

HB

144

Representative Jay Ramras
Chair, House Judiciary
House Labor & Commerce
House Oil & Gas
House Military & Veteran
Affairs

1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701
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Alaska State Legislature



in Session
itol, Room 118
aska 99801-1182
465- 3004
465-2070
(877) 465-3004


District 10

House of Representatives

Memo

To: Representative Dahlstrom
Chair House Rules Committee

CC: Rachelle Fenderson, Committee Aide

From: Representative Jay Ramras 

Date: February 2, 2010

Re: HB 144: Uniform Probate Code, Trusts and Wills

Please schedule House Bill 144, Uniform Probate Code, Trusts and Wills to be heard on the House Floor.

Attached to this memo please find the following documents:

- HB 144 Sponsor Statement
- HB 144 version 26-LS0634\A
- HB 144 Sectional version 26-LS0634\A
- Letter of support
- Information on the Uniform Probate Code (UPC)
- Law 0 Fiscal Note
- Office Contact: Jane Pierson, 465-4990

Thank you.

Representative_Jay_Ramras@legis.state.ak.us

Chair, Judiciary
Chair, Economic Development,
Trade & Tourism
Energy

Military & Veteran Affairs
Joint Armed Services
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District 10

Sponsor Statement

HB144 - UNIFORM PROBATE CODE; TRUSTS, WILLS

Alaska passed the first piece of trust legislation in 1997. Other states have adopted similar pieces of legislation because they realize the effectiveness of Alaska's trust laws. The trust and estate planning community continuously recommends to the legislature updates and improvements to Alaska trust laws to make sure that Alaska stays on the leading edge of providing the best estate and financial planning solutions.

Alaska's trust laws have had a significant impact on Alaska's economy. The State of Alaska has directly received millions of dollars of insurance premium tax dollars that the state would not have received without our trust laws. Local banks have also benefited, for example Alaska Trust Company has over twenty-million dollars on deposit with local Alaska banks. Many jobs have also been created in the trust, banking, insurance and legal fields.

HB144 provides the following amendments to the Uniform Probate Code to facilitate the administration of wills and trusts in Alaska:

- Adds provisions allowing the settlor of a trust to designate a representative who can represent or bind an incapacitated person in future proceedings relating to the trust administration.
- Establishes that an augmented estate does not include property transferred to an irrevocable trust if the settlor is a discretionary beneficiary of the trust and if the transfer was made more than 30 days before marriage, or with the consent of the decedent's spouse. This provision is similar to statutory provisions adopted in Delaware.
- HB144 also creates a procedure for the establishment of will and trust validity before death. Situations arise where there is a question concerning a person's capacity to execute a will or trust, or whether the document was executed as the result of undue

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1/19/10

influence, duress, fraud, or mistake. The new procedure will allow these issues to be brought before the court while the testator or settlor is alive and when evidence is fresh. Similar procedures are allowed in three other states.

- HB144 also provides for venue of a probate proceeding if the decedent was not domiciled in Alaska, but significant assets are located within the state.

The passage of HB144 will ensure that Alaska stays the premier state in which to establish trusts and estates.

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District 10

HB 144 - UNIFORM PROBATE CODE; TRUSTS, WILLS SECTIONAL (26-LS0634\A 1.19.10)

Section 1. Amends AS 13.06.120(2), which lists the situations when persons are bound by orders binding others in proceedings under the Uniform Probate Code. Allows a person designated by a trust instrument to represent and bind a born or unborn trust beneficiary. Allows the settlor to designate the person in the trust in various ways. Generally does not allow a designated person serving as a trustee to represent and bind the beneficiaries. Generally does not allow the designated person to represent and bind a beneficiary if the designated person is also a beneficiary.

Also provides that certain persons who represent other persons under AS 13.06.120(2)(A)-(F) are not liable for good faith acts and omissions to the beneficiaries whose interests are represented or to persons claiming through those beneficiaries.

Section 2. Amends AS 13.12.201(b)(9). Makes grammatical and conforming amendments to the definition of "transfer" for certain provisions of the Uniform Probate Code that relates to the elective share of a surviving spouse.

Section 3. Amends AS 13.12.205, which relates to a decedent's nonprobate transfers to other persons. Deletes an irrevocable transfer in trust with a transfer restriction from the property that is included in the augmented estate.

Section 4. Adds AS 13.12.205(b). Provides that the augmented estate does not include property transferred to an irrevocable trust with a transfer restriction if two conditions relating to the trust's settlor and the transfer's timing are met.

Section 5. Makes a conforming amendment for bill section 4 to a cross-reference in AS 13.12.206(3).

Section 6. Makes a conforming amendment for bill section 4 to a cross-reference in AS 13.12.207(b).

