

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8138 HOUSE STATE AFFAIRS

403

Sec. 13.12.205 establishes the procedure for how the surviving spouse's election is to be made, including notice requirements. Sets a time limit for including the decedent's reclaimable estate in the augmented estate for the purpose of computing the elective share. Allows the surviving spouse under certain circumstances to obtain an extension of time for making the election. Allows the surviving spouse to withdraw a demand for an elective share at any time before the court's final determination. Directs the court to determine the elective share and supplemental elective share amounts and to order their payment from the assets of the augmented estate or by contribution as appropriate. Directs the court, if property included in the augmented estate has not been collected by the personal representative or has been distributed, to fix the liability of persons with an interest in or possession of the property. Authorizes the enforcement of the court's judgment or order as necessary in a suit for contribution or payment in this state or another jurisdiction.

Sec. 13.12.206 provides that the surviving spouse's homestead allowance, exempt property, and family allowance are not charged against the elective share and supplemental elective share.

Sec. 13.12.207 indicates how property is applied to satisfy the elective share amount and the supplemental elective share amount. Limits the persons who are liable to make a proportional contribution toward satisfaction of the elective share or supplemental elective share.

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

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

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

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

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

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

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

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

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

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

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

Sec. 13.12.501 establishes who may make a will.

Representative Carl Moses

February 21, 1994

Page 6

Sec. 13.12.502 establishes the requirements for a will, including its execution and witnessing. Validates a noncomplying will as a holographic will under certain conditions. Provides that extrinsic evidence can be used to establish the testator's intent that the document be the testator's will.

Sec. 13.12.503 validates as a will a noncomplying document if clear and convincing evidence establishes that the testator intended the document to be the testator's will.

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

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

Sec. 13.12.506 validates a will if it is executed in compliance with this state's applicable statutory provisions or with the laws of another jurisdiction having a specified relationship to the execution of the will or to the decedent.

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

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

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

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

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

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

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

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

Sec. 13.12.515 allows a will to be deposited with a court for safekeeping, under the rules of the court. Establishes certain rules for the confidentiality, delivery, and examination of the will, for the notification of the person designated to receive it after the testator's death, and for the delivery of the will to the designated person or the appropriate court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Representative Carl Moses

February 21, 1994

Page 9

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

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

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

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

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

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

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

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

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

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

Sec. 13.12.801 allows a person to disclaim the receipt of property by delivering or filing a written disclaimer under this section. Establishes a time limit and procedure for handling the disclaimer in testamentary and nontestamentary situations. Addresses disclaimers by joint tenants and tenants by the entirety. If the disclaimed property is real property or an interest in real property, allows a copy of the disclaimer to be recorded. Indicates what a disclaimer must contain and that it must be signed. Indicates how a disclaimed interest, testamentary or nontestamentary, passes. Establishes that a disclaimer or a written waiver of the right to disclaim binds the disclaimant or person waiving and all persons claiming through or under either of them. Indicates that certain activities bar the right to disclaim. Indicates that this section does not abridge the right of a person to waive, release, disclaim, or renounce property under another statute. Provides a transition section for disclaiming certain property interests existing on the effective date of this Act.

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

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

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

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

Provides that provisions of a governing instrument that aren't revoked by this section are given effect as if the killer disclaimed the revoked provisions or predeceased the decedent.

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

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

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

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

Sec. 13.12.804 establishes, except in certain circumstances, that a divorce or an annulment revokes certain dispositions, provisions, and nominations, and severs the interests of the former spouses in property held by the spouses as joint tenants with the right of survivorship. Indicates that a severance does not affect certain third-party interests in property acquired under certain conditions. States that provisions that are not revoked by this section are given effect as if the former spouse and relatives of the former spouse disclaimed the revoked provisions or died immediately before the divorce or annulment. States that provisions revoked solely by this section are revived by remarriage to the former spouse or nullification of the divorce or annulment. States that a change of circumstances other than as described in this section and in sec. 13.12.803 does not effect a revocation. Establishes the liability of property payors, payees, transferors, and transferees in these circumstances. Establishes the procedure for handling claims under this section based on divorce, annulment, or remarriage. Indicates the effect of federal preemption on the section.

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

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

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

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

Sec. 13.12.914 establishes additional formal requirements for international wills.

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

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

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

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

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

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

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

Section 4. Makes conforming and technical amendments.

Section 5. Makes a conforming amendment.

Section 6. Makes conforming and technical amendments. Also provides under certain circumstances for the distribution of the residuary estate in any equitable manner.

Section 7. Establishes a new chapter on nonprobate transfers. Secs. 13.33.101 are Article 1. Secs. 13.33.201 - 13.33.227 are Article 2, which relates to multiple-person

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

Sec. 13.33.101 states that provisions for nonprobate transfer of property on death in certain written documents are not testamentary. Identifies certain provisions that are covered by the section. Declares that the section does not limit the rights of creditors under other laws of this state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 13.33.225 authorizes a financial institution to make a payment under AS 13.46, if the payment to a minor beneficiary is required or permitted under Article 2.

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

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

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

Sec. 13.33.301 defines terms for Article 3.

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

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

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

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

Sec. 13.33.306 states that the designation of a transfer-on-death beneficiary on the registration of a security does not affect ownership until the owner's death.

Authorizes the cancellation or change of a registration in beneficiary form at any time without the beneficiary's consent.

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

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

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

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

Section 8. Makes a conforming amendment.

Section 9. Repeals three current chapters on intestate succession and wills, nonprobate transfers, and the uniform simultaneous death act.

Section 10. Provides transitional provisions for the bill.

Section 11. Explains how the bill amends Alaska Rule of Probate Procedure 5.

Representative Carl Moses
February 21, 1994
Page 17

Section 12. Makes the Act effective January 1, 1996.

If I may be of further assistance, please advise.

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UNIFORM PROBATE CODE
ARTICLE II - INTESTACY, WILLS, AND DONATIVE TRANSFERS

The Uniform Probate Code (UPC) was originally promulgated by the Uniform Law Commissioners (ULC) in 1969. It is the first effort, ever, at comprehensive codification of the law of estates and probate. Its major divisions are Intestate Succession and Wills, Probate of Wills and Administration, Foreign Personal Representatives, Ancillary Administration, Protection of Persons Under Disability and Their Property, Nonprobate Transfers on Death, and Trust Administration. The divisions suggest the comprehensive nature of the whole of the UPC.

In the twenty-plus years since its origination, portions of it have been revised. Article V, Protection of Persons Under Disability and Their Property, and Article VI, Nonprobate Transfers on Death, were extensively revised in 1982 and 1989, respectively. There have been some significant expansions, such as the Succession Without Administration addition to Part 3 of Article III in 1982. But, in 1990, the ULC has promulgated a complete revision of Article II, one of the core articles of the UPC. This revision reflects a recommitment of the UPC to family protection, to reducing the risk of technical invalidation of wills, and to harmonization of rules of presumed intention for probate and nonprobate transfers of property at death. The 1969 UPC II served the first two of these three purposes; twenty years' experience with the original provisions and changes in the makeup of American families during recent decades have pointed the way to new improvements in earlier formulations.

Use of revocable trusts and contractual death benefits to reduce reliance on wills has increased greatly in the last two decades, making it necessary to unify historically different default rules for dealing with out-of-date wills and will substitutes. In result, Article II has been expanded to include a fresh set of rules to guide construction of beneficiary provisions in life insurance contracts, revocable trusts and other will substitutes.

If an individual does not make a will, any property owned during life will pass by intestate succession to the heirs. A statute designates who are heirs, and the line of succession has always included spouse, children, parents, and blood relations in some order of priority. The 1969 UPC II proposed some drastic changes in the law of intestate succession. The traditional intestate succession statute divided the property among close relatives by set fractions of the total. In most traditional intestate succession schemes, the spouse took one-third or one-half if there were children or parents of the deceased spouse. There were (and continue to be) variations upon the method for dividing the share passing to descendants. The terms "by right of representation" and "per stirpes" suggest these variations.

The initial reform in the intestate succession provisions of original UPC II provided for greater spousal protection in what has come to be called the "law's estate plan." It had been long observed that the average will leaves the estate primarily to the surviving spouse. Original UPC II reflected a similar preference for the spouse in the law of intestate succession. Under original UPC II, even if there are children or the deceased person has living parents and unless the intestate also left children of a prior marriage, the spouse takes all of the estate up to a specified dollar amount (\$50,000 in the original version) plus one-half of the remainder, if there is any.

Revised UPC II even more dramatically favors the spouse in "the law's estate plan." The spouse takes 100% of the estate unless one of the following apply: (1) the spouse of a childless decedent who leaves no will takes the first \$200,000 plus three-fourths of the balance of the estate if there is a living parent of the decedent; (2) if the decedent's children are also children of the surviving spouse and the spouse also has a child of a prior marriage, the spouse takes the first \$150,000 plus one-half of the balance of the estate and the decedent's children share the balance; (3) if the decedent left a child by a prior marriage, the spouse takes the first \$100,000 plus one-half of the balance and the decedent's children take the rest.

The new UPC II includes an improved system for division among descendants. Original UPC divides an intestate's estate equally among children, and gives grandchildren by a deceased child their parent's share. However, if two or more but less than all children die before the decedent leaving different numbers of children, the grandchildren by deceased children take uneven amounts based on numbers of siblings sharing each family's share. If all of the intestate's children predeceased the intestate leaving different numbers of children, family shares become irrelevant and all grandchildren share equally. Under Revised UPC II, the principle of equal shares for persons of the same generation is fully implemented. If two or more children, but less than all, predecease the decedent leaving varying numbers of children, all children of these deceased parents take equal shares of the total of the shares attributed to the decedent's deceased children who left children.

State law has long contained provisions rooted in common law notions such as dower that limit a spouse's ability to disinherit a spouse, but, before the original UPC, these provisions were largely ineffective for protective purposes and worked principally to overcompensate survivors who had received generous provision from deceased mates. One of the reforms in original UPC II is an elective share for the spouse of one-third of the "augmented" estate. The augmented estate is the probate estate increased by adding those values that were transferred during the marriage by

revocable trust or other will substitute to persons other than the surviving spouse. Any amounts that the surviving spouse actually received from the decedent by similar transfers is also added to the augmented estate.

The elective share of one-third of the total is first satisfied from those assets that the surviving spouse has already received. The concept preserves the effect of intentional transfers to a surviving spouse for the purpose of estate planning. The surviving spouse cannot use the elective share to increase a fair share already received. But the augmented estate concept obviously prevents use of transfers to others during life, i.e., nonprobate transfers, to reduce the estate intentionally against the surviving spouse's interest.

Revised UPC II builds on elective share and augmented estate concepts in the 1969 Code, but the theory and effect is different. The elective share notion in Revised UPC II reflects principles of marital property as developed in the Uniform Marital Property Act and community property states. The marital property principle regards almost all property obtained in marriage as property of the marriage, in which each spouse has an undivided one-half interest. The marriage is viewed a shared economic relationship. The longer a marriage, the more likely it is that premarital property has been lost or commingled with acquisitions resulting from the marriage and that all property of the spouses will be shared equally.

In Revised UPC II, the elective share grows by annual percentage increments set forth in the statute so that a surviving spouse who married the decedent less than fifteen years prior to death receives less than a full 50% share; e.g., 15% for a five-year marriage, 30% for a ten-year marriage, and 46% for a fourteen-year marriage. These annual increases signify the increased contribution by the surviving spouse in accumulations of property by the deceased spouse. The system also recognizes the fact of second marriages in which there may be other familial obligations with a better claim upon the deceased spouse's property until the marriage has sufficient longevity to merit a full 50% share for the surviving spouse.

The augmented estate, also, changes in the reckoning based upon marital property principles. In a pure marital property regime, each spouse has an undivided one-half interest in the property acquired during the marriage (with some limited exceptions) no matter which spouse brings that property to the marriage. UPC II only simulates a marital property regime, but, to simulate it completely, the augmented estate must take all assets of the surviving spouse into account to the same extent as the survivor's growing share of the decedent's assets, rather than, as formerly, only to the extent of the property that the surviving spouse has received from the decedent.

Revised UPC II also increases family exemptions from probate substantially. As revised, the surviving spouse takes the first \$43,000 in probate assets in addition to the spouse's share of an intestate estate or whatever is given to the spouse by will.

Wills and will construction occupy the largest portion of original UPC II, and continue to do so in Revised UPC II. A will is a formally executed document that establishes who will have a person's property at death. But for the entitlements inherent in family exemptions noted above, the law favors wills and honors the intent of the person who makes one. The consistent policy of UPC II, from its origins through revision, is to validate testamentary documents, and to eliminate technical determinations of invalidity, whenever possible. The holographic will (carried over from original to Revised UPC II) is a primary example of this policy.

In Revised UPC II, there is a new provision that develops the basic policy even further. It permits a document, or writing added upon a document, that is not executed in accordance with the rules of execution for wills, to be given testamentary effect if it can be established by clear and convincing evidence that it was intended to be effective as a will or a modification of a will. Any writing might become a will in litigation permitted under this section.

The rules pertaining to the construction of wills are comprehensively covered in original UPC II. There is a need for rules of construction because the drafting of these documents does not always take into account every contingency - even when drafting is careful and proper. There are some underlying principles that commonly link such rules. One is the principle of enforcing the testator's intent. As far as possible, wills are construed to carry out the intent of the persons who make them, or to achieve results most likely to be preferred by the maker in instances where no thought appears to have been given to a point that later becomes critical.

