



SB 225: Trusts; Trust Proceedings; Trustees

Sectional Analysis, Version A

Section 1 – Amends AS 13.36.035 (*Court jurisdiction; choice of law*) to add a new subsection (j) that requires the court to protect the privacy of a settlor and the beneficiaries of a noncharitable trust in trust proceedings by sealing all court records upon the filing of a petition and limiting access to listed persons.

Section 2 – Amends AS 13.36 (*Trust Administration*) by adding a new section AS 13.36.057 (*Nonjudicial settlement agreements*) to allow “indispensable parties” to enter into a binding nonjudicial settlement agreement with respect to any trust administration matter, explicitly including the proceedings described in AS 13.36.035(a). 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 a court. The section includes a list of matters that may be resolved by a nonjudicial settlement agreement including the investment and use of trust assets, direction to a trustee to perform or refrain from performing a particular act, termination of the trust, etc. It includes subsections that allow indispensable parties to petition the court for approval of a nonjudicial settlement agreement and to allow a trustee to give notice under proposed AS 13.36.115 (Section 4).

Section 3 – Amends AS 13.36.079 (*Certification of trust; penalty*) subsection (j) to clarify that the right to obtain a copy of the trust instrument in a judicial proceeding concerning the trust is subject to AS 13.36.035(j).

Section 4 – Amends AS 13.36 (*Trust Administration*) by adding a new section AS 13.36.115 (*Notice of proposed action; fiduciary liability*). The proposed section creates a procedure wherein a “fiduciary” may provide notice to specific beneficiaries (as described in subsection (b)) of a proposed trust administration action that is contemplated under the terms of the governing instrument of a trust or AS 13.36. The section creates requirements for the contents of a notice of proposed action, which must include a description of the proposed action and the time period for a beneficiary to provide written objection. Importantly, it limits the liability of a fiduciary that takes action in accordance with the notice, if the notice is issued in compliance with the section, if no beneficiary objects, and if the action is not a breach of fiduciary duty. It defines “fiduciary” to mean a trustee or a trust protector or trust adviser acting within the scope of authority granted to the trust protector or trust adviser in the governing instrument.

Section 5 – Amends AS 13.36.157 (*Exercise of power of appointment*) subsection (a) to provide that 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,” 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. “Ascertainable standard” is defined in section 20.

Section 6 – Amends AS 13.36.157 (*Exercise of power of appointment*) subsection (b) to clarify that a permissible appointee 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.

Section 7 – Amends AS 13.36.157 (*Exercise of power of appointment*) subsection (c) to clarify that 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.

Section 8 – Amends AS 13.36.157 (*Exercise of power of appointment*) subsection (d) to provide that 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, 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.

Section 9 – Makes a conforming amendment to AS 13.36.157 (*Exercise of power of appointment*) subsection (e) by inserting the word “ascertainable” before the word “standard” and clarifies that an authorized trustee may change the distribution standard if the trustee appoints to an appointed trust that is a special needs trust, a pooled trust, or a third-party trust.

Section 10 – Amends AS 13.36.157 (*Exercise of power of appointment*) subsection (g) to update the subsection citations to conform with the repeal of AS 13.36.157(f) in Section 24 of the bill.

Section 11 – Amends AS 13.36.157 (*Exercise of power of appointment*) subsection (h) to provide accurate subsection citations and to clarify that the appointed trust must grant the same power of appointment as in the invaded trust while repealing language requiring the class of permissible appointees to remain the same.

Section 12 – Amends AS 13.36.157 (*Exercise of power of appointment*) by adding a new subsection (i) that states an authorized trustee exercising the power under (a) of this section – which is *not* limited by an ascertainable standard – may (1) establish an ascertainable standard for the distribution of income that is a different standard from the standard in the invaded trust, (2) appoint the principal of the invaded trust to an appointed trust that is a special needs trust, pooled trust, or third-party trust, and (3) subject to restrictions in AS 13.36.158(i)(1), reduce a beneficiary’s right to a mandatory distribution of income or principal.

