

SENATE BILL NO. 225

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/23/26

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to trusts; relating to trust proceedings; relating to nonjudicial**
2 **settlement agreements in trust matters; relating to the powers of trustees; and providing**
3 **for an effective date."**

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

5 *** Section 1.** AS 13.36.035 is amended by adding a new subsection to read:

6 (j) The court shall protect the privacy of a settlor and the beneficiaries of a
7 noncharitable trust in a proceeding under this section. Upon the filing of a petition
8 under AS 13.36.060, court records relating to the proceeding shall be sealed and may
9 not be made available for public inspection. Court records relating to a proceeding
10 protected under this subsection are only available to the following persons:

11 (1) the settlor and the settlor's attorney;
12 (2) a trustee or other fiduciary, trust protector, trust advisor, or trustee
13 advisor, and their attorneys;
14 (3) a beneficiary or a beneficiary's representative and their attorneys;

- (4) a party to the proceeding and the person's attorney;
- (5) the judge or judges hearing or reviewing the matter;
- (6) a member of the clerical or administrative staff of the court if access is essential for authorized internal administrative purposes; and

(7) other interested persons upon a court order finding, on clear and convincing evidence, that the disclosure is narrowly tailored to serve a compelling public interest.

* **Sec. 2.** AS 13.36 amended by adding a new section to read:

Sec. 13.36.057. Nonjudicial settlement agreements. (a) Except as provided in (b) of this section, indispensable parties may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust that is within the scope of proceedings described in AS 13.36.035(a). A nonjudicial settlement agreement is effective when the agreement has been signed by all indispensable parties.

(b) A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this chapter or other applicable law.

(c) Matters that may be resolved by a nonjudicial settlement agreement include

- (1) the interpretation or construction of the terms of the trust;
- (2) the investment or use of trust assets;
- (3) the approval of a trustee's report or accounting;
- (4) the direction to a trustee to perform or refrain from performing a particular act;

- (5) the grant to a trustee of any necessary or desirable power;
- (6) the resignation or appointment of a trustee and the determination of a trustee's compensation;

(7) the addition, deletion, or modification of a term or condition of the trust:

- (8) a merger or division of trusts;
- (9) the transfer of a trust's principal place of administration;

- (10) the liability of a trustee for an action relating to the trust; and
- (11) the termination of the trust.

(d) An indispensable party may request the court to approve a nonjudicial settlement agreement and to determine whether the agreement contains terms and conditions the court could have properly approved.

(e) If an indispensable party does not sign a nonjudicial settlement agreement or provide the trustee with a written objection, the trustee may give notice of proposed action under AS 13.36.115 to all indispensable parties who have not signed the settlement agreement, where the proposed action is to accept and comply with the nonjudicial settlement agreement.

(f) In this section, "indispensable party" means an interested person, as defined in AS 13.06.050, whose consent would be required to achieve a binding settlement were the settlement to be approved by the court.

* **Sec. 3.** AS 13.36.079(j) is amended to read:

(j) Subject to AS 13.36.035(j), this [THIS] section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

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

Sec. 13.36.115. Notice of proposed action; fiduciary liability. (a) A fiduciary may provide a notice of proposed action regarding a trust administration action under the terms of the governing instrument of a trust or this chapter.

(b) If a fiduciary issues a notice of proposed action, the notice must be mailed to every adult beneficiary who, at the time the notice is provided, receives, or is entitled to receive, income under the trust or who would be entitled to receive a distribution of principal if the trust were terminated.

(c) A notice of proposed action must state that the notice is provided pursuant to this section and include

(1) the name and mailing address of the fiduciary;

(2) the name and telephone number of a person to contact for additional information regarding the proposed action;

(3) a description of the proposed action, an explanation of the reason

1 for the proposed action, and an explanation of the fiduciary's authority to take the
2 proposed action;

3 (4) the time period within which any written objection to the proposed
4 action must be made, which may not be less than 30 days after the notice of proposed
5 action is mailed;

6 (5) a statement that failure to object within the stated time period bars
7 any claim against the fiduciary arising from the proposed action, except as provided in
8 (i) of this section; and

9 (6) the date the proposed action is intended to be taken or is intended
10 to be effective.

11 (d) A beneficiary may object to the proposed action by mailing a written
12 objection to the fiduciary at the address and within the time period stated in the notice.

