

SENATE BILL NO. 354 am H

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Amended: 5/12/98

Introduced: 4/14/98

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to wills, intestacy, nonprobate transfers, and trusts; and
2 amending Rule 24, Alaska Rules of Civil Procedure."

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

4 * **Section 1.** AS 13.06 is amended by adding a new section to read:

5 **Sec. 13.06.068. Choice of law; validity.** (a) Subject to the other provisions
6 of this section, the formal validity, intrinsic validity, effect, interpretation, revocation,
7 or alteration of a testamentary disposition of real property and the manner in which the
8 property descends at death when not disposed of by will are determined by the law of
9 the jurisdiction in which the land is situated.

10 (b) Subject to the other provisions of this section, the intrinsic validity, effect,
11 revocation, or alteration of a testamentary disposition of personal property and the
12 manner in which the property devolves at death when not disposed of by will are
13 determined by the law of the jurisdiction in which the decedent was domiciled at
14 death.

(c) A will disposing of personal property, wherever situated, or real property situated in this state made within or outside this state by a domiciliary or nondomiciliary of the state where the property is situated, is formally valid and admissible to probate in this state if the will is in writing and signed by the testator and otherwise executed and attested to under the local law of

(1) this state;

(2) the jurisdiction where the will was executed at the time of execution; or

(3) the jurisdiction where the testator was domiciled, either at the time of execution or at death.

(d) A testamentary disposition of personal property intrinsically valid under the law of the jurisdiction where the testator was domiciled when the will was executed is not affected by a subsequent change in the domicile of the testator to a jurisdiction under the law of which the disposition is intrinsically invalid.

(e) The interpretation of a testamentary disposition of personal property shall be made under the local law of the jurisdiction where the testator was domiciled when the will was executed.

(f) Whether a testamentary disposition of personal property is effectively revoked or altered by a subsequent testamentary instrument or by a physical act to or on the will by which the testamentary disposition was made is determined by the local law of the jurisdiction where the testator was domiciled when the subsequent instrument was executed or the physical act performed.

(g) Subject to (d) - (f) of this section, the intrinsic validity, effect, revocation or alteration of a testamentary disposition by which a power of appointment over personal property is exercised and the question of whether the power has been exercised at all are determined by

(1) in the case of a presently exercisable general power of appointment, the local law of the jurisdiction where the donee of the power was domiciled at the time of death;

(2) in the case of a general power of appointment exercisable by will alone or a special power of appointment, the local law of the jurisdiction

(A) that the donor of the power expressly selected in the governing instrument to govern the disposition; or

(B) where the donor of the power was domiciled at the time of death if the donor did not expressly select in the governing instrument a jurisdiction to govern the disposition.

(h) The formal validity of a will by which a power of appointment over personal property is exercised is determined under (b) of this section on the basis that the testator referred to in (b) of this section is the donee of the power.

(i) When a testator, who is not domiciled in this state at the time of death, provides in the testator's will that the testator elects to have the disposition of the testator's property situated in this state governed by the local law of this state, the intrinsic validity, including the testator's general capacity, effect, interpretation, revocation, or alteration of the provision, is determined by the local law of this state. The formal validity of the will is determined under (b) of this section.

(j) Notwithstanding the definition of "real property", as set out in (l) of this section, whether an estate in, leasehold of, fixture, mortgage, or other lien on land is real property governed by (a) of this section or personal property governed by (b) of this section is determined by the local law of the jurisdiction where the land is situated.

(k) Notwithstanding the other provisions of AS 13.06 - AS 13.36, the provisions of this section govern in AS 13.06 - AS 13.36.

(l) In this section,

(1) "effect" means the legal consequences attributed under the local law of a jurisdiction to a valid testamentary disposition;

(2) "formal validity" means the formalities established by the local law of a jurisdiction for the execution and attestation of a will;

(3) "interpretation" means the procedure of applying the law of a jurisdiction to determine the meaning of language employed by the testator if the testator's intention is not otherwise ascertainable;

(4) "intrinsic validity" means the rules of substantive local law by which a jurisdiction determines the legality of a testamentary disposition, including the

1 general capacity of the testator;

2 (5) "local law" means the law that the courts of a jurisdiction apply
3 when adjudicating legal questions that are not related to another jurisdiction;

4 (6) "personal property" means property other than real property, and
5 includes tangible and intangible property;

6 (7) "real property" means land or an estate in land, and includes
7 leaseholds, fixtures, and mortgages or other liens on land;

8 (8) "testamentary disposition" means disposition under a will.

9 * **Sec. 2.** AS 13.12.401 is amended to read:

10 **Sec. 13.12.401. Applicable law.** Except as provided in AS 13.06.068,
11 AS 13.12.401 - 13.12.405 [AS 12.13.401 - 12.13.405] apply to the estate of a decedent
12 who dies domiciled in this state, and rights [. RIGHTS] to homestead allowance,
13 exempt property, and family allowance for a decedent who dies not domiciled in this
14 state are governed by the law of the decedent's domicile at death.