An important rule of construction provides for lapsed devises. A lapsed devise is one to a person who predeceases the person who makes the will. The law has struggled with the problem of terminating such a devise as opposed to saving it by assuming a preference for substituting the descendants of the deceased devisee to take in the parent's place. Generally, the debate has been resolved in the favor of statutory anti-lapse rules for devises within a family. Anti-lapse rules preserve a devise to a family member in the favor of those who are descendants of the deceased devisee.

Original UPC II had an anti-lapse provision. Revised UPC II contains a major effort to resolve, once and for all, a number of construction problems that arise when a will contains language apparently requiring the named devisee to survive. The revised

provision views such words of survival as insufficient to prevent the devisee's descendants from taking under the anti-lapse statute.

Revised UPC II does not direct substitution of a devisee's descendants if the will explicitly provides for another substitute taker in case of the devisee's death, for all agree that the will should control in such cases. But, the revision answers a number of related problems including who should take if the substitute taker also predeceases the decedent and both original and substitute devisees leave descendants.

Construction rules, such as anti-lapse provisions, are extended to will substitutes in Revised UPC II. This, perhaps, is the most important innovation to be found in the revision. An enormous quantity of property passes at death in transfers that are nonprobate in character, i.e., trusts, insurance contracts, POD provisions in account contracts, and TOD provisions in investment securities. Nonprobate transfers of various kinds, sometimes called will substitutes, are favored because they avoid the time and expense of probate.

Historically, nonprobate transfers at death have been governed by rules that are suitable for arm's length bargains between persons engaged in business. The use of present contracts and transfers to achieve revocable death benefits has meant that rules designed for business have governed gifts at death by revocable writings that should be construed as wills are construed; i.e., so as to take account of the reality that they are prepared to meet the later eventuality of death, and tend to be out-of-mind when family circumstances change because of a premature death in the family, or a divorce, re-marriage or other important family occurrence.

Revised UPC II also includes carefully worked out rules of construction for use when ambiguous words like "family," "heirs," "issue," and the like appear in a dispositive instrument. It answers questions such as whether a gift to another's "children" includes an adopted person even if the adoption occurred when the adopted person was a competent adult. It also answers questions of meaning when a stepchild, a foster-child, or a child born out of wedlock claims under someone's gift to another's "children" and there is no persuasive evidence of what the donor meant. These matters were dealt with to some extent in original UPC, but Revised UPC II greatly extends and improves rules designed to assist clarity in written instruments.

UNIFORM LAW COMMISSIONERS

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AMENDMENTS TO UNIFORM PROBATE CODE ARTICLE VI

UNIFORM NONPROBATE TRANSFERS ON DEATH ACT

UNIFORM MULTIPLE-PERSON ACCOUNTS ACT

UNIFORM TOD SECURITY REGISTRATION ACT

INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

UMPACA explicitly provides for an account with an agency desig-

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

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

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

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

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

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

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

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

nation on the records of the issuing entity.

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

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

CONCLUSION

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

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

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MEMORANDUM

October 20, 1993

SUBJECT: Revision of probate code (Work Order No. 8-LS0982\A)

TO: Representative Carl Moses

FROM: *TL*
Theresa L. Bannister
Legislative Counsel

This memo accompanies the draft that you requested to revise the probate code by adopting the new Article II of the Uniform Probate Code. The draft includes the optional Uniform International Wills Act portion of Article II; if you wish this Act deleted, please advise.

The draft does not include the revised payment on death (POD) and the new transfer on death (TOD) provisions because those provisions are revisions of Article VI of the Uniform Probate Code. If you want to include those items, please advise.

As a starting point for drafting the bill, I have used Article II of the Uniform Probate Code contained in the Uniform Laws Annotated ("ULA") for the new chapter AS 13.12 (replacing AS 13.11). As previously discussed with your office, the portion of Art. II addressing the rule against perpetuities has been placed in a separate bill (your Work Order No. 8-LS1213\A). Using one bill for the probate code and the rule against perpetuities may violate the single subject rule. Therefore, it is safer to use two bills. Sec. 13.12.702(d)(3) of the bill has been modified accordingly.

The bill was prepared with the goal of balancing the use of our legislative drafting style with the need to keep the material uniform with other states. With that in mind, the following comments are brought to your attention.

1. Some of the sections were rearranged to comply with our drafting style (e.g. secs. 13.12.106, 13.12.202, 13.12.511, 13.12.514, 13.12.702, 13.12.706, 13.12.709, 13.12.801, 13.12.803, and 13.12.804).
2. The word "any" was replaced with "an" or "a," or deleted, where appropriate.

3. To a limited extent, definitions were relocated or rearranged to comply with our drafting style. (See, e.g., secs. 13.06.050(38) and (49), 13.12.106, 13.12.507(a)(2), 13.12.603, 13.12.706, 13.12.707, 13.12.709, 13.12.803, and 13.12.804). The definitions at secs. 13.12.106(e)(2), 13.12.706(g)(6), 13.12.707(d)(7), and 13.12.709(f)(3) are unnecessary since the individual terms are already defined and the combined usage is not different. Do you want these definitions deleted?

4. References to "his" and "her" or "he" or "she" were replaced with appropriate terms.

5. The structure of a sentence was changed when the sentence used a form such as "no individual is disqualified" (changed to "an individual is not qualified"). Examples are found in secs. 13.12.111, 13.12.114(b), 13.12.202(e), 13.12.205(d), 13.12.302(a), 13.12.606(e), 13.12.707(c), 13.12.709(e), 13.12.804(g), 13.12.907(b)(9), and 13.12.-914(a).

6. An applicability section was added to provide some guidance for the application of the amendments, repealers, and new chapters. Since there wasn't any general guidance on this in the ULA for Article II, the section should be examined carefully to determine if it handles the transition as you want it handled.

7. "Therein," "thereof," "thereto," and similar words were replaced with more specific phrases (e.g. secs. 13.06.050(38) and (52), 13.12.106(c), 13.12.202(a)(2), 13.12.205(d), 13.12.207(a), 13.12.403, 13.12.504, 13.12.507, 13.12.511(c), 13.12.801, and 13.12.-913(d)).

8. Miscellaneous stylistic changes were made. (See, e.g. secs. 13.06.050 (caption) 13.12.404(a), 13.12.516, 13.12.605, 13.12.701 (deleting "or types" because under AS 01.10.050 the singular includes the plural), 13.12.702, 13.12.707(b), 13.12.801, 13.12.803, 13.12.907, and 13.12.916).

9. In sec. 13.06.035, "Alaska Rules of Evidence" is used in place of the ULA language. In sec. 13.06.035(b), "at least" has been inserted before "120 hours."

10. In sec. 13.06.050(1), a reference to an individual authorized to make decisions for another under a natural death act was deleted because Alaska does not appear to have a natural death act.

11. In sec. 13.06.050(52), the reference to a trust account defined in AS 13.31 doesn't appear to make sense, since AS 13.31 doesn't "define" any trust accounts, so I deleted the reference. Would you prefer to have the reference remain but read "payment on death account under AS 13.31"? The intent of the original reference is not clear, so I am not sure whether "payment on death account under AS 13.31" is an accurate replacement.

12. In AS 13.06 and AS 13.11, the abbreviations "POD" and "TOD" were replaced with "pay on death" and "transfer on death," or "under AS 13.31," to conform to our drafting style. (See, e.g. secs. 13.06.050(3), (4), and (19); secs. 13.12.702, 13.12.706). In secs. 13.06.050(49) and 13.12.702(a)-(b), the references to the Uniform TOD Security Registration Act were deleted.

13. The definition of "court" in sec. 13.06.050(7) does not include the clause "having jurisdiction in matters relating to the affairs of decedents" because all of the state's superior courts have probate jurisdiction.

14. The definition of "minor" sec. 13.06.050(29) uses 18 years of age to reflect the age of majority in Alaska.

15. The definition of "person" was deleted from sec. 13.06.050 because there is a general provision (AS 01.10.060(8)) broadly defining this term for all of the statutes.

16. In sec. 13.12.102 ("Share of Spouse"), which is the present AS 13.11.012 and which relates to native corporation stock, was added as sec. 13.12.102(b). The monetary amounts in sec. 13.12.102(a)(2)-(4) are taken from the ULA.

17. Sec. 13.12.105 was expanded to provide specific references for the handling of unclaimed property.

18. In sec. 13.12.114(a), AS 25.20.050 is used as the statutory reference for the determination of a parent and child relationship. In sec. 13.12.144(b) - (c), the references to AS 25.23.130 were added to avoid a conflict between sec. 13.12.114 and AS 25.23.130 regarding the inheritance rights of adopted children.

19. In sec. 13.12.201, the time frames and percentages are taken from the ULA. In sec. 13.12.201(b), the second reference to "AS 13.12.202(b)(3) - (4) and 13.12.207(a)(1), (a)(3), (b), and (c)" was inserted to replace and clarify the ULA's "those sections".

20. In secs. 13.12.202(e), 13.12.702(f), 13.12.706(d), 13.12.803(h), and 13.12.804(g), the references to the appropriate court are simplified because all superior courts in the state have probate jurisdiction.

21. In sec. 13.12.202(i)(1), the clause relating to a state documentary fee was deleted because it appears to reference a document filing fee based on price, and I am not aware of such a state fee. In sec. 13.12.202(a)(2)(C), it was unclear how the conditions interrelated (the "if" clauses), so the subparagraph was rewritten. Please review to determine if our interpretation is correct. In sec. 13.12.202(a)(3) and (i)(6), "federal Social Security System" was replaced by "42 U.S.C. 301-1397f (Social Security Act)".

Representative Carl Moses

October 20, 1993

Page 4

22. In sec. 13.12.203(b)(1), the ULA provides a choice for the provision: whether certain benefits/assistance are or are not to be considered when making expenditures. The draft uses language considering them, but you could choose not to consider them.

23. In sec. 13.12.205, the time periods are taken from the ULA.

24. In sec. 13.12.207(b) - (c), "the recipients" replaces "their" in front of "interests in the reclaimable estate."

25. The monetary amounts in sec. 13.12.402 are those from current law. The ULA used \$15,000.

26. The monetary amounts in sec. 13.12.402 are taken from the ULA.

27. Sec. 13.12.501 retains the age of 18 used in the ULA.

28. In sec. 13.12.606(a)(4)-(5), I changed "a specifically devised obligation" to "the specifically devised obligation," because the subsection appeared to apply only to the specific devised obligation mentioned in the introductory language for (a).

29. In sec. 13.12.702(c), I added "with right of survivorship" after "more than two co-owners," to clarify what appears to be the intent of the subsection.

30. In sec. 13.12.801, the use of nine months is taken from the ULA.

31. In sec. 13.12.803(k)(3), the "and" was deleted after "decedent's killer" because it appeared to be superfluous.

32. The title to Article 9 was changed to delete the reference to the rule against perpetuities and to avoid using "etc."

33. Sec. 13.12.901(e) was rewritten to make it clearer.

34. The ULA indicates that sec. 13.12.907 (honorary trusts and trusts for pet) is optional. If you wish to have it deleted, please advise. The 21-year period in sec. 13.12.907(a) is taken from the ULA, but the ULA indicates that the actual period is to be selected for the particular state.

35. The ULA indicates that secs. 13.12.912 - 13.12.921 (Uniform International Wills Act) are optional. Please advise if you wish to delete them. In sec. 13.12.914(d) "international" has been inserted before "will."

Representative Carl Moses

October 20, 1993

Page 5

36. In sec. 13.12.919, the section uses "are licensed to practice law in this state" instead of "have been admitted to practice law before the courts of this state."

37. In sec. 13.12.920, the Department of Commerce and Economic Development is identified as the entity handling the international will registry system, since the ULA used an executive branch agency. However, you may wish to use the court system, since the court is the depository of wills generally.

Due to the size of the bill, the above comments do not indicate all of the changes made to the uniform act. If you wish to be provided with more details on the changes or on any of the above, please advise.

If I may be of further assistance, please advise.

TLB:gc
93-505.glc

Enclosure

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January 5, 1994

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Honorable Carl E. Moses
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State Capitol, Room 204
Juneau, Alaska 99801-1182

and
Honorable Frances Ulmer
Alaska House of Representatives
State Capitol, Room 403
Juneau, Alaska 99801-1182

Re: (1) Uniform Statutory Rule Against Perpetuities and
(2) Uniform Probate Code, Article II (wills and
intestate succession), and Article VI (nonprobate
transfers)

Dear Carl and Fran:

As requested by both of you, I have noted the draft of the bill proposing the Uniform Statutory Rule Against Perpetuities (USRAP) and have reviewed the drafts of the respective Uniform Probate Code (UPC) bills (Carl's dated October 20, 1993 and Fran's dated October 14, 1993), along with legislative counsel Terry Bannister's cover memos of those same dates. I trust that the USRAP bill is the same as 1992 CSHB 334(Jud) (which passed the House May 1, 1992 35 to 0), and I don't need to review it. Fran's draft of the UPC bill includes the Article VI (nonprobate transfers) provisions from her 1992 HB 392. As usual, Terry has done an excellent job.

I would feel more comfortable if Terry would refer to the official NCCUSL version of an Act rather than West Publishing Company's version that is published in Uniform Laws Annotated [ULA]. However, ULA is usually very accurate even though it is one step removed from the official version. The several places where I spot-checked for this kind of accuracy in this UPC bill looked okay.

This letter will confirm my oral comments to Tim Benintendi, of Carl's staff, and address some additional points raised by Terry's memo. Although the two versions of her memo are not verbatim, they are essentially identical and the item numbers are the same.