13 (e) Except as provided in (i) of this section, if no beneficiary entitled to
14 receive notice of a proposed action objects to the proposed action and the other
15 requirements of this section are met, the fiduciary is not liable to present or future
16 beneficiaries for any action taken in accordance with the notice.

17 (f) If the fiduciary receives a timely written objection to the proposed action,
18 the fiduciary may not proceed to take the action unless the objection is withdrawn or
19 the fiduciary obtains court approval to take the action as proposed or with
20 modification. A beneficiary who fails to object to the proposed action is not estopped
21 from opposing the proposed action. A beneficiary who opposes the proposed action
22 has the burden in a subsequent judicial proceeding to prove that the proposed action
23 should not be taken or should be modified. If the fiduciary takes the proposed action
24 as approved by the court, the fiduciary is not liable to any beneficiary with respect to
25 that action.

26 (g) If the fiduciary decides not to take a proposed action for which notice has
27 been provided, the fiduciary shall notify the beneficiaries of the decision not to take
28 the proposed action and the reasons for the decision. The fiduciary is not liable to any
29 present or future beneficiary with respect to the decision not to take the proposed
30 action. A beneficiary may petition the court for an order to take the action as proposed.
31 The burden is on the beneficiary to prove that the proposed action should be taken.

(h) The terms of a governing instrument of a trust may expand, restrict, or eliminate application of this section.

(i) This section does not relieve a fiduciary from liability related to breach of a fiduciary duty, fraud, intentional misrepresentation, omission of a material fact in the notice, or action taken in bad faith.

(j) In this section, "fiduciary" means

(1) a trustee; or

(2) a trust protector or trust adviser acting within the scope of authority granted to the trust protector or trust adviser in the governing instrument.

* **Sec. 5.** AS 13.36.157(a) is amended to read:

(a) An authorized trustee with discretionary power to distribute all or part of the trust principal to or for a current beneficiary, which power is not limited by an ascertainable standard, [UNLIMITED DISCRETION TO INVADE TRUST PRINCIPAL] may appoint part or all of that principal to a trustee of an appointed trust for the benefit of a beneficiary of the invaded trust. [, AND ONLY FOR THE BENEFIT OF, ONE OR MORE CURRENT BENEFICIARIES OF THE INVADED TRUST TO THE EXCLUSION OF OTHER CURRENT BENEFICIARIES. A PERMISSIBLE APPOINTEE OF A POWER OF APPOINTMENT HELD BY A BENEFICIARY OF THE APPOINTED TRUST IS NOT CONSIDERED A BENEFICIARY OF THE APPOINTED TRUST, REGARDLESS OF WHETHER THE PERMISSIBLE APPOINTEE IS A CURRENT BENEFICIARY OR A SUCCESSOR AND REMAINDER BENEFICIARY.]

* **Sec. 6.** AS 13.36.157(b) is amended to read:

(b) An authorized trustee exercising the power under (a) of this section may grant a discretionary power of appointment, including a presently exercisable power of appointment, in the appointed trust to one or more of the current beneficiaries of the invaded trust, **if** [TO THE EXTENT THAT] the beneficiary who is granted the power to appoint is authorized to receive the principal outright under the terms of the invaded trust. A permissible appointee is not limited to the beneficiaries of the invaded trust **and may include**

(1) a person that is not a beneficiary of the invaded trust;

(2) a holder of a power of appointment; or

(3) the estate or a creditor of a holder of a power of appointment.

* Sec. 7. AS 13.36.157(c) is amended to read:

(c) Under (a) and (b) of this section, if the beneficiaries of the invaded trust are described by a class, the beneficiaries of the appointed trust may include present or future members of that class, **except that a person may not become a beneficiary sooner than as provided in or authorized by the invaded trust.**

* **Sec. 8.** AS 13.36.157(d) is amended to read:

(d) An authorized trustee with discretionary power to distribute all or part of the trust principal to or for a current beneficiary, which power is limited by an ascertainable standard, including a beneficiary trustee, [THE POWER TO INVADE TRUST PRINCIPAL BUT WITHOUT UNLIMITED DISCRETION] may appoint part or all of the principal of the trust to a trustee of an appointed trust if the current beneficiaries of the appointed trust are the same as the current beneficiaries of the invaded trust and the successor and remainder beneficiaries of the appointed trust are the same as the successor and remainder beneficiaries of the invaded trust. The shares of the current beneficiaries of the appointed trust must be the same as the shares of the current beneficiaries of the invaded trust, and the shares of the successor and remainder beneficiaries of the appointed trust must be the same as the shares of the successor and remainder beneficiaries of the invaded trust.