15 * **Sec. 3.** AS 13.12.502 is amended to read:

16 **Sec. 13.12.502. Execution; witnessed wills; holographic wills.** (a) Except
17 as provided in (b) of this section, AS 13.06.068, [AND IN] AS 13.12.506, and
18 13.12.513, a will must be

19 (1) in writing;

20 (2) signed by the testator or in the testator's name by another individual
21 in the testator's conscious presence and by the testator's direction; and

22 (3) signed by at least two individuals, each of whom signs within a
23 reasonable time after the witness witnesses either the signing of the will as described
24 in (2) of this subsection or the testator's acknowledgment of that signature or the will.

25 (b) Except as provided in AS 13.06.068, a [A] will that does not comply with
26 (a) of this section is valid as a holographic will, whether or not witnessed, if the
27 signature and material portions of the document are in the testator's handwriting.

28 * **Sec. 4.** AS 13.12.506 is amended to read:

29 **Sec. 13.12.506. Choice of law as to execution.** Except as provided by
30 AS 13.06.068, a [A] written will is valid if executed in compliance with AS 13.12.502
31 or if its execution complies with the law at the time of execution of the place where

the will is executed [,] or of the law of the place where, at the time of execution or at the time of death, the testator is domiciled, has a place of abode, or is a national.

* **Sec. 5.** AS 13.12.601 is amended to read:

Sec. 13.12.601. Scope. Except as provided in AS 13.06.068, in [IN] the absence of a finding of a contrary intention, the rules of construction in AS 13.12.601 - 13.12.609 control the construction of a will.

* **Sec. 6.** AS 13.12.703 is amended by adding a new subsection to read:

(b) The provisions of (a) of this section are subject to AS 13.06.068.

* **Sec. 7.** AS 13.12.912(a) is amended to read:

(a) Except as provided by AS 13.06.068, a [A] will is valid as regards form, irrespective of the place where the will is made, of the location of the assets, and of the nationality, domicile, or residence of the testator, if the will is made in the form of an international will complying with the requirements of AS 13.12.912 - 13.12.921.

* **Sec. 8.** AS 13.16.175 is amended to read:

Sec. 13.16.175. Formal testacy proceedings; will construction; effect of final order in another jurisdiction. Subject to AS 13.06.068, a [A] final order of a court of another state determining testacy, the validity, or construction of a will [,] made in a proceeding involving notice to and an opportunity for contest by all interested persons must be accepted as determinative by the courts of this state if it includes, or is based upon, a finding that the decedent was domiciled at death in the state where the order was made.

* **Sec. 9.** AS 13.36 is amended by adding a new section to read:

Sec. 13.36.043. Change of situs to Alaska. (a) The situs of a foreign trust is moved to this state when the trust satisfies AS 13.36.035(c) and a qualified person serving as trustee registers the trust under AS 13.36.010.

(b) If the situs of a foreign trust is moved to this state as provided in this section, a provision in the trust that restricts the transfer of trust assets in a manner similar to AS 34.40.110, that allows the trust to be perpetual, or that is not expressly prohibited by the law of this state is effective and enforceable under the laws of this state.

(c) A foreign trust that moves its situs to this state is valid whether or not the

trust complied with the laws of this state at the time of its creation or after its creation.

(d) In this section, "foreign trust" means a trust that is created in another state or country and that is valid in that state or country.

* **Sec. 10.** AS 13.36.075 is amended to read:

Sec. 13.36.075. Trustee's standard of care and performance. Except as otherwise provided by the terms of the trust or by AS 13.36.105 - 13.36.295, the trustee shall observe the standards in dealing with the trust assets that would be observed by a prudent person [MAN] dealing with the property of another, and, if the trustee has special skills or is named trustee on the basis of representations of special skills or expertise, the trustee is under a duty to use those skills.

* **Sec. 11.** AS 13.36.095(b) is amended to read:

(b) Subject to AS 13.36.105 - 13.36.295, a [A] trustee is personally liable for obligations arising from ownership or control of property of the trust estate or for torts committed in the course of administration of the trust estate only if personally at fault.

* **Sec. 12.** AS 13.36 is amended by adding new sections to article 3 to read:

Sec. 13.36.105. Powers attached to the office of trustee. Unless otherwise provided by the trust instrument, an amendment of the trust instrument, or a court order, the powers of a trustee are attached to the office and are not personal.

Sec. 13.36.107. General powers; fiduciary duties. (a) Without authorization by a court, a trustee may exercise the powers conferred by the terms of the trust and, except as limited by the terms of the trust, the powers conferred by this chapter.

(b) This chapter does not affect the power of a court to

(1) relieve a trustee from provisions contained in the terms of the trust that restrict the exercise of powers;

(2) confer on a trustee additional powers, whether or not the powers are authorized by the terms of the trust; or

(3) restrict the exercise of a power otherwise given to the trustee by the terms of the trust or this chapter.

(c) The grant of a power to a trustee, whether under the terms of the trust, this chapter, or a court, does not alone govern the exercise of the power.