I see that Carl has prefiled the perpetuities bill (HB 316) and the UPC bill (HB 307). I understand that, due to a minor glitch in the multi-directional communication we've all been

Dillon & Findley

Honorable Carl E. Moses
Honorable Fran Ulmer
January 5, 1994

Page 2

involved in, Carl's UPC bill does not include the Article VI (nonprobate transfers) amendments. The plan, then, is for him to introduce a sponsor substitute that does include the Article VI amendments, and that Fran will then join as co-sponsor.

Here are my comments on the points raised by Terry, referring to the item numbers in her memo:

1, 2, 4, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 17, 19, 20, 23, 24, 25, 27, 29, 30, 31, 32, and 36: these items look okay, as Terry has drafted them. Where she listed a string of sections to illustrate a particular type of style change that she had made, I spot-checked the sections, but did not read every one of them.

*delete
dup.* 3: Terry asks whether certain definitions should be deleted. Her point about duplication has some merit; however, I nevertheless recommend retaining those definitions to help assure ease of use of our UPC by individuals and their attorneys from other states (one of the primary objectives of a Uniform Act).

10: I believe that Terry is correct regarding whether Alaska has a "natural death Act," but I'm wondering whether the NCCUSL original version is referring to something like the Uniform Rights of the Terminally Ill Act which Alaska has enacted as AS 18.12. In a quick skim, I did not see any such decision-making-authority provision in our AS version, so I must assume that the NCCUSL version is referring to something else.

11: In Fran's draft, which includes the Article VI amendments (proposed as AS 13.33), the reference probably should be retained to "under AS 13.33." Terry is correct that the proposed AS 13.33 does not "define" the term "trust account." However, that term is defined in the present Article VI (our AS 13.31.005(14)), and I am not sure why that definition was not carried forward by the NCCUSL into the new version of Article VI. So, for the moment, I recommend retaining the reference to AS 13.33, but changing "defined in" to read "under," as Terry did at line 4, page 8, of Fran's version of the bill.

18: Terry's draft looks okay, but I have not compared Alaska's current UPC provision, if any.

21: Terry asks about her interpretation of the "if" clauses for proposed AS 13.12.202(i)(1). I believe that her interpretation is correct and should remain in the bill.

22: The NCCUSL version of what we are designating AS 13.12.203(b)(1) is Section 2-203(b)(1) (using alternative B, of the NCCUSL version). The effect of the choice made in Terry's draft is

Honorable Carl E. Moses
Honorable Fran Ulmer
January 5, 1994

Page 3

to include in the considerations of a trustee administering a trust for an incapacitated surviving spouse various governmental medical and other benefits. Given that the basic thrust of many of these amendments, including those in this section, is to try to implement the probable intent of the decedent if he or she had thought of the particular question presented, it appears to me reasonable to include, rather than exclude, consideration of these benefits. Therefore, I recommend retaining Terry's wording (although I could be persuaded otherwise).

26: I believe that the reference to AS 13.12.402 should, in fact, be to AS 13.12.403. The provision looks okay.

28: I am inclined to think that the official version's "a" should be retained, but it probably doesn't matter.

33: The draft contains no AS 13.12.901(e), which is cited in the list. Perhaps proposed AS 13.12.907(c) should have been cited. If the latter provision was intended, I believe that Terry's slight rewriting in it is okay.

34: Terry asks whether you would like to delete proposed AS 13.12.907 (honorary trusts and trusts for pets). I recommend leaving it in.

35: Terry asks whether you would like to leave the Uniform International Wills Act (proposed AS 13.12.912 -- 13.12.921) in the bill. I recommend leaving it in.

37: Terry's draft, in AS 13.12.920, places the responsibility for handling the international will registry system in the Department of Commerce and Economic Development. She points out that it could have been located in the court system. The official NCCUSL version places it in the office of the secretary of state (or lieutenant governor). Another possibility for us to consider is the Department of Natural Resources which has an elaborate, computerized land-recording system. I have no recommendation regarding the choice, and suggest that each of the agencies being considered be contacted.

That is the end of Terry's list of points. I should add that I have not read every word of the 87-page version prepared for Fran (nor of Carl's 72-page version). But I have spot-checked it, and it looks good.

Terry believes that the Uniform Statutory Rule Against Perpetuities bill should not be incorporated into the general UPC bill. She believes that to do so would violate the single-subject rule of Article II, Section 13, of the Alaska Constitution. I do

leave
in

leave
in

DCED

Honorable Carl E. Moses
Honorable Fran Ulmer
January 5, 1994

Page 4

not think that our court would consider the combination a violation. However, she is correct in that it would be the safer course to put the perpetuities provisions in a separate bill. Therefore, I have no objection to her presentation of this material in two separate bills.

I will try to provide whatever assistance I can as you move these bills through the legislative process. Thank you for your support and introduction of them.

Yours truly,



Arthur H. Peterson

AHP/gg

cc: Theresa L. Bannister
Legislative Counsel
Legislative Affairs Agency

cc w/Bannister memo:
Rest of Alaska's ULC Delegation:
Jay A. Rabinowitz
W. Grant Callow
Tamara Brandt Cook
L. S. (Jerry) Kurtz, Jr.
Deborah E. Behr

Professor Richard V. Wellman
University of Georgia School of Law

P.S. Please note that the UPC bill includes the current NCCUSL language for the following, in addition to a variety of another amendments to Article II (our AS 13.12):

- Uniform Testamentary Additions to Trusts Act (UPC Section 2-511);
- Uniform Simultaneous Death Act (UPC Section 2-702);
- Uniform Disclaimer of Property Interests Act (UPC Section 2-801);
- Uniform International Wills Act (UPC Article II, Part 10);
- Uniform Nonprobate Transfers on Death Act (UPC Article VI, Parts 1 - 3).



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December 1, 1993

The Honorable Carl Moses
Member, State House of Representatives
716 W. 4th Avenue, Suite 630
Anchorage, AK 99501-2133

Dear Representative Moses:

The Alaska State Legislative Committee of AARP urges you to work towards the adoption of the Revised Uniform Probate Code (UPC) Article II.

As you may know, Article II of the 1990 Uniform Probate Code covers a host of inheritance and estate planning matters that are of great importance to elderly persons.

The improvements over original UPC Article II coverage reflected by the 1990 revision bring the uniform law up to the demands of the 1990's and beyond. The earlier work reflected family makeup of the 1960's when incidence of divorce, remarriage, step-children, single parents and reasonably affluent grandparents was much less frequent than at present. Changes in family characteristics must be reflected in rules of heirship if the law is to keep pace with the needs of people. Revised UPC Article II offers heirship recommendations that meet 1990's family needs and reduce pressure on individuals to resort to custom-made estate plans.

The Revised UPC Article II also resolves a problem regarding the fair share of marital assets to be enjoyed by one suddenly left alone as a result of divorce or death of a spouse. Divorce laws in all states now assure a fair share of marital assets to a divorced spouse. Probate law has not kept up. A surviving spouse now can be left with almost nothing by the plan of a decedent spouse who, for good or no reason, decides to direct his or her wealth away from the survivor. Revised UPC corrects this problem in a manner that measures the survivor's entitlement by the length of the marriage and avoids complex tracing of acquisitions through the history of a marriage. The emerging law assures fairness and should serve to remove some of the complexities that often dissuade elderly single persons with families from marrying even though marriage might be preferred.

Page Two

Original UPC Article II also failed to anticipate sufficiently the tremendous growth in popularity of probate-avoiding living trusts and other will substitutes. In result, though wills rules prevent benefits from passing to a former spouse by an out-of-date will that was not redone following divorce, rules governing death benefits via joint and survivor holdings, insurance policies, and living trusts are often different. Revised UPC Article II remedies this and related problems stemming from failure to think about and revise death benefits via out-of-date plans whether controlled by will or other form.

AARP strongly supports simplification, modernization and uniformity of rules relating to succession to assets of decedents. Revised UPC Article II responds to these goals and merits AARP's full endorsement and support.

We hope you agree with us on the need to adopt the Revised UPC Article II. We also look forward to working with you and others on this issue.

Sincerely,



Mary Lou Meiners, Chair
Alaska State Legislative Committee

cc: Richard V. Wellman, Executive Director
Joint Editorial Board for Uniform Probate Code
Arthur Peterson
Members, AK State Legislative Committee, Capital City Task Force &
Metropolitan Area Satellite Group

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March 8, 1994

Hon. Al Vezey, Chair
House State Affairs Committee
Alaska State Legislature
Room 102, State Capitol
Juneau, Alaska 99801-1182

HAND-DELIVERED

Re: SSHB 307, Uniform Probate Code update

Dear Representative Vezey:

Thank you for scheduling the March 10 hearing on SSHB 307. By this letter, I wish to express my support of the bill, briefly describe it, and urge your and your committee's support of it.

BACKGROUND:

In 1972, Alaska enacted the Uniform Probate Code (UPC), which had been promulgated in 1969 by the National Conference of Commissioners on Uniform State Laws (NCCUSL). Although there have been a few relatively minor amendments of it in the intervening decades, SSHB 307 presents the NCCUSL's first comprehensive updating of Article II and its revision of Article VI. Since Alaska has enacted the UPC, we need to keep up-to-date with national developments.

As promulgated, the national version of the UPC consists of seven "articles." In Alaska's numbering system, those articles have become "chapters." This bill amends Article II (AS 13.11, which the bill repeals and replaces with AS 13.12) and Article VI (AS 13.31, which the bill repeals and replaces with AS 13.33). It includes some compatibility amendments in Article I (AS 13.06) and Article III (AS 13.16). The subjects are:

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

THE ARTICLE II CHANGES:

The bulk of the bill, pages 8 -- 70, presents the Article II revision. In addition to the basic wills and intestacy provisions,

Article II includes several components¹ that you might occasionally hear referred to independently.

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

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

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

THE ARTICLE VI CHANGES:

UPC Article VI, on nonprobate transfers, clarifies the law of joint tenancy and tenancy in common for deposit accounts, with or without right of survivorship, and declares that pay-on-death (POD) clauses in the contracts that establish deposit accounts are nontestamentary. This means that such clauses allow the payment of the money in an account to the beneficiary named in a POD clause even though the clause does not meet the formal requirements for a will. The money is paid without passing through the estate of the decedent account holder. The expense, frustration, and delay of probate is thus avoided.

¹ -- Testamentary Additions to Trusts Act (1991), UPC sec. 2-511 (AS 13.12.511);
-- Simultaneous Death Act (1991), UPC sec. 2-702 (AS 13.12.702);
-- Disclaimer of Property Interests Act (1990), UPC sec. 2-801 (AS 13.12.801);
-- International Wills Act (1977), UPC art. II, part 10 (AS 13.12.912 -- 13.12.921).

Rep. Al Vezey
SSHB 307, Uniform Probate Code
March 8, 1994

Page 3

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

CONCLUSION:

SSHB 307 makes a number of improvements, addresses the concerns that have developed in a changing society, and helps keep Alaska law current with that in the rest of the country.

The American Association of Retired Persons supports this measure, and I believe that you already have a copy of the Alaska Chapter's December 1, 1993 letter to Representative Moses, expressing that support.

Please let me know if you would like to have more information on this bill.

Thank you for your consideration of the bill and these comments. I urge your committee's "Do Pass" recommendation.

Yours truly,



Arthur H. Peterson
Uniform Law Commissioner
for Alaska

cc: Hon. Carl Moses
Alaska House of Representatives

Hon. Fran Ulmer
Alaska House of Representatives



Attorneys at Law

COOK SCHUHMAN & GROSECLOSE, INC.

714 Fourth Avenue, Suite 200 • Post Office Box 70810 • Fairbanks, Alaska 99707-0810 • 907/452-1855 • Fax 907/452-8154

March 9, 1994

Via Facsimile: 465-3258

Rep. Al Vezey
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Re: House Bill 307
Revisions to the Alaska Uniform Probate Code

Dear Rep. Vezey:


It has come to our attention that House Bill 307 has been referred to your committee for review. The undersigned attorneys practice in the probate area and were unaware that such major revisions (we understand the bill to be 71 pages long) to the Probate Code were underway. We would like an opportunity to review the changes and to give the Probate Section of the Alaska Bar time to consider these revisions before HB 307 is passed out of your committee.

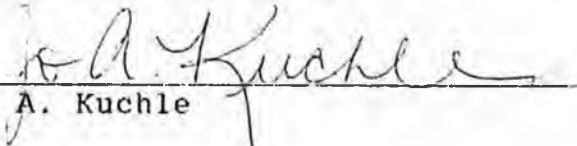
We look forward to having an opportunity to review and comment upon these revisions.

Sincerely,

COOK SCHUHMAN & GROSECLOSE, INC.


Dennis W. Cook


Robert B. Groseclose


Jo A. Kuchle

JAK/dlj:1450

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HB-307

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March 15, 1994

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and

Lynn E. Levensgood, Esq.
Downes, MacDonald & Levensgood, P.C.
1008 16th Ave., Suite 200
Fairbanks, Alaska 99701

Re: SSHB 307 (UPC, Articles II and VI)

Dear Folks:

The letter from Cook, Groseclose, and Kuchle, and the constituent POMs from Loennig and Levensgood, to Rep. Al Vezey, concerning HB 307, have been relayed to me. (Please note that the current version is SSHB 307 -- the 87-page version co-sponsored by Representatives Carl Moses and Fran Ulmer.) Thank you for your interest. I value your expertise, and I invite your specific comments on this bill.

The amendments proposed by this bill were briefly discussed in my Uniform Laws article in the July/August 1992 issue of the Alaska Bar Rag and again in my article in the July/August 1993 issue of the Bar Rag (front page both times). The Article VI amendments were presented in 1992's HB 392. Bob Manley, chair of the Alaska Bar's Estate Planning & Probate Section, sent a July 17, 1992 memo to section members setting out the portions of the 1990 UPC revisions to be discussed at the 9/22/92, 10/13/92, 11/10/92, and 12/8/92 section meetings, and the monthly section newsletter sent out by the Alaska Bar staff to all Alaska Bar members repeated this schedule. So, the substance of SSHB 307 is not new.

