

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

4150 SJUD HB 393 - HB 408

1030



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith

Signature of Camera Operator

11/7/89

Date

HPB

393

BILL CONTACT/ACTION

DATE	CONTACT/ACTION
10/22/85	Anchorage hearing -
1/7/86	see SB168 file - reference conversation with
	Senate HESS - hold HB393
	- will move HB172

Offered: 5/3/85
Referred: Finance

Original sponsor: Judiciary Committee

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 393 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - FIRST SESSION
5 A BILL

6 For an Act entitled: "An Act relating to the rights of physically and
7 mentally disabled persons."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 09.20.010 is amended by adding new subsections to read:

10 (b) A person is not disqualified to act as a juror solely be-
11 cause of the loss of hearing or sight in any degree or a disability
12 that substantially impairs or interferes with the person's mobility.

13 (c) The court shall provide, and pay the cost of services of, an
14 interpreter or reader when necessary to enable a person with impaired
15 hearing or sight to act as a juror.

16 * Sec. 2. AS 18.06.040 is amended to read:

17 Sec. 18.06.040. ENFORCEMENT AND PENALTY [FOR DENYING RIGHTS].
18 Enforcement of this chapter shall be by the state Human Rights Commis-
19 sion under AS 18.80.010 - 18.80.145. A person who denies or inter-
20 feres with admittance to or enjoyment of the public facilities set out
21 in AS 18.06.02[^] or otherwise interferes with the rights of a physical-
22 ly or (mentally) [TOTALLY OR PARTIALLY BLIND OR OTHERWISE] disabled
23 person is guilty of a misdemeanor and upon conviction is punishable by
24 a fine of not more than \$1,000, or by imprisonment for not more than
25 60 days, or by both.

26 * Sec. 3. AS 18.80.255 is amended to read:

27 Sec. 18.80.255. UNLAWFUL PRACTICES BY THE STATE OR ITS POLITICAL
28 SUBDIVISIONS. It is unlawful for the state or any of its political
29 subdivisions

of
Work
Copy

18.06 "Rights of
Blind + otherwise
Physically Disabled
Persons"

reader

does this conflict with chapter title?

change to class B misdemeanor?

not in
SB 168

1 (1) to refuse, withhold from or deny to a person any local,
2 state or federal funds, services, goods, facilities, advantages or
3 privileges because of race, religion, sex, ^{disability here?} color or national origin;

4 (2) to publish, circulate, issue, display, post or mail a
5 written or printed communication, notice or advertisement which states
6 or implies that any local, state or federal funds, services, goods,
7 facilities, advantages or privileges of the office or agency will be
8 refused, withheld from or denied to a physically or mentally disabled
9 person or a person of a certain race, religion, sex, color or national
10 origin or that the patronage of a physically or mentally disabled
11 person or a person belonging to a particular race, creed, sex, color
12 or national origin is unwelcome, not desired or solicited; it is not
13 unlawful to post notice that facilities to accommodate the physically
14 or mentally disabled are not available;

15 (3) to refuse or deny to a person any local, state, or
16 federal funds, services, goods, facilities, advantages or privileges
17 because of physical or mental disability; however, this paragraph may
18 not be construed to require alteration or remodeling of buildings or
19 facilities owned or operated by the state or its political subdi-
20 visions to any extent not required by other law.

SB168 says
"dwarf, blind or
disabled"

this not in SB168

What about definitions here?

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary Committee 5/1/85, 1:30

SECTIONAL ANALYSIS

DRAFT CS FOR HB 393 (JUDICIARY) - AN ACT RELATING TO THE RIGHTS OF PHYSICALLY AND MENTALLY DISABLED PERSONS.

SECTION 1 Amends Title 9 to provide that hearing and sight impaired persons may serve on juries, and that the court shall provide interpreters and readers to assist these people.

SECTION 2 Provides that the Human Rights Commission shall provide enforcement for AS 18.80 and AS 18.06.020, and that denial of the rights of a physically or mentally disabled person is a misdemeanor punishable of a fine of not more than \$1,000, imprisonment for 60 days, or both.

SECTION 3 Adds physically or mentally disabled persons to the section of the Human Rights Commission statute which prohibits discrimination by the state or its political subdivisions.

Provides that facilities may post notice that they cannot accommodate the disabled.

Provides that this section is not to be construed to imply that a state or political subdivision must alter the physical structure of a facility to comply with 18.80.255.

SECTION 4 Definitions.

NOTE: LAA legal drafting style demands that the definitions used in CSHB 172 be included in HB 393 in case this bill should pass first.

**STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date: 5/1/85

REQUEST

Bill/Resolution No.: HB 393

Title: An Act Relating To Rights of Deaf, Blind, Disabled Persons

Sponsor: House Judiciary

Requestor: _____

Date of Request: 5/1/85

FISCAL DETAIL

Agency Affected: ALASKA COURT SYSTEM

Program Category Affected: _____

Due Process

BRU, Program or Subprogram(s) Affected: _____

Trial Courts

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL		4.1	4.3	4.6	4.9	5.2
300 CONTRACTUAL		9.9	10.5	11.1	11.8	12.5
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		14.0	14.8	15.7	16.7	17.7

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		14.0	14.8	15.7	16.7	17.7
FEDERAL FUNDS						
OTHER						
TOTAL		14.0	14.8	15.7	16.7	17.7

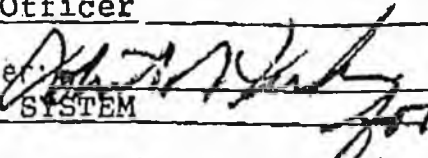
POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Robert G. Fisher
Division: Fiscal Officer

Phone: 264-0561
Date: 5/1/85

Approved by Commissioner: 
Agency: ALASKA COURT SYSTEM

Date: 5/1/85

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

ALASKA COURT SYSTEM
HB 393 - RIGHTS OF DEAF, BLIND, AND DISABLED PERSONS
FISCAL IMPACT

This legislation allows deaf, blind, and disabled individuals to serve on juries. Additionally, interpreters are provided for deaf persons while on jury duty. This legislation will impact the Court's travel, contractual, and leasehold improvements budget categories.

Historically, seven percent of all eligible persons are selected for jury service, which typically averages one and one-half days in length. The Division of Vocational Rehabilitation has estimated that 250 deaf persons would be eligible for jury duty. Based on past experience, approximately 17 deaf individuals could be called for service in a year. Each deaf juror would require an interpreter for all activities in the court. Interpreter fees are calculated to cost \$9,900 per year. Depending upon availability, interpreters may have to travel to the court locations around the state. This travel is estimated to cost \$4,100.

Cost estimates for subsequent fiscal years reflect inflation at the rate of six percent.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 393
 Title: "An Act relating to the rights of physically and mentally disabled Person"
 Sponsor: Judiciary Committee
 Requestor: _____
 Date of Request: 4-30-85

FISCAL DETAIL

Department of Health
 Agency Affected: and Social Services
 Program Category Affected: Division of Mental Health
 Person: (and Developmental Disabilities
 BRU, Program or Subprogram(s) Affected:
 Central Office Division of Mental Health and
 Developmental Disabilities

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0


FUNDING: (Thousands of Dollars)

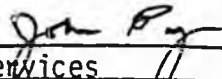

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME none						
TEMPORARY required						

ANALYSIS: Attach a separate page if necessary

Prepared By: Mel Henry, Ph.D., M.P.A.  Phone: 465-3370
 Division: Mental Health and Developmental Disabilities Date: 4-30-85

Approved by Commissioner: John P. ...  Date: 5-1-85
 Agency: Health & Social Services 

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget

JCC

POSITION PAPER

HB 393

"An Act relating to the rights of physically and mentally disabled persons."

EFFECT OF HB 393:

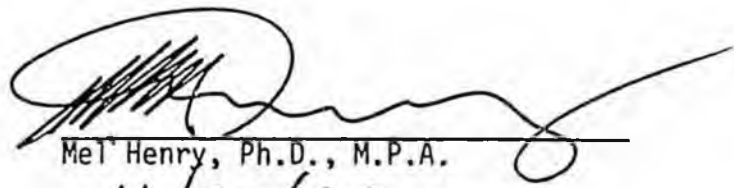
This bill seeks to expand the rights of physically and mentally disabled persons in the following areas:

1. It would amend A.S. 09.20.010 to allow persons with visual, hearing and mobility impairments to serve as jurors and require courts to pay for interpreter and /or reader services as needed for such jurors.
2. AS. 18.06 is amended by adding a new section which would require any department, office, agency or other organizational unit of state government or a political subdivision of the state, including the University of Alaska , from which a deaf person seeks access to funds, services, goods, facilities, advantages, or privileges, to pay the costs of and provide an interpreter for the person.
3. 18.80.255 is amended by expanding the prohibition against discrimination in the provision, notice and advertisement of goods, services, funds, facilities and advantages, to include protection for physically and mentally disabled persons.
4. AS 18.80.300 is amended by adding definitions for "major life activities" and "physical or mental disability"

RECOMMENDATION:

The Department of Health and Social Services supports passage of HB 393.

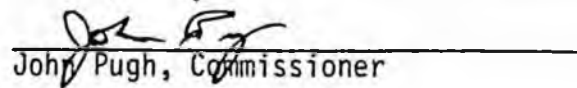
Recommended by:


Mel Henry, Ph.D., M.P.A.

Date:

4/30/85

Approved by:


John Pugh, Commissioner

Date:

5-1-85



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: File - SB168 & HB393

Conversation with Annie - Interpreter Referral Service
9/18/85

Interpreter requested for October 22 hearing on SB 168 and HB 393

Asked her about levels of interpreter certification -

Standard for court interpreter is the highest level - Comprehensive Skills Certificate (CSC). They typically have two years of training to reach that level. CSC-L is CSC-Legal; they have special training in legal terminology, and are screened and tested by a board.

There are four CSC level interpreters in the state - three with legal experience. This would not be enough to cover needs if legislation is passed to allow deaf on juries.

CSC-L interpreters usually charge \$28/hour with a 2 hour minimum

Interpreter for hearing will charge approximately \$20/hour.



PROTECTION AND ADVOCACY FOR THE DEVELOPMENTALLY DISABLED

MAIN OFFICE
325 East 3rd, 2nd Floor
Anchorage, AK 99501
(907) 274-3658

**SOUTHEAST
REGIONAL OFFICE**
127 S. Franklin, Suite 2
Juneau, AK 99801
(907) 586-1627

**NORTHERN
REGIONAL OFFICE**
733 7th Ave.
Fairbanks, AK 99701
(907) 456-1070

April 30, 1985

Representative M. Mike Miller
Chairman House Judiciary Committee
Pouch V
Juneau, Alaska 99811

RE: HB 393

Dear Representative Miller:

Thank you for directing your staff to inform me about the Judiciary Committee's consideration of this bill. I cannot attend the hearing, so please include these comments in the record.

I believe it is essential that all sections of the bill become law. While they each have some fiscal impact, it is important to remember that each furthers an important element of what we all presume is involved in the concept of citizenship.

Being an American citizen presumes fulfillment of the responsibility of jury duty. Denying jury service to deaf, blind, and mobility impaired persons forecloses this important avenue of citizenship. It stigmatizes these disabled persons as second class citizens.

The only fiscal impact this bill should bear is the cost of interpreters for the deaf.(1) The court system has much experience using qualified interpreters for deaf parties and witnesses. New interpreters will have to be trained. Considering that there are only 200 deaf adults in Alaska, the actual number of deaf jurors should be quite small. Therefore, the cost of interpreters should be in the area of several thousand dollars per year. This is a small sum when compared to how the legislation will enhance both the dignity of the disabled and the integrity of the jury process.

(1) The court system's fiscal note of \$200,000 primarily deals with the cost of making buildings accessible to the mobility impaired. The court system is already required to render these buildings accessible under existing law. AS 35.10.015; AS 47.80.010; 17 AAC 50.10. Therefore HB 393 should not bear those cost.

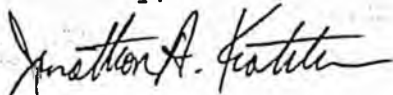
Section 3 of the bill addresses the Human Rights Commissions' jurisdiction over unlawful discrimination by the state and local governments. The Judiciary Committee deleted this section from CS HB 172 because of the fiscal impact. It would be inappropriate for the legislature to order private citizens to not discriminate against disabled persons, and yet allow the state to continue to discriminate.

I consider it ironic that when the state was awash in oil revenue, the community was politically unwilling to extend these protections to disabled persons. Now that the consciousness has been raised and the importance of these rights has been recognized, it is funding which is the stumbling block. It would be unthinkable for the legislature to say that due to diminishing revenue, discrimination on the basis of race is no longer prohibited. A legislative statement to the effect that disabled people are a minority deserving special protection from discrimination by private persons but not, due to funding, by the governments, should be likewise unthinkable. And, in light of the numerous essential services disabled people receive from the government, protection from this type of discrimination is even more critical.

