

HOUSE CS FOR CS FOR SENATE BILL NO. 163(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/11/00

Referred: Rules

Sponsor(s): SENATE JUDICIARY COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to trusts, to a trustee's duties to notify and inform beneficiaries,
2 and to the revocation, modification, termination, reformation, construction, and
3 trustees of trusts."

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

5 * **Section 1.** AS 13.36.080 is amended by adding new subsections to read:

6 (b) The settlor of a trust may exempt a trustee from the duties under (a) of this
7 section to provide notification or information regarding the trust to a beneficiary who
8 is not entitled to a mandatory distribution of income or principal from the trust on an
9 annual or more frequent basis. The settlor may provide the exemption by provision
10 in the instrument creating the trust if the trust is created by a writing, by an
11 amendment of the trust if the settlor reserved the power to amend the trust, or by a
12 written document after the trust is created. The exemption may not exceed in duration
13 the shorter of the settlor's lifetime or a judicial determination of the settlor's incapacity.

(c) If a settlor provides for an exemption under (b) of this section and a beneficiary with a future interest

(1) who is not a beneficiary entitled to a mandatory distribution of income or principal from the trust on an annual or more frequent basis receives a distribution, the trustee shall provide notification or information limited to the accounting period during which the distribution was made;

(2) becomes a beneficiary entitled to a mandatory distribution of income or principal from the trust on an annual or more frequent basis, the trustee shall provide notification and information as required under AS 13.16 and (a) of this section.

* **Sec. 2.** AS 13.36 is amended by adding new sections to read:

Sec. 13.36.335. Presumption of revocability. (a) Unless a trust is expressly made irrevocable, a trust executed on or after the effective date of this Act is revocable by the settlor.

(b) Notwithstanding AS 13.36.035 - 13.36.050, this section applies only if the

(1) settlor is domiciled in this state when the trust is created;

(2) trust instrument is executed in this state; or

(3) trust provides that the law of this state governs the trust.

Sec. 13.36.340. Modification and revocation of revocable trusts. (a) A trust that is revocable by the settlor may be modified or revoked in whole or in part by

(1) substantial compliance with a method of modification or revocation provided in the trust instrument; or

(2) a writing, other than a will, signed by the settlor and delivered to the trustee during the lifetime of the settlor, except that, if the trust instrument expressly makes the method of revocation provided in the trust instrument the exclusive method of revocation, the trust may not be revoked under this paragraph.

(b) Unless otherwise provided in the trust instrument, if a trust that is revocable by the settlor is created by or funded by more than one settlor,

(1) the trust may be modified or revoked as provided in AS 34.77.100 to the extent the trust consists of community property under AS 34.77 (Alaska

Community Property Act);

(2) each settlor may modify or revoke the trust as to the portion of the trust property contributed by that settlor that is not community property under AS 34.77.

(c) A revocable trust may not be modified or revoked by an attorney-in-fact under a power of attorney unless the modification or revocation is expressly permitted by the trust instrument.

Sec. 13.36.345. Modification or termination of irrevocable trusts because of unanticipated circumstances. (a) On petition by a trustee, settlor, or beneficiary, a court may modify the administrative or dispositive terms of an irrevocable trust or terminate an irrevocable trust if, because of circumstances not anticipated by the settlor, modification or termination would substantially further the settlor's purposes in creating the trust.

(b) Upon termination of a trust under this section, the trust property shall be distributed in accordance with the settlor's probable intention.

Sec. 13.36.350. Reformation to correct mistakes in irrevocable trusts. (a) On petition by a trustee, settlor, or beneficiary, a court may reform the terms of an irrevocable trust, even if the trust instrument is not ambiguous, to conform to the settlor's intention if the failure to conform was due to a mistake of fact or law, whether in expression in the trust or inducement to create the trust, and if the settlor's intent can be established by clear and convincing evidence.

(b) A court may consider evidence, including direct evidence contradicting the plain meaning of the text, when determining the settlor's intent or for any other purpose under this section.

Sec. 13.36.355. Construction of trust to achieve settlor's tax objectives. (a) The terms of a trust shall be construed to achieve the settlor's tax objectives.

(b) On petition by a trustee, settlor, or beneficiary, a court may modify the terms of an irrevocable trust to achieve the settlor's tax objectives in a manner that does not violate the settlor's probable intent. The court may order that the modification operate retroactively.

Sec. 13.36.360. Modification or termination of irrevocable trust by consent.

(a) Except as otherwise provided by this section, on petition by a trustee, settlor, or beneficiary, a court may modify or terminate an irrevocable trust if all of the beneficiaries consent and if continuation of the trust on the existing terms of the trust is not necessary to further a material purpose of the trust. However, the court, in its discretion, may determine that the reason for modifying or terminating the trust under the circumstances outweighs the interest in accomplishing the material purposes of the trust. The inclusion of a restriction on the voluntary or involuntary transfer of trust interests under AS 34.40.110 may constitute a material purpose of the trust under this subsection, but is not presumed to constitute a material purpose of the trust under this subsection.

(b) Unless otherwise provided in the trust instrument, an irrevocable trust may not be modified or terminated under this section while a settlor is also a discretionary beneficiary of the trust.

(c) If a beneficiary other than a qualified beneficiary does not consent to a modification or termination of an irrevocable trust that is proposed by the trustee, settlor, or other beneficiaries, a court may approve the proposed modification or termination if the court determines

(1) if all the beneficiaries had consented, the trust could have been modified or terminated under this section; and

(2) the rights of a beneficiary who does not consent will be adequately protected or not significantly impaired.

(d) In (c) of this section, "qualified beneficiary" means a beneficiary who

(1) on the date the beneficiary's qualification is determined, is entitled or eligible to receive a distribution of trust income or principal; or

(2) would be entitled to receive a distribution of trust income or principal if the event causing the trust's termination occurs.

Sec. 13.36.365. Uneconomical irrevocable trust. (a) Notwithstanding the other provisions of AS 13.36.335 - 13.36.365, if the value of the property of an irrevocable trust is less than \$50,000, the trustee may terminate the trust unless the trust instrument provides otherwise.

(b) Notwithstanding the other provisions of AS 13.36.335 - 13.36.365 and the

1 terms of the trust, on petition to the superior court by a trustee, settlor, or beneficiary,
2 the court may modify or terminate an irrevocable noncharitable trust, or remove the
3 trustee and appoint a different trustee, if the court determines that the value of the trust
4 property is insufficient to justify the cost of administration.

5 (c) Upon termination of a trust under this section, the trustee shall distribute
6 the trust property in accordance with the settlor's probable intent.