec. 13.16.680 Collection of personal property by affidavit.

(a) Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that

(1) the value of the entire estate, wherever located, less liens and encumbrances, does not exceed \$15,000;

(2) 30 days have elapsed since the death of the decedent;

(3) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(4) the claiming successor is entitled to payment or delivery of the property.

(b) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in (a) of this section.

(§ 1 ch 78 SLA 1972; am § 4 ch 80 SLA 1984)

A. S. 13.16.680, AK ST § 13.16.680

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AS 13.16.700

ALASKA STATUTES

Title 13. Decedents' Estates, Guardianships, Transfers, and Trusts.

Chapter 16. Probate of Wills and Administration.

Article 12. Collection of Personal Property by Affidavit and Summary Administration Procedure.

Sec. 13.16.700 Settlement directed by court.

When a judge receives information that a person has died in the judge's judicial district leaving an estate of \$15,000 or less and no qualified person has appeared to take charge of the assets, the judge may immediately appoint a person, corporation, or attorney to settle the estate in the manner provided for in AS 13.16.680 -- 13.16.695.

(§ 1 ch 78 SLA 1972; am § 5 ch 80 SLA 1984)

A. S. 13.16.700, AK ST § 13.16.700

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AS 13.33.101

ALASKA STATUTES

Title 13. Decedents' Estates, Guardianships, Transfers, and Trusts.

Chapter 33. Nonprobate Transfers.

Article 1. Provisions Relating to Effect of Death.

Sec. 13.33.101 Nonprobate transfers on death.

(a) A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of a similar nature is nontestamentary. This subsection includes a written provision that

(1) money or other benefits due to, controlled by, or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later;

(2) money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or

(3) property controlled by or owned by the decedent before death that is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later.

(b) An instrument referred to in (a) of this section may designate as a beneficiary, payee, or owner, a trustee named or to be named in the will of the person entitled to make the designation. The designation may be made before or after the execution of the designator's will. It is not necessary to the validity of the underlying trust that there be in existence a trust corpus other than the right to receive benefits or to exercise the rights resulting from the designation.

(c) This section does not limit rights of creditors under other laws of this state.

(§ 12 ch 75 SLA 1996)

A. S. 13.33.101, AK ST § 13.33.101

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FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: SCS CSHB 196(L&C)
 (S) Publish Date: 3/10/08

Identifier (file name): _____ Dept. Affected: LAW
 Title: An Act relating to matters after a person's death RDU: Civil
 Component: Commercial & Fair Business
 Sponsor: JUDICIARY
 Requester: SENATE LABOR & COMMERCE Component Number: _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| | Appropriation Required | Information | | | | | | |
|-------------------------------|---------------------------|-------------|------------|------------|------------|------------|------------|------------|
| | | FY 2009 | FY 2009 | FY 2010 | FY 2011 | FY 2012 | FY 2013 | FY 2014 |
| OPERATING EXPENDITURES | | | | | | | | |
| Personal Services | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Travel | | | | | | | | |
| Contractual | | | | | | | | |
| Supplies | | | | | | | | |
| Equipment | | | | | | | | |
| Land & Structures | | | | | | | | |
| Grants & Claims | | | | | | | | |
| Miscellaneous | | | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | | | |
|-----------------------------|--|--|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | | | |
|-----------------------------|--|--|--|--|--|--|--|--|

| | | | | | | | | |
|-------------------------------|--|--|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | | | |
|-------------------------------|--|--|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | | | |
|----------------------------|------------|------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | | | |
| 1003 GF Match | | | | | | | | |
| 1004 GF | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1005 GF/Program Receipts | | | | | | | | |
| 1037 GF/Mental Health | | | | | | | | |
| Other Interagency Receipts | | | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

| | | | | | | | | |
|-----------|--|--|--|--|--|--|--|--|
| Full-time | | | | | | | | |
| Part-time | | | | | | | | |
| Temporary | | | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This bill proposes amendments to Title 13 of the Alaska Statutes relating to matters following a person's death including changes to allow enforceability of a penalty clause for a will contest, raising the amount of personal property that may be collected by affidavit in the administration of small estates, and to ensure that non-probate transfers of life insurance or retirement plan benefits are not subject to the debts of the individual who was the insured or who was the plan participant or to claims of that individual's creditors. Enactment of the bill is not anticipated to fiscally impact the Department of Law.

Prepared by: Robert Meiners, Administrative Services Manager
 Division: Administrative Services Division
 Approved by: Talis Colberg, Attorney General
Department of Law

Phone: 907-465-5427
 Date/Time: 2/19/08 9:10 PM
 Date: 2/19/2008

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: SCS CSHB 196(L&C)
 (S) Publish Date: 3/10/08

Identifier (file name): _____ Dept. Affected: Alaska Court System
 Title: Handling matters after a person's death RDU: Trial Courts
 Component: Trial Courts
 Sponsor: House Judiciary Committee
 Requester: Senate Labor and Commerce Committee Component Number: _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| | Appropriation Required | Information | | | | | | |
|-------------------------------|---------------------------|-------------|------------|------------|------------|------------|------------|------------|
| | | FY 2009 | FY 2009 | FY 2010 | FY 2011 | FY 2012 | FY 2013 | FY 2014 |
| OPERATING EXPENDITURES | | | | | | | | |
| 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 | 0.0 |

| | | | | | | | | |
|-----------------------------|--|--|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | | | |
|-----------------------------|--|--|--|--|--|--|--|--|

| | | | | | | | | |
|-------------------------------|--|--|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | | | |
|-------------------------------|--|--|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | | | |
|----------------------------|--|------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | | | |
| 1003 GF Match | | | | | | | | |
| 1004 GF | | | | | | | | |
| 1005 GF/Program Receipts | | | | | | | | |
| 1037 GF/Mental Health | | | | | | | | |
| Other Interagency Receipts | | | | | | | | |
| TOTAL | | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2008) cost: _____

POSITIONS

| | | | | | | | | |
|-----------|--|--|--|--|--|--|--|--|
| Full-time | | | | | | | | |
| Part-time | | | | | | | | |
| Temporary | | | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of CSHB 196(JUD).

Prepared by: Doug Wooliver, Administrative Attorney
 Division: _____
 Approved by: Stephanie Cole, Administrative Director by Doug Wooliver

Phone 907-463-4750
 Date/Time 2/21/08 11:30 AM
 Date 2/21/2008