Section 2 of HB 393 is also essential. Interpreters are an essential part of any deaf person's attempts to participate in the basic elements of citizenship. The absence of interpreters prevents deaf people from accessing all the programs and services that we have come to expect from our governments. Considering a deaf population of about 400 people, our state is not justified in failing to provide these services.

Thank you for this opportunity to present my comments on behalf of this important piece of legislation. I hope that the committee will pass out HB 393 intact. Please feel free to contact me if you have any questions or comments.

Sincerely,


Jonathon A. Katcher
Supervising Attorney

JAK:bk

cc: Judiciary Committee Members



RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith

Signature of Camera Operator

11/7/89

Date

H B

4 0 8

BILL CONTACT/ACTION

DATE	CONTACT/ACTION
4/11	(4968) GRUBENBERG, & (4990) MIKE MILLER NOTIFIED
	of 4/15 meeting

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

HB 408

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 408
Title: Uniform Simultaneous Death Act.

Sponsor: Gruenberg
Requestor: House Judiciary Committee
Date of Request: 1/13/86

FISCAL DETAIL

Agency Affected: None
Program Category Affected: None

BRU, Program or Subprogram(s) Affected: None

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS: -0-

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Hayden Kaden, Committee Counsel Phone: 465-4990
Division: House Judiciary Committee Date: 1/13/86
Approved by Chairman Date: 1/13/86
Agency: House Judiciary Committee

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor

12/1/83

State of Alaska

COMMITTEES

HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES
(Co-Chairman)
HOUSE JUDICIARY
HOUSE COMMUNITY AND
REGIONAL AFFAIRS



P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4965

914 CLAY COURT
ANCHORAGE, ALASKA 99503
(907) 276-6844

Representative Max F. Gruenberg, Jr.
District 11
Spennard, Upper Midtown Anchorage

April 12, 1986

Honorable Pat Rodey, Senator
Capitol Bldg. Rm 504
Juneau, AK 99801

RE: HB 408, Uniform
Simultaneous Death Act

Dear Pat:

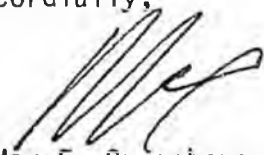
The enclosed bill, which I sponsored, passed out of the House Judiciary Committee unanimously and then passed the House floor without dissent. It is now in Senate Judiciary. Enclosed is a copy of the letter I have received from the Anchorage Estate Planning Council and enclosure concerning this bill. As you can see, the Estate Planning Council supports the bill.

As I mentioned to you, I'd be grateful if you could schedule a hearing on this bill in the near future to get it passed this year.

I would also appreciate your making certain that the enclosed letter plus enclosure are made available to the other members of the committee if you believe this information would be of interest to them.

Many thanks.

Cordially,


Max F. Gruenberg, Jr.

MFG/ddl

Enclosures

Offered: 1/20/86
Referred: Rules

Original sponsors: Gruenberg, Taylor,
Clocksin, et al

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2

CS FOR HOUSE BILL NO. 408 (Judiciary)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act providing for the adoption of the Uniform
Simultaneous Death Act."

7

8

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9

* Section 1. AS 13.06.035 is amended to read:

10

Sec. 13.06.035. EVIDENCE AS TO DEATH OR STATUS. In proceedings
under AS 13.06 - AS 13.36, and AS 13.43 the rules of evidence in
courts of general jurisdiction including any relating to simultaneous
deaths, are applicable unless specifically displaced by AS 13.06 -
AS 13.36 or AS 13.43. In addition, the following rules relating to
determination of death and status are applicable:

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(1) a certified or authenticated copy of a death certifi-
cate purporting to be issued by an official or agency of the place
where the death purportedly occurred is prima facie proof of the fact,
place, date and time of death and the identity of the decedent;

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(2) a certified or authenticated copy of any record or
report of a governmental agency, domestic or foreign, that a person is
missing, detained, dead, or alive is prima facie evidence of the
status and of the dates, circumstances and places disclosed by the
record or report;

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(3) a person who is absent for a continuous period of five
years, during which the person has not been heard from, and whose
absence is not satisfactorily explained after diligent search or
inquiry is presumed to be dead; the person's death is presumed to have
occurred at the end of the period unless there is sufficient evidence

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1 for determining that death occurred earlier.

2 * Sec. 2. AS 13 is amended by adding a new chapter to read:

3 CHAPTER 43. UNIFORM SIMULTANEOUS DEATH ACT.

4 Sec. 13.43.010. NO SUFFICIENT EVIDENCE OF SURVIVORSHIP. Except
5 as otherwise provided in this chapter, when the title to property or
6 the devolution of property depends upon priority of death and there is
7 no sufficient evidence that the persons have died other than simulta-
8 neously, the property of each person shall be disposed of as if that
9 person had survived.

10 Sec. 13.43.020. SURVIVAL OF BENEFICIARIES. When two or more
11 beneficiaries are designated to take successively by reason of
12 survivorship under another person's disposition of property and there
13 is no sufficient evidence that the beneficiaries died otherwise than
14 simultaneously, the property disposed of shall be divided into as many
15 equal portions as there are successive beneficiaries and the portions
16 shall be distributed to those who would have taken if each designated
17 beneficiary had survived.

18 Sec. 13.43.030. JOINT TENANTS OR TENANTS BY THE ENTIRETY. (a)
19 When there is no sufficient evidence that two joint tenants or tenants
20 by the entirety have died other than simultaneously the property held
21 in that manner shall be distributed one-half as if one had survived
22 and one-half as if the other had survived.

23 (b) When property is held by more than two joint tenants and
24 there is no sufficient evidence that all joint tenants have died other
25 than simultaneously the joint property distributed shall be in the
26 proportion that one bears to the whole number of joint tenants.

27 (c) In this section, "joint tenants" includes owners of property
28 held under circumstances that entitle one or more to the whole of the
29 property on the death of the other or others.

1 Sec. 13.43.040. COMMUNITY PROPERTY. When a husband and wife
2 have died, leaving community property, and there is no sufficient
3 evidence that they have died other than simultaneously, one-half of
4 all the community property shall pass as if the husband had survived
5 and as if that one-half were the husband's separate property, and the
6 other one-half of all the community property shall pass as if the wife
7 had survived and as if that one-half were the wife's separate prop-
8 ty.

9 Sec. 13.43.050. INSURANCE POLICIES. (a) When the insured and
10 the beneficiary in a policy of life or accident insurance that is not
11 community property have died and there is no sufficient evidence that
12 they have died other than simultaneously the proceeds of the policy
13 shall be distributed as if the insured had survived the beneficiary.

14 (b) When a policy of life or accident insurance is community
15 property of the insured and spouse and there is no alternative benefi-
16 ciary except the estate or personal representatives of the insured,
17 the proceeds shall be distributed as community property under AS 13.-
18 43.040.

19 Sec. 13.43.060. INAPPLICABLE SECTIONS IF DECEDENT PROVIDES
20 OTHERWISE. The provisions of this chapter do not apply in the case of
21 wills, living trusts, deeds, contracts of insurance, or any other
22 situation when provision is made for distribution of property differ-
23 ent from the provisions of this chapter, or when provision is made for
24 a presumption as to survivorship that results in a distribution of
25 property different from that provided for under this chapter.

26 Se 13.43.070. UNIFORMITY OF INTERPRETATION. This chapter
27 shall be applied and construed to achieve its general purpose to make
28 uniform the law with respect to the subject of this chapter among
29 those states that enact it.

1 Sec. 13.43.080. SHORT TITLE. This chapter may be cited as the
2 Uniform Simultaneous Death Act.

3 * Sec. 3. APPLICABILITY. The provisions of sec. 2 of this Act do not
4 apply to the distribution of the property of a person who died before the
5 effective date of this Act.



Anchorage Estate Planning Council

March 19, 1986

Representative Max F. Gruenberg, Jr.
1024 West Sixth Avenue, Suite 201D
Anchorage, Alaska 99501

Dear Representative Gruenberg:

The Estate Planning Council of Anchorage is an affiliate of a national organization comprised of certified public accountants, attorneys, certified life underwriters and trust officers who specialize in estate planning.

A number of bills which impact the estate planning process have been submitted this session. Consequently, the Estate Planning Council has created a committee to evaluate and comment upon those bills.

I hope you will find the attached comments enlightening as these bills come up for consideration.

If you desire further information, please feel free to contact me.

Yours very truly,

Kathryn A. Black

Kathryn A. Black,
Estate Planning Council President
1127 West Seventh Avenue
Anchorage, Alaska 99501

KAB/jy

HOUSE BILL 408

An Act providing for the adoption of the Uniform Simultaneous Death Act.

RECOMMENDATION:

The Estate Planning Council recommends adoption of this Bill in its current form.



ALASKA BAR ASSOCIATION

P.O. BOX 279, ANCHORAGE, ALASKA 99510, (907) 272-7469

PROBATE LAW SECTION

March 11, 1985

Representative Max Gruenberg
Pouch V
Juneau, AK 99811

RE: Prospective Amendments to Uniform Probate
Code deemed desirable by Probate Law Section
and Taxation Law Section of Alaska Bar
Association

Dear Mr. Gruenberg:

In response to your letter to the Alaska Bar Association, I have talked with David Shaftel and Rodney Kleedehn of the Alaska Bar Association's Taxation Law Section and with members of the Probate Law Section and offer the following as amendments to the Uniform Probate Code as enacted in Alaska.

Please note that the provisions under the letter from Mr. Goerig referring to the Uniform Simultaneous Death Act were essentially to be part of the Uniform Probate Code but were inadvertently eliminated when the Code was adopted in 1973. Alaska happens to be one of the few remaining states which does not have a specific provision in this regard.

Trigg Davis has advised me he would be willing to meet with you regarding these modifications to the statute as well as the proposed modification under the Taxation Law Section's letterhead as proposed by Dave Shaftel and Rodney Kleedehn.


Both committees are currently working on more extensive proposals; however, those proposals will probably be pursued through the Code Revision Commission some time this Fall. These provisions were considered by all to be relatively non-controversial and fairly straightforward.

Mr. Max Gruenberg
March 11, 1985
Page 2

Your assistance in enacting these statutes will do much to bring Alaska residents up to par with the residents of other states in the area of estate and gift tax planning.

Your cooperation in this regard is greatly appreciated. If I can be of any assistance, please feel free to contact me.

Sincerely,


Richard S. Thwaites, Jr.

RST:lj

Enclosures

cc: David G. Shaftel, Esq.
G. Rodney Kleedehn, Esq.
George E. Goerig, Jr., Esq.
Trigg T. Davis, Esq.