Sec. 13.36.109. Specific powers of trustees. Except as otherwise provided

by this chapter, in addition to the powers conferred by the terms of the trust, a trustee may perform all actions necessary to accomplish the proper management, investment, and distribution of the trust property, including the power

(1) to collect, hold, and retain trust property received from a settlor or another person; the property may be retained even if it includes property in which the trustee is personally interested;

(2) to accept additions to the property of the trust from a settlor or another person;

(3) to continue or to participate in the operation of a business or other enterprise that is part of the trust property and to effect an incorporation, dissolution, or other change in the form of the organization of the business or enterprise;

(4) to acquire or dispose of property, for cash or on credit, at public or private sale or by exchange;

(5) to manage, control, divide, develop, improve, exchange, partition, change the character of, or abandon trust property;

(6) to encumber, mortgage, or pledge trust property for a term within or extending beyond the term of the trust in connection with the exercise of a power vested in the trustee;

(7) to make ordinary or extraordinary repairs, alterations, or improvements in buildings or other trust property; to demolish improvements; and to raze existing or erect new party walls or buildings;

(8) to subdivide or develop land; to dedicate land to public use; to make or obtain the vacation of plats and to adjust boundaries; to adjust differences in valuation on exchange or partition by giving or receiving consideration; and to dedicate easements to public use without consideration;

(9) to enter into a lease for any purpose as lessor or lessee with or without the option to purchase or renew and for a term within or extending beyond the term of the trust;

(10) to enter into a lease or arrangement for exploration and removal of gas, oil, or other minerals or geothermal energy; and to enter into a community oil lease, a pooling agreement, or a unitization agreement;

(11) to grant an option involving disposition of trust property or to take an option for the acquisition of property, including an option that is exercisable beyond the duration of the trust;

(12) with respect to shares of stock of a domestic or foreign corporation, a membership in a nonprofit corporation, or other property, to

(A) vote in person and to give proxies to exercise any voting rights with respect to the shares, memberships, or property;

(B) waive notice of a meeting or to give consent to the holding of a meeting; and

(C) authorize, ratify, approve, or confirm an action that could be taken by shareholders, members, or property owners;

(13) to pay calls, assessments, and other sums chargeable to or accruing against or on a securities account;

(14) to sell or exercise stock subscription or conversion rights;

(15) to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise; to participate in voting trusts, pooling arrangements, and foreclosures; and, in connection with a reorganization, consolidation, merger, dissolution, liquidation, voting trust, pooling arrangement, or foreclosure, to deposit securities with, transfer title, and delegate discretion to a protective or other committee as the trustee considers advisable;

(16) to deposit securities in a securities depository;

(17) to insure the property of the trust against damage or loss and to insure the trustee against liability with respect to third persons;

(18) to borrow money for a trust purpose to be repaid from trust property;

(19) to pay or contest a claim, to settle a claim by or against the trust by compromise, arbitration, or otherwise, and to release, in whole or in part, a claim belonging to the trust;

(20) to pay taxes, assessments, reasonable compensation of the trustee, employees, and agents of the trust, and other expenses incurred in the collection, care,

administration, and protection of the trust;

(21) to make loans out of trust property to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances and to guarantee loans to the beneficiary by encumbrances on trust property;

(22) to pay an amount distributable to a beneficiary, whether or not the beneficiary is under a legal disability, by paying the amount to the beneficiary or by paying the amount to another person for the use or benefit of the beneficiary;

(23) to make a distribution of property and money in divided or undivided interests, pro rata or otherwise, and to adjust resulting differences in valuation;

(24) to employ accountants, attorneys, investment advisers, appraisers, or other persons, even if they are associated or affiliated with the trustee, to advise or assist the trustee in the performance of administrative duties;

(25) to inspect or investigate property that the trustee has been asked to hold or property owned or operated by an entity in which the trustee holds or has been asked to hold an interest for the purpose of determining the application of environmental law to the property and to take action to prevent, abate, or otherwise remedy an actual or potential violation of an environmental law affecting property held directly or indirectly by the trustee;

(26) to establish for an asset a reserve for depreciation, depletion, or obsolescence, and to decide, under law, how and in what proportions a receipt or disbursement is to be credited, charged, or apportioned between principal and income;

(27) to execute and deliver instruments that are useful to accomplish or facilitate the exercise of the trustee's powers; and

(28) to prosecute or defend an action, claim, or proceeding in order to protect trust property and the trustee in the performance of the trustee's duties.

Sec. 13.36.110. Liability of trustee relating to exercise of power. A dissenting trustee who has not joined another trustee in exercising a power is not liable to the beneficiaries or to others for the consequences of the exercise of the power if the dissenting trustee joins because of a requirement for unanimous trustee consent to the exercise of the power. The dissenting trustee's dissent must be presented in writing

1 to a co-trustee and a legally competent beneficiary or, if the beneficiary is a minor or
 2 an incompetent person, the representative of the beneficiary. A trustee who is not
 3 authorized to exercise a power is not liable to the beneficiaries or to others for

4 (1) the exercise by a co-trustee of the power; or

5 (2) the failure to exercise that power.

6 **Sec. 13.36.120. Voting of corporate stock owned by trustee.** A trustee of
 7 a trust owning corporate stock is liable for a loss resulting to the beneficiaries from
 8 a failure to use reasonable care in deciding how to vote the stock and in voting the
 9 stock only if personally at fault.

10 **Sec. 13.36.125. Creation of trust bank account to pay special debts.**
 11 Whenever a bank account is, by entries made on the books of the depositor and the
 12 bank at the time of the deposit, created exclusively for the purpose of paying
 13 dividends, interest, interest coupons, salaries, wages, or pensions or other employee
 14 benefits, and the depositor at the time of opening the account does not expressly
 15 declare otherwise, the depositor is considered a trustee of the account for the creditors
 16 to be paid from the account, subject to any power of revocation that the depositor may
 17 have reserved by agreement with the bank.