Dennis E. Cook, Esq., et al.
SSHB 307 (UPC amendments)
March 15, 1994

Page 2

The bill presents the update of UPC Article II (wills, intestacy, etc.) and Article VI (nonprobate transfers) promulgated by the National Conference of Commissioners on Uniform State Laws. It includes compatibility amendments in Article I (general provisions) and Article III (probate of wills, etc.) and consists of the following components:

- miscellaneous Article II amendments (1990);
- Testamentary Additions to Trusts Act (1991);
- Simultaneous Death Act (1991);
- Disclaimer of Property Interests Act (1990);
- International Wills Act (1977);
- Nonprobate Transfers on Death (1989);
- Multiple-person Accounts (1989);
- TOD Security Registration (1989).

Although Bob Manley mentioned, in his September 10, 1993 letter to Representative Carl Moses (cc to me), that there was "concern on the part of some section members" about some of the amendments, neither Bob nor anyone else has contacted Rep. Moses or me about any particular concern, although, in my October 4, 1993 letter, I expressly invited him to do so. We do not know what amendment prompted a concern, we do not know how serious any concern was, and we do not know whether any concern persisted after the individual was fully informed of the NCCUSL's reasons for the proposal.

These amendments have been around for quite awhile now, they have been the subject of study by Alaska's probate bar, no particular problem has been called to the attention of the bill's sponsors or our Uniform Laws delegation, and I would like to see it pass. If there is a specific problem, we can work it out. Alaska needs to keep its UPC up to date.

I encourage your support of SSHB 307. Thanks.

Yours truly,



Arthur H. Peterson
Uniform Law Commissioner
for Alaska

cc: Hon. Al Vezey, Chair
House State Affairs Committee

Hon. Carl Moses, Chair
House Rules Committee

Dennis E. Cook, Esq., et al.
SSHB 307 (UPC amendments)
March 15, 1994

Page 3

Hon. Fran Ulmer, Minority Leader
Alaska House of Representatives

Rest of Alaska's ULC Delegation:

Jay A. Rabinowitz
W. Grant Callow
Tamara Brandt Cook
L. S. (Jerry) Kurtz, Jr.
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March 30, 1994

Hon. Al Vezey, Chair
House State Affairs Committee
Alaska State Legislature
Room 102, State Capitol
Juneau, Alaska 99801-1182

HAND-DELIVERED

Re: SSHB 307, Uniform Probate Code update

Dear Representative Vezey:

Don't be dismayed by the amount of helpful paper here. You can go into as much or as little detail as you wish.

At your March 10, 1994 committee hearing on this bill, two questions arose: (1) five attorneys from Fairbanks contacted you to say that they had not had a chance to review these amendments; (2) a lobbyist for the American Council of Life Insurance testified to the effect that his group did not like two provisions in the bill (in proposed AS 13.12.202 and 13.12.804) that would include certain life insurance in the "augmented estate" and that would revoke certain life insurance upon divorce -- both of which provisions are aimed at protecting a surviving spouse. The bill should now be ready to move.

As you know, I wrote to those five attorneys March 15 (cc to you), outlining the public availability of this material and its study by the Probate and Estate Planning Section of the Alaska Bar since 1992, and briefly describing SSHB 307. I have not yet heard from any of those attorneys. We should not delay any longer in moving forward with this worthwhile legislation.

The life insurance industry's point raises a policy issue that we will not be able to resolve with a simple amendment to make both sides happy. The drafters and supporters of these amendments -- the National Conference of Commissioners on Uniform State Laws, the American Bar Association, the American College of Trust and Estate Counsel, and state court and law school teachers liaisons -- are scholarly organizations, with no personal stake in the outcome, that have chosen a sound public policy: additional, but not unusual, protection for surviving spouses (typically, elderly widows). The life insurance industry's position, on the other hand, directly promotes its own financial interest. Much as I respect local lobbyist John George, I cannot accede to his client's

position, and I strongly urge your committee to reject that position and to move the bill along, unchanged, with a "Do Pass" recommendation.

The effect of proposed AS 13.12.202's including the dead spouse's life insurance proceeds in the "augmented estate," along with other assets, is to increase the base from which the surviving spouse's "elective share" will come. It recognizes the typically joint accumulation of the estate during the marriage, and its purpose is avoidance of leaving a surviving spouse destitute. Neither the concept of the augmented estate nor the concept of the elective share is new; certain life insurance is being added because there is no sound principle for treating it differently from other kinds of assets that are subject to being distributed outside of probate and to the disadvantage of surviving spouses. But not all life insurance is included -- just that which meets the criteria in proposed AS 13.12.202(a)(2)(C).

As the Joint Editorial Board for the Uniform Probate Code has put it, in its March 1994 statement in response to the life insurers position,

If the policy of this country is to protect surviving spouses -- mostly elderly widows -- from disinheritance by will, there is no defensible case for allowing disinheritance by will substitutes (nonprobate transfers), which are functional equivalents of wills.

Use of non-probate transfers of assets -- one means of which is the purchase of life insurance -- has vastly increased in recent years and with good reason (avoiding the expense and delay of probate). To help assure that there is consistency in the handling of wills (subject to probate) and non-probate transfers of assets, and thus equity in the outcome, one set of changes in this bill applies to the instruments creating non-probate transfers the rules of construction that apply to wills. Thus, proposed AS 13.12.804 applies the divorce-revocation rule of construction to various non-probate transfer instruments, subject, however, to the express contrary intent of the dead person.

The March 21, 1994 statement of the American Association of Retired Persons states

The American Association of Retired Persons strongly endorses the Revised Uniform Probate Code, supports the JEB's Statement in Response to the Security Life Legislative Alert, and urges state lawmakers not to exempt life insurance from the surviving spouse's protection against disinheritance (UPC Elective Share) or

from the UPC's rules of construction.

Emphasis in original.

Professors Richard V. Wellman, of the University of Georgia School of Law, and Lawrence W. Waggoner, of the University of Michigan Law School, are the nation's two leading experts in this field. You will find attached the following material that they have sent to me, and which I urge you to review:

1. A March 22, 1994 memo from Professor Wellman to persons interested in SSHB 307, to which he has attached two letters from a Professor Morse in Kansas, one of which briefly expresses to the legislature his support of these amendments.
2. The March 1994 Statement of the Joint Editorial Board in Response to the Security Life Legislative Alert Dated February 4, 1994, to which 10 attachments are attached. Although the subject is rather technical, this material is quite readable and quite persuasive.

CONCLUSION

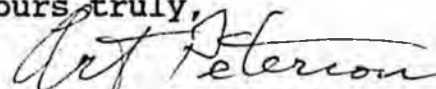
The proposals in SSHB 307 have been around and studied in Alaska for quite some time. No specific problems have been brought to the attention of the bill's sponsors or of Alaska's uniform law commissioners. We should not delay any longer.

The life insurance industry's concern about two provisions in the bill does not have merit. The policy of protecting surviving spouses is an old one and a sound one, and the unique treatment currently accorded life insurance proceeds -- exempting them from the augmented estate -- is not defensible.

Please let me know if you would like to have more information on this bill.

Thank you for your consideration of the bill, these comments, and the attached material. I urge your committee's "Do Pass" recommendation.

Yours truly,



Arthur H. Peterson
Uniform Law Commissioner
for Alaska

Rep. Al Vezey
SSHB 307, Uniform Probate Code
March 30, 1994

Page 4

cc w/enc.: Hon. Carl Moses
Alaska House of Representatives

Hon. Fran Ulmer
Alaska House of Representatives

To: Persons Interested in ^{SS} HB 307

Re: Insurance Industry Opposition

THE QUESTIONS

(1) Should statutory protection against disinheritance by one spouse of the other spouse exist against transfers at death by will substitutes as well as by will? Original UPC said "yes" to this but excluded life insurance payable to one other than the insured's spouse.

(2) Should life insurance policies be treated like other investments that transfer assets outside the probate process at a decedent's death, such as living trusts, POD and TOD asset registrations, and joint and survivor titling? Original UPC, a product of the late 1960s that pre-dated the recent massive move toward use of will substitutes that avoid probate, was concerned only with wills.

SSH 307 AND REVISED UPC ARTICLE II PROPOSALS

(1) The original UPC omission of life insurance from a spouse's protection against being intentionally disinherited by the other spouse was designed purely to deflect life insurance opposition to the entire code. Now that UPC is well-established as the national model for improved state legislation, the exemption of life insurance from the spouse's "augmented estate" protection against disinheritance by the other spouse should be discarded. The American Law Institute, the Uniform Law Commissioners, several organizations of women lawyers, and AARP support the revised UPC position regarding life insurance and the spouse's protection against disinheritance. If the life insurance industry has its way on this, the principle that one spouse may not by any transfer at death defeat the other spouse's fair share of the couple's economic resources will be contradicted and the supposed protection made largely illusory. This should not happen, especially since insurers and other payors of death benefits are amply protected by revised UPC in paying in accordance with contract terms and in the absence of notice of any contrary claim.

(2) UPC and ^{SS} HB 307 provisions define terms, such as "child", "descendant" and "surviving", commonly encountered in various documents controlling death benefits. The statutory definitions apply only if an instrument's meaning is unclear; there is no interference with freedom to contract. As introduced, H. 307's provisions governing the meaning of instruments cover wills, living trusts, retirement benefit documents and other contractual arrangements including life insurance. The life insurance people want references to life insurance deleted from these sections, evidently to avoid having to refer to a probate code. It is plainly in the public interest to have a single set of clear definitions for use when death benefit instruments fail to give

clear answers to all questions. The insurance industry request to delete all reference to life insurance plainly should be rejected.

R. V. Wellman, Exec. Dir.
JEB/UPC

March 22, 1994

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Manhattan KS 66502
March 17, 1994

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University of Michigan
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Richard V. Wellman
School of Law
Univ. of Georgia
Athens, GA 30602

Gentlemen:

I want to share with you news that the Consumer Federation of America, meeting in Washington, March 12, adopted a resolution to support Article II, Part 2 of the UPC. A copy of the draft as approved is enclosed.

You will note their adoption of a spousal consent in states which are exempt from ERISA requirements. Enclosed is a copy of New Sec. 7 HB 3067 to amend this into the Kansas Public Employees Retirement System.

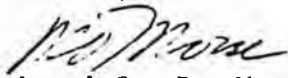
These resolutions are subject to editorial clean-up, so if you have any suggestions in that regard I know the CFA office would be interested. I suggest you write:

Stephen Brobeck, Executive Director
Consumer Federation of America
1424 16th Street, N.W. Suite 604
Washington, DC 20036

In closing I want to thank both of you for you product of which we in Kansas are beneficiaries, perhaps. We will know better after next week's Senate hearings.

Please also extend our thank to Professor Langbein, whose taped address has been supplied House and Senate committee members with positive impact.

Sincerely,


Richard L. D. Morse
Professor Emeritus of Family Economics

cc: Randy Hearrell

2429 Lookout Drive
Manhattan KS 66502
March 17, 1994

Senator Lana Oleen
Kansas State Senate
Room 136-N
State Capitol
Topeka, KS 66612

Re: H.B. No. 2430

*fyi - Sample of letter
urgency favorable
action next week
by Senate or
House - passed by*

Dear Senator Oleen,

I want to follow up on the brief discussion we have in the Mall about H.B. 2430 and share with you my views on this bill.

I am excited by its innovations, bringing probate law into harmony with traditional views of marriage as a partnership.

1. The graduated scale of Sec 1(a)(1) recognizes the length of marriage as a meaningful criteria for spousal rights.

2. The augmented estate defined in Sec 1(b) recognizes both partners as having shared in the accumulated estate.

I am also pleased to shift the burden for care of the surviving spouse from government welfare to the estate. This is the rationale for the supplemental elective-share in Sec 1(b).


If are wondering why I feel so strongly about this legislation, it is because it makes good family economic sense to me as one who has been professor of family economics since 1947.

And if you are wondering what I as a non-lawyer would know about this subject, I have been a member of the Probate Law Study Committee of the Kansas Judicial Council since 1972 and have come to know and have great respect for the lawyers on the committee who study and debate such matters freely and objectively. We have spent more than two years of study to this. Furthermore, it shows the scholarship of the National Conference of Commissioners of Uniform State Law.

I wanted to share these personal observations with you because this bill is not simple and easy to understand, especially under the time restraint of your schedule. I testified before the House subcommittee both as a committee member and on behalf of the Kansas AARP which supports the bill. (Jan Kruh was unavailable that day).

Passage of this bill will prevent continuance of many of the abuses which existing law tolerates. I hope you will be able to give it your favorable consideration.

Sincerely,



Richard L. D. Morse

JOINT EDITORIAL BOARD FOR UNIFORM PROBATE CODE

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MARCH 1994

STATEMENT OF THE JOINT EDITORIAL BOARD IN RESPONSE TO THE SECURITY LIFE LEGISLATIVE ALERT DATED FEBRUARY 4, 1994

The Joint Editorial Board for the Uniform Probate Code (JEB) wishes to respond to the statement of February 4, 1994, labelled "Legislative Alert," issued by Security Life of Denver, Colorado. The Security Life Legislative Alert urges lobbyists for the life insurance industry to work to remove life insurance payable to third parties from the property that is subject to the elective share of the surviving spouse and to remove life insurance and other nonprobate transfers from the UPC's rules of construction.

