

LEGAL SERVICES

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MEMORANDUM

January 29, 2013

SUBJECT: Bill relating to retirement plans, judgment creditors of certain organizations, the Uniform Probate Code, the Alaska Principal and Income Act, the Alaska Uniform Transfers to Minors Act, the disposition of human remains, certain insurance policies, trust interests, and community property
(Work Order No. 28-LS0335\A)

TO: Representative Wes Keller
Attn: Ernest Prax

FROM:  Terry Bannister
Legislative Counsel

This memo accompanies the bill described above.

1. Single subject issue. It is my opinion that, by combining all of the subjects in the bill, the bill is not confined to one subject, and could be held by a court to violate the constitutional requirement that a bill be confined to one subject.¹

The Alaska Supreme Court standard is that an "act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject."²

Historically, the Alaska Supreme Court has interpreted Alaska's single subject rule to permit very broad subject matter in one bill without violating the single subject requirement. For example, the Court has held that bills relating to such broad themes as "development of water resources,"³ "taxation,"⁴ "land,"⁵ "intoxicating liquor,"⁶ and

¹ Article II, sec. 13, Constitution of the State of Alaska.

² State v. First Nat'l Bank of Anchorage, 660 P.2d 406 (Alaska 1982).

³ Gellert v. State, 522 P.2d 1120 (Alaska 1974).

⁴ North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534, 545 (Alaska 1978).

⁵ State v. First Nat'l Bank of Anchorage, 660 P.2d 406 (Alaska 1982).

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"criminal law"⁷ are acceptable.⁸ However, there was a strong dissent in one case against allowing broad subject matter in a single bill.⁹ And, in 2010, the Alaska Supreme Court found that a proposed initiative violated the single subject requirement.¹⁰ Please be aware that failure to comply with this requirement could jeopardize this bill if it were ever challenged.

2. Impairment of contracts issues. The applicability section of the bill (bill secs. 51(a) and (d)) applies the sections of the bill to retirement plans, individual retirement accounts (IRAs), and Roth IRAs that exist before the effective date of the bill. Applying the changes and new provisions in AS 09.38.017 and AS 34.40.118 to retirement plans, IRAs, and Roth IRAs that pre-date the effective date of these changes and new provisions may raise constitutional impairment of contracts issues if the changes or new provisions operate as a substantial impairment of any contractual relationships involved in these plans, IRAs, or Roth IRAs.

The applicability section of the bill (bill sec. 51(b)) applies sections of the bill to trusts that exist before the effective date of the bill. Applying the changes and new provisions in AS 13.36.157 - 13.36.159, AS 13.36.072(c), AS 13.36.215(b), AS 13.36.225(a), AS 13.36.273, AS 13.36.375, AS 13.36.370(a), and AS 13.36.375(c) to trusts that pre-date the effective date of these changes and new provisions may raise constitutional impairment of contracts issues if the changes or new provisions operate as a substantial impairment of any contractual relationships involved in the trusts.

The applicability section of the bill (bill sec. 51(c)) applies the changes to AS 13.46 to transfers that are made before the effective date of this bill, and may raise constitutional impairment of contracts issues if the changes or provisions operate as a substantial impairment of any contractual relationships already established by the transaction that created the transfers.

If I may be of further assistance, please advise.

TLB:ljw
13-038.ljw

Enclosure

⁶ Van Brunt v. State, 646 P.2d 872 (Alaska App. 1982).

⁷ Galbraith v. State, 693 P.2d 880 (Alaska App. 1985).

⁸ Evans v. State, 56 P.3d 1046, 1070 (Alaska 2002).

⁹ Yute Air Alaska, Inc. v. McAlpine, 698 P.2d 1173 (Alaska 1985). In his dissent, at page 1182, Justice Moore stated: "This court has mistakenly continued to give the rule such an extremely liberal interpretation that the rule has become a farce."

¹⁰ Croft v. Parnell, 236 P.3d 369 (Alaska 2010).