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CS FOR HOUSE BILL NO. 292( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES THOMPSON, Peggy Wilson, Gruenberg

A BILL

FOR AN ACT ENTITLED

"An Act relating to property exemptions for retirement plans, individual retirement accounts, and Roth IRAs; relating to pleadings, orders, liability, and notices under the Uniform Probate Code; relating to the appointment of trust property; relating to the Alaska Principal and Income Act; relating to the Alaska Uniform Transfers to Minors Act; relating to the disposition of human remains; relating to insurable interests for life insurance policies; relating to transfers of individual retirement plans; relating to the community property of married persons; and amending Rule 301(a), Alaska Rules of Evidence."

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

*** Section 1.** AS 09.38.017(a) is amended to read:

(a) In addition to the exemption under AS 09.38.015(b), the following are exempt from a claim of an individual's **or beneficiary's** creditor:

(1) the interest of the individual **or beneficiary** in a retirement plan; [AND]

(2) the money or other assets payable to the individual from a retirement plan**;**

(3) the interest of a beneficiary in

(A) a retirement plan if the beneficiary acquired the interest as a result of the death of an individual; the beneficiary's interest is exempt to the same extent that the individual's interest was exempt immediately before the individual died;

(B) an individual retirement account that has been transferred by the individual to the beneficiary during the individual's lifetime; the beneficiary's interest is exempt to the same extent that the individual's interest was exempt immediately before the transfer to the beneficiary;

(4) the money or other assets payable to a beneficiary from

(A) a retirement plan if the beneficiary acquired the money or other assets as a result of the death of an individual who would have had, during the individual's life, an exemption in the money or other assets;

(B) an individual retirement account if the beneficiary acquired the money or other assets as a result of the transfer of the money or other assets by an individual who would have had, at the time of the transfer, an exemption in the money or other assets.

*** Sec. 2.** AS 09.38.017(d) is amended to read:

(d) A retirement plan exempt from claims under (a) of this section is conclusively presumed to be a spendthrift trust under this section**, except for transfers or assignments under AS 34.40.113**.

*** Sec. 3.** AS 09.38.017(e) is amended to read:

(e) In this section,

(1) "alternate payee" has the meaning given in 26 U.S.C. 414(p)(8);

(2) **"beneficiary" includes a person, trust, or trustee who has,**

before or after the death of an individual, a direct or indirect beneficial interest in a retirement plan; in this paragraph, "beneficial interest" includes an interest that is acquired

(A) as a designated beneficiary, survivor, co-annuitant, heir, or legatee; or

(B) if excludible from gross income under 26 U.S.C. (Internal Revenue Code), as a

(i) rollover under 26 U.S.C. 408 or 26 U.S.C. 408A;

(ii) a distribution from one retirement plan to another retirement plan; or

(iii) a distribution that is similar to (i) or (ii) of this subparagraph;

(3) "individual" means [AN INDIVIDUAL WHO IS] a participant in, **an owner** [A BENEFICIARY] of, or an alternate payee of a retirement plan;

(4) "individual retirement account" means an individual retirement account established under 26 U.S.C. 408 or a Roth IRA established under 26 U.S.C. 408A;

(5) [(3)] "retirement plan" means

(A) a retirement plan that is qualified under 26 U.S.C. 401(a), 26 U.S.C. 403(a), 26 U.S.C. 403(b), [26 U.S.C. 408, 26 U.S.C. 408A, OR] 26 U.S.C. 409**, 26 U.S.C. 414(d), 26 U.S.C. 414(e), or 26 U.S.C. 457** (Internal Revenue Code)**;**

(B) an individual retirement account; and

(C) the teachers' retirement system under AS 14.25, the judicial retirement system under AS 22.25, the public employees' retirement system under AS 39.25, and the elected public officers' retirement system under former AS 39.37.