The JEB observes at the outset that the American Law Institute, in the Restatement (Second) of Property (1992), has also taken the position that life insurance payable to third parties should be subject to the surviving spouse's elective share and that rules of construction for both probate and nonprobate transfers (including life insurance) should be uniform. *Consequently, state legislators should be aware that both the Uniform Law Conference and the American Law Institute, the two premier and disinterested national organizations devoted to law reform, are in alignment on these two issues.*

The UPC Protects Insurance Companies (and Other Payors) from Liability. Before discussing the merits of the UPC's position on these two issues, the JEB wishes to point out that the UPC (but not the Restatement) contains elaborate payor protection provisions. The term "payor" is a defined term that includes life insurance companies. Insurance companies (and other "payors") are protected from liability if they pay to the designated beneficiaries before receiving notice of a contrary claim. If they receive notice of a contrary claim before making payment, they can disentangle themselves from the dispute (and avoid liability) by paying the proceeds into court. Consequently, the UPC does not impose administrative costs on insurance companies (or other payors). Insurance companies (or other payors) need not expend resources on investigating the validity of claims under the elective share or the rules of construction. Cases in which a contrary claim is filed will be small in number. They will be the exception, not the rule. In those isolated cases, the courts, not the insurance companies, are charged with determining who is ultimately entitled to receive the insurance proceeds. For additional discussion of the UPC's payor protection provisions and related issues, see Attachment No. 7.

Elective Share of the Surviving Spouse. The elective share of the surviving spouse is one of the few instances in American law where freedom of disposition is curtailed. State law has long protected surviving spouses from disinheritance by will (probate transfers).

If the public policy of this country is to protect surviving spouses — mostly elderly widows — from disinheritance by will, there is no defensible case for allowing disinheritance by will substitutes (nonprobate transfers), which are functional equivalents of wills. Recently, federal law recognized this by protecting surviving spouses from being deprived of employee death benefits under plans covered by the Employee Retirement Income Security Act (ERISA), as amended by the Retirement Equity Act (REACT).

As first promulgated in 1969, the UPC subjected will substitutes such as revocable trusts and joint tenancies to the spouse's elective share, but did not then subject life insurance payable to third parties. The decision to exempt life insurance was not based on any principled distinction between life insurance and other will substitutes. It was based on an apprehension of opposition from the life insurance industry. The recent Security Life Legislative Alert suggests that the fear that existed in 1969 was justified. Indeed, the life insurance lobby seems determined to make its product exempt from the spouse's elective share. The state of New York recently revised its legislation on the elective share. The Advisory Committee appointed by the New York legislature to study the matter, a commission composed of disinterested lawyers, judges, and law professors, recommended several revisions, all designed to strengthen the protection given to the surviving spouse. Among the recommended revisions was the inclusion of life insurance payable to third parties.¹ The inclusion of life insurance was so obviously correct that the Committee Report states that the suggestion was "readily accepted" by the Committee. See First Report of the EPTL Advisory Committee at p. 15 (1991). But, according to the New York Times, when it came to legislative consideration of the Advisory Committee's proposals, "that recommendation [to include life insurance] was dropped from the final draft of the bill after intense lobbying by the insurance industry, which was worried that people might choose alternative investments." See N.Y. Times, August 30, 1992, § 3, page 17.

We deem it very important that the Security Life Legislative Alert does not put forward a principled case for distinguishing life insurance from other will substitutes nor, indeed, from wills themselves. The only argument that Security Life makes is that subjecting life insurance to the spouse's elective share would displease the decedent's non-spouse beneficiaries. That argument, if persuasive, would not merely support exempting life insurance from the elective share, but all donative transfers—by will or by will substitute. At its base, that argument, in other words, is an anti-spouse argument—an argument for entirely abolishing the elective share. It is, after all, also true that subjecting probate assets to the elective share displeases the decedent's legatees and devisees, for they may be forced to give up part of what the decedent wanted them to have (but did not have the right to give them). The same is true of beneficiaries of revocable trusts, surviving joint tenants, and other beneficiaries of nonprobate transfers.

There is a profound parallel between the elective share of the surviving spouse and the federal estate tax. See Attachment No. 4. The federal estate tax taxes both probate and nonprobate transfers (including life insurance). The reason is simple. If the federal estate tax only taxed probate transfers, the tax would be ineffective because people would swarm to the nonprobate transfers. If the federal estate tax taxed both probate and nonprobate transfers, but left out one form of nonprobate transfer—life insurance—people would use life insurance to avoid the estate tax. The same point holds true for the elective share. If life insurance were the only exempted nonprobate transfer, life insurance would be the estate-depleting

¹ The recommended inclusion was of "insurance policies on the life of the decedent wherein the decedent retained or transferred within one year of his death any incidents of ownership." See First Report of the EPTL Advisory Committee at p. 15 (1991).

transfer of choice for people determined to disinherit their surviving spouses, since people of any age not only can change beneficiaries of existing policies but can also buy new policies.²

Life insurance is one of the most important forms of wealth transmission in the United States. According to the American Council of Life Insurance (ACLI), there was over \$10.4 trillion in life insurance coverage in the United States in 1992, up from about \$4.5 trillion in 1982. During 1991, life insurance companies paid \$25.4 billion to beneficiaries of deceased policyholders. According to a prominent writer on life insurance, life insurance has become the principal last will and testament of our legal system. See Attachment No. 8 (About Life Insurance). If the elective share is to be effective, life insurance must not be exempted.

State legislators should be aware that the UPC's elective share, as revised in 1990, has been endorsed by the American Association of Retired Persons (Attachment No. 9) and by the Consumer Federation of America.

Rules of Construction (Antilapse). Contrary to the suggestion of the Security Life Legislative Alert, the UPC has always covered nonprobate transfers and other matters extending beyond decedents' estates. Article V of the original UPC covered guardianship and protective proceedings and Article VI governed nonprobate transfers such as joint bank accounts, Totten trusts, and payable on death (POD) accounts. Article VI also contained a section protecting nonprobate transfers (including life insurance) against challenge based on noncompliance with the formalities for executing a valid will. Article II contained a provision—called the slayer rule—that prevented probate and nonprobate transfers (including life insurance benefits) from being paid to someone who feloniously and intentionally killed the decedent. UPC coverage of nonprobate transfers (including life insurance) is not unprecedented.

One of the themes of the 1990 revisions of the UPC was further to unify the law of probate and nonprobate transfers, so that all donative transfers, whether by will or will substitute, would be covered by the same rules of construction. It makes no sense, for example, to have a rule of construction providing that adopted children are presumptively included in a class gift to "children," but to limit that rule of construction to wills. If the term "children" contained in a will presumptively includes adopted children, the term should mean the same when included in other documents making donative transfers.

One of the rules of construction that the UPC extends to nonprobate transfers (including life insurance) is a provision on "antilapse." The main goal of antilapse statutes is to protect against an unintended disinheritance of the decedent's grandchildren. These statutes, which are traditional in probate codes, are necessitated by the fact that parents do not instinctively expect to bury their children. For a child to die before a parent constitutes what the Internal Revenue Service calls an "unusual order of deaths." Antilapse statutes are founded on common intention—on the conviction, borne out by experience, that most decedents, if they had thought about the possibility of an unusual order of deaths, would have provided that a deceased child's share should go to the deceased child's issue. Antilapse statutes do not, however, force this result on donors: if there is persuasive evidence that the decedent did think about the

² Either way, the transfer is estate-depleting. The higher premiums older persons must pay to purchase a new life insurance policy roughly makes up for the premiums they did not pay for that policy when they were younger, and vice versa. Note also that the proper measure of the included amount is the value of the asset that the decedent's premiums purchased, not the value of the premiums the decedent paid for the asset, *i.e.*, the proper amount to be included is the value of the insurance proceeds payable to third parties.

possibility and deliberately provided that the deceased child's issue not take, then that intent is honored. This is known as the contrary intent rule, and it applies to all rules of construction. Rules of construction are intent-effecting because they only apply if there is no contrary intent.

The UPC's extension of antilapse statutes to will substitutes is supported by precedent. Although conventional antilapse statutes only apply to wills, some courts have recently applied these statutes to will substitutes, a position supported by the Restatement (Second) of Property § 34.6(3)(b) (1992) (set forth in Attachment No. 1). An antilapse statute for life insurance and similar beneficiary plans is especially needed. Unlike wills, which are typically prepared later in life, life insurance is often taken out early in life when the policyholder is a young adult, fairly recently married, and with young children. This is a time of life when the parent is least likely to anticipate the possibility of an unusual order of deaths. The problem is compounded by the fact that life insurance companies and similar payor institutions typically offer a fairly rigid set of beneficiary options that usually do not include the one that most people would choose were it offered—the one designating a deceased child's issue to take the share that the deceased child would have taken.³

What option do most insurance companies give their policyholders? The typical beneficiary option given is one providing that the deceased child's share goes to the other (surviving) children, not to the deceased child's issue. The Security Life Legislative Alert seems to assume that this anti-grandchild option is what most policyholders want. See the Security Life Legislative Alert, Discussion of Issue No. 5. For a different view of why most insurance companies only offer this option, see Attachment No. 3 (Extracts from Letter of May 26, 1993, to the Joint Editorial Board from the Retired Attorney of a Subsidiary of a Major Corporation).

Insurance policies express this anti-grandchild option in a variety of ways. In Attachment No. 2, we give a series of examples showing that the UPC's antilapse statute does not overturn the plain meaning of these beneficiary designations when they are stated plainly enough so that the policyholder should clearly understand what he or she is signing. The antilapse statute only becomes operative when the insurance policy fails to state this anti-grandchild option, or states it so subtly, by using mere words of survival, that few people would understand that they are cutting out their grandchildren if one of their children predeceases them.

Errors in Security Life Legislative Alert. The Security Life Legislative Alert (Attachment No. 5), and a similar one issued by the American Council of Life Insurance (Attachment No. 6), contain a number of erroneous statements about the UPC or its effect. See Attachment No. 7 for a correction of the most serious of these errors.

³ An exception is Northwestern Mutual Life, whose policies now offer a checkoff option similar to the one described in Attachment 2, Example 4. That company, however, only recently began offering this option. The JEB urges other life insurance companies to follow suit, and hopes that some already have.

SCHEDULE OF ATTACHMENTS

- Attachment No. 1. Provisions of the Restatement (Second) of Property (1992)**
- Attachment No. 2. Examples Illustrating the UPC's Antilapse Statute**
- Attachment No. 3. Extracts from Letter of May 26, 1993 to the Joint Editorial Board from the Retired Attorney of a Subsidiary of a Major Corporation**
- Attachment No. 4. Provisions of the Internal Revenue Code Taxing Life Insurance in the Decedent's Estate and Making the Beneficiaries Liable to the Executor for their Portion of the Tax**
- Attachment No. 5. Security Life Legislative Alert**
- Attachment No. 6. American Council of Life Insurance Legislative Alert**
- Attachment No. 7. Correction of Errors in Security Life and American Council of Life Insurance Legislative Alerts**
- Attachment No. 8. About Life Insurance**
- Attachment No. 9. American Association of Retired Persons Endorsement**
- Attachment No. 10. About the Joint Editorial Board**

PROVISIONS OF THE RESTATEMENT (SECOND) OF PROPERTY
DONATIVE TRANSFERS (1992)

§ 32.4, *Comment f [Defining Life Insurance as a "Substitute for a Will"]:*

The insured may direct the insurance company to pay the insurance proceeds on the insured's death outright to a named person, or to the trustees of a trust. An arrangement may be made with the insurance company to retain the proceeds and pay them out over a period of time under one of the options in the policy. In each of these situations, the pay-out arrangement, though revocable by the insured, is an inter vivos donative document of transfer that is a substitute for a will.

§ 34.1(3) *[Providing that Life Insurance (and Other Will Substitutes) Payable to Others is Subject to Spouse's Elective Share]:*

An inter vivos donative transfer to others than the donor's spouse that is a substitute for a will, or that is revocable by the donor at the time of the donor's death, is subject to spousal rights of the donor's spouse in the transferred property that would accrue to the donor's spouse on the donor's death if the transfer had been made by the donor's will.

§ 34.6((3)(b) *[Providing that State Antilapse Statutes May be Judicially Extended to Life Insurance (and Other Will Substitutes)]:*

If the document of transfer is a substitute for a will, the subject matter may pass, by analogy to the antilapse statute in the controlling state, to the substitute taker such statute would have provided if the document of transfer had been a will.

EXAMPLES ILLUSTRATING THE UPC'S ANTI LAPSE STATUTE

The following examples demonstrate that the UPC's antilapse statute for life insurance is not nearly as intrusive as the Security Life Legislative Alert contends, and provides no reason for the great concern expressed in that document.

Also, contrary to the statement in the Security Life Legislative Alert, the UPC does provide guidance showing how to draft language expressing a contrary intent. The Official Comment to the antilapse provision related to life insurance directs readers to the Official Comment to the companion provision, the antilapse provision related to wills. The Official Comment to that provision provides extensive guidance on how to express a contrary intent.

Example 1. G is the policyholder. When the policy was taken out, G was married to S; G and S had two young children, A and B. G died 45 years after the policy was taken out. S predeceased G, A survived G, and B predeceased G leaving three children (X, Y, and Z) who survived G. G's policy names S as the primary beneficiary of the policy, but because S predeceased G, the secondary (contingent) beneficiary designation became operative. The secondary (contingent) beneficiary designation of G's policy states: "equally to the then living children born of the marriage of G and S."

The printed terms of G's policy provide:

If two or more persons are designated as beneficiary, the beneficiary will be the designated person or persons who survive the Insured, and if more than one survive, they will share equally.

