

LDIR# 238
UPC
HISTORY
OF
ADOPTION

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

August 15, 1973

Stophel, Caldwell & Heggie
Attorneys and Counsellors at Law
Fourth Floor Maclellan Building, West
Chattanooga, Tennessee 37402

Attention Syd Carpenter

Gentlemen:

This is in reply to your letter of June 25 in which you inquired about how the Uniform Probate Code was adopted in Alaska. Before going on to explain what transpired, please let me apologize for the time it has taken me to answer your letter. It seems, however, that interim committee and travel demands have put me a little behind in my correspondence.

To begin with, I am enclosing a copy of a letter that was written to Dr. Alan Rosenthal of the Eagleton Institute of Politics when we entered the Legislative Report Awards competition of the National Conference of State Legislative Leaders in 1972, along with a set of documents pertaining to the revision of Alaska's probate laws. I believe that this explanatory letter and accompanying documents should give you a pretty complete picture of what transpired in getting the UPC enacted in 1972.

During the 1973 session, further action was taken on the UPC by the Alaska Legislature. Amendments were proposed to substitute a number of significant original UPC provisions for variations made during the 1972 session. This legislation (HCS SB 140) passed both houses, was approved by the governor on April 23, 1973 and took effect on April 24, 1973. (Ch. 56 SLA 1973) Now Alaska's version of the UPC is much closer in line with the official version than that enacted in 1972. So that you can see exactly what was changed, I am also enclosing a copy of ch. 56 SLA 1973 and a pertinent committee report which explains what this year's amendments accomplish.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

September 26, 1972

Dr. Alan Rosenthal
Eagleton Institute of Politics
Rutgers University
New Brunswick, New Jersey 08901

Dear Dr. Rosenthal:

On behalf of the Alaska Legislative Council I am forwarding at this time documents pertaining to the revision of Alaska's probate laws during the 1972 legislative session for consideration by the Eagleton Institute staff and the Legislative Report Awards Committee as outlined in Senator William Jacquin's memoranda of May 4, 1972 and September 7, 1972.

Alaska had been attempting to update, simplify and, in short, completely overhaul its probate law since the early sixties. In 1971, the Alaska Legislature directed, by resolution, the Legislative Council to undertake a revision of Alaska's probate law, with particular emphasis to be given to consideration of the Uniform Probate Code as it might be adapted to the Alaska situation. The Legislative Council is a permanent interim committee of the Alaska Legislature (one of two only) and is composed of five senators and five representatives. That committee utilizes the staff of the Legislative Affairs Agency (the permanent legislative legal and research office) for its staff support and assistance.

Because of the importance attached to a revision of Alaska's probate law, the Council, at its initial meeting after passage of the resolution directing the study, determined that this legislative directive would be the major interim project of the Council during the 1971-72 interim. Following is a brief breakdown of the steps and methods employed by the Council during the life of this project:

As a preliminary step to the revision of the probate code, all members of the Alaska Bar Association were notified by letter of the directives contained in HCR 24 and of the fact that public hearings would be held during the summer. At

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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STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

Public doc
attached to
9/26/72 letter

STATE OF ALASKA
STATE CAPITAL
ALASKA 99501

MEMORANDUM

September 22, 1971

TO: Members of the Legislative Council
FROM: Russell E. Mulder, Deputy Director
SUBJECT: Clarification of various portions of the
Uniform Probate Code

As you will recall, during the Council's consideration of the Uniform Probate Code in Fairbanks, clarification was asked for a number of sections. I have researched the questions raised and hope that the following discussion will be of assistance in better understanding the code.

- (1) Substitution of existing Alaska law for the presumptive death provision of the Uniform Probate Code.

To clarify this point both sets of procedure are set forth for your consideration and comparison. The Uniform Probate Code (hereinafter referred to as the code) provides:

"(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."

The existing law is comprised of a number of sections and reads:

Sec. 09.55.020. PETITION AND INQUIRY. If a petition is presented by an interested person to a district judge or magistrate alleging that a designated person has disappeared and after diligent search cannot be found, and if it appears to the satisfaction of the judge or magistrate that the circumstances surrounding the disappearance afford reasonable grounds for the belief that the person has suffered death from accidental or other violent means, the judge or magistrate shall summon and impanel a jury of six

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

(not a copy)

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99801

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.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

January 10, 1972

Handwritten note:
The Alaska State
Legislature

MEMORANDUM

TO : Alaska State Legislators

FROM : John M. Elliott, Executive Director

SUBJECT: Comparison of the Uniform Probate Code with the
Model Probate Code

Through the adoption of House Concurrent Resolution No. 24, in 1971, the Legislature directed the Legislative Council to study the Uniform Probate Code, comparing it to existing state probate law and the Model Probate Code and to prepare a bill for presentation to the Second Session of the Seventh State Legislature.