*** Sec. 4.** AS 13.06.120 is amended to read:

Sec. 13.06.120. Pleadings; when parties bound by orders; notice. In any proceedings involving trusts, nonprobate assets, or estates of decedents, minors, protected persons, or incapacitated persons brought under AS 13.06 - AS 13.36 or

AS 13.38, [INCLUDING ANY JUDICIALLY SUPERVISED SETTLEMENTS AND ANY NONJUDICIAL PROCEEDINGS AND SETTLEMENTS,] the following apply:

(1) interests to be affected shall be described in pleadings that give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in other appropriate manner;

(2) persons are bound by orders binding others in the following cases:

(A) orders binding the sole holder or all co-holders of a power of revocation or a general or nongeneral power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests, as objects, takers in default, or otherwise, are subject to the power;

(B) to the extent there is no conflict of interest between them or among persons represented, orders binding a conservator bind the person whose estate the conservator controls; orders binding a guardian bind the ward if no conservator of the estate has been appointed; orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary, and in proceedings involving creditors or other third parties; orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate; and orders binding an agent having authority to act with respect to the particular questions or dispute bind the principal; if there is no conflict of interest and no conservator or guardian has been appointed, a parent may represent the minor child;

(C) an unborn person, a minor, an incapacitated person, or a person whose identity or location is unknown or not reasonably ascertainable who is not otherwise represented is bound by an order to the extent the interest is adequately represented by another party having a substantially identical interest in the proceeding;

(D) with regard to interests given upon the happening of a certain event to persons who comprise a certain class, orders binding the living

persons who would constitute the class, if the event had happened immediately before the commencement of the proceeding, bind all members of the class;

(E) with regard to an interest given to a living person when the same interest or a share of the interest is to pass to the surviving spouse or to persons who are or might be the distributees, devisees, heirs, or issue of the living person upon the happening of a future event, orders binding the living person bind the surviving spouse, distributees, devisees, heirs, or issue of the living person;

(F) with regard to interests given to a person or a class of persons, or to both, upon the happening of a future event, if the same interest or a share of the interest is to pass to another person or class of persons, or to both, upon the happening of an additional future event, orders binding the living person or class of persons who would take the interest upon the happening of the first event bind the persons and classes of persons who might take on the happening of the additional future event;

(G) if a person is designated by a trust instrument to represent and bind a born or unborn beneficiary of the trust and receive a notice, information, accounting, or report for the beneficiary, then the beneficiary is bound by an order binding the designated person; in this subparagraph,

(i) the settlor may make the designation in the trust instrument, in a separate document, or by a trust protector authorized in the trust instrument to make the designation;

(ii) except as otherwise provided in this subparagraph, a person designated under (i) of this subparagraph may not represent and bind a beneficiary while the designated person is serving as trustee;

(iii) except as otherwise provided in this subparagraph, a person designated under (i) of this subparagraph may not represent and bind another beneficiary if the designated person also is a beneficiary, unless the designated person was named by the settlor, is the beneficiary's spouse, or is a grandparent or descendant of a grandparent of the beneficiary or the beneficiary's spouse; in this sub-

subparagraph, "spouse" means the individual to whom the beneficiary is married and with whom the beneficiary is living, and a physical separation primarily for education, business, health, and similar reasons does not prevent the individual from being considered to be living with the beneficiary;

(3) a person representing another person under (2)(A) - (F) of this section and a person designated under (2)(G)(i) of this section are not liable to the beneficiary whose interests are represented, or to a person claiming through that beneficiary, for an action or omission to act made in good faith;

(4) notice is required as follows:

(A) notice as prescribed by AS 13.06.110 shall be given to every interested person or to one person who can bind an interested person as described in (2)(A), (B), or (D) - (G) of this section; notice may be given both to a person and to another person who may bind the person;

(B) notice is given to unborn persons, a minor, an incapacitated person, or a person whose identity or location is unknown or not reasonably ascertainable, and persons who are not represented under (2)(A), (B), or (D) - (G) of this section, by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn persons, the minor, the incapacitated person, or the person whose identity or location is unknown or not reasonably ascertainable;

(5) at any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of an unborn person, a minor, an incapacitated person, or a person whose identity or address is unknown or not reasonably ascertainable, if the court determines that representation of the interest otherwise would be inadequate; if not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests; the court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.

*** Sec. 5.** AS 13.06.120 is amended by adding a new subsection to read:

(b) In this section,

(1) "order" means a judicial order, nonjudicial order, the result of the

settlement of an account of a fiduciary under a procedure authorized by AS 13.06 - 13.36 or AS 13.38, and a settlement agreement resulting from a proceeding;

(2) "proceeding" means a judicial proceeding, nonjudicial proceeding, the settlement of an account of a fiduciary under a procedure authorized by AS 13.06 - 13.36 or AS 13.38, and a settlement negotiation, even if the settlement negotiation does not involve a judicial or nonjudicial third party who decides or facilitates a settlement.