The UPC's antilapse statute does not override the printed terms of the policy.¹ A is entitled to all of the proceeds of the policy.

Example 2. The facts are the same as in Example 1, except that G's policy names "A and B" as secondary (contingent) beneficiaries. The printed terms of the policy provide:

If any designated Beneficiary predeceases the Insured, the interest of such Beneficiary will terminate and shall be shared equally by such of the Beneficiaries as survive the Insured.²

The UPC's antilapse statute does not override the printed terms of the policy. A is entitled to all of the proceeds of the policy.

¹ In the language of the statute, the printed clause constitutes an "alternative beneficiary designation," which supersedes the substitute gift to the deceased beneficiary's children.

² See note 1, *supra*.

ATTACHMENT NO. ²~~7~~ CONTINUED

Example 3. The facts are the same as Examples 1 or 2, except that the printed terms of the policy do not contain either quoted clause or a similar one.³

Under the UPC's antilapse provision, A would be entitled to half of the policy proceeds and X, Y, and Z would divide the other half equally.

Example 4. The facts are the same as Example 3, except that the policy has a beneficiary designation that provides that, if the adjacent box is checked, the share of any deceased beneficiary shall be paid "in one sum and in equal shares to the children of that beneficiary who survive. G did not check the box adjacent to this option.

Under the UPC's antilapse statute, G's deliberate decision not to check the box providing for the share of any deceased beneficiary to go to that beneficiary's children constitutes a clear expression of a contrary intent. A would be entitled to the all proceeds of the policy.

Example 5. G's policy names her niece, A, as primary beneficiary, and provides that if A does not survive her, the proceeds are to go to her niece B, as contingent beneficiary. A predeceased G, leaving children who survived G. B survived G.

Contrary to the suggestion in the American Council of Life Insurance Legislative Alert (see Attachment No. 6), the UPC's antilapse statute does not override the express terms of the policy.⁴ The proceeds go to B, not to A's children.

Example 6. G's policy names her niece, A, as primary beneficiary, and provides that if A does not survive her, the proceeds are to go to her niece B, as contingent beneficiary. The printed terms of the policy specifically state that if neither the primary nor secondary beneficiaries survive the policyholder, the proceeds are payable to the policyholder's estate. A predeceased G, leaving children who survived G. B also predeceased G, leaving children who survived G.

The UPC's antilapse statute does not override the express terms of the policy.⁵ The proceeds go to G's estate, not to A's children or to B's children.

³ Most life insurance policies do contain a similar clause.

⁴ In the language of the statute, the contingent beneficiary designation constitutes an "alternative beneficiary designation," which supersedes the substitute gift to the deceased primary beneficiary's children.

⁵ See note 1, *supra*.

**EXTRACTS FROM LETTER OF MAY 26, 1993
TO THE JOINT EDITORIAL BOARD
FROM THE RETIRED ATTORNEY OF A
SUBSIDIARY OF A MAJOR CORPORATION**

[O]ur beneficiary designation forms generally had a provision similar to many insurance policies which stated "to my beneficiaries in equal shares, in equal shares to the survivors of them." [Among the] situations that caused what the families and everyone connected with the process felt was unfair and not what the employee would have intended [was] distribution to children which excluded distribution to the children of a deceased child. . . .

From time to time a distribution would be made only to the surviving children where one of the named beneficiaries was deceased. The brothers and sisters were always surprised to learn that this would be the result and often requested that the distribution be made to the children of their deceased brother or sister. The committee never felt it had such authority, even with consent of all the distributees. In 1969 [our parent corporation] was written and advised of the problem. A request was made for approval of a form that would permit elective adoption of an anti lapse provision. The issue was submitted to their life insurance advisors They advised against use of such a form for a number of reasons. First, it wasn't the insurance company's obligation to make the distribution fair. Employees could insure fairness by keeping their beneficiary designations up to date. It was administratively more expensive to distribute to any one but named beneficiaries. During the insured's lifetime, the company earned money on the premiums. Once death occurs, everything that occurs thereafter is an expense and the procedures should minimize all further activity on an account. Distribution to children of a deceased child would pose the likelihood that they would be minors and require distribution to a court appointed conservator. More costs are incurred in monitoring this type of distribution than just making out a check to a named beneficiary. Also there would be no way for the insurance company or employing company to determine who were the lineal descendants of a deceased child without incurring a substantial risk of error. Determining children of the deceased employee was not that big of a problem under the afterborn child rule because of supervisor and fellow employee knowledge and other company records (Blue Cross claims). Such information would not be available to help identify children of a deceased child because the company in most cases has no direct contact with families of an employee's children. The caliber of their clerical personnel would have to be substantially upgraded for them to analyze heirship matters and they would have to charge [our parent company] for the training and additional supervision required for such a program. [Our parent company] recommended that the form not be used. . . .

[We continued to receive] requests to distribute to the children of a deceased child. We declined and advised the families that they could divide up the distribution privately. In one case I felt that this would be done. In another case a brother thought that the distribution should be made as the beneficiary form provided as that is what he thought his brother must have wanted since the employee had a number of years to make the change and didn't. In one case the deceased employee, a grandfather, had substantially helped his son's wife financially to raise the grandchildren after the son's death. He had promised to pay their way through college. The daughter-in-law was devastated when she learned that the grandfather had died and had not provided for her or the grandchildren. The grandfather had named his children as

ATTACHMENT NO. 3 CONTINUED

primary beneficiaries of his group life insurance. A second spouse of some years received his pension, savings plan account and plan death benefit. The son's wife did not feel that she would continue to receive help from her step-mother-in-law. Moreover, the brother and sisters did not seem inclined to want to help their deceased's brother widow or her children.

One afternoon late in the day I was staring out the window when John, our house service man, saw me and asked what was troubling me? I told him the situation and asked who he thought should get the money. He didn't hesitate a minute in telling me that the share belonged to the children of the deceased child and should not be divided up among the brother and sisters. I thought that if John, an old, uneducated person of modest means, knew what was the right thing to do, that a sophisticated bureaucratic organization ought to be able to figure out a way to handle the problem. . . .

[The subsidiary subsequently adopted a comprehensive set of beneficiary designation options, including one that directed that the share of a deceased child should go to that child's issue. The following paragraphs address the subsidiary's experience under this option.]

Our experience was based on handling hundreds of cases each year. Normally, the number of cases handled annually amounted to one per cent of the active work force, not counting retirees. With 80,000 employees we handled about 800 death cases. As the work force went down to 60,000, we had 600 death cases. Usually, only one or two a year posed problems and I can't remember a case where we were not confident that we had the information to make a proper distribution. So we felt we could handle these cases from an information standpoint. . . .

[The] number of problem cases was very very small, so that when the cost is averaged over all cases, the additional cost is really very little. [Our parent corporation's life insurance company] used this argument to suggest that it wasn't worth doing. But while the number is small and of no great consequence to the company, it means everything for the family and individuals involved. They only get one chance at receiving an inheritance from their parents. . . .

When you ask [attorneys from other companies] if they were the employee's attorney would they write the employee's will to cut out the lineal descendants of the employee's deceased child, they always say no. When you then ask why they write the employee's will substitute to cut out the descendant of a deceased child, they answer that it is just different, without being able to articulate why. The real answer is they just don't want to be bothered.

**PROVISIONS OF THE INTERNAL REVENUE CODE
TAXING LIFE INSURANCE IN THE DECEDENT'S ESTATE
AND MAKING THE BENEFICIARIES LIABLE TO THE
EXECUTOR FOR THEIR PORTION OF THE TAX**

The following provisions of the Internal Revenue Code closely parallel the UPC's provisions protecting the surviving spouse from disinheritance by purchasing life insurance. Section 2042 includes life insurance proceeds in the decedent's taxable estate, Section 2035 includes the full value of life insurance proceeds in the decedent's taxable estate if the decedent gave the policy away within 3 years of death, and Section 2206 makes the beneficiaries of the life insurance liable to pay a proportionate part of the estate tax.

IRC § 2042. Proceeds of Life Insurance. The value of the gross estate shall include the value of all property—

(1) **Receivable by the Executor.**—To the extent of the amount receivable by the executor as insurance under policies on the life of the decedent.

(2) **Receivable by Other Beneficiaries.**—To the extent of the amount receivable by all other beneficiaries as insurance under policies on the life of the decedent with respect to which the decedent possessed at his death any of the incidents of ownership, exercisable either alone or in conjunction with any other person. . . .

IRC § 2035. Adjustment for Gifts Made Within 3 Years of Decedent's Death.

(a) **Inclusion of Gifts Made by Decedent.**—Except as provided in subsection (b), the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, during the 3-year period ending on the date of the decedent's death.

(b) **Exceptions.**—Subsection (a) shall not apply—

(1) to any bona fide sale for an adequate and full consideration in money or money's worth, and

(2) to any gift to a donee made during a calendar year [within the \$10,000 per donee annual exclusion]. Paragraph (2) shall not apply to any transfer with respect to a life insurance policy.

IRC § 2206. Liability of Life Insurance Beneficiaries. Unless the decedent directs otherwise in his will, if any part of the gross estate on which tax has been paid consists of proceeds of policies of insurance on the life of the decedent receivable by a beneficiary other than the executor, the executor shall be entitled to recover from such beneficiary such portion of the total tax paid as the proceeds of such policies bear to the taxable estate. If there is more than one such beneficiary, the executor shall be entitled to recover from such beneficiaries in the same ratio. . . .

The UPC contains similar provisions, one including life insurance proceeds as part of the property subject to the spouse's elective share (§ 2-205(1)(iv)), one including the full value of life insurance proceeds if the decedent gave the policy away within 2 years of death (§ 2-205(3)(ii)), one exempting all transfers for adequate consideration in money or money's worth (§ 2-208(a)), and another making the non-spouse beneficiaries of the life insurance liable for their proportionate part of the spouse's entitlement (§ 2-210).

ATTACHMENT NO. 5--SECURITY LIFE LEGISLATIVE ALERT



LEGISLATIVE ALERT

FEBRUARY 4, 1994

In its continuing focus on agent and policyholder well being, Security Life has uncovered legislation which undermines the very heart of what insurance companies do -- contracting to provide specific insurance benefits to designated individuals.

The source of our concern is the proposed Uniform Probate Code II ("UPC II"). Currently, under consideration in numerous states, UPC II proposes to fundamentally alter the manner in which and to whom property, including non probate property such as life insurance, may be transferred upon death. A complex and lengthy document, UPC II is difficult to understand. To date, with the assistance of probate experts, Security Life has identified several areas in which life insurance is seriously compromised. The following list identifies only the consequences, please see the attachment for an in depth discussion of the issue and the necessary revisions:

ISSUE NO. 1: UPC II subjects non probate property including life insurance, pensions, non qualified deferred compensation and trusts (both irrevocable and revocable) to the probate code in numerous ways.

ISSUE NO. 2: Under UPC II, the named beneficiary on a life insurance policy may not be the individual who receives all of the proceeds of the policy under specified circumstances.

ISSUE NO. 3: Transfers of any property made less than two years prior to death can be reclaimed under certain circumstances by a surviving spouse unless the property is transferred for full and adequate value without notice.

ISSUE NO. 4: Under UPC II, if an insured names a beneficiary other than his or her spouse, the non spouse beneficiary is left uncertain that all of the policy proceeds belong to him or her for an indefinite period of time after the insured's death.

ISSUE NO. 5: The plain language of a beneficiary designation will no longer mean what it says, UPC II will impose its beneficiary arrangement which may be different.

ISSUE NO. 6: Payor provisions under UPC II do not fully protect the payor. The payor may still need to do additional administration and investigation of claims before making payment to a beneficiary, thus delaying claim payment and causing the payor to incur additional expense.

SECURITY LIFE LEGISLATIVE ALERT--CONTINUED

ISSUE NO. 7: UPC II creates exposure to malpractice claims for agents, lawyers and Insurers for which there is no adequate protection.

ISSUE NO. 8: Not Only Agents and Insurers are affected by UPC II, employers who establish employee benefit plans such as deferred compensation, split dollar and 162 bonus plans will be faced with additional administrative burdens, uncertainties, expenses and litigation.

We do not oppose UPC II since it contains many positive provisions. However, there is something profoundly wrong when:

- words do not mean what they plainly say;
- lay people cannot do their business without paying for a new legal expert;
- non spouse beneficiaries must be concerned that the surviving spouse may reclaim portions of property left to the beneficiary at some unknown future date;
- the probate code becomes another layer of complicated regulation, delay, expense and uncertainty at a time when the public is seeking to limit probate;
- the integrity of life insurance products and services is compromised; and
- there is substantial interference with commerce while solving no problem. and

The above listed portions of UPC II are paternalistic social engineering at its worst and should not be allowed to stand. Please act now! Protect policyholder interests by becoming involved in the legislative process when UPC II is introduced in your state.

SECURITY LIFE LEGISLATIVE ALERT--CONTINUED

DISCUSSION POINTS

Issue No. 1 **UPC II subjects non probate property to its provisions.** Historically, non probate property was not subject to the probate code. UPC II subjects all of the following non probate property to certain of its provisions: life insurance; annuities; accounts with POD designations; securities; pensions, profit sharing, retirement or similar (e.g. non qualified deferred compensation) employee benefit plans; real and personal property; joint tenancies with right of survivorship and trusts (both irrevocable and revocable).

Response: It is our opinion that UPC II should not subject any non probate property to its estate valuation or reclamation provisions.