UNIFORM SIMULTANEOUS DEATH ACT

Table of Jurisdictions Wherein Act Has Been Adopted

Jurisdiction	Laws	Effective Date	Statutory Citation
Alabama	1949, p. 852	9-7-1949	Code 1975, §§ 43-7-1 to 43-7-8.
Arizona	1959, c. 77	6-20-1959	A.R.S. §§ 14-2804 to 14-2810.
Arkansas	1941, Act 15	1-30-1941*	Ark.Stats. §§ 61-124 to 61-130.
California	1945, p. 1685	9-15-1945	West's Ann.Cal.Proc.Code, §§ 296 to 296.8.
Colorado	1967, p. 104	3-14-1967	C.R.S.1973, 15-11-613.
Connecticut	1943, c. 266, p. 272	10-1-1943	C.G.S.A. § 45-287.
Delaware	1945, c. 234	4-18-1945*	12 Del.C. §§ 701 to 707.
Dist. of Columbia	1965, 79 Stat. 700	1-1-1966	D.C.Code 1981, §§ 19-501 to 19-506
Florida	1941, c. 20884	6-12-1941	West's F.S.A. § 732.601.
Georgia	1966, p. 606	7-1-1966	O.C.G.A. §§ 53-11-1 to 53-11-
Hawaii	1941, Act 74	4-22-1941	HRS §§ 534-1 to 534-5.
Idaho	1943, c. 83	2-23-1943*	I.C. § 15-2-613.
Illinois	1941, vol. 1, p. 6	7-16-1941	S.N.A. ch. 110 1/2, §§ 3-1, 3-2.
Indiana	1941, c. 49	2-24-1941*	West's A.I.C. 29-2-14-1 to 29-2-14-8.
Iowa	1963, c. 326	1-1-1964	I.C.A. §§ 633.523 to 633.528.
Kansas	1947, c. 239	6-30-1947*	K.S.A. 58-701 to 58-707.
Kentucky	1942, c. 79	3-5-1942	KRS 397.010 to 397.080.
Maine	1941, c. 111	3-29-1941	18-A M.R.S.A. § 2-805.
Maryland	1941, c. 191	6-1-1941	Code, Courts and Judicial Proceedings, §§ 10-801 to 10-807.
Massachusetts	1941, c. 549	7-29-1941	M.G.L.A. c. 190A, §§ 1 to 8.
Michigan	1941, No. 73	1-10-1942	M.C.L.A. §§ 720.101 to 720.104.
Minnesota	1943, c. 248	4-2-1943*	M.S.A. § 525.90.
Mississippi	1956, c. 214	7-1-1956	Code 1972, §§ 91-3-1 to 91-3-15.
Missouri	1947, Vol. 1, p. 13	9-10-1947	V.A.M.S. §§ 471.010 to 471.080.
Nebraska	1947, c. 112	3-8-1947	R.R.S.1943, §§ 30-121 to 30-128.
Nevada	1949, c. 44	3-9-1949*	N.R.S. 135.010 to 135.090.
New Hampshire	1941, c. 55	4-8-1941	RSA 563:1 to 563:9.
New Jersey	1947, c. 384	7-3-1947	N.J.S.A. 3B:6-1 to 3B:6-7.
New Mexico	1959, c. 172	3-31-1959	NMSA 1978, §§ 45-8-1 to 45-8-8.
New York	1966, c. 952	9-1-1967	McKinney's EPTL 2-1.6.
North Carolina	1947, c. 1016	4-5-1947	G.S. §§ 28A-24-1 to 28A-24-7.
North Dakota	1943, c. 211	3-17-1943	NDCC 31-12-01 to 31-12-06.
Oklahoma	1959, c. 385	10-2-1959	58 Okl.St. Ann. §§ 1001 to 1008.
Oregon	1947, c. 555	4-21-1947	ORS 112.575 to 112.645.
Pennsylvania	1972, No. 164	7-1-1972	21 Pa.C.S.A. §§ 8501 to 8505.
Rhode Island	1947, c. 1871	4-28-1947	*Gen.Laws 1956, §§ 33-2-1 to 33-2-9.
South Carolina	1948, p. 1753	4-3-1948	Code 1976, §§ 21-9-10 to 21-9-80.
South Dakota	1941, c. 332	3-4-1941	SDCL 29-8-1 to 29-8-8.
Tennessee	1941, c. 59	2-10-1941	T.C.A. §§ 31-501 to 31-508.
Texas	1955, c. 55	1-1-1956	V.A.T.S. Probate Code, § 47.
Utah	1953, c. 78	5-12-1953	U.C.A.1953, 75-2-1001 to 75-2-1008.
Vermont	1941, No. 41	3-21-1941	14 V.S.A. §§ 621 to 627.
Virgin Islands	1957, c. 3	9-1-1957	15 V.I.C. § 88.
Virginia	1942, c. 63	2-25-1942	Code 1950, §§ 64.1-97 to 64.1-104.
Washington	1943, c. 113	3-16-1943	West's RCWA 11.05.010 to 11.05.910.
West Virginia	1953, c. 66	2-18-1953	Code, 42-5-1 to 42-5-10.
Wisconsin	1941, c. 284	6-25-1941	W.S.A. 851.55.
Wyoming	1941, c. 94	2-21-1941	W.S.1977, §§ 2-13-101 to 2-13-107.

* Date of approval.

SIMULTANEOUS DEATH

Historical Note

The Uniform Simultaneous Death Act was approved by the National Conference of Commissioners on Uniform State Laws, and the American Bar Association, in 1940. The Act was subsequently amended in 1953 and similarly approved.

PREFATORY NOTE

After more than five years study a Uniform Simultaneous Death Act has been approved by the National Conference of Commissioners on Uniform State Laws and recommended to the various legislatures for adoption. Two considerations justify the hope that the Act which is presented herewith will be received favorably by the legislative bodies of the various States. It may be a sad commentary, but the pace of modern living with its multiple forms of transportation has caused the instances of simultaneous death to occur with much greater frequency than in the past. More and more therefore courts will be called upon to administer the estates of persons who have died under circumstances that there is no evidence of survivorship and it is desirable to have a workable and uniform rule to apply in such instances. The second consideration which should recommend this Act to the various legislative bodies is the unsatisfactory variety of methods that have been devised either as a result of jurisprudence or the result of legislation to administer this troublesome legal situation. Some States have set arbitrary presumptions which are employed by the courts to determine the devolution of property. In other States there is the "common law rule" which indulges no presumption one way or the other and leaves the matter to the respective claimants to prove survivorship. Both situations seem to be unrealistic. Prescribed presumptions frequently ignore the facts of life. For instance in some States it is presumed (conclusively) that an adult in good health survives a minor child or infant. If the minor happened to be the son or daughter of the adult it is more reasonable to suppose that the adult would have used every expedient to protect the child even at the sacrifice of his own life. In those States where there is no presumption whatever indulged courts are faced with an anachronism. The reason for the difficulty of administration is that it is impossible to know which of the persons has survived. Yet the "common law rule" in effect says that the person who claims by virtue of an alleged survivorship must prove the survivorship which is tantamount to demanding the impossible.

The theory of the present Act makes no effort whatever to resolve the un-resolvable. The formula is a simple one and easily applied. The theory of the present Act is that as to the property of each person he is presumed to be the survivor and it is administered accordingly.

Perhaps a word ought to be said with respect to Section four which deals with contracts of insurance. The Act provides that when the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise

SIMULTANEOUS DEATH

than simultaneously the proceeds of the policy shall be distributed as if the insured had survived. Obviously this section creates a conclusive presumption. The special circumstances seem to justify the creation of a presumption relative to the survivorship of the insured or beneficiary. By providing that the insured presumably survived it is thought that the result will most nearly approximate the intention of the real party in interest. If it does not, he is at liberty to provide otherwise in the contract of insurance.

General Statutory Notes

Alaska. L.1972, c. 78, repealed former title 13 of the Alaska Statutes and enacted a new title 13 in lieu thereof. While the new title 13 contains provisions relating to simultaneous deaths (see A.S. §§ 13.06.035 and 13.11.220), they are not in substantial conformity with the uniform act. Accordingly, Alaska has been deleted from the table of jurisdictions wherein the uniform act has been adopted.

California. Adds sections as follows:

"§ 296.41. Proceeding to determine simultaneous death; petition; notice of hearing; service. When it is claimed that, in accordance with the provisions of this chapter, any persons have died under circumstances where there is no sufficient evidence that they have died otherwise than simultaneously, the executor or administrator of any such person, or any other person interested in the estate of any such person, may file a petition, in the estate proceeding where he received his appointment, or in which he claims an interest, seeking to have it determined that such persons died under circumstances where there is no sufficient evidence that they died otherwise than simultaneously. The clerk shall set the petition for hearing by the court and cause notice thereof to be personally served at least 10 days before the date of the hearing upon the executor or administrator of each other person claimed to have so died. If the representative of any such other person is also the petitioner then, in lieu of personal service upon him, such notice shall be mailed to the heirs and devisees of such other person, so far as they are known to

the petitioner, at least 10 days before the date of hearing."

"§ 296.42. Proceeding by executor or administrator to determine simultaneous death; hearing; determination of order of death; jurisdiction. At the time appointed, the court, upon proof that due notice of the hearing has been given, shall proceed to hear the petition and any objections thereto that may have been filed or presented; and if, after a full hearing, the court is satisfied that the named persons are dead and that there is no sufficient evidence that they died other than simultaneously, it shall make an order to that effect. If the court is satisfied that the named persons are dead and that they did not die simultaneously then the court shall make an order setting forth the order in which such persons died. Such order when it becomes final shall be a binding determination of the facts therein set forth and conclusive as against the personal representatives of the deceased persons named in the order and against all persons claiming by, through or under any such deceased persons. The probate court which first acquires jurisdiction under Section 296.41 shall have exclusive jurisdiction to determine, by its order, that there is no sufficient evidence that the named persons died otherwise than simultaneously or to determine the order in which the named persons died."

Florida. L.1974, c. 74-100, repealed West's F.S.A. § 736.05, which formerly constituted the Uniform Simultaneous Death Act, and reenacted said Uniform Act as part of the Florida Probate Code in West's F.S.A. § 732-601.

SIMULTANEOUS DEATH

Illinois. The Illinois Act was repealed and reenacted by L.1975, P.A. 79-328. While the reenacted Illinois Act remains a substantial adoption of the Uniform Act, it now contains numerous variations, omissions and additional matter which cannot be clearly indicated by statutory notes.

Maine. L.1970, c. 540, repealed 18 M.R.S.A. §§ 1101 to 1108, which formerly constituted the Uniform Simultaneous Death Act, and reenacted said Uniform Act as part of the Maine Probate Code in 18-A M.R.S. A. § 2-805, effective Jan. 1, 1981.

Said 18-A M.R.S.A. § 2-805 contains the following additional provision: "This section shall not apply to the distribution of the property of any person dying before July 26, 1941, nor to the distribution of the proceeds of any policy of life or accident insurance the effective date of which is prior to that date."

Michigan. Adds a section as follows:

"720.105. Application of act; not retroactive. Sec. 5. ACT NOT RETROACTIVE. This act shall not apply to the distribution of the property of a person who has died before it takes effect."

Montana. L.1974, c. 365, repealed the Uniform Simultaneous Death Act (R.C.M.1947, §§ 91-423 to 91-430) and enacted provisions in the Montana Probate Code which relate to the same subject matter but which are not in substantial conformity with the Uniform Act. See R.C.M.1947, §§ 91A-2-104 and 91A-2-001. Accordingly, Montana has been deleted from the table of jurisdictions wherein the uniform act has been adopted.

New Jersey. L.1981, c. 405, repealed N.J.S.A. 3A:5-1 to 3A:5-8, which formerly constituted the Uniform Simultaneous Death Act, and reenacted said Uniform Act as part of N.J.S.A. Title 3B, Administration of Estates—Decedents and Others in N.J.S.A. 3B:6-1 to 3B:6-7, effective May 1, 1982.

South Dakota. The enactment of the South Dakota Uniform Probate Code (SDCL 29A-1-101 to 29A-8-101)

by SL 1974, c. 196, effective Jan. 1, 1976, superseded the provisions of the South Dakota Uniform Simultaneous Death Act (SDCL 29-8-1 to 29-8-8) despite the fact that the latter act was never actually repealed. Now, however, the South Dakota Uniform Probate Code has been repealed by SL 1976, c. 175, § 2 and SL 1976, c. 177, § 3, effective July 1, 1976. SL 1976, c. 175, § 1 and SL 1976, c. 177, § 2, provided for the promulgation of rules by the Supreme Court for the orderly transition of actions started pursuant to the procedures set forth in the Uniform Probate Code to the procedures set forth in SDCL Titles 29 and 30. Thus, the provisions of the South Dakota Uniform Simultaneous Death Act as they existed prior to the adoption of the Uniform Probate Code are again in effect.

Adds a section as follows:

"29-8-5. Estates to which chapter applies.—This chapter shall not apply to the distribution of the property of a person who has died before July 1, 1941."

Texas. The Texas Act has been significantly amended and while it remains a substantial adoption of the Uniform Act, it now contains numerous variations, omissions and additional matter which cannot be clearly indicated by statutory notes.

Utah. L.1975, c. 150, repealed U. C.A.1953, 74-5-1 to 74-5-8, which formerly constituted the Uniform Simultaneous Death Act, and reenacted said Uniform Act as part of the Utah Probate Code in U.C.A.1953, 75-2-1001 to 75-2-1008, effective July 1, 1977.

Adds a section as follows:

"75-2-1008. Death before taking effect of act.—This part shall not apply to the distribution of the property of a person who has died before it takes effect."

Virginia. Adds a section as follows:

"§ 64.1-101. Chapter not retroactive.—This chapter shall not apply to the distribution of the property of a person who died prior to June twenty-seventh, nineteen hundred forty-two."

UNIFORM SIMULTANEOUS DEATH ACT

An Act providing for the disposition of property where there is no sufficient evidence that persons have died otherwise than simultaneously, and to make uniform the law with reference thereto.

1940 ACT

Amended in 1953

Sec.

1. No Sufficient Evidence of Survivorship.
2. Survival of Beneficiaries.
3. Joint Tenants or Tenants by the Entirety.
4. Community Property.
5. Insurance Policies.
6. Act Does Not Apply If Decedent Provides Otherwise.
7. Uniformity of Interpretation.
8. Short Title.
9. Repeal.
10. Severability.
11. Time of Taking Effect.

Be it enacted

§ 1. No Sufficient Evidence of Survivorship

Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this act.

Action in Adopting Jurisdictions

Variations from Official Text:

Idaho. Adds "Subject to extension by the provisions of section 15-2-104 and section 15-2-601 of this code" preceding "where the title".

Kentucky. Omits this section.

Missouri. Inserts "as determined by a court of competent jurisdiction", following "simultaneously."

Oklahoma. Inserts "of two or more persons" following "death" and "to establish" following "evidence".

Wisconsin. Substitutes "If" for "Where", and inserts "or she" following "he".

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Law Review Commentaries

Burden of proof and presumptions. John T. McNaughton. 35 Boston U. L.Rev. 481 (1955).

Common disaster, burden of proving survivorship. 27 Iowa L.Rev. 137 (1941).