* **Sec. 6.** AS 13.36.157 is repealed and reenacted to read:

Sec. 13.36.157. Exercise of power of appointment. (a) An authorized trustee with unlimited discretion to invade trust principal may appoint part or all of that principal to a trustee of an appointed trust for, and only for the benefit of, a current beneficiary 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. The successor and remainder beneficiaries of the appointed trust may be one or more of the successor and remainder beneficiaries of the invaded trust to the exclusion of other successor and remainder beneficiaries.

(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, 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.

(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.

(d) An authorized trustee with 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.

(e) If the authorized trustee exercises the power under (d) of this section, the appointed trust must include the same 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 if the trustee appoints to an appointed trust that is a special needs trust, a pooled trust, or a third-party trust.

(f) If an authorized trustee exercises the power under (d) and (e) of this section to extend the duration of the appointed trust beyond the duration of the invaded trust for any period after the invaded trust would have otherwise terminated under the provisions of the invaded trust, the appointed trust, in addition to the language required to be included in the appointed trust under (e) of this section, may also provide an additional trustee with unlimited discretion to invade the principal of the appointed trust during the extended duration. The trustee with unlimited discretion continues to be subject to the restrictions in (d) - (h) of this section.

(g) Under (d) - (f) of this section, if the beneficiaries of the invaded trust are described by a class, the beneficiaries of the appointed trust include present or future members of that class.

(h) If the authorized trustee exercises the power under (d) - (g) of this section and if the invaded trust grants a power of appointment to a beneficiary of the trust, the appointed trust must grant this power of appointment in the appointed trust, and the class of permissible appointees shall be the same as in the invaded trust.

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

Sec. 13.36.158. Additional provisions relating to exercise of a power of appointment. (a) An exercise of the power to invade trust principal under AS 13.36.157 is the exercise of a special power of appointment.

(b) The appointed trust to which an authorized trustee appoints the assets of the invaded trust under AS 13.36.157 may have a duration that is longer than the

duration set out in the invaded trust.

(c) If an authorized trustee has unlimited discretion to invade the principal of a trust and if the same trustee or another trustee has a power, not dependent on unlimited discretion, to invade principal under the trust instrument, the authorized trustee having unlimited discretion may exercise the power of appointment under AS 13.36.157(a) - (c).

(d) An authorized trustee may exercise the power to appoint in favor of an appointed trust under AS 13.36.157 whether or not there is a current need to invade principal under the terms of the invaded trust.

(e) An authorized trustee exercising the power under AS 13.36.157 - 13.36.159 has a fiduciary duty to exercise the power in the best interests of one or more proper objects of the exercise of the power and as a prudent person would exercise the power under the prevailing circumstances. The authorized trustee may not exercise the power under AS 13.36.157 - 13.36.159 if there is substantial evidence of a contrary intent of the settlor and it cannot be established that the settlor would be likely to have changed this intention under the circumstances existing at the time the trustee exercises the power. The provisions of the invaded trust may not be viewed alone as substantial evidence of a contrary intent of the settlor unless the invaded trust expressly prohibits the exercise of the power in the manner intended by the authorized trustee.

(f) The provisions of AS 13.36.157 - 13.36.159 may not be construed to abridge the right of a trustee to appoint property further in trust under the terms of the governing instrument of a trust, another provision of law, or common law, or as directed by a court having jurisdiction over the trust.

(g) Nothing in AS 13.36.157 - 13.36.159 creates or implies a duty to exercise a power to invade principal. An inference of impropriety may not be made, and liability is not incurred, as a result of an authorized trustee not exercising the power conferred under AS 13.36.157.

(h) A power authorized by AS 13.36.157 may be exercised, subject to the provisions of AS 13.36.159(a), unless expressly prohibited by the terms of the governing instrument. A general prohibition against amending or revoking the invaded

trust and a provision that constitutes a spendthrift clause do not preclude the exercise of a power under AS 13.36.157.