Issue No. 2 **The Integrity of the Insurance Contract May Be Compromised.** As stated above, currently, when an individual buys an insurance policy on his or her life and names a beneficiary, the insured can usually be assured, absent fraud, that the insurance proceeds will pass outside of the insured's probate estate to the named beneficiary. However, under UPC II a surviving spouse may, in certain circumstances, include non probate property such as life insurance in a decedent's estate for the purposes of determining the surviving spouse's share of the estate. Moreover, if the property owned by or received by the surviving spouse from the decedent does not satisfy the surviving spouse's share of the estate, UPC II provides that the surviving spouse may, with court approval, reclaim specified portions of non probate property such as life insurance proceeds to cure the deficiency, perhaps years later. Therefore, *under UPC II the named beneficiary on a life insurance policy may not be the individual who receives all of the proceeds of the policy.*

Response: It is our opinion that UPC II should not subject any non probate property to its estate valuation or reclamation provisions.

Issue No. 3 **Transfers Prior to Death May be Challenged.** The UPC II allows the pull back of property transferred within two years of death unless that property has been transferred for full and adequate value without notice. For example, an insurance policy transferred to an irrevocable trust within two years of the grantor's death could be subjected to spousal reclamation since the trust cannot qualify as a bonafide purchaser for full and adequate value without notice.

Response: Non probate property must not be subjected to the probate code.

Issue No. 4 **Beneficiaries May Be Subjected to Litigation, Expenses and Delays.** Under UPC II, if a surviving spouse elects to reclaim non probate property to satisfy his or her share of a decedent's estate, the spouse must first obtain approval of the probate court. However, UPC II does not appear to specify a time period within which the surviving spouse must gain court approval, or, after having gained approval, exercise the reclamation right. Therefore, reclamation could occur years after policy proceeds have been paid to the named beneficiary, causing the beneficiary to either not use all of the proceeds or to come up with the amount of money reclaimed through other sources. In either event, *under UPC II the beneficiary is left uncertain that all of the policy proceeds belong to him or her for an indefinite period of time. This result interferes with the ability of an individual to benefit children of prior marriages, other needy relatives, charities and children born out of wedlock.*

Response: As stated earlier, we do not believe non probate property should be subjected to the probated code.

SECURITY LIFE LEGISLATIVE ALERT—CONTINUED

Issue No. 5 **Beneficiary Designation Language May Be Overridden by the Probate Code.** Currently, a beneficiary designation that states, for example, "to my surviving children," would generally be interpreted in almost every state to mean that if an insured has three children and one of those children predeceases the insured that the remaining two children would be the beneficiaries of the insured's policy. In other words, the plain language of the designation would govern.

Under UPC II, however, this may not be the case. UPC II specifies that the language construction rules for wills would also be the rules applicable to non probate property such as life insurance policies, pensions, non qualified deferred compensation and trusts. This means that the words "to my surviving children" would generally be given a meaning different from their plain language meaning. Thus, if one of the insured's children predeceases the insured, that predeceased child's share of the insurance proceeds would be divided among the child's descendants (step children would not qualify as descendants unless legally adopted). In order for the "surviving children" to inure to the deceased child's share, the beneficiary designation would have to emphatically state that the children are to receive the deceased child's benefits and there is no guidance in UPC II as to what language would be sufficient to insure that the insured's intent is met. In short, *under UPC II, the plain language of beneficiary designations will no longer mean what it says, the rules of the UPC II will govern.*

Since each state which considers the UPC II may adopt differing version of the beneficiary language rules, agents, when assisting their clients in drafting beneficiary designation would have to retain counsel familiar with the specific rules of the state in which the client resides. Further, if the client later moves to a state in which the probate code differs, then the beneficiary designations would have to be altered to comply with the new state's rules to insure that the insured's intentions are met. *An insured would be required to constantly maintain vigilance over his beneficiary designations to make sure that his intentions will be met and even then he cannot be sure.*

Response: There appears to be no logical reason why the UPC II subjects non probate property to rigid mechanical construction requirements. The problems created by this provision far outweigh any benefits to be gained by these "one shoe fits all" requirements. Therefore, we conclude that the rules of construction should not apply to non probate property, unless they fill a void in the document.

Issue No. 6 **Termination of Beneficiary Arrangements Upon Divorce.** UPC II provides that a beneficiary designation naming a spouse is revoked upon divorce. Although some payor protection provisions exist under UPC II for benefit payors such as insurance companies and employers, *these payor provisions do not provide the fullest protection. The payor may still need to do additional administration and investigation of claims before making payment to a beneficiary, thus delaying claim payment and causing the payor to incur additional expense.*

Response: The payor protection provisions will need to be made absolute so that payors do not face potential conflicts when paying claims.

Issue No. 7 **Agent Malpractice Exposure.** Even though *payor protection* exists under UPC II, it *does not protect* insurers and agents from malpractice claims.

Response: The only protection against malpractice claims is the deletion of non probate property from UPC II and the limitation of rules of construction exclusively to wills.

SECURITY LIFE LEGISLATIVE ALERT--CONTINUED

Issue No. 8 **Not Only Insurance Companies and Agents are Affected by the UPC II.** Some of the issues discussed above not only affect insurance companies and their agents; they also affect employers who establish benefit plans such as deferred compensation, split dollar, 162 Bonus plans, etc. These employers when making distributions will be burdened by some of the same issues, uncertainties, expense and litigation in determining claim payments and administering their benefits plans.

Response: The solutions suggested for each of the above Issues should also solve many of the problems that employers may encounter with UPC II.

**ATTACHMENT NO. 6--AMERICAN COUNCIL OF LIFE INSURANCE
LEGISLATIVE ALERT**



American Council of Life Insurance

Richard E. Earnsback
Vice President and Chief Counsel, State Relations

February 2, 1994

To: ACLI State Vice Presidents

**Re: Legislative Alert - Uniform Probate Code Amendments
(UPC-II)**

The 1991 amendments to the Uniform Probate Code (known as UPC-II), promulgated by the Commissioners on Uniform State Laws, subjects nonprobate property, including life insurance policies, trusts, real estate, related legal instruments, etc., to the probate code. In the past, insurance proceeds were not subject to the rules of probate. While the ACLI does not oppose this code and its many positive additions, it may be necessary to make technical corrections to prevent problems created for policyholders, agents and companies.

Among other things UPC-II:

- Subjects non-probate property, such as insurance policies, etc., to the probate code for purposes of the marital elective share.
- Allows a surviving spouse to claim certain property of the other spouse which was transferred to others (except a bona-fide purchaser) within 24 months of the death of the non-surviving transferring spouse to satisfy the marital share.
- Mandates certain contingent beneficiaries for life policies, trusts, pension plans, non-qualified deferred compensation and other nonprobate property transfers. These mandated contingent beneficiaries would displace the contingent beneficiaries provided in the documents (e.g., insurance policies). Therefore, the ultimate recipient of the proceeds may not be the beneficiary designated or desired by the policyowner.

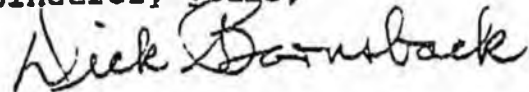
The Uniform Probate Code (UPC-II) is a very complex legal document (over 300 pages) in an area of law beyond the scope of practice of most insurance lawyers. A task force was appointed by the Chairman of the ACLI Legislative Committee last year to study and make recommendations concerning UPC-II. That study is underway.

**AMERICAN COUNCIL OF LIFE INSURANCE LEGISLATIVE ALERT--
CONTINUED**

-2-

So be on the alert for proposed amendments to your state probate code and please advise your ACLI Legislative Director or me when you learn of any activity.

Sincerely yours,



Richard E. Barnsback

/jc

cc: ACLI Retained Counsel

PROBATE .100/LAWSTATE/PROBATE

**CORRECTION OF ERRORS IN
THE SECURITY LIFE AND
AMERICAN COUNCIL OF LIFE INSURANCE
LEGISLATIVE ALERTS**

The initial portion of this memorandum sets forth the reasons that make the case so compelling for subjecting life insurance to the surviving spouse's elective share and for applying the UPC's rules of construction equally to probate and nonprobate transfers (including life insurance). The Security Life Legislative Alert (Attachment No. 5) and the American Council of Life Insurance Legislative Alert (Attachment No. 6) contain a few additional assertions that are in error or exaggerated and hence require correction.

UPC Antilapse Statute Does Not Displace Contingent Beneficiaries of Life Insurance. Contrary to the statement in the American Council of Life Insurance Legislative Alert, the UPC's antilapse statute does not "displace the contingent beneficiaries provided in the documents (e.g., insurance policies)." This point is demonstrated in Example 5 of Attachment No. 2.

Malpractice Exposure Easily Avoided. The main text of this memorandum observes that the UPC contains elaborate payor protection provisions. These provisions protect insurance companies (and other "payors") from liability if they pay to the designated beneficiaries before receiving notice of a contrary claim. If they receive notice of a contrary claim before making payment, they can disentangle themselves from the dispute (and avoid liability) by paying the proceeds into court. Consequently, insurance companies (or other payors) need not expend resources on investigating the validity of claims under the elective share or the rules of construction. The courts, not the insurance companies, are charged with determining who is ultimately entitled to receive the insurance proceeds.

The Security Life Legislative Alert states, however, that insurance companies and their agents may still be exposed to malpractice actions. Although the exact nature of the malpractice exposure seen by Security Life is not disclosed, we assume that the company is worried that courts might hold that it or its selling agents have a duty to inform potential customers of a possible spousal claim to part of the proceeds if they name someone other than their spouses as primary beneficiary. To the extent that there is such a duty to inform, life insurance companies and their agents are potentially subject to that duty already because the Restatement (Second) of Property subjects life insurance proceeds to the spouse's elective share. See Attachment No. 1. Moreover, the companies would seem to be under a host of similar duties—e.g., a duty to inform customers in community property states that their spouses might own half of the policy and that the spouse's ownership interest will continue to exist even if the couple moves to a common-law state; a duty to inform customers in common-law states who have recently moved from a community property state that their spouses might own as much as half of the policy; a duty to inform customers that the federal government might have a claim to part of the proceeds to pay the estate tax (see Attachment No. 4), since many members of the lay public think that life insurance is not taxable. Whether or not a duty to inform customers about the possibility of a spousal claim to part of the proceeds actually exists, life insurance companies, if truly worried about malpractice, could easily discharge that duty by putting a spousal consent form on their policies and on their change of beneficiary

ATTACHMENT NO. 7 CONTINUED

forms,¹ together with a suitable notice cautioning that spousal consent may be advisable if the insured is naming someone other than his or her spouse as primary beneficiary.² A similar spousal consent form is already required by the Retirement Equity Act for beneficiary designations under employee benefit plans covered by the Employee Retirement Income Security Act (ERISA).

Possible Non-uniformity Does Not Impose Administrative Burdens. The Security Life Legislative Alert states that the possibility that some enacting states might modify the UPC's rules of construction requires their sales agents to retain local counsel in order to assist their clients in drafting beneficiary designations. In addition, the Legislative Alert states, the client might have to alter the beneficiary designation if the client changes domicile. These statements are founded, however, on two faulty propositions. The first faulty proposition is that rules of construction are intent-defeating, when in fact they are intent-effecting. Regardless of any local law variations in detail, rules of construction yield to a contrary intention. Consequently, the anti-grandchild beneficiary designation favored by Security Life and many other insurance companies would control—if clearly stated—regardless of local-law variations in the antilapse rule. Also, contrary to the statement in the Security Life Legislative Alert, the UPC does provide guidance showing how to draft language expressing a contrary intent. The Official Comment to the antilapse provision related to life insurance directs readers to the Official Comment to the companion provision, the antilapse provision related to wills. The Official Comment to that provision provides extensive guidance on how to express a contrary intent. See Attachment No. 2. The second faulty proposition is that the law of the policyholder's domicile at death necessarily governs, when in fact UPC § 2-703 specifically provides that "the meaning and legal effect of a governing instrument is determined by the local law of the state selected in the governing instrument." A simple choice-of-law clause written into the printed terms of the policy can limit the applicable rules of construction to those of the designated jurisdiction.

UPC's Treatment of Gifts Within Two Years of Death Not Unreasonable. Both the Security Life and American Council of Life Insurance Legislative Alerts express concern about the UPC's treatment of gifts within two years of death. Gifts of life insurance policies within a few years before death are such notorious estate-depleting devices that Congress, in the federal estate tax, singled such gifts out as one of the few outright transfers that are taxed under the estate tax rather than under the gift tax. See IRC § 2035, Attachment No. 4.

UPC § 2-205(3)(ii) subjects the face value of a life insurance policy irrevocably transferred to a non-spouse within two years of death only "to the extent the proceeds were payable at the decedent's death" to someone other than the decedent's surviving spouse. The proceeds, in such a case, are treated as if the decedent still owned the policy. If, however, the donee of the policy surrenders the policy for its cash value before the decedent's death, UPC § 2-209(b) relieves the donee of all liability to return any portion of that cash value except in the exceedingly rare case in which the spouse's elective share entitlement is not fully satisfied from the decedent's probate estate and other nonprobate transfers.

¹ Under UPC § 2-208(a), written spousal consent removes nonprobate transfers (including life insurance) from the property subject to the elective share.

² As long as the spouse is named primary beneficiary, no spousal consent to naming someone else as secondary (contingent) beneficiary would be necessary.