Common disaster clauses in estate planning. Robert H. Wyshak. 34 Mass.L.Q. 22 (1949).

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Disposition of property in event of death in common accident, use of mutual reciprocal wills. Edward S. Boyles. Texas Bar J. 57 (1949).

Drafting a simple will. Don H. McLucas. 39 Ill.Bar J. 78 (1950).

Effect of simultaneous death of joint tenants or tenants by the entirety. 14 Intra.L.Rev. [N.Y.U.] 130 (1959).

Estate planning for common disaster. 38 Boston U.L.Rev. 277 (1958).

Evidence of survivorship in common disaster cases. John E. Tracy and John J. Adams. 38 Mich.L.Rev. 801 (1940).

Federal estate tax, marital deduction for property passing. Harry A. Blackmun. 36 Minn.Law Review 50 (1951).

Interpretation of "common disaster" provisions in wills. 1 Syracuse L.Rev. 457 (1950).

Law of survival in case of death by common disaster as it is related to distribution of property. Frederick A. Wislizenus. 6 St. Louis L. Rev. 1 (1921).

New developments in will drafting. George P. Ettenheim. 22 Wis.Bar Bull. 25 (1949).

Presumption in case of death by common disaster. 1 Iowa L.Rev. 93 (1925).

Presumption of order of death in common calamity, the steamboat house. D. H. Redfearn. 9 Fla.L.J. 405, 423 (1935).

Presumptions, simultaneous death. Williams H. De Pareq. 40 Minn.Law Review 308 (1956).

Simultaneous Death Act as it pertains to the marital deduction. Frederic Sammond. 38 Marquette L.Rev. 169 (1954).

Simultaneous death statute. 1 U. Fla.L.R. 75 (1948).

Sins of oversight in wills and trusts. Paul B. Sargent. 30 Boston U.L.Rev. 301 (1950).

Status of entireties in Florida. 5 Miami L.Q. 592 (1951).

Statutory solution of the problem of survival in a common disaster. 50 Harvard L.Rev. 344 (1936).

Tenancy by the entireties in Florida. John M. Starling. 14 U.Fla.L.R. 111 (1961).

Library References

Death ⇐5

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SIMULTANEOUS DEATH

§ 1
Note 6

1. Common law

Under common law, there was no presumption either of survivorship or of simultaneous death. *Sherman v. Roe*, 1953, 262 S.W.2d 393, 153 Tex. 1. See, also, *In re Conover's Estate*, 1965, 259 N.Y.S.2d 618, 46 Misc.2d 336.

At common law, property rights of husband and wife killed in common disaster are disposed of as if death occurred at same time. *In re Conover's Estate*, 1965, 259 N.Y.S.2d 618, 46 Misc.2d 336.

Where two or more persons perished in the same disaster, there was no presumption at common law that either survived or that all perished simultaneously. *Glover v. Davis*, Tex.1963, 366 S.W.2d 227.

2. Constitutionality

This Act is constitutional. *In re Meade's Estate*, 1964, 39 Cal.Rptr. 278, 228 Cal.App.2d 169.

3. Purpose

The purpose of Uniform Simultaneous Death Act is to supplant the former arbitrary and complicated presumption of survivorship with effective, workable and equitable rules applicable to the ever-increasing number of cases where two or more persons have died under such circumstances that there is no sufficient evidence to indicate that they have died otherwise than simultaneously. *In re Estate of Schmidt*, 1968, 67 Cal. Rptr. 847, 261 Cal.App.2d 262. See, also, *Azvedo v. Benevolent Soc. of Cal.*, 1954, 270 P.2d 948, 125 C.A.2d Supp. 894; *In re Rowley's Estate*, 1967, 65 Cal.Rptr. 139, 257 Cal.App.2d 224; *In re Estate of Bobula*, 1966, 25 A.D.2d 241, 269 N.Y.S.2d 599.

Purpose of Georgia Simultaneous Death Act is to solve problem of proper devolution of property when distribution depends upon order of death and the circumstances are such that the order of death is not ascertainable. *Wien's Estate v. C. I. R.*, C.A.Ga.1971, 441 F.2d 32.

Uniform Simultaneous Death Act was adopted to provide more realistic

answer to problem of who died first in common accident. *In re Suzzino's Estate*, 1968, 73 Cal.Rptr. 150, 267 Cal.App.2d 591, 39 A.L.R.3d 1325.

4. Law governing

In interpleader suit to determine right to proceeds of son's life policies as between administrators of father and son who were killed in same automobile accident, West's Ann.Cal. Probate Code, § 296.3, requiring distribution of policy proceeds as if insured had survived beneficiary in absence of evidence that insured and beneficiary dies otherwise than simultaneously was applicable, to the complete exclusion of West's Ann.Cal. Probate Code, § 296 governing disposition of property when dependent upon priority of death. *Hahn v. Padre*, C.A.Cal.1957, 235 F.2d 356.

5. Construction with other laws

Antilapse statute and Uniform Simultaneous Death Act are in pari materia and will be construed accordingly. *Brundige v. Alexander*, Tenn. 1976, 547 S.W.2d 232.

6. Generally

Where two or more persons perish in a common disaster and there is no proof as to which died first, the Uniform Simultaneous Death Act furnishes a guide in the absence of evidence by which the descent of property may be judicially determined and creates a presumption that death of the parties was simultaneous. *In re Estate of Schmidt*, 1968, 67 Cal. Rptr. 847, 261 Cal.App.2d 262.

Uniform Simultaneous Death Act is not rule of evidence, as such, but one of substantive law that governs devolution of property under certain circumstances. *In re Moran's Estate*, 1979, 32 Ill.Dec. 349, 395 N.E.2d 579, 77 Ill.2d 147.

Uniform Simultaneous Death Act is not a rule of evidence and does not afford any presumption as to survivorship but is rule of substantive law controlling devolution of property of persons who die in common disaster. *Brundige v. Alexander*, Tenn. 1976, 547 S.W.2d 232.

§ 1

Note 7

SIMULTANEOUS DEATH

7. Distribution of estate

Where husband and wife who left identical wills, each leaving everything to the other were found dead in their apartment from gas poisoning, and husband left no relations while wife left nephews and nieces, wife's nephews and nieces were entitled to estates of both decedents regardless of who survived the other, as against city's contention that property of each decedent should be disposed of as if he or she survived and husband's estate escheated to school board. *Mayor and City Council of Baltimore v. White*, 1948, 56 A.2d 824, 189 Md. 571.

Where wife willed all her property to husband upon condition that he survive her, and husband and wife were killed simultaneously in automobile accident, husband's son by prior marriage did not acquire title through father to real estate owned by wife upon her death. *Stanley v. Giesecking*, 1952, 105 N.E.2d 171, 230 Ind. 690.

Where persons die in common disaster so that death would appear to be simultaneous, disposition of property will be made according to estate powers and trust law. In re *Bucci's Will*, 1968, 293 N.Y.S.2d 994, 57 Misc.2d 1001.

Where actual survivorship of parties fatally injured in common disaster cannot be ascertained, property of each passes as though each survived. In re *Spatufoara's Estate*, 1962, 229 N.Y.S.2d 601, 35 Misc.2d 128.

Where decedent and her husband died in a common disaster and no proof was submitted as to who died first, her estate would be distributed as if she survived her husband. In re *Hoffer's Will*, 1958, 172 N.Y.S.2d 850, 10 Misc.2d 311.

Where two or more persons perish in a common accident, or otherwise under circumstances where positive credible evidence other than a mere factual inference based on the physique of one being superior to that of the other, or others, is lacking, former *McKinney's Decedent Estate Law*, § 89 [now *McKinney's EPTL* § 2-1.6], controls absolutely, to the effect that

the property of each person shall be disposed of as if, between or among persons in question, such person had been the survivor. In re *Di Bella's Estate*, 1953, 125 N.Y.S.2d 755.

Where husband and wife died under circumstances which would make the order in which they died difficult, if not impossible, of proof, and the parents of husband filed a petition for letters of administration as husband's only distributees, the mother of wife, who paid for wife's funeral expenses, was entitled to reimbursement from husband's estate. In re *Laue's Estate*, 1950, 102 N.Y.S.2d 333, 199 Misc. 35.

Where husband and wife met their deaths accidentally in their home from gas asphyxiation, and there was no showing which of the two died first, property of husband would be disposed of as if he had survived his wife, and the wife's property would be disposed of as if she had survived husband, and therefore the brother of the wife had no interest in the property of the deceased husband and was without standing to attack appointment of public administrator to administer deceased husband's estate. In re *Gerashimoff's Estate*, 1950, 96 N.Y.S.2d 142.

Where complaint alleged that mother and son died by asphyxiation as result of suicide and homicide committed by mother, and it could not be determined that mother and son died otherwise than simultaneously, and mother's will left entire estate to her son and made no other provision in event of failure of son to survive mother, under this section, testamentary gift to son lapsed and for purposes of distribution of her estate, the mother died intestate. In re *Meyer's Estate*, 1950, 94 N.Y.S.2d 620, 276 App.Div. 972.

Where husband and wife died on same day from natural causes and there was no evidence to establish whether husband survived or predeceased his wife, husband's estate was required to be distributed as if he had survived his wife. In re *Dunham's Will*, 1947, 69 N.Y.S.2d 572, 188 Misc. 1026.

SIMULTANEOUS DEATH

§ 1
Note 9

Provision in husband's will which totally disinherited wife if they both died at or about the same time as the result of a common disaster was valid even if wife survived by 13 or 14 minutes following automobile accident and did not consent to the will. *In re Messenger's Estate*, 1972, 494 P.2d 1107, 268 Kan. 763.

This Act was not applicable in determination of whether woman whose husband and daughter were both killed in vehicle accident bound to have resulted from husband's negligence was entitled to entire recovery rather than moiety since it dealt with title to or devolution of property as distinguished from statutory right to recover for wrongful death, but resort to common-law rule that there is no presumption of survivorship was required. *McCallum v. Harris*, Ky.1964, 379 S.W.2d 438.

Where testators did not die simultaneously, provisions of will governing disposition of estate in event of simultaneous death never became operative. *Sutton v. Salley*, Fla.App. 1979, 370 So.2d 425, certiorari denied 381 So.2d 769.

Where will set up a trust and provided that income should be paid to life tenant and upon her death corpus should be divided among certain remaindermen, as a class, who survived the life tenant, estate of remainderman who died with the life tenant in a common airplane disaster, there being no proof that they died other than simultaneously, shared equally with other remainderman in the corpus of the trust under statute. *Miami Beach First Nat. Bank v. Miami Beach First Nat. Bank*, 1951, 52 So.2d 893.

8. Estate taxes

This Act was not applicable for purpose of determining whether corpus of inter vivos trust created by husband for wife's benefit before effective date of act should be included in wife's taxable estate. *In re Conover's Estate*, 1965, 259 N.Y.S.2d 618, 46 Misc.2d 336.

9. Burden of proof

Party whose claim is dependent on survivorship has burden of proving the fact by preponderance of the evidence. *In re Schmidt's Estate*, 1968, 67 Cal.Rptr. 847, 261 Cal.App.2d 262.

Where two persons die in common disaster, there is no presumption as to which person survived, and no presumption that deaths were simultaneous, and burden of proof is on party claiming survivorship to establish it as fact or by evidence which fairly warrants inference of survivorship. *Matter of Bausch's Estates*, 1979, 420 N.Y.S.2d 181, 100 Misc.2d 817.

In case of death from common disaster, there is no presumption as to who survived nor any presumption that deaths were simultaneous, but burden of proof is on party asserting survivorship to establish it as a fact or at least by evidence which would fairly warrant inference of survivorship. *In re Spatafora's Estate*, 1962, 229 N.Y.S.2d 601, 35 Misc.2d 128.

Party asserting that wife, who was killed in a common disaster with her husband, survived her husband, had burden of proving survival by wife. *In re Dukszta's Estate*, 1948, 87 N.Y.S.2d 245, 193 Misc. 720, reversed on other grounds 90 N.Y.S.2d 686, 275 App.Div. 915, reargument denied 92 N.Y.S.2d 310, 275 App.Div. 1035.

Under this section whenever proof is lacking that a specific person survived, court deems that all died in same instant and burden of proof falls on parties whose claim is dependent on survivorship to establish that fact and sufficient evidence is evidence that satisfies an unprejudiced mind. *In re Cruson's Estate*, 1950, 221 P.2d 892, 189 Or. 537.

In absence of legislation there is no presumption of survivorship, and none of simultaneous death but when a showing is made that decedents perished in a common disaster, survivorship will be deemed unascertainable, in absence of sufficient evidence showing that one of them outlived the other or others and burden of proof falls on party whose claim is dependent on survivorship to establish that fact. *Id.*

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Note 9

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In proceeding by state to escheat estate of deceased woman who was killed along with her husband in automobile accident, burden of proving that husband survived rested on parties claiming as legal heirs of husband. *Id.*

Under the Simultaneous Death Act, the burden of proof falls upon the party whose claim is dependent upon survivorship. *Matter of Viviano's Estate*, Mc.App.1981, 624 S.W.2d 130.