* **Sec. 9.** AS 13.36.157(e) is amended to read:

(e) If the authorized trustee exercises the power under (d) of this section, the appointed trust must include the same **ascertainable** standard authorizing the trustee to distribute the income or invade the principal of the appointed trust as the standard in the invaded trust. However, the standard authorizing the trustee to distribute the income or invade the principal of the appointed trust may be changed **by an authorized trustee** if the trustee appoints to an appointed trust that is a special needs trust, a pooled trust, or a third-party trust.

* **Sec. 10.** AS 13.36.157(g) is amended to read:

(g) Under **(d) and (e)** [(d) - (f)] of this section, if the beneficiaries of the invaded trust are described by a class, the beneficiaries of the appointed trust include

1 present or future members of that class.

2 * **Sec. 11.** AS 13.36.157(h) is amended to read:

3 (h) If the authorized trustee exercises the power under (d) or (e) [(d) - (g)] of
 4 this section and if the invaded trust grants a power of appointment to a beneficiary of
 5 the trust, the appointed trust must grant the same [THIS] power of appointment [IN
 6 THE APPOINTED TRUST, AND THE CLASS OF PERMISSIBLE APPOINTEES
 7 SHALL BE THE SAME] as in the invaded trust.

8 * **Sec. 12.** AS 13.36.157 is amended by adding a new subsection to read:

9 (i) An authorized trustee exercising the power under (a) of this section may
 10 (1) establish an ascertainable standard for the distribution of income or
 11 invasion of principal in the appointed trust that is a different standard from the
 12 standard in the invaded trust;
 13 (2) appoint the principal of the invaded trust to an appointed trust that
 14 is a special needs trust, pooled trust, or third-party trust; and
 15 (3) subject to the restrictions in AS 13.36.158(i)(1), reduce a
 16 beneficiary's right to a mandatory distribution of income or principal.

17 * **Sec. 13.** AS 13.36.158(c) is repealed and reenacted to read:

18 (c) If more than one authorized trustee has discretionary power to distribute all
 19 or part of the trust principal, an authorized trustee with discretionary power that is not
 20 limited by an ascertainable standard may exercise the power under AS 13.36.157(a) -
 21 (c) and (i).

22 * **Sec. 14.** AS 13.36.158(e) is amended to read:

23 (e) An authorized trustee exercising the power under AS 13.36.157 -
 24 13.36.159 has a fiduciary duty to exercise the power in the best interests of one or
 25 more proper objects of the exercise of the power and as a prudent person would
 26 exercise the power under the prevailing circumstances. [THE AUTHORIZED
 27 TRUSTEE MAY NOT EXERCISE THE POWER UNDER AS 13.36.157 - 13.36.159
 28 IF THERE IS SUBSTANTIAL EVIDENCE OF A CONTRARY INTENT OF THE
 29 SETTLOR AND IT CANNOT BE ESTABLISHED THAT THE SETTLOR WOULD
 30 BE LIKELY TO HAVE CHANGED THIS INTENTION UNDER THE
 31 CIRCUMSTANCES EXISTING AT THE TIME THE TRUSTEE EXERCISES THE

1 POWER. THE PROVISIONS OF THE INVADED TRUST MAY NOT BE VIEWED
 2 ALONE AS SUBSTANTIAL EVIDENCE OF A CONTRARY INTENT OF THE
 3 SETTLOR UNLESS THE INVADED TRUST EXPRESSLY PROHIBITS THE
 4 EXERCISE OF THE POWER IN THE MANNER INTENDED BY THE
 5 AUTHORIZED TRUSTEE.]

6 * **Sec. 15.** AS 13.36.158(i) is amended to read:

7 (i) An authorized trustee may not exercise a power authorized by
 8 AS 13.36.157 to