Immediately after the session adjourned the Legislative Council directed the Legislative Affairs Agency to proceed with the probate law study. It soon became apparent that to study the Uniform Probate Code, compare it to existing law, and prepare appropriate legislation, would be more than enough for the staff to accomplish before the convening of the next session. As a result, a portion of the study was turned over to the University of Michigan School of Law.

The comparative analysis between the Uniform Probate Code and the Model Probate Code done by the University of Michigan Law School under the supervision of Professor Richard V. Wellman is the subject of this volume.

Enclosure



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

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Attachment # 7
(SB 248 - 1971)
(out of copies)

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

SENATE JOURNAL

ALASKA STATE LEGISLATURE

EIGHTH LEGISLATURE - FIRST SESSION

Juneau, Alaska

Friday

March 2, 1973

Fifty-fourth Day

Pursuant to adjournment the Senate was called to order by President Miller at 10:02 a.m.

The roll call showed all members present except Senators Lewis, Ray, Sackett and Young who were excused.

The prayer was offered by the chaplain, Reverend John J. Shaffer of the Methodist Church.

Senator Thomas moved and asked unanimous consent that the journal for the fifty-third day be approved with the following correction to page 397: SENATE CONCURRENT RESOLUTION NO. 36 should be introduced by the Rules Committee by request of the Special Senate Fisheries Committee. Senator Thomas moved and asked unanimous consent the journal be approved as corrected and certified. There being no objection, it was so ordered.

SCR
36

MESSAGES FROM THE HOUSE

Message of March 1 was read, stating the House has passed SENATE BILL NO. 2 and returning same. SENATE BILL NO. 2 was referred to the Secretary for enrollment.

SB
2

Message of March 1 was read stating the House has passed the following resolution and bill and transmitting same for consideration:

HOUSE CONCURRENT RESOLUTION NO. 54

HOUSE BILL NO. 262

JOURNAL
SUPPLEMENT

March 2, 1973

SENATE

No. 9

Following is a letter of intent from the Judiciary Committee and a memorandum from the Legislative Affairs Agency which accompanied the Judiciary Committee report on SENATE BILL NO. 140:

March 1, 1973

LETTER OF LEGISLATIVE INTENT

Re: Senate Bill 140 (Uniform Probate Code)

This bill is essentially a revisor's bill which rectifies some oversights and defects in the Uniform Probate Code which the legislature adopted last year.

It is the intent of the Judiciary Committee to request that the Legislative Affairs Agency analysis of the bill be spread upon the supplemental journal in order that a section by section review will be available to everyone; said memo bears date of February 27, 1973.

Ziegler
Robert H. Ziegler, Sr.
Chairman
Senate Judiciary Committee

February 27, 1973

MEMORANDUM

TO: Senator Ziegler, Chairman
Senate Judiciary Committee

FROM: Russell E. Mulder, Deputy Director *REM*

SUBJECT: Amendments to Uniform Probate Code (SB 140)

Pursuant to your request, the following sectional explanation of the amendments has been prepared. A great majority of the amendments contained in the bill are merely for the purpose



LAWS OF ALASKA

1973

Source

HCSSB 140

Chapter No.

56

AN ACT

Relating to the Uniform Probate Code; and providing for an effective date.

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

* Section 1. AS 13.06.050(11) is amended to read:

(11) "estate" includes the property of the decedent, trust, or other person whose affairs are subject to this code as originally constituted and as it exists from time to time during administration;

* Sec. 2. AS 13.11.090(a) is amended to read:

(a) The surviving spouse may elect to take his elective share in the augmented net estate by filing in the court and mailing or delivering to the personal representative a petition for the elective share within six months after the first publication of notice to creditors for filing claims which arose before the death of the decedent. The court may extend the time for election as it sees fit for cause shown by the surviving spouse before the time for election has expired.

* Sec. 3. AS 13.11.125 is amended to read:

ARTICLE 4. EXEMPT PROPERTY AND ALLOWANCES.

Sec. 13.11.125. HOMESTEAD ALLOWANCE. A surviving spouse of a decedent who was domiciled in this state is entitled to a homestead allowance of \$12,000. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to \$12,000 divided by the number of minor and dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate. Homestead allowance is in addition to any