On petition to determine order of death, it was position of wife's estate that wife survived her husband and, thus, wife's estate had the burden to establish same. *Id.*

10. Evidence of survival—Applicability of statute

Provision in Georgia Simultaneous Death Act that statute will apply if there is not sufficient proof that parties have died otherwise than simultaneously does not require proof that the parties actually died at the same instant; rather the statute applies in all cases of common disaster where it is impossible to prove which of the parties died first. *Wien's Estate v. C. I. R.*, C.A.Ga.1971, 441 F.2d 32.

The Uniform Simultaneous Death Act is inapplicable if there is evidence as to which of the parties survived the other or if there are particular circumstances from which the fact of survivorship may be inferred. *In re Estate of Schmiat*, 1968, 67 Cal.Rptr. 847, 261 Cal.App.2d 262.

If there is any sufficient evidence that either party survived other even when deaths occur at substantially the same time, the Uniform Simultaneous Death Act is inapplicable and the question of survivorship must be determined as any other fact. *Id.*

If burden of proving survivorship is met, survival by one second is enough to make the Uniform Simultaneous Death Act inapplicable. *Id.*

If there is any sufficient evidence that either party survived other, even when deaths occur at substantially the same time, Uniform Simultaneous Death Act is inapplicable, and question of survivorship

must be determined as any other fact. *In re Rowley's Estate*, 1967, 67 Cal.Rptr. 139, 257 Cal.App.2d 324.

In view of satisfactory proof that husband predeceased wife by about five minutes, though both died of injuries sustained in common accident, Uniform Simultaneous Death Act was not applicable to govern distribution of their assets. *Matter of Bausch's Estates*, 1979, 420 N.Y.S.2d 181, 100 Misc.2d 817.

The Uniform Simultaneous Death Act would be rendered almost useless by proffered literal interpretation of Act that unless evidence supports conclusion that decedents expired at same instant, Act does not apply and court must determine which one survived other, no matter how difficult the task, and such literal interpretation has not been adopted by Oregon court, or by majority of courts, but, rather, Act has been construed to mean that if it cannot be determined by sufficient evidence which decedent died first, Act becomes applicable. *Matter of Campbell's Estate*, 1982, 641 P.2d 610, 56 Or.App. 222, review denied 651 P.2d 143, 293 Or. 146.

This Act is not applicable where there is sufficient evidence that the persons concerned had died otherwise than simultaneously. *United Trust Co. v. Pyke*, 1967, 427 P.2d 67, 199 Kan. 1.

Where there is sufficient evidence to determine that one party survived another, the Simultaneous Death Statute and statute concerning distribution of property of joint tenants or tenants by the entirety, are not applicable. *In re Davenport's Estates*, 1958, 323 P.2d 611, 79 Idaho 548.

This section is inapplicable if there is evidence as to which party survived the other or if there are particular circumstances from which fact of survivorship may be inferred. *Sauers v. Stolz*, 1950, 218 P.2d 741, 121 Colo. 456.

Survival by one second would be enough to make Simultaneous Death Act inapplicable. *Matter of Vivi-*

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ano's Estate, Mo.App.1981, 624 S.W.2d 130.

Where husband and wife received fatal injuries in same accident but wife, although never regaining consciousness, did not die until 17 days later, Ark.Stats. § 61-124 et seq. relating to disposition of property when devolution depends upon priority of death and there is no evidence that persons have died otherwise than simultaneously was inapplicable. *Smith v. Smith*, 1958, 317 S.W.2d 275, 229 Ark. 579.

11. — Admissibility

Question of coroner's qualification to express his opinions on issue whether one of two persons who died at approximately the same time had survived the other was for trial court's determination in proceeding, under Uniform Simultaneous Death Act, for determination that there was no sufficient evidence that the two persons had died otherwise than simultaneously. In *re Rowley's Estate*, 1967, 65 Cal.Rptr. 139, 257 Cal.App.2d 324.

In proceeding by state to escheat estate of deceased woman who was killed, along with her husband, in automobile accident, death certificates signed by county coroner showing that deaths of deceased and her husband occurred synchronously, constituted material evidence and were admissible to establish that deaths were concurrent. In *re Cruson's Estate*, 1950, 221 P.2d 892, 189 Or. 537.

In proceeding by state to escheat estate of deceased woman who was killed, along with her husband in automobile accident, where mortician gave all data and facts he had as to appearance and injuries of deceased parties at time they were discovered after accident, his opinion as to which of the parties survived the other was inadmissible. *Id.*

12. — Sufficiency

The presumption of simultaneous death created by the Uniform Simultaneous Death Act was not intended to take the place of competent, positive and direct evidence, and the fact

of survivorship requires no higher degree of proof than any other fact in the case. In *re Estate of Schmidt*, 1968, 67 Cal.Rptr. 847, 261 Cal.App.2d 262.

Finding that wife who died in same automobile crash as husband died of basal skull fracture and survived husband by 10 to 15 minutes was supported by evidence, including eyewitness testimony that wife was bleeding extensively from her ears for a period of time after the accident and breathed, gasped and moaned which actions some experts interpreted as signs of life as opposed to post mortem reactions. *Id.*

Fact that deaths occur substantially or approximately at same time does not make the death simultaneous under Uniform Simultaneous Death Act. In *re Rowley's Estate*, 1967, 65 Cal.Rptr. 139, 257 Cal.App.2d 324.

The words "sufficient evidence" as used in this Act mean preponderance of the evidence. *Estate of Moran*, 1978, 24 Ill.Dec. 312, 385 N.E.2d 79, 67 Ill.App.3d 576, affirmed 12 Ill.Dec. 349, 395 N.E.2d 579, 77 Ill.2d 147.

Evidence that wife of administrator and her parents died when an airplane in which they were passengers crashed at speed of 175 miles per hour into a mountainside, and that death of wife was due to the "dismemberment and destruction of [her] skull and body," her head having been crushed and her body torn in half by the force of the crash, was sufficient to support finding that wife and her parents died instantaneously and simultaneously. *Ohashi v. Blanchard*, 1974, 314 N.E.2d 897, 2 Mass.App. 863.

There is no presumption when persons die in common disaster that by reason of sex or physical condition, one person survived another. In *re Bucci's Will*, 1968, 293 N.Y.S.2d 904, 57 Misc.2d 1001.

Where mother and daughter perished in common accident, fact that daughter was younger and in better physical health than her mother was irrelevant in determining question of

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survivorship between mother and daughter in absence of other evidence. *In re Di Bella's Estate*, 1953, 125 N.Y.S.2d 755.

In proceeding for revocation of letters of administration, evidence of attending physician was sufficient to establish that wife survived her husband by approximately one hour. *In re Rose's Estate*, 1951, 106 N.Y.S.2d 235, 201 Misc. 470.

No physical condition such as sex, relative ages or physiques, or circumstance that one of two persons whose survivorship of other is in question was suffering from some malady or any other physical condition which, logically, might seem to be a basis of probability in relation to survivorship, can be considered as constituting basis of presumption that physically superior person survived the other. *In re Di Bella's Estate*, 1950, 160 N.Y.S.2d 763, 199 Misc. 847, affirmed 107 N.Y.S.2d 929, 279 App.Div. 689.

Under this section if there is proof by petitioning party sufficient to show by a fair preponderance of evidence that one party survived the other, one second would be sufficient. *Id.*

Courts will look at whole case to determine which of two victims of a common disaster survived, if there are circumstances tending to prove survivorship, but court will not attempt to solve question if only the fact of death by common disaster appears. *In re Dunksza's Estate*, 1948, 87 N.Y.S.2d 245, 193 Misc. 720, reversed on other grounds 90 N.Y.S.2d 686, 275 App.Div. 915, reargument denied 92 N.Y.S.2d 310, 275 App.Div. 1035.

In proceeding by state to escheat estate of deceased woman who was killed along with her husband in automobile accident, evidence was insufficient to establish which, if either, of the parties survived the other, and estate of wife would be treated as though she survived and escheat to state. *In re Cruson's Estate*, 1950, 221 P.2d 892, 189 Or. 537.

The presumption under this section of simultaneous death could not be

invoked where two lay witnesses testified without contradiction or impeachment that after automobile accident wife's body was twisted and showed no heartbeat, while husband's heartbeat was perceptible and he was bleeding in spurts. *Sauers v. Stolz*, 1950, 218 P.2d 741, 121 Colo. 456.

Simultaneous Death Act does not apply if there is any sufficient evidence that one joint tenant outlived the other. *Matter of Viviano's Estate*, Mo.App.1981, 624 S.W.2d 130.

Death certificates indicating simultaneous death, severe nature of collision, and testimony of emergency personnel who arrived at the scene shortly after the crash, constituted substantial evidence supporting trial court's determination that husband and wife died simultaneously in automobile accident. *Id.*

Where life policy provisions coincided with provision of this Act and all evidence pointed toward simultaneous death of insured and beneficiary, insured presumably survived beneficiary, in absence of proof to contrary. *Belt v. Baser*, 1964, 383 S.W.2d 657, 238 Ark. 644.

If all parties in automobile collision case are unquestionably dead before anyone arrives at the scene or observes any of them alive, it would be necessary to rely on circumstantial evidence in order to prove survivorship and they would have to be considered to have died simultaneously under this section. *Glover v. Davis*, Tex.1902, 360 S.W.2d 924, affirmed 366 S.W.2d 227.

In case in which evidence was presented which indicated that wife died before husband but expert medical testimony was presented which would indicate that such evidence was inconclusive, trial court did not err in determining that husband and wife died simultaneously for purposes of probate of their respective estates. *In re Shine's Estate*, Fla. App.1980, 380 So.2d 1191, review denied 397 So.2d 779.

That deaths occurred otherwise than simultaneously within meaning of Uniform Simultaneous Death Law,

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may be established by a preponderance of the evidence, and it is not necessary that the showing be made by proof beyond reasonable doubt. *Rimmer v. Tesla*, Fla.1967, 201 So.2d 573.

Death certificates, each of which recited that decedent named therein died at approximately 9:00 a. m. of same morning, were not prima facie evidence of simultaneous deaths under statute making death certificates prima facie evidence of facts recited therein. *Id.*

Thoroughness or comprehensiveness of examination by doctor who attempted but failed to find carotid pulse in neck of one victim of automobile accident but observed another victim breathing for approximately 15 minutes thereafter went only to weight of his testimony that their deaths were other than simultaneous and not to its competency or credibility. *Id.*

13. Questions of fact

This Act does not alter rules of evidence; there is no presumption of survivorship, which is a fact to be established like any other fact. *Estate of Moran*, 1978, 24 Ill.Dec. 312, 385 N.E.2d 79, 87 Ill.App.3d 570, af-

firmed 32 Ill.Dec. 349, 395 N.E.2d 579, 77 Ill.2d 147.

Where there is a common disaster, there is no presumption of survivorship, nor is there a presumption that death occurred simultaneously but survivorship is a fact to be established by evidence as any other fact. *In re Di Bella's Estate*, 1951, 107 N. Y.S.2d 929, 279 App.Div. 689.

The question whether one survives another is to be determined as a matter of fact by evidence. *United Trust Co. v. Pyke*, 1967, 427 P.2d 67, 199 Kan. 1.

14. Review

Upon issue whether persons dying at approximately the same time have died simultaneously, finding of survivorship must be sustained on appeal if supported by substantial evidence. *In re Rowley's Estate*, 1967, 65 Cal. Rptr. 139, 257 Cal.App.2d 324.

On review of proceeding, under Uniform Simultaneous Death Act, for determination whether two persons, who had died at approximately the same time, had died otherwise than simultaneously, whether members of reviewing court would have arrived at conclusion, as did trial court, that one of the persons had survived the other would not be decisive. *Id.*

§ 2. Survival of Beneficiaries

If property is so disposed of that the right of a beneficiary to succeed to any interest therein is conditional upon his surviving another person, and both persons die, and there is no sufficient evidence that the two have died otherwise than simultaneously, the beneficiary shall be deemed not to have survived. If there is no sufficient evidence that two or more beneficiaries have died otherwise than simultaneously and property has been disposed of in such a way that at the time of their death each of such beneficiaries would have been entitled to the property if he had survived the others, the property shall be divided into as many equal portions as there were such beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each of such beneficiaries had survived.

As amended August 1953.

Amendments

Section, prior to amendment of 1953, read as follows: "Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than si-

multaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Action in Adopting Jurisdictions

Variations from Official Text:

Alabama. Section reads: "Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

California. Section reads: "Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

X **Connecticut.** Section reads: "When two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that such beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and such portions shall be distributed respectively to those who would have taken

in the event that each designated beneficiary had survived."

Delaware. Section reads: "Where 2 or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

District of Columbia. In the second sentence, omits "of such beneficiaries" following "of their death each", omits "such" following "as there were", and substitutes "the" for "such" following "that each of".