18 **Sec. 13.36.130. Failure of beneficiary to present claim for payment.** If a
 19 beneficiary for whom a trust bank account is created under AS 13.36.125 does not
 20 present the beneficiary's claim to the bank for payment within one year after the claim
 21 is due, the depositor who created the trust may revoke the trust as to the beneficiary.

22 **Sec. 13.36.135. Holding stock in name of nominee.** (a) A trustee of a trust
 23 owning stocks, bonds, notes, debentures, or other written obligations of a public or
 24 private corporation may hold the obligations in the name of a nominee, without
 25 mention of the trust in the records of the corporation or in the stock certificate or stock
 26 registration book of the corporation, if

27 (1) the trust records and all reports or accounts rendered by the trustee
 28 clearly show the ownership of the stocks, bonds, notes, debentures, or other written
 29 obligations of the public or private corporation by the trustee and the facts regarding
 30 the holding by the trustee; and

31 (2) the nominee deposits with the trustee a signed statement showing

the trust ownership, endorses the stock certificate or other title instruments for the obligations in blank, and does not have possession of or access to the stock certificate or other title instruments for the obligations except under the immediate supervision of the trustee.

(b) A trustee holding obligations under (a) of this section is personally liable for a loss to the trust resulting from an act of the nominee in connection with the stocks, bonds, notes, debentures, or other written obligations held under (a) of this section.

Sec. 13.36.140. Loan of trust funds. Except as provided in AS 13.36.145, a corporate trustee may not lend trust funds to itself or an affiliate, or to a director, an officer, or an employee of itself or an affiliate, and a noncorporate trustee may not lend trust funds to itself or to a relative, an employer, an employee, or a partner or other business associate.

Sec. 13.36.145. Corporate trustee depositing trust funds with itself. (a) A corporate trustee that is subject to regulation and supervision by state or federal authorities may deposit with itself trust funds that are being held out of necessity pending investment, distribution, or payment of debts if the corporate trustee

(1) pays into the trust for the deposit the interest the corporate trustee is required by state or federal law to pay on uninvested trust funds or, if there is not a state or federal law requiring the payment of interest, at the same rate of interest the corporate trustee pays on similar nontrust deposits; and

(2) maintains in its trust department as security for the deposit a separate fund consisting of securities that are legal for trust investments and that are at all times equal in total market value to the amount of the deposit, except that the security is not required to the extent that the deposit is insured or given a preference by state or federal law.

(b) The separate fund of securities required by (a)(2) of this section shall be marked as a separate fund for (a)(2) of this section. Withdrawals from or additions to the separate fund may be made from time to time, as long as the required value is maintained. The income of the securities in the separate fund belongs to the corporate trustee. In the statements of its financial condition published or delivered to the

1 division of banking, securities, and corporations in the Department of Commerce and
 2 Economic Development, the corporate trustee shall show as separate items the amount
 3 of trust funds that it has deposited with itself and the amount of securities that it holds
 4 as security for the payment of the deposits.

5 **Sec. 13.36.150. Trustee buying from or selling to itself.** A trustee, unless
 6 expressly authorized by the trust instrument, may not directly or indirectly lease, buy,
 7 or sell property for the trust from or to

8 (1) itself or an affiliate;

9 (2) a director, an officer, or an employee of the trustee or an affiliate;

10 or

11 (3) a relative, an employer, or a partner or other business associate.

12 **Sec. 13.36.155. Permitted sales between trusts held by same corporate**
 13 **trustee.** If the transaction is fair to both trusts and if the transaction is not prohibited
 14 by the instruments creating the trustee relationship, a corporate trustee may sell to
 15 itself as trustee of a trust the following held by the corporate trustee as trustee for
 16 another trust:

17 (1) stocks, bonds, and other securities listed on a securities exchange
 18 supervised by the United States Securities and Exchange Commission; and

19 (2) obligations of the United States treasury and obligations of United
 20 States government agencies.

21 **Sec. 13.36.157. Trustee's special power to appoint to other trust.** (a)
 22 Unless the terms of the instrument expressly provide otherwise, a trustee who has the
 23 absolute discretion under the terms of a testamentary instrument or irrevocable inter
 24 vivos agreement to invade the principal of a trust for the benefit of the beneficiary who
 25 is eligible or entitled to the income of the trust may exercise without prior court
 26 approval the trustee's discretion by appointing part or all of the principal of the trust
 27 in favor of a trustee of a trust under an instrument other than that under which the
 28 power to invade was created if the exercise of this discretion

29 (1) does not reduce any fixed income interest of an income beneficiary
 30 of the trust;

31 (2) is in favor of the beneficiary of the trust; and

1 (3) does not violate the limitations on validity under AS 34.27.050(a).

2 (b) This section applies to a trust governed by the laws of this state, including
3 a trust whose governing jurisdiction is transferred to this state.

4 (c) The exercise of the power to invade the principal of a trust under (a) of
5 this section is considered to be the exercise of a special power of appointment.