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

(1) reduce, limit, or modify a beneficiary's current right to a mandatory distribution of income or principal, a mandatory annuity or unitrust interest, a right to withdraw a percentage of the value of the trust, or a right to withdraw a specified dollar amount, if the mandatory right has come into effect with respect to the beneficiary, but the mandatory right may be reduced, limited, or modified during any extended duration of the trust; however, notwithstanding the other provisions in this paragraph, but subject to the other limitations in AS 13.36.157 - 13.36.159, an authorized trustee may exercise a power authorized by AS 13.36.157 to appoint to an appointed trust that is a special needs trust, a pooled trust, or a third-party trust;

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

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

(4) fix as binding and conclusive the value of an asset for purposes of 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).

(j) Before exercising the power under AS 13.36.157, an authorized trustee shall consider the tax implications of the exercise of the power.

(k) An authorized trustee may not exercise a power described in AS 13.36.157 - 13.36.159 in violation of the limitations on validity in AS 34.27.051 or 34.27.100, or the restrictions on exercising certain powers in AS 13.36.153 by trustees who are not independent. A violation voids the entire exercise of the power unless the exercise is modified to correct the violation.

(l) Unless a court having jurisdiction over the trust directs otherwise, an authorized trustee may not exercise a power authorized by AS 13.36.157 to change the provisions regarding the determination of the compensation of a trustee. The commissions or other compensation payable to the trustees of the invaded trust may continue to be paid to the trustees of the appointed trust during the term of the appointed trust and shall be determined in the same manner as for the invaded trust.

(m) A trustee may not receive a payment, a commission, or other compensation for appointing property from the invaded trust to an appointed trust under AS 13.36.157. However, a trustee may be compensated at an hourly rate for the time spent considering and implementing the exercise of a power to appoint.

(n) Unless the invaded trust expressly provides otherwise, the provisions in AS 13.36.157 - 13.36.159 apply to

(1) a trust, whether testamentary or inter vivos, governed by the laws of this state, including a trust whose governing law has been changed to the laws of this state; and

(2) a trust that has a trustee who is an individual domiciled in this state, or a trustee that is an entity having an office in this state, if a majority of the trustees select this state as the location for the primary administration of the trust and the selection is made by an instrument in writing that is signed and acknowledged by a majority of the trustees; the instrument exercising this selection shall be kept with the records of the invaded trust.

(o) A power to pay principal that includes words such as "best interests," "welfare," "comfort," or "happiness" is not considered a limitation or modification of the right to distribute principal.

(p) In this section, "internal revenue code" means the Internal Revenue Code of the United States (26 U.S.C.) as it exists on the effective date of this Act and as it is amended from time to time.

Sec. 13.36.159. Implementation of power of appointment. (a) Unless the authorized trustee provides otherwise, the appointment of

(1) all of the assets comprising the principal of the invaded trust to an appointed trust includes subsequently discovered assets of the invaded trust and undistributed principal of the invaded trust acquired after the appointment to the appointed trust;

(2) a part but not all of the assets comprising the principal of the invaded trust to an appointed trust may not include subsequently discovered assets belonging to the invaded trust or principal paid to or acquired by the invaded trust after the appointment to the appointed trust; those subsequently discovered assets remain the assets of the invaded trust.

(b) The exercise of the power to appoint to an appointed trust under AS 13.36.157 shall be evidenced by an instrument in writing that is signed, dated, and acknowledged by the authorized trustee. The exercise of the power is effective 30 days after the date of service of the instrument as specified in (d) of this section, unless the persons entitled to notice consent in writing to a sooner effective date.

(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.

(d) A copy of the invaded trust, the appointed trust, and the 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 the qualified beneficiary under AS 13.06.120.

(e) Notice under (d) of this section to a qualified beneficiary is not required if the settlor has exempted the authorized trustee from providing notification or information to beneficiaries under AS 13.36.080(b). Notice under (d) of this section shall be provided under AS 13.06.110.

(f) The instrument exercising the power must state whether the appointment is of all or part of the assets comprising the principal of the invaded trust and, if a part, the approximate percentage of the value of the principal of the invaded trust that is the subject of the appointment.