9 (1) reduce, limit, or modify a beneficiary's current right to a mandatory
 10 distribution of income, [OR PRINCIPAL, A MANDATORY] annuity, or unitrust
 11 interest **for which a marital deduction has been taken for federal tax purposes**
 12 **under 26 U.S.C. 2056 or 26 U.S.C. 2523 (Internal Revenue Code) or for state tax**
 13 **purposes under a comparable provision of state law** [, A RIGHT TO WITHDRAW
 14 A PERCENTAGE OF THE VALUE OF THE TRUST, OR A RIGHT TO
 15 WITHDRAW A SPECIFIED DOLLAR AMOUNT, IF THE MANDATORY RIGHT
 16 HAS COME INTO EFFECT WITH RESPECT TO THE BENEFICIARY, BUT THE
 17 MANDATORY RIGHT MAY BE REDUCED, LIMITED, OR MODIFIED DURING
 18 ANY EXTENDED DURATION OF THE TRUST; HOWEVER,
 19 NOTWITHSTANDING THE OTHER PROVISIONS IN THIS PARAGRAPH, BUT
 20 SUBJECT TO THE OTHER LIMITATIONS IN AS 13.36.157 - 13.36.159, AN
 21 AUTHORIZED TRUSTEE MAY EXERCISE A POWER AUTHORIZED BY
 22 AS 13.36.157 TO APPOINT TO AN APPOINTED TRUST THAT IS A SPECIAL
 23 NEEDS TRUST, A POOLED TRUST, OR A THIRD-PARTY TRUST];

24 (2) decrease or indemnify against a trustee's liability or exonerate a
 25 trustee from liability for failure to exercise reasonable care, diligence, and prudence
 26 unless the court having jurisdiction over the trust specifies otherwise;

27 (3) eliminate a provision granting another person the right to remove
 28 or replace the authorized trustee exercising the power under AS 13.36.157 unless a
 29 court having jurisdiction over the trust specifies otherwise;

30 (4) fix as binding and conclusive the value of an asset for purposes of
 31 distribution, allocation, or otherwise; or

(5) jeopardize

(A) the deduction or exclusion originally claimed with respect to a contribution to the invaded trust that qualified for the annual exclusion under 26 U.S.C. 2503(b), the marital deduction under 26 U.S.C. 2056(a) or 26 U.S.C. 2523(a), or the charitable deduction under 26 U.S.C. 170(a), 26 U.S.C. 642(c), 26 U.S.C. 2055(a), or 26 U.S.C. 2522(a) (Internal Revenue Code);

(B) the qualification of a transfer as a direct skip under 26 U.S.C. 2642(c) (Internal Revenue Code);

(C) the election to treat a corporation as a subchapter S corporation under 26 U.S.C. 1362 (Internal Revenue Code); or

(D) another specific tax benefit for which a contribution originally qualified for income, gift, estate, or generation-skipping transfer tax purposes under 26 U.S.C. (Internal Revenue Code).

* **Sec. 16.** AS 13.36.159(c) is amended to read:

(c) An authorized trustee may exercise the power authorized by AS 13.36.157 without the consent of the settlor or a person interested in the invaded trust and without court approval. However, an authorized trustee may seek court approval for the exercise. When seeking court approval, notice shall be sent to all qualified beneficiaries **or to a person who may represent and bind a qualified beneficiary under AS 13.06.120.**

* **Sec. 17.** AS 13.36.159(d) is amended to read:

(d) A copy of the invaded trust, the executed appointed trust, and the executed instrument exercising the power shall be delivered to

(1) the settlor, if living, of the invaded trust;

(2) a person having the right, under the terms of the invaded trust, to remove or replace the authorized trustee exercising the power under AS 13.36.157; and

(3) a qualified beneficiary or a person who may represent and bind a qualified beneficiary under AS 13.06.120.

* **Sec. 18.** AS 13.36.215(b)(1) is amended to read:

(1) "appointed trust" means an irrevocable trust that receives principal

from an invaded trust under AS 13.36.157, including a new trust created by the settlor of the invaded trust, by another person, or by an authorized trustee [THE TRUSTEES,] acting in that capacity, of the invaded trust or a restatement or modification of the invaded trust;

* **Sec. 19.** AS 13.36.215(b)(2) is amended to read:

(2) "authorized trustee" means [, WITH REGARD TO AN INVaded TRUST,] a trustee or fiduciary, other than the settlor, with the power to distribute all or part of the [AUTHORITY TO PAY] trust principal to or for a current beneficiary; [IN THIS PARAGRAPH, "TRUSTEE" DOES NOT INCLUDE A SETTLOR OR A BENEFICIARY TO WHOM INCOME OR PRINCIPAL MUST BE PAID, CURRENTLY OR IN THE FUTURE, OR WHO IS OR WILL BECOME ELIGIBLE TO RECEIVE A DISTRIBUTION OF INCOME OR PRINCIPAL IN THE DISCRETION OF THE TRUSTEE OTHER THAN BY THE EXERCISE OF A POWER OF APPOINTMENT HELD IN A NONFIDUCIARY CAPACITY];