Florida. Section reads: "When two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is insufficient evidence that the beneficiaries died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal parts as there are successive beneficiaries and the parts shall be distributed to those who would have taken if each designated beneficiary had survived."

Hawaii. Section reads: "Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that

These beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Idaho. Section reads: "Where two (2) or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Indiana. Section reads: "Where two (2) or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Iowa. Section reads: "Where two or more beneficiaries are designated to take successively, by reason of survivorship, under another person's disposition of property, and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries, and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Kansas. Section reads: "Where two or more beneficiaries are designated to take successively or alter-

nately by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive or alternate beneficiaries, and the portion allocable to each beneficiary shall be distributed as if he or she had survived all the other beneficiaries."

Maine. Section reads: "Where a testamentary disposition of property depends upon the priority of death of the designated beneficiaries and there is no sufficient evidence that these beneficiaries died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are designated beneficiaries and these portions shall be distributed respectively to those who would take in the event that each designated beneficiary were the survivor."

Maryland. Section reads: "Where two or more beneficiaries are designated to take successively because of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died other than simultaneously, the property disposed of shall be divided into as many equal portions as there are successive beneficiaries, and these portions shall be distributed to those who would have taken in the event that each designated beneficiary had survived."

Michigan. Section reads: "Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Minnesota. Section reads: "Where two or more beneficiaries are design-

nated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Mississippi. Section reads: "Where two (2) or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Nebraska. Section reads: "Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Nevada. Section reads: "Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

New Hampshire. Section reads: "Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

New Jersey. Section reads: "Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

New York. Section reads: "Where a testamentary disposition of property depends upon the time of death of two or more beneficiaries designated to take alternatively by reason of survivorship and there is no sufficient evidence that such beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are alternative beneficiaries and such portions shall be distributed respectively to those who would have taken the whole property in the event that the designated beneficiary through whom they take had survived."

North Carolina. Section reads: "(a) Other than as provided in subsection (b) below, if property is so disposed of that the right of a beneficiary to succeed to any interest therein is conditional upon his surviving another person and both persons die, and there is no sufficient evidence that the two have died other than simultaneously, the beneficiary shall be deemed not to have survived."

"(b) If property is so disposed of that it is to be distributed among such members of a class as survive another person and there is no sufficient evidence that one or more members of the class and such other person died other than simultaneously, each member of the class so dying will be deemed to have survived such other person.

"(c) If property is so disposed of that its disposition depends upon the time of death of two or more beneficiaries designated to take alternatively by reason of survivorship and there is no sufficient evidence that such beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are alternative beneficiaries who would have taken the whole property if they had survived and such portions shall be distributed respectively to each such beneficiary."

North Dakota. Section reads: "Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Oklahoma. Inserts "to establish" following "evidence" in both instances.

Oregon. Inserts "all of" following "evidence that" in the second instance.

Pennsylvania. Section reads: "Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as

there are successive beneficiaries, and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Rhode Island. Section reads: "Where two (2) or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

South Carolina. Section reads: "When two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

South Dakota. Section reads: "Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Tennessee. Section reads: "Where two (2) or more beneficiaries are designated to take successively (by reason of survivorship) under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died other-

wise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries, and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Vermont. Section reads: "Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is not sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Virgin Islands. Section reads: "Where a testamentary disposition of property depends upon the time of death of two or more beneficiaries designated to take alternatively by reason of survivorship and there is no sufficient evidence that such beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are alternative beneficiaries and such portions shall be distributed respectively to those who would have taken the whole property in the event that the designated beneficiary through whom they take had survived."

Virginia. Section reads: "When two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there

are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Washington. Section reads: "Where two or more beneficiaries are designated to take successively or alternately by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive or alternative beneficiaries and the portion allocated to each beneficiary shall be distributed as if he had survived all the other beneficiaries."

West Virginia. Section reads: "Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Wyoming. Section reads: "Where two (2) or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successively beneficiaries and those portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Library References

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C.J.S. Death § 11.

Notes of Decisions

Generally 1
Evidence of survival 2

1. Generally

Status of absolute owner, who was also primary beneficiary of life policy, as beneficiary would not support inclusion of proceeds in estate of owner, who under Oregon Uniform Simultaneous Death Act was presumed to have predeceased insured. *Chown's Estate v. C.I.R.*, C.A.9, 1970, 428 F.2d 1395.

Under Uniform Simultaneous Death Act, there is no presumption of survivorship based upon age, sex, or condition of health. In re *Moran's Estate*, 1979, 32 Ill.Dec. 349, 395 N.E.2d 579, 77 Ill.2d 147.

Fairly interpreted, provision in will, which was substantially the same as this Act, meant that when all evidence was assembled and was not sufficient to show which one died first, then testator was presumed to have survived beneficiaries named in will. In re *Roland's Estate*, 1963, 244 N.Y.S.2d 743, 40 Misc.2d 1018.

2. Evidence of survival

Under former McKinney's Decedent Estate Law § 18 (now McKinney's EPTL § 5-1.1), respecting setting up of trust for benefit of widow in lieu of her right to election, only requirement is that income of trust be payable to surviving spouse for life, and if court cannot be satisfied on all available evidence that her life had extended beyond that of her husband, under will provision substantially in accordance with this Act, trustee will not be required to set aside income for her estate. In re *Roland's Estate*, 1963, 244 N.Y.S.2d 743, 40 Misc.2d 1018.

Where wife was shot five times in the head by husband who sometime thereafter shot and killed himself this Act was not applicable in probate contest between administrator of husband's estate and administrator of wife's estate respecting claims of inheritance, joint tenancy survivorship, and proceeds under life insurance contracts, in view of evidence showing that any one of five outlets would have caused almost instantaneous death. *United Trust Co. v. Pyke*, 1967, 427 P.2d 67, 199 Kan. 1.

§ 3. Joint Tenants or Tenants by the Entirety

Where there is no sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

The term "joint tenants" includes owners of property held under circumstances which entitled one or more to the whole of the property on the death of the other or others.

As amended August 1953.

Amendments

The 1953 amendment added the last paragraph defining "joint tenants".

Action in Adopting Jurisdictions

Variations from Official Text:

- Alabama.** Omits last paragraph.
- Arizona.** Omits "or tenants by the entirety" and adds "with the exception of community property" following "other or others".
- California.** Omits "or tenants by the entirety", substitutes "administered upon, distributed, or otherwise dealt with" for "distributed", wherever appearing, and omits last paragraph.
- Colorado.** Omits reference to "tenants by the entirety".
- Connecticut.** Omits "or tenants by the entirety".
- District of Columbia.** Inserts "or descend as the case may be" following "distributed", where first appearing, and "or descended" following "distributed" where second appearing, and omits "other or" preceding "others".
- Florida.** Omits last paragraph.
- Georgia.** Section reads: "If any stocks, bonds, bank deposits or other intangible property shall be so owned that one of two joint owners is entitled to the whole on the death of the other and both persons die and there is no sufficient evidence that the two joint owners have died otherwise than simultaneously, these assets shall be distributed one-half as if one joint owner had survived and one-half as if the other joint owner had survived. If there are more than two joint owners and there is no sufficient evidence that all have died otherwise than simultaneously, these assets shall be divided into as many equal portions as there are joint owners and these portions shall be distributed respectively to those who would have taken in the event that each joint owner had survived."
- Hawaii.** Omits last paragraph.
- Idaho.** Omits reference to "tenants by the entirety"; omits last paragraph.
- Indiana.** Omits last paragraph.
- Iowa.** Omits "or tenants by the entirety"; omits last paragraph.
- Kansas.** In first paragraph, second sentence reads: "Where more than two joint tenants have died and there is no sufficient evidence that they died otherwise than simultaneously the property so held shall be divided into as many equal shares as there were joint tenants and the share allocable to each shall be distributed as if he had survived all the others"; omits last paragraph.
- Maine.** Omits "or tenants by the entirety"; omits last paragraph.
- Massachusetts.** In first paragraph, second sentence reads: "Where more than two joint tenants have died and there is no sufficient evidence that they died otherwise than simultaneously the property so held shall be divided into as many equal shares as there were joint tenants and the share allocable to each shall be distributed as if he had survived all the others"; omits last paragraph.
- Michigan.** Omits last paragraph.
- Minnesota.** Omits last paragraph.
- Mississippi.** Omits "or tenants by the entirety"; omits last paragraph.
- Nebraska.** Omits reference to "tenants by the entirety"; omits last paragraph.
- Nevada.** Omits last paragraph.
- New Hampshire.** Omits last paragraph.
- New Jersey.** Omits last paragraph.
- New Mexico.** Omits reference to "tenants by the entirety"; omits last paragraph.
- New York.** Omits last paragraph.
- North Carolina.** Omits last paragraph.
- North Dakota.** Omits last paragraph.
- Oklahoma.** Inserts "to establish" following "evidence".

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Pennsylvania. Omits last paragraph.

Rhode Island. Omits last paragraph.

South Carolina. Omits last paragraph.

South Dakota. Omits last paragraph.

Tennessee. Omits last paragraph.

Utah. Omits last paragraph.

Vermont. Omits last paragraph.

Virgin Islands. Omits last paragraph.

Virginia. Omits last paragraph.

Washington. Omits "or tenants by the entirety".

West Virginia. Omits last paragraph.

Wisconsin. Omits last paragraph.

Wyoming. Omits last paragraph.

Law Review Commentaries

Joint tenancy property and estate planning. Henry R. Barber and Bernard G. Segatto. 1959 Law Forum 1922.

Legal consequences of joint ownership. Stuart M. Mamer. 1959 Law Forum 944.

Severance or destruction of a joint tenancy. 32 Iowa L.Rev. 539 (1947).

Tax incidents of joint ownership. J. Nelson Young. 1959 Law Forum 972.

Testamentary survivorship provisions: Effect on tenancies by the entirety under New York's Simultaneous Death Act. 44 Albany L.Rev. 680 (1950).

Library References

Death ∞ 5.

C.J.S. Death § 11.

Notes of Decisions

Distribution of property 1
Evidence of survival 2
Presumptions 3

1. Distribution of property

One half of joint tenancy property which husband and wife owned prior to their simultaneous deaths passed under will of husband to trustee named in his will and the other half passed under will of wife, under this Act providing that property held in joint tenancy shall be administered upon, distributed, or otherwise dealt with one-half as if one tenant had survived and one-half as if the other had survived. *In re Meade's Estate*, App.1964, 39 Cal.Rptr. 278.

Uniform Simultaneous Death Act controls disposition of property held by decedent as tenants by entireties. *Brundige v. Alexander*, Tenn.1976, 547 S.W.2d 232.

Where testatrix and her husband, beneficiary under residuary clause, were killed in common accident, Uniform Simultaneous Death Act applied to property held by entireties so that testatrix' one-half interest in property passed under will. *Id.*

In actions for declaratory judgment as to how assets of estates of deceased husband and wife, who were fatally injured in automobile accident, should be distributed, and to quiet and determine title to realty held by husband and wife, individually or as tenants by the entirety, evidence sustained trial court's finding that deceased wife survived deceased husband and that therefore heirs of deceased wife had title to property held by husband and wife by the entirety and an undivided one-half interest in the separate estate of the deceased husband. *Schmitt v. Pierce*, Mo.1960, 344 S.W.2d 120.

Where husband and wife came to their death simultaneously and at

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that time they were the owners as tenants by the entirety of the homestead and were joint owners of certain personal property, and the only surviving heirs of either of them consisted of brothers and sisters, the estate of the wife was entitled to one-half of the cash in a safety deposit box which was in the name of husband and in the name of the wife as a deputy. *Adams v. Gardener*, Mo. App.1951, 237 S.W.2d 495, 241 Mo. App. 275.

2. Evidence of survival

Where there is sufficient evidence to determine that one party survived another, the statute is not applicable. *In re Davenport's Estates*, 1958, 323 P.2d 611, 79 Idaho 548.

Where question in action was whether one deceased spouse survived the other deceased spouse, or whether they died simultaneously in automobile collision within meaning of V.A.M.S. § 471.010 et seq., and defendants withdrew their objection to admission of opinions of plaintiffs' witnesses as to whether deceased husband and wife were alive or dead when witnesses reached scene of accident on condition that defendants be permitted to offer like testimony, and plaintiffs' witnesses gave their opinions, opinions of defendants' lay witnesses of equal qualifications to plaintiffs' lay witnesses should have been received under curative admissibility rule and position taken by parties at the trial. *Schmitt v. Pierce*, Mo.1960, 344 S.W.2d 120.

Sufficient proof of survivorship for a short time, if only one second, of first tenant by the entirety after death of second tenant by the entirety serves to permit first tenant by the entirety to act as a conduit of title to his or her heirs under V.A.M.S. § 471.010 et seq. *Id.*

In action by the administrator of the estate of a wife against the administratrix of the estate of husband to require the turn over of a certain sum alleged to belong to the estate of wife, evidence sustained finding of trial court that husband and wife were the owners as tenants by the

entirety of the homestead and were the joint owners of certain personal property and that husband and wife came to their death simultaneously. *Adams v. Gardener*, Mo.App.1951, 237 S.W.2d 495, 241 Mo.App. 275.

