

CS FOR HOUSE BILL NO. 459(JUD) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Amended: 2/21/96

Offered: 2/12/96

Sponsor(s): REPRESENTATIVE VEZEY

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the jurisdiction governing a trust, to challenges to trusts or
2 property transfers in trust, to the validity of trust interests, and to transfers of
3 certain trust interests."

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

5 * **Section 1.** AS 13.36.035(a) is amended to read:

6 (a) The court has exclusive jurisdiction of proceedings initiated by interested
7 parties concerning the internal affairs of trusts, including trusts covered by (c) of this
8 section. Except as provided in (c) - (d) of this section, proceedings that [.
9 PROCEEDINGS WHICH] may be maintained under this section are those concerning
10 the administration and distribution of trusts, the declaration of rights and the
11 determination of other matters involving trustees and beneficiaries of trusts. These
12 include [, BUT ARE NOT LIMITED TO,] proceedings to

13 (1) appoint or remove a trustee;

14 (2) review trustees' fees and to review and settle interim or final

1 accounts;

2 (3) ascertain beneficiaries, determine any question arising in the
3 administration or distribution of any trust including questions of construction of trust
4 instruments, instruct trustees, and determine the existence or nonexistence of any
5 immunity, power, privilege, duty or right; and

6 (4) release registration of a trust.

7 * **Sec. 2.** AS 13.36.035 is amended by adding new subsections to read:

8 (c) A provision that the laws of this state govern the validity, construction, and
9 administration of the trust and that the trust is subject to the jurisdiction of this state
10 is valid, effective, and conclusive for the trust if

11 (1) some or all of the trust assets are deposited in this state and are
12 being administered by a qualified person;

13 (2) a trustee is a qualified person; and

14 (3) the principal place of administration is located in this state.

15 (d) The validity, construction, and administration of a trust with a state
16 jurisdiction provision are determined by the laws of this state, including the

17 (1) capacity of the settlor;

18 (2) powers, obligations, liabilities, and rights of the trustees and the
19 appointment and removal of the trustee; and

20 (3) existence and extent of powers, conferred or retained, including a
21 trustee's discretionary powers, the powers retained by a beneficiary of the trust, and
22 the validity of the exercise of a power.

23 * **Sec. 3.** AS 13.36.045(a) is amended to read:

24 (a) The court will not, over the objection of a party, entertain proceedings
25 under AS 13.36.035 involving a trust registered or having its principal place of
26 administration in another state, unless

27 (1) all appropriate parties could not be bound by litigation in the courts
28 of the state where the trust is registered or has its principal place of administration;
29 [OR]

30 (2) the interests of justice otherwise would seriously be impaired; or

31 (3) the trust contains a state jurisdiction provision; and

1 (A) some or all of the trust assets are deposited in this state
2 and are being administered by a qualified person; or
3 (B) a trustee is a qualified person.

4 * **Sec. 4.** AS 13.36 is amended by adding new sections to read:

5 Sec. 13.36.310. CHALLENGES TO TRUST. Except as provided in
6 AS 34.40.110, a trust that is covered by AS 13.36.035(c) or that is otherwise governed
7 by the laws of this state, or a property transfer in trust that is covered by
8 AS 13.36.035(c) or that is otherwise governed by the laws of this state, is not void,
9 voidable, liable to be set aside, defective in any fashion, or questionable as to the
10 settlor's capacity, on the grounds that the trust or transfer avoids or defeats a right,
11 claim, or interest conferred by law on a person by reason of a personal or business
12 relationship with the settlor or by way of a marital or similar right.

13 Sec. 13.36.390. DEFINITIONS. In AS 13.36,

14 (1) "qualified person" means

15 (A) an individual who, except for brief intervals, military
16 service, attendance at an educational or training institution, or for absences for
17 good cause shown, resides in this state, whose true and permanent home is in
18 this state, who does not have a present intention of moving from this state, and
19 who has the intention of returning to this state when away;

20 (B) a trust company that is organized under AS 06.25 and that
21 has its principal place of business in this state; or

22 (C) a bank that is organized under AS 06.05, or a national
23 banking association that is organized under 12 U.S.C. 21 - 216d, if the bank
24 or national banking association possesses and exercises trust powers and has
25 its principal place of business in this state;

26 (2) "settlor" means a person who transfers property in trust; "settlor"
27 includes a person who furnishes the property transferred to a trust even if the trust is
28 created by another person;

29 (3) "state jurisdiction provision" means a provision that the laws of this
30 state govern the validity, construction, and administration of a trust and that the trust
31 is subject to the jurisdiction of this state.