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Section 7. Makes a conforming amendment for bill section 4 to a cross-reference in AS 13.12.209(b).

Section 8. Adds a new set of sections that provide for establishing the validity of wills and trusts before the testator's death.

Sec. 13.12.530. Allows certain persons to petition the court to determine the validity of a will before the testator's death.

Sec. 13.12.535. Allows certain persons to petition the court to determine the validity of a will before the testator's death.

Sec. 13.12.540. Establishes the venue for a petition to determine will or trust validity.

Sec. 13.12.545. Identifies what a petition for will validity must contain.

Sec. 13.12.550. Identifies what a petition for will validity must contain.

Sec. 13.12.555. Authorizes a court to declare a will or trust to be valid. Declares that the will has full legal effect and must be admitted to probate on request of the testator's death, unless modified or revoked after the court's declaration.

Sec. 13.12.560. Makes the court's validity declaration binding on other persons.

Sec. 13.12.565. Directs the court to hold a hearing after a petition is filed. Requires the petitioner to notify the spouse, children, and heirs of the testator or settlor. For a will, also requires the petitioner to notify the testator, the personal representatives nominated in the will, and the devisees under the will. For a trust, also requires the petitioner to notify the settlor and parties in interest.

Sec. 13.12.570. Establishes the burden of proof for the petitions.

Sec. 13.12.575. Allows a testator to modify or revoke the will after the court's declaration.

Sec. 13.12.580. Allows a trust to be modified, terminated, revoked, or reformed after the court's declaration.

Sec. 13.12.585. Establishes which records related to a petition are public, which are available only to certain persons, and which are confidential. Allows the court to order confidential records to be made available to other persons when good cause is shown.

Sec. 13.12.590. Defines terms used in the new article.

Section 9. Amends AS 13.16.410. Allows personal representatives to consider discretionary distributions to a beneficiary as being made from capital gains realized during the year.

Section 10. Amends AS 13.36.109. Allows trustees to consider discretionary distributions to a beneficiary as being made from capital gains realized during the year.

Section 11. Indicates how certain provisions in the bill amends court rules.

Section 12. States that those sections that amend the court rules only take effect if the bill section 11 is approved by a two-thirds vote.

HOMPESCH & EVANS

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PROFESSIONAL STAFF

BARBARA CORY-HOMPESCH

ENROLLED AGENT (IRS)

March 23, 2009

VIA FAX (907) 465-2070

Representative Jay Ramras
State Capitol
Juneau, Alaska 99801-1182

Re: HB 144

Dear Representative Ramras:

I am writing in support of HB 144. I have worked as a will and trust attorney for nearly 25 years. If House Bill 144 becomes law, Alaska will be the first state to my knowledge that permits a testator to petition the court for an order regarding the validity of his or her will during the lifetime of the testator.

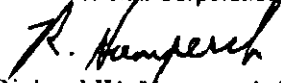
Under current law the validity of the will cannot be determined until after the death of the most important witness – the testator. This gives a procedural advantage to the party contesting the will and in my opinion is unfair. House Bill 144 will level the playing field and will allow a person to testify in court in order to establish the validity of his or her own will. This will allow the court to evaluate first hand the testator's competency and to determine whether the testator was unduly influenced into signing the will.

Thank you for sponsoring HB 144.

Sincerely yours,

HOMPESCH & EVANS

A Professional Corporation


Richard W. Hompesch II

RWH

Uniform Probate Code

The Uniform Probate Code (UPC) is a comprehensive statute that unifies, clarifies, and modernizes the laws governing the affairs of decedents and their estates, certain transfers accomplished other than by a will, and trusts and their administration. The UPC was originally approved by the National Conference of Commissioners on Uniform State Laws and the House of Delegates of the American Bar Association in 1969. The purpose of the UPC is to modernize probate law and probate administration and to encourage uniformity through the adoption of the code by all fifty states. The UPC, which has been amended numerous times, has been adopted in its entirety by sixteen states: Alaska, Arizona, Colorado, Florida, Hawaii, Idaho, Maine, Michigan, Minnesota, Montana, Nebraska, New Mexico, North Dakota, South Carolina, South Dakota, and Utah. The other thirty-four states have adopted parts of the UPC, but in general the UPC has not succeeded in providing a uniform body of substantive and procedural probate law.

The UPC contains seven substantive articles. Article I contains general provisions, definitions, and jurisdictional topics. Article II governs wills and intestate succession, which occurs when a person dies without leaving a will. Article III deals with the probate of wills and the administration of estates, article IV concerns the probating of estates in states other than the domicile of the decedent, article V extends protection to persons under disability and their property, and article VI governs nonprobate transfers of property. Article VII contains comprehensive provisions on trust administration.

