

LDIR#234

UPC

*Memorandum
Committee*

Introduced: 3/16/71
Referred: Judiciary

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 HOUSE CONCURRENT RESOLUTION NO. 24

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SEVENTH LEGISLATURE - FIRST SESSION

5 Relating to a study of the Uniform
6 Probate Code.

7 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 WHEREAS, due to expression of concern by the Alaska Bar Association
9 and individual members of the Alaska Bar for several years, the legislature
10 passed 1960 House Concurrent Resolution No. 57, requesting the Legislative
11 Council to prepare a revised probate code; and

12 WHEREAS that revision has been repeatedly introduced in the legislature
13 since 1961, it being House Bill No. 5 in the current legislature; and

14 WHEREAS the Uniform Probate Code, approved by the National Conference
15 of Commissioners on Uniform State Laws and the American Bar Association in
16 August 1969, appears to be a more satisfactory alternative to our present
17 law than does House Bill No. 5; and

18 WHEREAS the time remaining in this First Session of the Seventh State
19 Legislature is insufficient to study the matter properly;

20 BE IT RESOLVED that the Legislative Council is requested to study the
21 Uniform Probate Code, comparing it to our present law and to House Bill
22 No. 5; conduct public hearings on the probate code in appropriate locations
23 in the state; solicit analysis and comment from the bar associations in the
24 state; and prepare a report and substitute bill for presentation to the
25 Second Session of the Seventh State Legislature.

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Attachment # 1

STATE OF ALASKA
THE LEGISLATURE

(not complete)

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

October 4, 1971

TO: Members of the Alaska Bar Association
FROM: Russell E. Mulder, Deputy Director
SUBJECT: Proposed Probate Code

As you are aware from previous correspondence, the Legislative Council has undertaken a study and revision of the Alaska probate laws. In carrying out this interim project, the council has asked the members of the Alaska Bar Association to submit their thoughts on whether or not the probate laws of Alaska should be revised and if so, what should be the basis for a revision. Also, the council held public hearings in both Anchorage and Fairbanks this summer in an attempt to receive first hand the thinking of both the Bar and the members of the public in regard to this matter.

As a result of the comments received, public testimony, and its own deliberations, the council has decided that revision of the probate laws of Alaska is long overdue and that the Uniform Probate Code approved by the National Conference of Commissioners on Uniform State Laws and the American Bar Association in August 1969 should be used as a basis of such a revision. A copy of this Uniform Probate Code as redrafted in accord with our drafting style and numbering system is enclosed for your consideration and comment. While the council decided to use the Uniform Probate Code as the basis for probate revision, it has made certain other decisions and recommended changes which it hopes you will also seriously consider and comment upon. These important Council decisions and recommendations are as follows:

- (1) Because the Uniform Probate Code goes well beyond the subject of decedent's estates, the council decided to expand existing AS 13 (Decedents Estates) to include "Guardianships and Trusts." To date time has not allowed the staff of the Legislative Affairs Agency to go through all existing titles and find the existing statutes on guardianships and trusts which need to be repealed if the Uniform Probate Code became law but this will be done prior to the 1972 legislative session.

Attachment # 6

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

MEMORANDUM

June 16, 1971

TO: Members of the Alaska Bar

FROM: Joel F. Bennett, Legislative Counsel *JFB*

SUBJECT: Revision of the Alaska Criminal and Probate Codes

By passage of Senate Concurrent Resolution No. 36 and House Concurrent Resolution No. 24, the Seventh State Legislature directed the Legislative Council (a permanent interim committee of the legislature) to undertake revisions of the current Alaska law pertaining to probate and the substantive criminal law.

Actually, the legislature has had before it both a revision of the criminal code and the probate code for many years but the proposals have received little or no consideration. As the original probate revision was done in 1960--1961 and the criminal code revision in 1964--1965, these proposals are hopelessly out of date in light of court decisions and studies, and do not take into consideration recent recommendations and approaches which have been considered or adopted in other jurisdictions or advocated by concerned groups such as the National Conference of Commissioners on Uniform State Laws. The resolutions passed by the legislature envision the introduction next January of revised codes in light of present day attitudes, studies, court decisions, and recently adopted or recommended approaches to these areas of the law.