ATTACHMENT NO. 7 CONTINUED

Non-Spouse Beneficiaries Will Not be At Risk for an Indefinite Period of Time. The Security Life Legislative Alert repeatedly states that the UPC's inclusion of life insurance in the property subject to the spouse's elective share leaves non-spouse beneficiaries at risk of being forced to repay part of the proceeds "for an indefinite period of time after the insured's death." This, however, is a serious misreading of the UPC's elective share provisions. UPC § 2-211, prominently titled "Proceeding for Elective Share; Time Limit," limits the time for filing an election to the 9-month period after the decedent's death and requires the electing spouse to give notice of the election to the recipients of nonprobate transfers (including non-spouse beneficiaries of life insurance). Section 2-211 further provides that, after notice and hearing, the court shall fix the liability of any person who has possession of property subject to the elective share. Under this section, the non-spouse beneficiaries are clearly not at risk of being forced to repay "for an indefinite period of time after the insured's death."³

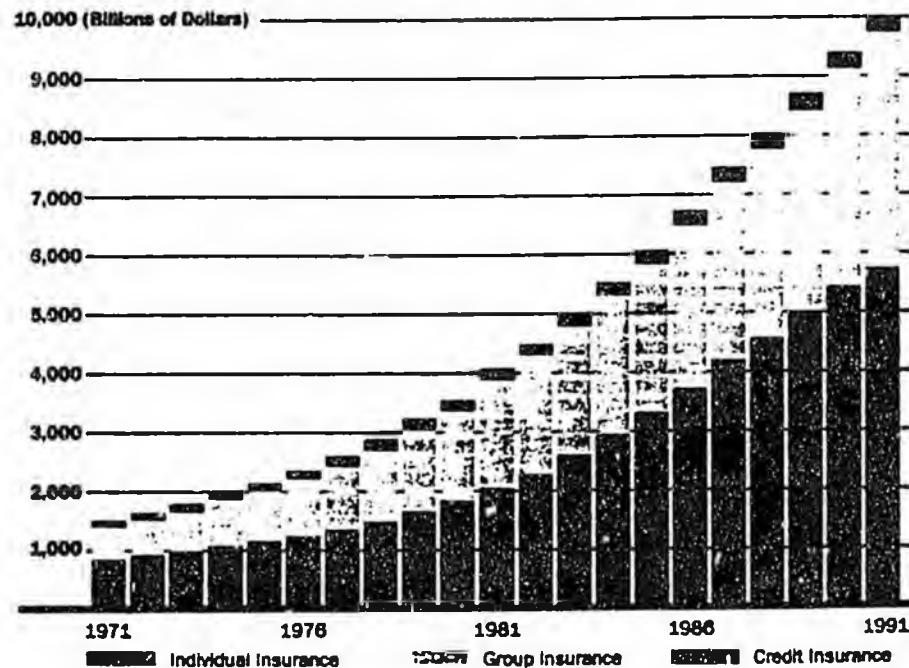
³ Section 2-211 also allows the petition for an elective share to be filed within 6 months after the probate of the decedent's will, even if that is beyond the 9-months-after-death period, but if the petition is filed more than 9 months after the decedent's death, the decedent's nonprobate transfers (including life insurance) are not subject to the elective share. The only exception allowed arises if the spouse, within 9 months after the decedent's death, petitions the court for an extension of time and gives notice of this petition to the recipients of nonprobate transfers. The court is authorized to grant the petition only "for cause shown." Consequently, extensions will be rare, and if they are granted, the recipients of the decedent's nonprobate transfers (including non-spouse life insurance beneficiaries) will be on notice of the extension and its length within 9 months after the decedent's death.

ABOUT LIFE INSURANCE

Life insurance is one of the most important forms of wealth transmission in the United States. Indeed, a prominent writer on life insurance has described the life insurance beneficiary designation as "the principal 'last will and testament' of our legal system." Spencer Kimball, *The Functions of Designations of Beneficiaries in Modern Life Insurance: U.S.A.*, in LIFE INSURANCE LAW IN INTERNATIONAL PERSPECTIVE 74, 76 (J. Hellner & G. Nord eds. 1969).

According to the American Council of Life Insurance (ACLI), there was over \$10.4 trillion in life insurance coverage in the United States in 1992, up from about \$4.5 trillion in 1982. See ACLI, 1993 LIFE INSURANCE FACT BOOK UPDATE 4. In 85% of married households, at least one member owned life insurance; the mean amount of coverage was \$160,900. In households with household income of \$75,000 or more, the mean amount of coverage was \$329,800. See *id.* at 17. During 1991, life insurance companies paid \$25.4 billion to beneficiaries of policyholders who died. See ACLI, 1992 LIFE INSURANCE FACT BOOK 45. The enormous increase in life insurance coverage over the last two decades is depicted in the following chart, reproduced from ACLI, 1992 LIFE INSURANCE FACT BOOK 17.

Growth of Individual, Group and Credit Life Insurance in Force in the United States



The staggering amounts of life insurance depicted in the above chart make it unconscionable to exempt life insurance from the property subject to the surviving spouse's elective share.

ATTACHMENT NO. 9--AARP ENDORSEMENT



Bringing lifetimes of experience and leadership to serve all generations.

March 21, 1994

The American Association of Retired Persons strongly endorses the Revised Uniform Probate Code, supports the JEB'S Statement in Response to the Security Life Legislative Alert, and urges state lawmakers not to exempt life insurance from the surviving spouses protection against disinheritance (UPC Elective Share) or from the UPC's rules of construction.

A handwritten signature in cursive script that reads "Melissa B. Burkholder".

Melissa B. Burkholder, Esq.
Consumer Issues Team Leader
State Legislation

ABOUT THE JOINT EDITORIAL BOARD

The Joint Editorial Board for the Uniform Probate Code (JEB) is the oversight panel for the law reform activities of three organizations that promote the improvement of the law in the fields of trusts, estates, probate, and guardianship.

Those organizations are:

(1) The *National Conference of Commissioners on Uniform State Laws*, a body of delegates from each state. The Commissioners draft the uniform laws. The Commission is funded from the contributions of all the state legislatures. Commissioners are appointed by governors or from state legislatures, and include leading practitioners, judges, and law professors.

(2) The *American College of Trust and Estate Counsel*, whose 2,000 elected fellows comprise the most seasoned experts in trust and estate law.

(3) The *American Bar Association's Section on Real Property, Probate, and Trust Law*, the largest body of specialist practitioners in the field.

The JEB is responsible for monitoring and updating the Uniform Probate Code and is involved in preparation and review of other uniform legislation in the field of trusts and estates.

HB

325

FISCAL NOTE

Revision Date:
Title: Motorcycle Safety

Department Affected: DOT&PF
BRU:

Sponsor: Brice
Requestor:

Component:
Component Serial Number:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING:	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

1002 FEDERAL RECEIPTS	0	0	0	0	0	0
1003 GF MATCH	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/PROGRAM RECEIPTS	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL FUNDING:	0	0	0	0	0	0

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY94) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary)

Failure to pass a universally applied helmet law in effect by October 1, 1994 will reduce monies available for capital improvement projects.

Prepared by: Schuyler J. Stevens

Phone: 465-6977

Division: State Chief Engineer

Date: February 3, 1994

Approved by Commissioner: B.A. Campbell

Phone: 465-3901

Agency: Department of Transportation and Public Facilities

Date: February 8, 1994

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 10, 1994

FURTHER REFERRALS:

State Affairs

Date of Committee Action: 2/08/94

The LABOR AND COMMERCE Committee considered:

HB 325

HOUSE BILL NO. 325

MOTORCYCLE SAFETY

"An Act relating to motorcycle safety and to use of helmets by operators of motorcycles."

RECOMMENDATIONS: CS HB 325 (L+C) the same title
 be replaced with CS HB 325 (L+C) a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note Public SAFETY

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>	✓	<i>Bill Hudson</i>			✓
<i>Brian Porter</i>	✓	<i>W. William</i>			✓
<i>Steve Satter</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				

Bill Hudson
 CHAIRMAN'S SIGNATURE



33 Collegeview Road, P.O. Box 6114, Westerville, Ohio 43081
Fax: 614-891-5012, Phone: 614-891-2425

January 26, 1994

The Honorable Bill Hudson, Co-Chairman
House Labor & Commerce Committee
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Hudson:

The American Motorcyclist Association (AMA) is a national organization representing the interests of over 200,000 motorcycle enthusiasts. On behalf of our Alaskan members, we write in support of House Bill 325, a bill that would establish a voluntary motorcycle safety program in Alaska.

Forty-two states currently have motorcycle safety programs funded by surcharges paid entirely by motorcyclists on motorcycle licenses and registrations. The federal government has recognized the contributions made to highway safety by motorcycle safety programs and designated such programs a priority under section 402 of the Intermodal Surface Transportation Efficiency Act of 1991. A recent study released by the Ohio Motorcycle Enrichment Program reported that course graduates between the ages of 16 and 18 were 1/7 as likely to be involved in an accident as their untrained peers. The establishment of a motorcycle safety program within your state will promote the traffic safety of all of Alaska's motorists.

For the reasons noted above, we respectfully request that you vote "YES" on HB-325. Thank you for your consideration.

Sincerely,

Christopher Kallfelz
Legislative Affairs Specialist
Government Relations

CK/tp




Representative Tom Brice

ALASKA STATE LEGISLATURE

119 N. Cushman, Ste. 205
Fairbanks, AK 99701
907-456-7423
While in Juneau
State Capitol
Juneau, AK 99801-1182
907-465-3466

MEMORANDUM

TO: Representative Bill Hudson, Chairman
House Labor & Commerce Committee

FROM: Representative Tom Brice 

DATE: January 25, 1994

SUBJECT: Draft CS for HB 325

I appreciate your prompt scheduling of a hearing for HB 325, which deals with mandatory motorcycle helmet use.

After discussion with the Department of Public Safety, it appears the motorcycle safety program established in the bill should be in AS 28.05.011. I have attached a blank CS which would accomplish this for your review.

Don't hesitate to contact me if you have any questions.



8-LS1298E

Ford

1/25/94

CS FOR HOUSE BILL NO. 325()
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE BRICE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to motorcycle safety and to use of helmets by operators of
 2 motorcycles."

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

4 * Section 1. POLICY. It is the policy of the state that the Department of Public Safety
 5 implement a motorcycle safety program.

6 * Sec. 2. AS 28.05.011 is amended by adding a new paragraph to read:

7 (12) regulations necessary to implement a motorcycle safety program.

8 * Sec. 3. AS 28.35.245 is repealed and reenacted to read:

9 Sec. 28.35.245. MOTORCYCLE HELMET. (a) A motorcycle helmet may not
 10 be manufactured or sold in the state unless the helmet conforms to standards
 11 established by regulation by the commissioner of public safety. The regulations must
 12 provide for helmets that allow normal peripheral vision and hearing and minimize neck
 13 injuries to the wearer potentially caused by the helmet. The regulations shall be
 14 adopted under the provisions of AS 44.62 (Administrative Procedure Act).

1
2
3

(b) A person who is 18 years of age or older may not be required to wear a helmet while operating a motorcycle if the person is the holder of a license or endorsement to operate a motorcycle.



Representative Tom Brice

ALASKA STATE LEGISLATURE

119 N. Cushman, Ste. 205
Fairbanks, AK 99701
907-456-7423
While in Juneau
State Capitol
Juneau, AK 99801-1182
907-465-3466

Sponsor Statement for HB 325

The new federal highway act, ISTEA, requires each state to adopt a mandatory helmet law. The penalty for noncompliance in the first year (FY95) is 1.5% of federal transportation funding which must be transferred from DOT&PF to the 402 fund for safety, training, and enforcement. Each year thereafter for the remaining four years of the act 3% will be moved. Depending on whether the act is fully funded by the US Congress, in FY95 \$2.6 million would go to the 402 fund, and \$5.2 million in each of the following years. Over the life of ISTEA the total would be about \$23.5 million.

During the interim, the state's Attorney General's office, in an attempt to bring Alaska into compliance with ISTEA mandates, issued an opinion supporting the state's ability to mandate the use of a helmet for motorcycle operators. The opinion's argument revolved around the use of "singularly licensed to drive a motorcycle". Although the opinion has been withdrawn, this is a new interpretation of a statute that has been on the books since 1976, and is contrary to legislative intent and current enforcement policy.

To address this, HB 325 simply eliminates the word "singularly". To ensure that some of these funds would be used for improving motorcycle safety, a motorcycle safety program would be established under DOT&PF.



FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO: CSHB325 (L&C)

Revision Date: _____ Dept. Affected: Public Safety
 Title: "An Act relating to motorcycle safety and to use of helmets by operators of motorcycles." BRU: Motor Vehicles
 Component: Driver Services
 Sponsor: Representative Brice
 Requestor: H. L&C COMPONENT SERIAL NO. 500

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0	0	0	0	0	0

Estimate of current year (FY 94) impact: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

It is not anticipated this bill will have additional fiscal impact on the Department. The Department certifies safety programs for drivers of motor vehicles. This certification process can be extended to include a motorcycle safety program.

Prepared By: Juanita M. Hensley Phone: 465-42650
 Division: Driver Services Date: 2/8/94
 Approved by Commissioner: *[Signature]* Date: 2/8/94
 Agency: Richard L. Burton, Dept. of Public Safety

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Representative Tom Brice
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MEMORANDUM

TO: Representative Bill Hudson, Chairman
House Labor & Commerce Committee

FROM: Representative Tom Brice *TB*

DATE: January 11, 1994

SUBJECT: Hearing for HB 325

I would appreciate your scheduling a hearing for HB 325, which deals with motorcycle safety, at your earliest convenience.

During the interim, DOT&PF attempted to find a way through existing statute in AS 28.35.245 to mandate motorcycle operators to wear a helmet. That interpretation would violate the legislative intent of the statute.

HB 325 will clarify legislative intent with regards to helmet laws, and closes any potential loopholes found by the department. Additionally, HB 325 will improve motorcycle safety by enhancing efforts in this area within the state highway safety program.

Thank you.