Section 13 – Repeals and reenacts AS 13.36.158 (*Additional provisions relating to exercise of a power of appointment*) subsection (c) to state if more than one authorized trustee has discretionary power to distribute all or part of the trust principal, an authorized trustee with discretionary power that is not limited by an ascertainable standard may exercise the power under AS 13.36.157(a) – (c) and (i).

Section 14 – Amends AS 13.36.158 (*Additional provisions relating to exercise of a power of appointment*) subsection (e) by deleting requirements related to ascertaining a settlor’s intent and retaining the best interests and prudent person requirements applicable to a fiduciary that exercises an appointment power.

Section 15 – Amends AS 13.36.158 (*Additional provisions relating to exercise of a power of appointment*) subsection (i)(1) to simplify limitations on an authorized trustee’s exercise of an appointment power by clarifying that an authorized trustee may not exercise a power authorized by AS 13.36.157 to reduce, limit,

or modify a beneficiary's current right to a mandatory distribution of income, annuity, or unitrust interest for which a marital deduction has been taken for federal tax purposes under 26 U.S.C. 2056 or 26 U.S.C. 2523 (Internal Revenue Code) or for state tax purposes under a comparable provision of state law. The amendment would also repeal other specific prohibitions and repetitive language related to appointment to a special needs trust, pooled trust, or third-party trust.

Section 16 – Amends AS 13.36.159 (*Implementation of power of appointment*) subsection (c) by clarifying that when an authorized trustee seeks court approval to exercise a power of appointment, the trustee has the option to send the required notice to all qualified beneficiaries to a person who can represent and bind a qualified beneficiary under AS 13.06.120.

Section 17 – Amends AS 13.36.159 (*Implementation of power of appointment*) subsection (d) by adding the word “executed” before the reference to “the appointed trust” and “the instrument exercising the power.”

Section 18 – Amends AS 13.36.215 (*Definitions*) subsection (b)(1) by clarifying that an “appointed trust” may include a new irrevocable trust created by the settlor of the invaded trust, by another person, or by an authorized trustee acting in that capacity, of the invaded trust or a restatement or modification of the invaded trust.

Section 19 – Amends AS 13.36.215 (*Definitions*) subsection (b)(2) to clarify that the definition of “authorized trustee” means a trustee or fiduciary, other than the settlor, with the power to distribute all or part of the trust principal to or for a current beneficiary. Language repealed from the definition allows a beneficiary to be an authorized trustee.

Section 20 – Amends AS 13.36.215 (*Definitions*) subsection (b) by adding definitions for “ascertainable standard” and “beneficiary.”

Section 21 – Amends AS 13.36.370 (*Trust protector*) subsection (b) to provide that a trust protector's powers, as conferred by the trust instrument, may include the power to issue a notice of proposed action under AS 13.36.115.

Section 22 – Amends AS 34.40.110 (*Restricting transfers of trust interests*) subsection (d) to reduce the amount of time for creditors of a settlor to bring a cause of action or claim for relief alleging fraudulent transfer of assets to a trust. Subsection (d)(1) applies to creditors of a settlor existing before assets are transferred into trust and reduces the time to bring an action from four years to one year after the transfer is made and from one year to six months after the creditor discovered or reasonably could have discovered the transfer. Subsection (d)(2) applies to a person who becomes a creditor of the settlor after assets are transferred into trust and reduces the time frame to bring an action from four years to one year after the transfer is made.

Section 23 – Amends AS 34.40.110 (*Restricting transfers of trust interests*) subsection (i) to clarify that the settlor's solvency affidavit is required at the time of initial funding of the trust. It additionally clarifies that after initial funding, the settlor may periodically renew the affidavit to include additional transfers of assets to the trust, however the settlor is presumed to be solvent with respect to these transfers.

Section 24 – Repeals AS 13.36.157(f), AS 13.36.159(i), and AS 13.36.215(b)(10).

Section 25 – States the uncoded law of the State of Alaska is amended by adding a new section to clarify that AS 13.36.157, AS 13.36.158, AS 13.36.159, and AS 13.36.215, as amended by this Act, apply to a trust that is created on or after the effective date of this Act.

Section 26 – Provides an immediate effective date for this Act.