The prime objective of the UPC is to simplify the probate process. For example, article III provides for supervised and unsupervised administration of probate. For estates with few assets and no disputes among the beneficiaries, the UPC allows unsupervised administration. In this case the executor of the will, who is called a Personal Representative in the UPC, handles the probating of the estate without direct supervision by the probate court. The personal representative handles every step of the probate process by filing a series of simple forms with the probate court. Unsupervised administration reduces the cost of probate and speeds up the process. Probate courts are freed from dealing with routine matters and may concentrate their efforts on estates with substantial assets or contested matters, where supervised administration is necessary.

The adoption of the UPC by state legislatures has been fought both by attorneys, who are opposed to unsupervised administration and to the overturning of current state laws governing probate, and by bonding companies, which stand to lose business because unsupervised probate does not require the posting of a bond. In light of this opposition, the Commissioners on Uniform State Laws have developed freestanding acts from similar provisions integrated into the UPC. This technique permits provisions, such as those involving powers of attorney and guardianship, to become law without disturbing other parts of a state's probate code.

Further readings

Averill, Lawrence H., Jr. 2001. *Uniform Probate Code in a Nutshell*. 5th ed. St. Paul, Minn.: West Group.

———. 1992. "An Eclectic History and Analysis of the 1990 Uniform Probate Code." *Albany Law Review* 55 (summer).

Stimmel, Andrew. 2002. "Mediating Will Disputes: A Proposal to Add a Discretionary Mediation Clause to the Uniform Probate Code." *Ohio State Journal on Dispute Resolution* 18 (fall).

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FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 144
() Publish Date: _____

Identifier (file name): HB144-LAW-CIV-2-02-10 Dept. Affected: Law
Title: An Act relating to the Uniform Probate Code. RDU: Civil
Component: Com. And Fair Business
Sponsor: REPRESENTATIVE(S) RAMRAS
Requester: JUDICIARY Component Number: 2717

Expenditures/Revenues: (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
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								
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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								
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 (FY2010) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

This bill provides conformity between Alaska's elective share and testamentary proof provisions in Alaska's Uniform Probate Code with those adopted in the 2009 amendments to the official Uniform Probate Code. It ensures that irrevocable trusts with transfer restrictions are excluded from the augmented estate. Finally, it allows petitioners to determine the validity of wills and trusts prior to the death of the settler and establishes the procedures to be followed in accomplishing this.

Prepared by: Eileen Donahue, Division Operations Manager
Division: Administrative Services
Approved by: Daniel S. Sullivan, Attorney General
Department of Law

Phone 465-5427
Date/Time 2/2/10 12:00 AM
Date 2/2/2010

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB144
 (H) Publish Date: 4/14/09

Identifier (file name): HB144-LAW-CIV-4-2-09 Dept. Affected: Law
 Title: An Act relating to the Uniform Probate Code. RDU: Civil
 Component: Com. And Fair Business
 Sponsor: Labor and Commerce
 Requester: REPRESENTATIVE(s) RAMRAS Component Number: 2717

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
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Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
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CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
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Estimate of any current year (FY2009) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

This bill provides conformity between Alaska's elective share and testamentary proof provisions in Alaska's Uniform Probate Code with those adopted in the 2009 amendments to the official Uniform Probate Code. It ensures that irrevocable trusts with transfer restrictions are excluded from the augmented estate. Finally, it allows petitioners to determine the validity of wills and trusts prior to the death of the settler and establishes the procedures to be followed in accomplishing this.

Prepared by: Robert Meiners, Deputy Director Phone 465-3673
 Division: Administrative Services Date/Time 4/2/09 2:00 PM
 Approved by: Wayne Anthony Ross, Attorney General Date 4/2/2009
Department of Law

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 14, 2009

FURTHER REFERRALS:

Date of Committee Action: 1/29/10

The JUDICIARY Committee considered:

HOUSE BILL NO. 144

"An Act relating to the Uniform Probate Code, including wills, trusts, nonprobate transfers, augmented estates, personal representatives, and trustees; and amending Rules 3 and 8, Alaska Rules of Civil Procedure, Rule 1, Alaska Rules of Probate Procedure, and Rule 37.5, Alaska Rules of Administration."

HB 144 UNIFORM PROBATE CODE; TRUSTS, WILLS

Recommends it be replaced with HCS or CS for _____ (_____)
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Depts.:
 ADM
 CED
 COR
 CRT
 EED
 DEC
 DFG
 GOV
 DHS
 LWF
 LAW
 LEG
 MVA
 DNR
 DPS
 REV
 DOT
 UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LAW	1			✓

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
LAW	1			✓

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	LYNN			X	
	Gruenberg				
	HEBRON			X	
	Gatto			X	
Chair:				X	
Chair:					