Wife's administratrix was entitled to administer real property formerly held by husband and wife by entireties where testimony of doctor who examined them immediately after automobile collision was sufficient to establish that wife survived husband by at least 15 minutes, despite recital in each death certificate that decedent named therein died at approximately 9:00 a. m. of same morning. *Reimmer v. Tesla*, Fla.1967, 201 So.2d 573.

Testimony of doctor, who arrived at scene within three or four minutes of automobile collision and immediately examined husband and wife involved therein, that husband had no carotid pulse in neck and therefore was dead but that wife continued to breathe for 15 minutes thereafter before expiring was sufficient to support finding that deaths of husband and wife occurred otherwise than simultaneously, in action instituted by wife's administratrix to establish right to administer real property formerly held by husband and wife by entireties. *Id.*

3. Presumptions

Where it was not established that wife, who died intestate, and husband, who died testate, died other than simultaneously, real estate and personal property held by such spouses as joint tenants or as tenants by entireties was required to be distributed one-half as if one spouse died first and one-half as if other died first, though will provided that in event of common accident it was to be presumed that wife predeceased husband. *Petition of Smith*, 1972, 282 N.E.2d 412, 361 Mass. 733.

No presumption is created by statute providing that if there is no sufficient evidence that two joint tenants or tenants by entirety have died otherwise than simultaneously property so held shall be distributed one-

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§ 4

half as if one had survived and one-half as if other survived. Id.

Under Uniform Simultaneous Death Act section governing joint tenants or tenants by entirety, and section governing insured and beneficiary, there is neither presumption of survivorship nor presumption of simultaneous death, and such sections become applicable when two or more

persons have died under circumstances where there is insufficient evidence that one of them outlived other, and burden of proof is on party whose claim depends upon survivorship. *Matter of Campbell's Estate*, 1982, 641 P.2d 610, 56 Or.App. 222, Review denied 651 P.2d 143, 293 Or. 146.

§ 4. Community Property

Where a husband and wife have died, leaving community property, and there is no sufficient evidence that they have died otherwise than simultaneously, one-half of all the community property shall pass as if the husband had survived [and as if said one-half were his separate property,] and the other one-half thereof shall pass as if the wife had survived [and as if said other one-half were her separate property.]

Added August 1953.

Historical Note

Former section 4, as originally enacted in 1940, is now covered by section 5.

Action in Adopting Jurisdictions

Variations from Official Text:

Alabama. Omits this section.

Arizona. Changes certain language without affecting substance of section.

Arkansas. Omits this section.

California. Section reads:

"Where a husband and wife have died, leaving community property and there is no sufficient evidence that they have died otherwise than simultaneously, one-half of all the community property shall be administered upon, distributed, or otherwise dealt with, as if the husband had survived and as if said one-half were his separate property and the other one-half thereof shall be administered upon, distributed, or otherwise dealt with, as if the wife had survived and as if said other one-half were her separate property, except as provided in Section 296.3.

"If a portion of the estate which was the community property of the husband and wife would otherwise escheat to the state under this section and Sections 201, 228, and 231, or if a portion of the estate which was separate property of a previously deceased spouse would otherwise escheat to the state under Section 229, because there is no relative, including next of kin, of one of the spouses to succeed to such portion of the estate, such portion of the estate shall be distributed in equal shares to the children of the other spouse and to their descendants by right of representation, or if such other spouse leaves no children, nor descendants of a deceased child, in equal shares to the parents of such other spouse, or if either is dead to the survivor, or if both are dead, in equal shares to the brothers and sisters of such other spouse and to their descendants by right of repre-

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sentation, or if such other spouse leaves neither parent, brother, sister, nor descendant of a deceased brother or sister, such portion of the estate goes to the next of kin of such other spouse in equal degree, except that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor must be preferred to those claiming through an ancestor more remote."

- Connecticut. Omits this section.
- Delaware. Omits this section.
- District of Columbia. Omits this section.
- Florida. Omits this section.
- Georgia. Omits this section.
- Hawaii. Omits this section.
- Idaho. Omits this section.
- Indiana. Omits this section.
- Iowa. Omits this section.
- Kansas. Omits this section.
- Kentucky. Omits this section.
- Maine. Omits this section.
- Maryland. Omits this section.
- Massachusetts. Omits this section.
- Michigan. Omits this section.
- Minnesota. Omits this section.
- Mississippi. Omits this section.

- Missouri. Omits this section.
- Nebraska. Omits this section.
- Nevada. Omits bracketed material and adds "except as provided in NRS 135.050 [section 5 of Uniform Act]."
- New Hampshire. Omits this section.
- New Jersey. Omits this section.
- New York. Omits this section.
- North Carolina. Omits this section.
- North Dakota. Omits this section.
- Oklahoma. Inserts "to establish" following "evidence".
- Oregon. Omits bracketed material.
- Pennsylvania. Omits this section.
- Rhode Island. Omits this section.
- South Carolina. Omits this section.
- South Dakota. Omits this section.
- Tennessee. Omits this section.
- Utah. Omits this section.
- Vermont. Omits this section.
- Virgin Islands. Omits this section.
- Virginia. Omits this section.
- Washington. Omits this section.
- West Virginia. Omits this section.
- Wisconsin. Omits this section.
- Wyoming. Omits this section.

Library References

- Death ⇐ 5.
- C.J.S. Death § 11.

Notes of Decisions

Insurance proceeds 2
 Law governing 1

1. Law governing

When community is dissolved in death, community status of property disappears with the community and the title cast upon surviving spouse is that of separate property and, though West's Ann.Cal.Probate Code §

296 et seq., are statutes of succession, that does not mean that in a proper case ultimate disposition under them may not be affected and changed by provisions of older statutes of succession. In re Hudson's Estate, 1958, 322 P.2d 987, 158 C.A.2d 335.

2. Insurance proceeds

See Notes of Decisions under section 5 of this Act, infra.

§ 5. Insurance Policies

Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary, [except if the policy is community property of the insured and his spouse, and there is no alternative beneficiary except the estate or personal representatives of the insured, the proceeds shall be distributed as community property under Section 4.]

Formerly § 4; renumbered 5 and amended August 1953.

Amendments

The 1953 amendment added the bracketed material.

Former section 5 as enacted in 1940, which related to retroactive effect of Act, was omitted in 1953.

Action in Adopting Jurisdictions

Variations from Official Text:

Alabama. Omits bracketed material.

Arkansas. Omits bracketed material.

California. Omits bracketed material.

Colorado. Inserts ", or no alternative beneficiary" preceding "except the estate".

Connecticut. Omits bracketed material.

Delaware. Omits bracketed material.

District of Columbia. Omits bracketed material.

Florida. Omits bracketed material.

Georgia. Omits bracketed material.

Hawaii. Omits bracketed material.

Idaho. Omits bracketed material.

Indiana. Omits bracketed material.

Iowa. Omits bracketed material.

Kansas. Section reads: "Where the insured and the beneficiary in a policy or contract of life or endowment insurance or insurance against accident have died and there is no

sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy or contract shall be payable as if the insured had survived the beneficiary."

Kentucky. Omits bracketed material.

Maine. Section reads: "Where the decedents are the insured and the beneficiary respectively in policies of life or accident insurance and there is no sufficient evidence that they died otherwise than simultaneously, the proceeds of each policy shall be distributed as if the person whose life was insured therein survived."

Maryland. Omits bracketed material.

Massachusetts. Omits bracketed material.

Michigan. Omits bracketed material.

Minnesota. Omits bracketed material.

Mississippi. Omits bracketed material.

Missouri. Omits bracketed material.

Nebraska. Omits bracketed material.

SIMULTANEOUS DEATH

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mine who is to succeed to estate. In *re Wedemeyer's Estate*, 1952, 240 P.2d 8, 109 C.A.2d 67.

2. Law governing

In interpleader suit to determine right to proceeds of son's life policies as between administrators of father and son who were killed in same automobile accident, West's Ann.Cal. Probate Code, § 296.3, requiring distribution of policy proceeds as if insured had survived beneficiary in absence of evidence that insured and beneficiary died otherwise than simultaneously was applicable, to the complete exclusion of West's Ann.Cal. Probate Code, § 296, governing disposition of property when dependent upon priority of death. *Hahn v. Padre*, C.A. Cal. 1957, 235 P.2d 356.

Where husband as insured owned as community asset chose in action represented by life policy, which named his estate, as beneficiary, and husband and wife died intestate in airplane crash and West's Ann.Cal. Probate Code, § 201, provided for husband to receive one-half of chose in action to be distributed as if wife had died first, ultimate distribution would be controlled by West's Ann. Cal. Probate Code, § 228, regulating distribution of community property belonging to deceased and previously deceased spouse by virtue of community character on presumed prior death of wife. In *re Wedemeyer's Estate*, 1952, 240 P.2d 8, 109 C.A.2d 67.

3. Definitions

The term "insured" in West's RCWA 11.05.040 providing that if insured and beneficiary die simultaneously the policy proceeds shall be distributed as if insured survived beneficiary meant to refer to the person whose life is insured. In *re Clise's Estates*, 1964, 391 P.2d 547, 64 Wash. 2d 320.

4. Generally

Where deaths of insured and beneficiary of accidental death policy occurred either simultaneously or insured survived beneficiary by a few minutes without exercising retained

right to change beneficiary of policy, proceeds of policy were payable to estate of insured. *Mutual of Omaha Ins. Co. v. Losey*, 1969, 170 N.W.2d 273, 17 Mich.App. 622.

5. Policies within section

Fact that one of the policies on life of husband, who died simultaneously with beneficiary-wife, provided for payment in form of continuing, monthly sums did not render policy an "annuity contract" and not an insurance policy within V.A.T.S. Probate Code, § 47(e) providing that if insured and beneficiary die simultaneously proceeds are to be distributed as if insured had survived beneficiary. *Brown v. Lee*, Tex. 1963, 371 S.W.2d 694.

6. Contingent beneficiaries

Simultaneous deaths of husband and wife, who owned an insurance policy on the life of her husband in the face amount of \$60,000, extinguished wife's ownership rights in the policy; at that point, the rights of the contingent beneficiaries to the policy proceeds took precedence over any rights the wife may have had, and also terminated her ability to determine the disposition of the proceeds. *Old Kent Bank & Trust Co. v. U. S.*, 430 F.2d 392.

7. Community property

Where husband, wife and children were killed simultaneously in airplane crash distribution of the two estates, consisting of insurance policies on husband's life purchased with community funds and payable to his estate, were properly ordered, in both estates, to be distributed one-half to mother of deceased husband and one-half to mother of deceased wife. In *re Sugino's Estate*, 1968, 73 Cal.Rptr. 150, 267 Cal.App.2d 591, 39 A.L.R.3d 1325.

Life policies of husband who died simultaneously with wife went to his estate and not to her estate, where their agreement made all their property community property which vested in survivor on death of either, agreement made no provision for distribution of property in event of simulta-

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neous deaths, will of each named the other as sole beneficiary and made no provision for distribution of estates in event of simultaneous deaths, and West's RCWA 11.05.040 provided that if insured beneficiary should die simultaneously the policy proceeds should be distributed as if insured survived beneficiary. In re Clise's Estates, 1964, 391 P.2d 547, 64 Wash.2d 320.

Where a husband and wife purchased certain life policies upon their own lives with community funds, and named each other as the beneficiaries of such policies, and no alternative beneficiary was named in the policies, and neither insured had children, but both left collateral heirs, and both died simultaneously in an airplane accident, under West's RCW 11.04.050, husband's collateral heirs were entitled to all proceeds of the policies in which he was the named insured, and wife's collateral heirs were entitled to all proceeds of policies in which she was the named insured. In re Saunders' Estates, 1957, 317 P.2d 528, 51 Wash.2d 274.

Where husband as insured owned choses in action represented by life policies, which named wife beneficiary, as community asset and husband and wife died intestate in airplane crash and husband, who was presumed to have survived wife, took choses in action, at husband's death proceeds of policies had to be distributed in his estate according to West's Ann.Cal.Probate Code, § 228, providing for distribution of community property belonging to deceased and previously deceased spouse by virtue of community character on the presumed prior death of wife. In re Wedemeyer's Estate, 1952, 240 P.2d 8, 100 C.A.2d 67.