* **Sec. 20.** AS 13.36.215(b) is amended by adding new paragraphs to read:

(11) "ascertainable standard" means a standard in a trust or other governing instrument relating to a person's health, education, maintenance, or support within the meaning of 26 U.S.C. 2041(b)(1)(A) or 26 U.S.C. 2514(c)(1) (Internal Revenue Code), as amended, and applicable regulations;

(12) "beneficiary" means a person who is, or in the future may be, eligible to receive income or principal under the terms of a trust, even if the person has a remote contingent remainder interest, unless the

(A) only interest of the person in the trust is the interest of a potential appointee under a nonfiduciary power of appointment held by another person; and

(B) power of appointment identified under (A) of this paragraph has not been exercised or will only be exercised in the future.

* **Sec. 21.** AS 13.36.370(b) is amended to read:

(b) A trust protector appointed under (a) of this section has the powers, delegations, and functions conferred on the protector by the trust instrument, which may include the power to

- (1) remove and appoint a trustee;
- (2) modify or amend the trust instrument to achieve favorable tax status or to respond to changes in 26 U.S.C. (Internal Revenue Code) or state law, or the rulings and regulations under those laws;
- (3) increase or decrease the interests of any beneficiary to the trust;

[AND]

- (4) modify the terms of a power of appointment granted by the trust;

and

- (5) issue a notice of proposed action under AS 13.36.115.**

* **Sec. 22.** AS 34.40.110(d) is amended to read:

(d) A cause of action or claim for relief with respect to a fraudulent transfer of a settlor's assets under (b)(1) of this section is extinguished unless the action under (b)(1) of this section is brought by a creditor of the settlor who

(1) is a creditor of the settlor before the settlor's assets are transferred to the trust, and the action under (b)(1) of this section is brought within the later of

(A) **one year** [FOUR YEARS] after the transfer is made; or

(B) **six months** [ONE YEAR] after the transfer is or reasonably
en discovered by the creditor if the creditor

could have been discovered by the creditor if the creditor

(i) can demonstrate, by a preponderance of the evidence, that the creditor asserted a specific claim against the settlor before the transfer; or

(ii) files another action, other than an action under (b)(1) of this section, against the settlor that asserts a claim based on an act or omission of the settlor that occurred before the transfer, and the action described in this sub subparagraph is filed within one year [FOUR YEARS] after the transfer; or

(2) becomes a creditor subsequent to the transfer into trust, and the action under (b)(1) of this section is brought within one year [FOUR YEARS] after the transfer is made.

* **Sec. 23.** AS 34.40.110(i) is amended to read:

(j) A settlor who creates a trust that names the settlor as a beneficiary and

whose beneficial interest is subject to a transfer restriction allowed under (a) of this section shall, at the time of initial funding of the trust, sign a sworn affidavit before the settlor transfers assets to the trust. After initial funding, the settlor may periodically renew the affidavit to include additional transfers of assets to the trust. The settlor is presumed to be solvent with respect to any transfers of assets to the trust that occur after initial funding. The affidavit must state that

(1) the settlor has full right, title, and authority to transfer the assets to the trust;

(2) the transfer of the assets to the trust will not render the settlor insolvent;

(3) the settlor does not intend to defraud a creditor by transferring the assets to the trust;

(4) the settlor does not have any pending or threatened court actions against the settlor, except for those court actions identified by the settlor on an attachment to the affidavit;

(5) the settlor is not involved in any administrative proceedings, except for those administrative proceedings identified on an attachment to the affidavit;

(6) at the time of the transfer of the assets to the trust, the settlor is not currently in default of a child support obligation by more than 30 days;

(7) the settlor does not contemplate filing for relief under the provisions of 11 U.S.C. (Bankruptcy Code); and

(8) the assets being transferred to the trust were not derived from unlawful activities.

* **Sec. 24.** AS 13.36.157(f), 13.36.159(i), and 13.36.215(b)(10) are repealed.

* **Sec. 25.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. AS 13.36.157, as amended by secs. 5 - 12 of this Act, AS 13.36.158, as amended by secs. 13 - 15 of this Act, AS 13.36.159, as amended by secs. 16 and 17 of this Act, and AS 13.36.215, as amended by secs. 18 - 20 of this Act, apply to a trust that is created on or after the effective date of this Act.

* **Sec. 26.** This Act takes effect immediately under AS 01.10.070(c).