6 **Sec. 13.36.160. Corporate trustee buying its own stock.** A corporate trustee
7 may not purchase for a trust shares of its own stock, or its bonds, or other securities,
8 or the stock, bonds, or other securities of an affiliate.

9 **Sec. 13.36.165. Withdrawals from mingled trust funds.** If a person who is
10 a trustee of two or more trusts mingles the funds of two or more trusts in the same
11 aggregate of cash or in the same bank or brokerage account or other investment, and
12 if a withdrawal is made from the cash aggregate, account, or investment by the trustee
13 for the trustee's own benefit, for the benefit of a third person who is not a beneficiary
14 or creditor of one or more of the trusts, or for an unknown purpose, the withdrawal
15 must be charged first to the amount of the personal cash, credit, or other property, if
16 any, of the trustee in the mingled fund, and, after the exhaustion of the trustee's cash,
17 credit, or other property, then to the several trusts in proportion to their several
18 interests in the cash, credit, or other property in the cash aggregate, account, or
19 investment at the time of the withdrawal. Nothing in this section is intended to
20 authorize the mingling of trust funds.

21 **Sec. 13.36.170. Unenforceable oral trust created by deed.** (a) When an
22 interest in real property is conveyed by deed to a person in a trust that is unenforceable
23 under AS 09.25.010 - 09.25.020 and the intended trustee or the trustee's successor in
24 interest holds title but refuses to carry out the trust because of AS 09.25.010 -
25 09.25.020, the intended trustee or the trustee's successor in interest, except to the
26 extent that the successor in interest is a bona fide purchaser of a legal interest in the
27 real property, shall convey the interest in real property to the settlor or the settlor's
28 successor in interest. A court having jurisdiction may prescribe the conditions for
29 conveying the interest to the settlor or the settlor's successor in interest.

30 (b) If the intended trustee of an unenforceable trust under (a) of this section
31 transfers part or all of the trustee's interest and the interest is transferred to a bona fide

1 purchaser, the intended trustee is liable to the settlor or the settlor's successor in
 2 interest for the value, at the time of the transfer, of the interest transferred, less any
 3 offsets that a court determines to be equitable.

4 **Sec. 13.36.175. Action on contract against trustee in representative**
 5 **capacity.** (a) When a trustee makes a contract that is within the trustee's powers as
 6 trustee or when a predecessor trustee has made a contract within the predecessor
 7 trustee's powers as trustee and a cause of action arises on the contract, the party in
 8 whose favor the cause of action has accrued may collect the judgment by execution
 9 on the trust property.

10 (b) In an action under this section, the plaintiff is not required to prove that
 11 the trustee could have been reimbursed from the trust fund if the trustee had paid the
 12 plaintiff's claim.

13 (c) A beneficiary or, in the case of a charitable trust, the attorney general and
 14 a corporation that is a beneficiary or agent in the performance of the charitable trust,
 15 may intervene in an action under this section and contest the right of the plaintiff to
 16 recover.

17 (d) A judgment may not be rendered in favor of the plaintiff in an action under
 18 this section unless the plaintiff proves that, within 30 days after the beginning of the
 19 action or within another period set by the court and more than 30 days before
 20 obtaining the judgment, the plaintiff has notified each of the beneficiaries who is
 21 known to the trustee and who then has a present interest in the existence and nature
 22 of the action, or, in the case of a charitable trust, the attorney general of this state and
 23 a corporation that is a beneficiary or agent in the performance of the charitable trust.
 24 The notice shall be given by mailing copies of the notice with postage prepaid to the
 25 beneficiaries at their last known addresses. The trustee shall furnish the plaintiff with
 26 a list of names and addresses of the beneficiaries within 10 days after the plaintiff
 27 makes a written demand for the list. Notification of the persons on the list constitutes
 28 compliance with the duty placed on the plaintiff by this section.

29 (e) The plaintiff in an action under this section may also hold the trustee who
 30 made the contract personally liable on the contract if the contract does not exclude the
 31 trustee's personal liability. In a contract action under this section, the addition of the

word "trustee" or the words "as trustee" after the signature of a trustee to a contract creates a presumption, which may only be rebutted by clear and convincing evidence otherwise, of an intent to exclude the trustee from personal liability, and, unless the presumption is rebutted, the trustee is not personally liable under the contract.

Sec. 13.36.180. Exoneration or reimbursement for tort. (a) A trustee who has incurred personal liability for a tort committed in the administration of the trust is entitled to exoneration for the liability from the trust property if the trustee has not discharged the claim, or to reimbursement for the liability out of trust funds if the trustee has paid the claim, if the trustee or an officer or employee of the trustee was not guilty of personal fault in incurring the liability.

(b) If a trustee has incurred personal liability for a tort committed in the administration of the trust and that tort increases the value of the trust property, the trustee is entitled to exoneration or reimbursement to the extent of the increase in value as a result of the tort even though the trustee would not otherwise be entitled to exoneration or reimbursement.

(c) Nothing in this section shall be construed to change the existing law with regard to the liability of trustees of charitable trusts for torts of the trustees or their employees.

