

SENATE CS FOR CS FOR HOUSE BILL NO. 101(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/10/97

Referred: Rules

Sponsor(s): REPRESENTATIVES VEZEY, Bunde, Therriault

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to certain irrevocable transfers in trust, to the jurisdiction
2 governing a trust, to challenges to trusts or property transfers in trust, to the
3 validity of trust interests, and to transfers of certain trust interests; and providing
4 for an effective date."

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

6 * Section 1. AS 13.12.205(2) is amended to read:

7 (2) property transferred in any of the following forms by the decedent
8 during marriage:

9 (A) an irrevocable transfer, **including an irrevocable transfer**
10 **in trust with a transfer restriction under AS 34.40.110(a)**, in which the
11 decedent retained the right to the possession or enjoyment of, or to the income
12 from, the property, if and to the extent the decedent's right terminated at or
13 continued beyond the decedent's death; the amount included is the value of the
14 fraction of the property to which the decedent's right related, to the extent the

fraction of the property passed outside probate to or for the benefit of a person other than the decedent's estate or surviving spouse;

(B) a transfer in which the decedent created a power over the income or property, exercisable by the decedent alone or in conjunction with another person, or exercisable by a nonadverse party, to or for the benefit of the decedent, the decedent's creditors, the decedent's estate, or creditors of the decedent's estate; the amount included with respect to a power over property is the value of the property subject to the power, and the amount included with respect to a power over income is the value of the property that produces or produced the income, to the extent the power in either case was exercisable at the decedent's death to or for the benefit of a person other than the decedent's surviving spouse or to the extent the property passed at the decedent's death, by exercise, release, lapse, default, or otherwise, to or for the benefit of a person other than the decedent's estate or surviving spouse; if the power is a power over both income and property and the preceding provision defining the amount included produces different amounts, the amount included is the greater amount; and

* **Sec. 2.** AS 13.36.035(a) is amended to read:

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

(1) appoint or remove a trustee;

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

(3) ascertain beneficiaries, determine any question arising in the administration or distribution of any trust including questions of construction of trust instruments, instruct trustees, and determine the existence or nonexistence of any

1 immunity, power, privilege, duty, or right; and

2 (4) release registration of a trust.

3 * **Sec. 3.** AS 13.36.035 is amended by adding new subsections to read:

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

7 (1) some or all of the trust assets are deposited in this state and are
8 being administered by a qualified person; in this paragraph, "deposited in this state"
9 includes being held in a checking account, time deposit, certificate of deposit,
10 brokerage account, trust company fiduciary account, or other similar account or deposit
11 that is located in this state;

12 (2) a trustee is a qualified person who is designated as a trustee under
13 the governing instrument or by a court having jurisdiction over the trust;

14 (3) the powers of the trustee identified under (2) of this subsection
15 include or are limited to

16 (A) maintaining records for the trust on an exclusive basis or
17 a nonexclusive basis; and

18 (B) preparing or arranging for the preparation of, on an
19 exclusive basis or a nonexclusive basis, an income tax return that must be filed
20 by the trust; and

21 (4) part or all of the administration occurs in this state, including
22 physically maintaining trust records in this state.

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

25 (1) capacity of the settlor;

26 (2) powers, obligations, liabilities, and rights of the trustees and the
27 appointment and removal of the trustees; and

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

31 (e) In (d) of this section, "settlor" means a person who transfers property in

trust; "settlor" includes a person who furnishes the property transferred to a trust even if the trust is created by another person.

* **Sec. 4.** AS 13.36.045(a) is amended to read:

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

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

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

(3) the trust satisfies AS 13.36.035(c).

* **Sec. 5.** AS 13.36 is amended by adding new sections to read:

Sec. 13.36.310. Challenges to trusts. Except as provided in AS 34.40.110, a trust that is covered by AS 13.36.035(c) or that is otherwise governed by the laws of this state, or a property transfer to a trust that is covered by AS 13.36.035(c) or that is otherwise governed by the laws of this state, is not void, voidable, liable to be set aside, defective in any fashion, or questionable as to the settlor's capacity, on the grounds that the trust or transfer avoids or defeats a right, claim, or interest conferred by law on a person by reason of a personal or business relationship with the settlor or by way of a marital or similar right. In this section, "settlor" means a person who transfers property in trust; "settlor" includes a person who furnishes the property transferred to a trust even if the trust is created by another person.

Sec. 13.36.390. Definitions. In AS 13.36,

(1) "qualified person" means

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

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

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

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

* **Sec. 6.** AS 34.27.050(a) is amended to read:

(a) A nonvested property interest is invalid unless

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

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

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

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

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

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

Sec. 34.40.110. Restricting transfers of trust interests. (a) A person who in writing transfers property in trust may provide that the interest of a beneficiary of the trust may not be either voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee. In this subsection,

(1) "property" includes real property, personal property, and interests

1 in real or personal property;

2 (2) "transfer" means any form of transfer, including deed, conveyance,
3 or assignment.

4 (b) If a trust contains a transfer restriction allowed under (a) of this section,
5 the transfer restriction prevents a creditor existing when the trust is created, a person
6 who subsequently becomes a creditor, or another person from satisfying a claim out
7 of the beneficiary's interest in the trust, unless the

8 (1) transfer was intended in whole or in part to hinder, delay, or
9 defraud creditors or other persons under AS 34.40.010;

10 (2) trust provides that the settlor may revoke or terminate all or part
11 of the trust without the consent of a person who has a substantial beneficial interest
12 in the trust and the interest would be adversely affected by the exercise of the power
13 held by the settlor to revoke or terminate all or part of the trust; in this paragraph,
14 "revoke or terminate" does not include a power to veto a distribution from the trust,
15 a testamentary special power of appointment or similar power, or the right to receive
16 a distribution of income, corpus, or both in the discretion of a person, including a
17 trustee, other than the settlor;

18 (3) trust requires that all or a part of the trust's income or principal, or
19 both, must be distributed to the settlor; or

20 (4) at the time of the transfer, the settlor is in default by 30 or more
21 days of making a payment due under a child support judgment or order.

22 (c) The satisfaction of a claim under (b)(1) - (4) of this section is limited to
23 that part of the trust to which (b)(1) - (4) of this section applies.

24 (d) A person may not bring an action with respect to a claim allowed under
25 (b)(1) of this section if the person

26 (1) is a creditor when the trust is created unless the action is brought
27 within the later of

28 (A) four years after the transfer is made; or

29 (B) one year after the transfer is or reasonably could have been
30 discovered by the person; or

31 (2) becomes a creditor subsequent to the transfer unless the action is

1 brought within four years after the transfer is made.

2 (e) In this section, "settlor" means a person who transfers real property,
3 personal property, or an interest in real or personal property, in trust.

4 * **Sec. 9.** This Act does not apply to a trust unless the trust is created on or after the
5 effective date of this Act.

6 * **Sec. 10.** This Act takes effect immediately under AS 01.10.070(c).