Where husband as insured owned choses in action represented by life policies, which named wife first beneficiary, as community asset and wife was presumed to have predeceased husband and wife's appointment as beneficiary lapsed and provision on behalf of husband's estate as secondary beneficiary became operative, change in beneficiary did not change character of property and did

not change applicability of West's Ann.Cal.Probate Code, § 228, providing for distribution of community property belonging to deceased and predeceased spouse. *Id.*

Where husband as insured owned community asset consisting of choses in action represented by life policies, which named wife first beneficiary, and wife was presumed to have predeceased husband who died in same accident, at death of wife her appointment as beneficiary lapsed and provision in behalf of husband's estate as secondary beneficiary became operative. *Id.*

Where there was no evidence as to which spouse died first, it was statutorily presumed that insured-husband survived for purposes of distributing proceeds from life insurance policies which were purchased with community funds. *Brown v. Lee*, Tex.1963, 371 S.W.2d 694.

8. Evidence of survival

Where insured and beneficiary of group policy were riding in automobile which was struck by train, insured's body was dismembered, beneficiary was found by engineer of train to be sitting in front of automobile apparently dead, and medical examiner who arrived a half hour later found beneficiary to be dead and noted death certificates that death of both occurred at same time, but was unable to say whether deaths were simultaneous, estate of insured was entitled to recover proceeds of policy. *Prudential Ins. Co. of America v. Somers*, 1957, 135 A.2d 365, 20 Conn.Sup. 351.

Use of term "direct evidence" in V.A.T.S. Probate Code, § 47(e), providing that when insured and beneficiary have died and there is no "direct evidence" that they have died otherwise than simultaneously, proceeds of policy shall be distributed as if insured had survived beneficiary, was intended to require a higher degree of proof than would have been required for "sufficient evidence" and that the question of death should not be left to conjecture or be determined alone on evidence having no

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foundation upon components usually regarded as reliable attributes of death. *Glover v. Davis*, Tex.1963, 366 S.W.2d 227.

In proceedings to determine which claimants were entitled to proceeds of life policy, where insured, his wife and two children were killed in an automobile collision, testimony merely to the appearance of death on the part of the father was not direct evidence that older daughter of insured survived the insured or that they died other than simultaneously. *Id.*

9. Taxation

Where husband and wife, each owning policies upon the life of the other in which owner was named as primary beneficiary, were killed in a common disaster under circumstances where it could not be established who died first, under the Georgia Simultaneous Death Act the ownership rights were in the estate of the owner at the moment of death, and ownership interests in the policies should have been valued according to procedures outlined in regulation basing value on the interpolated terminal reserve of the policy and should not have been included in the gross estates at value equal to the entire proceeds payable under the policies. *Wien's Estate v. C. I. R.*, C.A.Ga. 1971, 441 F.2d 32.

Application of Simultaneous Death Act is not tantamount to finding that parties in fact died simultaneously and will not support assumption that husband and wife each owning policies on the life of the other and who died in common disaster did die at the same instant so as to cause maturity of the policies to coincide with instant of the owner's death for purpose of determining amount includable in gross estate for estate tax purposes. *Id.*

Proceeds of life policy were not includable, for federal estate tax purposes, in estate of absolute owner, who was shown to have died at same time as insured in airplane crash and who under Oregon Uniform Simultaneous Death Act was presumed to have predeceased insured, on theo-

ry that policy became fully matured at instant of death, thereby giving to owner's interest the full value of the proceeds, which, for a fleeting instant, became the fair market value of her ownership interest. *Chown's Estate v. C. I. R.*, C.A.9 1970, 428 F.2d 1395.

Had executor of estate of absolute owner of life policy wished to claim that interpolated terminal reserve value of policy should not have been included, for estate tax purposes, in estate of owner, who under Oregon Uniform Simultaneous Death Act was presumed to have predeceased insured, executor would have been required to file claim for a refund, and, if that were denied, to pursue as remedy by an action in the district court; claim could not be raised in proceedings in tax court on deficiency assessment for failure to include proceeds of policy in estate. *Id.*

Statute, which provides that if there is no direct evidence that spouses died other than simultaneously, one-half of community shall be distributed as if husband survived and other half shall be distributed as if wife survived and which provides that statute is applicable to life insurance proceeds payable to estate of husband or wife, was not applicable, for inheritance tax purposes, to proceeds of policies on life of husband, who, together with wife and children, died in airplane crash, where insurance contracts provided that proceeds were to be paid to trust and trust agreement itself governed disposition of proceeds. *Bullock v. City Nat. Bank of Austin*, Tex.Civ.App.1977, 550 S.W.2d 763.

Value of wife's interest in policies, which insured husband's life, which were for term insurance without cash surrender value and which had to be maintained in force by additional premium payments, was not one-half of proceeds of policies but was one-half of policies' interpolated terminal reserve value which had been stipulated to be zero; thus, for inheritance tax purposes after such spouses were killed in airplane crash, no part of proceeds of policies became a part of wife's estate. *Id.*

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§ 6. Act Does Not Apply If Decedent Provides Otherwise

This act shall not apply in the case of wills, living trusts, deeds, or contracts of insurance, or any other situation where provision is made for distribution of property different from the provisions of this act, or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided.

As amended August 1953.

Amendments

The 1953 amendment inserted "or any other situation" and added "or where provision is made for a pre-

sumption as to survivorship which results in a distribution of property different from that here provided".

Action in Adopting Jurisdictions

Variations from Official Text:

Alabama. Section reads: "This chapter shall not apply in the case of wills, living trusts, deeds or contracts of insurance wherein provision has been made for distribution of property different from the provisions of this chapter or wherein provision is made for a presumption as to the order of survivorship if there is no sufficient evidence that the persons died otherwise than simultaneously, in which event full effect shall be given to the presumption so provided as to the order of survivorship."

California. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Connecticut. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Delaware. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Florida. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribu-

tion of property different from that here provided".

Hawaii. Omits this section.

Idaho. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Indiana. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Iowa. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Kansas. Section reads: "This act shall not apply to a will, living trust or deed wherein provision has been made for distribution different from the distribution under this act, or to a policy or contract of insurance wherein provision has been made for payment of its proceeds different from such payment under this act."

Kentucky. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

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Maine. Section reads: "This section shall not apply in the case of wills, deeds or contracts of insurance wherein provision has been made for distribution different from the provisions of said section."

Maryland. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Michigan. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Minnesota. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Mississippi. Section reads: "This chapter shall not apply in the case of wills, living trusts, deeds, contracts of insurance or other contracts wherein provision has been made for distribution of property different from the provisions of this chapter."

Nebraska. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Nevada. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

New Hampshire. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

New Jersey. Section reads: "This chapter shall not apply to a devolution of property of a decedent under a will or upon intestacy, where the law provides that in order to take on the devolution, a person shall survive

the decedent by 120 hours, living trusts, deeds, or contracts of insurance, wherein provision has been made for distribution of property different from the provisions of this chapter."

New York. Section reads: "This section shall not apply in the case of wills, living trusts, deeds or contracts of insurance wherein a provision other than that prescribed by this section has been made for disposition of property."

North Carolina. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

North Dakota. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Oklahoma. Section reads: "This Act shall not apply in the case of wills, living trusts, deeds, or contracts of insurance or annuity, or any other instrument wherein provision is made for distribution of property different from the provisions of this Act, or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided, in all of which cases the provisions of such instrument shall be given effect."

Pennsylvania. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Rhode Island. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

South Carolina. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

South Dakota. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Tennessee. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Utah. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Vermont. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Virgin Islands. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Virginia. Section reads: "This chapter shall not apply in the case of wills or living trusts wherein provision is made for distribution of property different from the distribution that would be made under the provisions of this chapter, or in the case of deeds creating a joint tenancy or a tenancy by the entirety where any such deed or the will of any cotenant

makes specific provision for distribution of property different from the distribution that would be made under the provisions of this chapter and in favor of another cotenant, or in the case of contracts of insurance where either such contract or the will of the insured makes provisions for distribution of the proceeds different from the distribution that would be made under the provisions of this chapter, provided that, if an insurance company makes payment to any beneficiary designated in an insurance contract in accordance with § 64.1-100 without actual knowledge of such provision in the will of the insured, such insurance company shall not be liable to any person therefor, but the insured's personal representative may recover from such payee the full amount of such proceeds."

Washington. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

West Virginia. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Wyoming. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Library References

Death ☞ 5.

C.J.S. Death § 11.

Notes of Decisions

1. Wills

Husband, whose will provided that if he and wife died within 30 days of each other it was to be conclusively presumed that wife survived husband, exercised option under section of Uniform Simultaneous Death Act to negate statutory presumption of testator's survival and substitute one of his own making; it was intention

of husband that presumption of wife's survivorship apply where spouses died within 30 days of each other but not as result of a common disaster, and this intention would be given effect. *Pannone v. McLaughlin*, 1977, 377 A.2d 597, 37 Md. App. 395.

Wills which were executed by husband and wife who died simultane-

SIMULTANEOUS DEATH

§ 11

ously and were proper in form and correctly executed were effective and controlled estates of husband and wife notwithstanding this Act. In re Meade's Estate, 1964, 30 Cal.Rptr. 278, 228 C.A.2d 169.

Terms of wills of husband and wife killed simultaneously were required to be given effect in accordance with this Act, and decedent's share of community property in each estate was disposable in same manner as if each spouse had survived and the community consisted of the whole of the estate of each spouse,

neither spouse ever having inherited from the other. *Id.*

Common disaster provision of will directing that under such circumstances testator's wife should be deemed to have predeceased him would be given its literal meaning so that gift to wife of testator was defeated where testator and his wife were fatally injured in automobile accident, although a wife survived testator's instantaneous death by a matter of three hours. In re Muller's Estate, 1966, 272 N.Y.S.2d 231, 50 Misc.2d 1068.

§ 7. Uniformity of Interpretation

This act shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those states which enact it.

Library References

Statutes \S 226.

C.J.S. Statutes \S 371 et seq.

§ 8. Short Title

This act may be cited as the Uniform Simultaneous Death Act.

§ 9. Repeal

All laws or parts of laws inconsistent with the provisions of this act are hereby repealed.

§ 10. Severability

If any of the provisions of this act or the application thereof to any persons or circumstances is held invalid such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are declared to be severable.

§ 11. Time of Taking Effect

This act shall take effect

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99801
907 465 2800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 26, 1985

SUBJECT: Uniform Simultaneous Death Act
(Work Order No. 14-1030)

TO: Representative Max Gruenberg

FROM: George W. Edwards, JWE
Legislative Counsel

The accompanying draft legislation proposing the enactment of the Uniform Simultaneous Death Act in Alaska has been prepared at your request. The legislation is substantively identical to sections 1-8 of the act as it appears in Uniform Laws Annotated (1983 ed.). Some editorial license has been taken for the purposes of clarity and conformity to Alaska legislative drafting practices.

It is interesting to note that prior to enactment in Alaska of the Uniform Probate Code in 1972 (ch 78 SLA 1972) an abbreviated version of the Uniform Simultaneous Death Act was in place as AS 13.13.010-13.13.070 (ch 80 SLA 1949). The commentary at page 559 of volume 81, Uniform Laws Annotated indicates that as a result of the 1972 probate law changes Alaska law was no longer considered in substantial conformity with the Uniform Simultaneous Death Act and the state was deleted from the table of jurisdictions in which the act was in effect.

My review of the legislative history of the 1972 legislation provided no information as to why the death act was not then adopted along with the probate code. Since then the probate code sections found in AS 13.06.035 and AS 13.11.220 have constituted the only Alaska law directly concerned with simultaneous death situations. At this time Alaska and Louisiana appear to be the only states in which the Uniform Simultaneous Death Act is not in effect.

GWE:csh
c4/018

STATE OF ALASKA
THE LEGISLATURE

FOUCHY STATE TAVIOL
JUNEAU ALASKA 998
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LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

October 4, 1985

SUBJECT: HB 408 - Uniform Simultaneous Death Act

TO: Representative M.M. Miller
House Judiciary Committee

FROM: Michael F. Ford *M.F.*
Legislative Counsel

The following is a section by section analysis of HB 408:

Section 1

13.43.010 - States the general rule, that in cases of simultaneous death the property of each person shall be disposed of as if that person had survived. This is a legal presumption that is simple, and avoids the difficulty of proving survivorship.

13.43.020 - Applies the same presumption of survivorship to a beneficiary or beneficiaries in simultaneous death situations.

13.43.030 - Provides for distribution of property held by joint tenants or tenants by the entirety in simultaneous death cases.

13.43.040 - Provides for distribution of community property in cases of simultaneous death of a husband and wife.

13.43.050 - Subsection (a) creates a conclusive presumption that when an insured and beneficiary die simultaneously, proceeds shall be distributed as if the insured had survived. This is presumed to be the intention of the insured, but the insured would be able to provide otherwise in the contract of insurance, if it does not. Subsection (b) provides that when insurance is community property and an alternative beneficiary is not selected, proceeds are distributed as community property under 13.43.040.

Representative R.M. Miller
October 4, 1985
Page 2

13.43.060 - Allows a person to provide for a different kind of distribution of property than is provided in this chapter.

13.43.070 - Uniformity provision.

13.43.080 - Citation section.

Section 2 - This Act will not apply to distribution of property of those persons dying before the effective date of the Act.

MFF:mkr
M1:031