Sec. 13.36.185. Tort liability of trust. (a) If a trustee or a predecessor of the trustee incurs personal liability for a tort committed in the course of the trustee's administration, the trustee in the trustee's representative capacity may be sued and collection made from the trust property if the court determines in the tort action that

(1) the trustee or the trustee's predecessor, or an officer or employee of the trustee or the trustee's predecessor, was not guilty of personal fault in incurring the liability; or

(2) although the tort does not fall under (1) of this subsection, the tort increased the value of the trust property.

(b) If the tort is within (a)(1) of this section, the full amount of proven damages may be collected from the trust property.

(c) If the tort is within (a)(2) of this section, collection may not be made from the trust property except to the extent of the increase in the value of the trust property.

1 (d) A beneficiary may intervene in an action under this section and contest the
2 right of the plaintiff to recover.

3 (e) In an action against the trustee in the trustee's representative capacity under
4 this section, the plaintiff is not required to prove that the trustee could have secured
5 reimbursement from the trust fund if the trustee paid the plaintiff's claim.

6 (f) A judgment may not be rendered in favor of the plaintiff in an action under
7 this section unless the trustee proves that within 30 days after the beginning of the
8 action, or within another period set by the court and more than 30 days before
9 obtaining the judgment, the trustee notifies each of the beneficiaries who is known to
10 the trustee who then has a present interest in the existence and nature of the action.
11 The notice shall be given by mailing copies of the notice with postage prepaid to the
12 beneficiaries at their last known addresses. The trustee shall furnish the plaintiff with
13 a list of names and address of the beneficiaries within 10 days after the plaintiff makes
14 a written demand for the list. Notification of the persons on the list constitutes
15 compliance with the duty placed on the plaintiff by this subsection.

16 (g) Nothing in this section may be construed to change the existing law with
17 regard to the liability of trustees of charitable trusts for torts of the trustees or their
18 employees.

19 **Sec. 13.36.190. Personal liability for tort committed by trustee.** A trustee
20 may be held personally liable for a tort committed by the trustee, or by the trustee's
21 agents or employees in the course of their agency or employment, subject to the rights
22 of exoneration or reimbursement under AS 13.36.180.

23 **Sec. 13.36.195. Power of settlor of trust.** (a) The settlor of a trust affected
24 by AS 13.36.105 - 13.36.295 may, by provision in the instrument creating the trust if
25 the trust is created by a writing, by oral statement to the trustee at the time of the
26 creation of the trust if the trust is created orally, or by an amendment of the trust if the
27 settlor reserved the power to amend the trust,

28 (1) relieve the trustee from any or all of the duties, restrictions, and
29 liabilities that would otherwise be imposed on the trustee by AS 13.36.105 - 13.36.295;

30 (2) alter or deny to the trustee any or all of the privileges and powers
31 conferred on the trustee by AS 13.36.105 - 13.36.295; or

1 (3) add duties, restrictions, liabilities, privileges, or powers, to those
2 imposed or granted by AS 13.36.105 - 13.36.295.

3 (b) Notwithstanding (a) of this section, an act of the settlor may not relieve a
4 trustee from the duties, restrictions, and liabilities imposed on the trustee by
5 AS 13.36.140, 13.36.145, or 13.36.150.

6 **Sec. 13.36.200. Power of beneficiary of trust.** A beneficiary of a trust
7 affected by AS 13.36.105 - 13.36.295 may, if the beneficiary has full legal capacity
8 and acts on full information, by written instrument delivered to the trustee, relieve the
9 trustee, as regards the beneficiary, from any or all of the duties, restrictions, and
10 liabilities that would otherwise be imposed on the trustee by AS 13.36.105 - 13.36.295,
11 except for the duties, restrictions, and liabilities imposed by AS 13.36.140 - 13.36.150.
12 The beneficiary may release the trustee from liability to the beneficiary for past
13 violations of AS 13.36.105 - 13.36.295.

14 **Sec. 13.36.205. Relieving trustee of duties; power of the court.** A court of
15 competent jurisdiction may, for cause shown and on notice to the beneficiaries, relieve
16 a trustee from any or all of the duties and restrictions that would otherwise be placed
17 on the trustee by AS 13.36.105 - 13.36.295 or wholly or partly excuse a trustee who
18 has acted honestly and reasonably from liability for violations of AS 13.36.105 -
19 13.36.295.

20 **Sec. 13.36.210. Liability for violations.** If a trustee violates a provision of
21 AS 13.36.105 - 13.36.295, the trustee may be removed as trustee and denied
22 compensation in whole or in part, and a beneficiary, co-trustee, or successor trustee
23 may treat the violation as a breach of trust.

24 **Sec. 13.36.290. Definitions.** In AS 13.36.105 - 13.36.295, unless the context
25 or subject matter otherwise requires,

26 (1) "affiliate" means a person directly or indirectly controlling or
27 controlled by another person or a person under direct or indirect common control with
28 another person, including a person with whom a trustee has an express or implied
29 agreement regarding the purchase of trust investments by each from the other, directly
30 or indirectly, except a broker or stock exchange;

31 (2) "relative" means a spouse, ancestor, descendant, brother, or sister;

1 (3) "trust" means an express trust only;

2 (4) "trustee" includes a trustee that is a corporation or a natural person
3 and a successor or substitute trustee.

4 **Sec. 13.36.295. Short title.** AS 13.36.105 - 13.36.295 may be cited as the
5 Alaska Trusts Act.