As a preliminary step to the revision of these two codes, hearings will be held this summer at Anchorage and Fairbanks. At the hearings, the Council will be interested in receiving recommendations and opinions, particularly from members of the bar, as to the merits or demerits of any of our current criminal or probate laws, recommendations for changes (either general or oriented to specific areas or statutes), and any other comments pertinent to the issue at hand. In the case of the probate code revision, the Council has been specifically instructed to study and adapt, if satisfactory, to Alaska law, the Uniform Probate Code that has been studied and recommended by the

Attachment # 2

*Alaska Bar
x Criminal Code*

A M E N D M E N T S

IN THE HOUSE

BY THE JUDICIARY COMMITTEE

TO: SENATE BILL NO. 248

- (1) Page 3, between lines 12 and 13 insert:
 - (3) a person who is absent for a continuous period of five years, during which he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead; his death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.
- (2) Page 6, line 21, delete "18" insert "19"
- (3) Page 17, line 11, after "parents" insert:

"except that an adopted child and his issue have the rights of inheritance from the natural parents and their respective kin unless the decree of adoption specifically provides for termination of those rights of inheritance and"
- (4) Page 25, line 16, change "EXEMPT PROPERTY" to "HOMESTEAD AND PERSONAL PROPERTY"
- (5) Page 25, lines 19 and 21, delete "\$8,000" and insert "\$12,000" in both instances.
- (6) Page 25, line 27, after the period add:

A trailer home, mobile home or another dwelling of like nature, which is owned by a family or one of its members and is used as the family's actual abode, is exempt up to \$8,000, whether or not the dwelling is affixed to the land, and whether or not the land is held in fee simple or by a leasehold or some other interest in land.
- (7) Page 25, line 28, change "EXEMPT PROPERTY" to "PERSONAL PROPERTY ALLOWANCE"
- (8) Page 26, lines 6, 8, 10, 11 and 13, add "personal" after "exempt" in each instance
- (9) Page 26, line 20 and Page 27, lines 14, 17 and 23, change "exempt property" to "personal property allowance" in each instance
- (10) Page 28, line 6, delete "18" and insert "19"
- (11) Page 30, between lines 12 and 13, add a new section to read:

Sec. 13.11.173. PROOF OF WILLS. Wills other than self-proving wills under sec. 165 of this chapter may be proven by the affidavits of the two witnesses to the will if one witness is deceased or cannot be located, by the testimony of one subscribing witness and other proof satisfactory to the court.



LAWS OF ALASKA

1972

Source

SB 248 am H

Chapter No.

78

AN ACT

Adopting the Uniform Probate Code; to codify and amend the state laws relating to decedents estates, guardians, conservators, trusts, and nonprobate transfers; and providing for an effective date.

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

* Section 1. AS 13 is amended by adding new chapters to read:

TITLE 13. DECEDENTS ESTATES, GUARDIANSHIPS AND TRUSTS.

CHAPTER 6. GENERAL PROVISIONS, DEFINITIONS AND PROBATE JURISDICTION OF COURT.

ARTICLE 1. SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS.

Sec. 13.06.005. SHORT TITLE. Chs. 6 - 36 of this title shall be known and may be cited as the Uniform Probate Code.

Sec. 13.06.010. PURPOSES; RULE OF CONSTRUCTION. (a) This code shall be liberally construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of this code are to

(1) simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors and incapacitated persons;

(2) discover and make effective the intent of a decedent in distribution of his property;

(3) promote a speedy and efficient system for liquidating the estate of the decedent and making

Attachment #9

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

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Attachment # 5

ELECTIVE SHARE OF SURVIVING SPOUSE

A. Purposes and Policies

The Uniform Probate Code

1. The surviving spouse should receive protection from intentional disinheritance. Although an argument against any protection can be made, almost all states have some form of protection, based historically on the dower-curttesy concepts but extended to a share in personalty. Although most husbands and wives make ample testamentary provision for the surviving spouse, a rare testator disinherits the spouse unfairly; to attack such a will on the grounds of lack of capacity is difficult as a legal solution and often psychologically unacceptable.

2. The protection should be in the form of a fixed share rather than based on a flexible amount geared to need. The share adopted is one-third, which has the advantage of familiarity, since it is used in many forced share statutes. An amount based on need would require judicial discretion and render election uncertain. (Recognition of need is found in the Code provisions relating to the family allowance, but is limited in scope).

3. The surviving should have an elective right, just as the surviving widow has. While American tradition treats the widow as the one needing protection, the shift in wealth ownership patterns may reverse the situation. Thus, if a husband puts his

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