1 * **Sec. 5.** AS 34.27.050(a) is amended to read:

2 (a) A nonvested property interest is invalid unless

3 (1) when the interest is created, it is certain to vest or terminate no later
4 than 21 years after the death of an individual then alive; [OR]

5 (2) the interest either vests or terminates within 90 years after its
6 creation; or

7 **(3) the interest is in a trust and all or part of the income or**
8 **principal of the trust may be distributed, in the discretion of the trustee, to a**
9 **person who is living when the trust is created.**

10 * **Sec. 6.** AS 34.27.060 is amended to read:

11 Sec. 34.27.060. REFORMATION. Upon the petition of an interested person,
12 a court shall reform a disposition in the manner that most closely approximates the
13 transferor's manifested plan of distribution and is within the 90 years allowed by
14 AS 34.27.050(a)(2), (b)(2), or (c)(2) if

15 (1) a nonvested property interest or a power of appointment becomes
16 invalid under AS 34.27.050;

17 (2) a class gift is not but might become invalid under AS 34.27.050 and
18 the time has arrived when the share of any class member is to take effect in possession
19 or enjoyment; or

20 (3) a nonvested property interest that is not validated by
21 AS 34.27.050(a)(1) **or (3)** can vest but not within 90 years after its creation.

22 * **Sec. 7.** AS 34.40.010 is amended to read:

23 Sec. 34.40.010. INVALIDITY GENERALLY. **Except as provided in**
24 **AS 34.40.110, a** [A] conveyance or assignment, in writing or otherwise, of an estate
25 or interest in land, or in goods, or things in action, or of rents or profits issuing from
26 them or a charge upon land, goods, or things in action, or upon the rents or profits
27 from them, made with the intent to hinder, delay, or defraud creditors or other persons
28 of their lawful suits, damages, forfeitures, debts, or demands, or a bond or other
29 evidence of debt given, action commenced, decree or judgment suffered, with the like
30 intent, as against the persons so hindered, delayed, or defrauded is void.

31 * **Sec. 8.** AS 34.40.110 is repealed and reenacted to read:

1 Sec. 34.40.110. RESTRICTING TRANSFERS OF TRUST INTERESTS. (a)
2 A person who in writing transfers property in trust may provide that the interest of a
3 beneficiary of the trust may not be either voluntarily or involuntarily transferred before
4 payment or delivery of the interest to the beneficiary by the trustee. In this subsection,
5 (1) "property" includes real property, personal property, and interests
6 in real or personal property;
7 (2) "transfer" means any form of transfer, including deed, conveyance,
8 or assignment.
9 (b) If a trust contains a transfer restriction allowed under (a) of this section,
10 the transfer restriction prevents a creditor existing when the trust is created, a person
11 who subsequently becomes a creditor, or another person from satisfying a claim out
12 of the beneficiary's interest in the trust, unless the
13 (1) transfer was intended in whole or in part to hinder, delay, or
14 defraud creditors or other persons under AS 34.40.010;
15 (2) trust provides that the settlor may revoke or terminate all or part
16 of the trust without the consent of a person who has a substantial beneficial interest
17 in the trust and the interest would be adversely affected by the exercise of the power
18 held by the settlor to revoke or terminate all or part of the trust; in this paragraph,
19 "revoke or terminate" does not include a power to veto a distribution from the trust or
20 a similar power; or
21 (3) trust requires that all or a part of the trust's income or principal, or
22 both, must be distributed to the settlor.
23 (c) The satisfaction of a claim under (b)(1) - (3) of this section is limited to
24 that part of the trust to which (b)(1) - (3) of this section applies.
25 (d) In this section, "settlor" means a person who transfers real property,
26 personal property, or an interest in real or personal property, in trust.
27 * **Sec. 9.** This Act does not apply to a trust unless the trust is created on or after the
28 effective date of this Act.