6 * **Sec. 13.** AS 13.36.310 is amended to read:

7 **Sec. 13.36.310. Challenges to trusts.** Except as provided in AS 34.40.110,
8 a trust that is covered by AS 13.36.035(c) or that is otherwise governed by the laws
9 of this state, or a property transfer to a trust that is covered by AS 13.36.035(c) or that
10 is otherwise governed by the laws of this state, is not void, voidable, liable to be set
11 aside, defective in any fashion, or questionable as to the settlor's capacity, on the
12 grounds that the trust or transfer avoids or defeats a right, claim, or interest conferred
13 by law on a person by reason of a personal or business relationship with the settlor or
14 by way of a marital or similar right. [IN THIS SECTION, "SETTLOR" MEANS A
15 PERSON WHO TRANSFERS PROPERTY IN TRUST; "SETTLOR" INCLUDES A
16 PERSON WHO FURNISHES THE PROPERTY TRANSFERRED TO A TRUST
17 EVEN IF THE TRUST IS CREATED BY ANOTHER PERSON.]

18 * **Sec. 14.** AS 13.36.310 is amended by adding new subsections to read:

19 (b) If a trust or a property transfer to a trust is voided or set aside under (a)
20 of this section, then the trust or property transfer shall be voided or set aside only to
21 the extent necessary to satisfy the settlor's debt to the creditor or other person at whose
22 instance the trust or property transfer is voided or set aside and the costs and attorney
23 fees allowed under the rules of court.

24 (c) If a trust or a property transfer to a trust is voided or set aside under (a)
25 of this section, and if the court is satisfied that the trustee has not acted in bad faith
26 in accepting or administering the property that is the subject of the trust,

27 (1) the trustee has a first and paramount lien against the property that
28 is the subject of the trust in an amount equal to the entire cost, including attorney fees,
29 properly incurred by the trustee in a defense of the action or proceedings to void or
30 set aside the trust or the property transfer;

31 (2) the trust or property transfer that is voided or set aside is subject

1 to the proper fees, costs, preexisting rights, claims, and interest of the trustee and any
 2 predecessor trustee that have not acted in bad faith; and

3 (3) the beneficiary, including the settlor, may retain a distribution made
 4 by exercising a trust power or discretion vested in the trustee of the trust, if the power
 5 or discretion was properly exercised before the commencement of the action or
 6 proceeding to void or set aside the trust or property transfer.

7 * **Sec. 15.** AS 13.36 is amended by adding new sections to read:

8 **Sec. 13.36.320. Nonqualified persons serving as trustees.** (a) If at least one
 9 qualified person serves as trustee of a trust whose state jurisdiction provision is valid,
 10 effective, and conclusive under AS 13.36.035(c), then the following persons also may
 11 serve as trustees even though they are not qualified persons:

12 (1) individuals who do not reside in Alaska;

13 (2) trust companies that have their principal place of business outside
 14 of Alaska and that are not organized under AS 06.25; and

15 (3) banks that have their principal place of business outside of Alaska
 16 or that are not organized under AS 06.05.

17 (b) Notwithstanding other provisions of law to the contrary, a trustee who is
 18 not a qualified person is not considered to be engaging in business in this state solely
 19 by reason of serving as trustee of a trust whose state jurisdiction provision is valid,
 20 effective, and conclusive under AS 13.36.035(c).

21 **Sec. 13.36.330. Penalty clause.** A provision in an inter vivos or testamentary
 22 trust purporting to penalize a beneficiary by charging the beneficiary's interest in the
 23 trust, or to penalize the beneficiary in another manner, for instituting a proceeding to
 24 challenge the acts of the trustee or other fiduciary of a trust, or for instituting other
 25 proceedings relating to the trust, is enforceable even if probable cause exists for
 26 instituting the proceedings.

27 * **Sec. 16.** AS 13.36.390 is amended by adding a new paragraph to read:

28 (3) "settlor" means a person who transfers property in trust and includes
 29 a person who furnishes the property transferred to a trust even if the trust is created
 30 by another person.

31 * **Sec. 17.** AS 13.38.060 is repealed and reenacted to read:

Sec. 13.38.060. Bonds, obligations, and other property; premium and discount. (a) A bond or other obligation for the payment of money is principal at its inventory value except as provided in (b) of this section. The trustee may not make a provision for amortization of a premium or for accumulation for discount.

(b) Except to the extent otherwise provided in the governing instrument, an increase in the value of the following above inventory value is distributable as income:

- (1) a zero coupon bond;
- (2) an annuity contract before annuitization;
- (3) a life insurance contract before the death of the insured;
- (4) an interest in a common trust fund; in this paragraph, "common trust fund" has the meaning given in 26 U.S.C. 584 (Internal Revenue Code);
- (5) an interest in a limited liability company, limited liability partnership, or a limited partnership; and
- (6) another obligation for the payment of money if the money is payable at a future time under a fixed, variable, or discretionary schedule of appreciation and if the payment exceeds the price at which the obligation was issued.

(c) The increase in value of the obligations described in (b) of this section is distributable to the beneficiary who was the income beneficiary at the time of the increase. The increase is distributable from the first cash available from the principal or, if cash is not available from the principal, when cash is first available from the principal due to a sale, a redemption, or another disposition. When an unrealized increase is distributed as income from principal, the principal shall be reimbursed when the increase is realized.

(d) In this section, the increase in value of an obligation described in (b) of this section is not available for distribution unless the trustee receives cash on account of the obligation.

(e) Notwithstanding a provision in this section to the contrary, a distribution from a partnership or limited liability company attributable to the cash flow or income derived from operations regularly carried on by the partnership or limited liability company is income, except to the extent otherwise provided in the governing instrument.

* **Sec. 18.** AS 13.41.005 is amended to read:

Sec. 13.41.005. Application. Except as provided by AS 13.06.068, this
[THIS] chapter applies to the disposition at death of the following property acquired
by a married person:

(1) all personal property, wherever situated,

(A) that was acquired as or became, and remained, community
property under the laws of another jurisdiction; or

(B) all or the proportionate part of which was acquired with the
rents, issues, or income of, or the proceeds from, or in exchange for, that
community property; or

(C) traceable to that community property;

(2) all or the proportionate part of any real property situated in this
state that was acquired with the rents, issues, or income of, the proceeds from, or in
exchange for, property acquired as or that [WHICH] became, and remained,
community property under the laws of another jurisdiction, or property traceable to that
community property.

* **Sec. 19.** AS 13.41.010 is amended to read:

Sec. 13.41.010. Rebuttable presumptions. Subject to AS 13.06.068, in [IN]
determining whether this chapter applies to specific property, the following rebuttable
presumptions apply:

(1) property acquired during marriage by a spouse of that marriage
while domiciled in a jurisdiction under whose laws property could then be acquired as
community property is presumed to have been acquired as or to have become, and
remained, property to which this chapter applies; and

(2) real property situated in this state and personal property wherever
situated acquired by a married person while domiciled in a jurisdiction under whose
laws property could not then be acquired as community property, title to which was
taken in a form that created rights of survivorship, are [IS] presumed not to be
property to which this chapter applies.

* **Sec. 20.** AS 34.40.110(d) is amended to read:

(d) A cause of action or claim for relief [PERSON MAY NOT BRING AN

ACTION] with respect to a **fraudulent transfer** [CLAIM ALLOWED] under (b)(1) of this section, **or under other law, is extinguished unless the action is brought as to a person who** [IF THE PERSON]

(1) is a creditor when the trust is created, [UNLESS THE ACTION IS BROUGHT] within the later of

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

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

(2) becomes a creditor subsequent to the transfer **into trust**, [UNLESS THE ACTION IS BROUGHT] within four years after the transfer is made.

* **Sec. 21.** AS 34.40.110 is amended by adding a new subsection to read:

(f) If a trust contains a transfer restriction allowed under (a) of this section, the transfer restriction prevents a creditor existing when the trust is created, a person who subsequently becomes a creditor, or another person from asserting any cause of action or claim for relief against a trustee of the trust or against others involved in the preparation or funding of the trust for conspiracy to commit fraudulent conveyance, aiding and abetting a fraudulent conveyance, or participation in the trust transaction. The creditor and other person prevented from asserting a cause of action or claim for relief is limited to recourse against the trust assets and the settlor to the extent allowed under AS 34.40.010.

* **Sec. 22.** AS 13.36.035(e) and 13.36.095(a) are repealed.

* **Sec. 23.** COURT RULES. (a) AS 13.36.175(c), enacted by sec. 12 of this Act, changes Rule 24, Alaska Rules of Civil Procedure, by allowing a beneficiary, or the attorney general and certain corporations under certain circumstances, to intervene in an action on a contract against a trustee without satisfying the criteria in the court rule.

(b) AS 13.36.185(d), enacted by sec. 12 of this Act, changes Rule 24, Alaska Rules of Civil Procedure, by allowing a beneficiary to intervene in a tort action against a trust without satisfying the criteria in the court rule.

* **Sec. 24.** AS 13.06.068, enacted by sec. 1 of this Act, does not apply to a will except for the will of a person dying on or after the effective date of this Act.

* **Sec. 25.** AS 13.36.043, enacted by sec. 9 of this Act, AS 13.36.105 - 13.36.295, enacted

1 by sec. 12 of this Act, AS 13.36.310, amended by secs. 13 and 14 of this Act, AS 13.36.320
 2 and 13.36.330, enacted by sec. 15 of this Act, and AS 13.36.390(3), enacted by sec. 16 of this
 3 Act, apply only to

4 (1) testamentary trusts created by wills, or codicils, of persons dying on or
 5 after the effective date of this Act regardless of when the trusts and codicils are executed;

6 (2) nontestamentary trusts created on or after the effective date of this Act; and

7 (3) testamentary or nontestamentary trusts that are registered or reregistered
 8 after the effective date of this Act if the registrations state that the trusts will be governed by
 9 this Act.

10 * **Sec. 26.** AS 13.38.060, as amended by sec. 17 of this Act, does not apply to a trust
 11 unless the trust is created on or after the effective date of this Act.

12 * **Sec. 27.** AS 13.36.175(c) and 13.36.185(d), enacted by sec. 12 of this Act, take effect
 13 only if sec. 23 of this Act receives the two-thirds majority vote of each house required by art.
 14 IV, sec. 15, Constitution of the State of Alaska.