(g) A person entitled to notice under (d) of this section may object to the trustee's exercise of the power under AS 13.36.157 - 13.36.159 by serving a written notice of objection on the trustee before the effective date of the exercise of the power. The failure to object does not constitute consent.

(h) The receipt of a copy of the instrument exercising the power does not, before the expiration of the limitation period in AS 13.36.100 with respect to a report disclosing the exercise, affect the right of a qualified beneficiary to object to the exercise of the power under AS 13.36.157 and to request the court to modify or to reverse the exercise.

(i) A copy of the instrument exercising the power shall be kept with the records of the invaded trust.

*** Sec. 8.** AS 13.36.215 is amended by adding a new subsection to read:

(b) In AS 13.36.157 - 13.36.159,

(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 or by the trustees, acting in that capacity, of the invaded trust;

(2) "authorized trustee" means, with regard to an invaded trust, a trustee with 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;

(3) "current beneficiary" means a person or, with regard to a class of persons, a person who is or will become a member of the class, to whom a trustee may distribute principal when exercising a power under AS 13.36.157;

(4) "invade" means pay directly to the beneficiary of a trust or apply to the benefit of a beneficiary;

(5) "invaded trust" means an irrevocable inter vivos or testamentary trust the principal of which is appointed under AS 13.36.157;

(6) "pooled trust" means a trust described in 42 U.S.C. 1396p(d)(4)(C) that meets the requirements for a pooled trust under the regulations of this state relating to the Medicaid treatment of trusts;

(7) "principal" means the assets of a trust, including accrued and accumulated income, but excluding income that is currently required to be distributed;

(8) "special needs trust" means a trust under 42 U.S.C. 1396p(d)(4)(A) that meets the requirements for a special needs trust under the regulations of this state relating to the Medicaid treatment of trusts;

(9) "third-party trust" means a trust that is

(A) established by a third party with the assets of the third party to provide for supplemental needs for a person eligible when the trust is created or at a future time for needs-based public assistance; and

(B) exempt from the provisions of the regulations of this state relating to the Medicaid treatment of trusts;

(10) "unlimited discretion" means the unlimited right to distribute principal that is not modified in any manner.

* **Sec. 9.** AS 13.38.200(b) is amended to read:

(b) In exercising a discretionary power of administration regarding a matter within the scope of this chapter, whether granted by the governing instrument or this chapter, including AS 13.38.210 and **13.38.300 - 13.38.490** [13.38.300 - 13.38.410], a fiduciary shall administer a trust or estate impartially based on what is fair and

reasonable to all of the beneficiaries, except to the extent that the governing instrument clearly manifests an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with this chapter is presumed to be fair and reasonable to all of the beneficiaries.

* **Sec. 10.** AS 13.38.210(c) is amended to read:

(c) A trustee may not make an adjustment under this section if

(1) the adjustment would diminish the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which a federal estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment; the prohibition in this paragraph does not apply to a trust after the trustee determines that the marital deduction has not been claimed or has not been allowed;

(2) the adjustment would reduce the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a federal gift tax exclusion;

(3) the adjustment would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(4) the adjustment is from any amount that is permanently set aside for charitable purposes under the governing instrument and for which a federal estate or gift tax charitable deduction has been taken, unless both income and principal are permanently set aside for charitable purposes under the governing instrument;

(5) possessing or exercising the power to make an adjustment would cause an individual to be treated as the owner of all or part of the trust for federal income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(6) possessing or exercising the power to make an adjustment would cause all or part of the trust assets to be subject to federal estate or gift tax with respect to an individual, and the assets would not be subject to federal estate or gift tax with respect to the individual if the trustee did not possess the power to make an adjustment;

(7) the trustee is a beneficiary of the trust; or

(8) the trust has been converted to a unitrust under **AS 13.38.300 - 13.38.435** [AS 13.38.300 - 13.38.410].

*** Sec. 11.** AS 13.38.300 is amended to read:

Sec. 13.38.300. Power to convert to unitrust. Unless expressly prohibited by the governing instrument, a trustee may release the power to adjust under AS 13.38.210 and may convert a trust into a unitrust as described in **AS 13.38.300 - 13.38.435** [AS 13.38.300 - 13.38.410] if

(1) the trustee determines that the conversion will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust;

(2) the trustee gives written notice of the trustee's intention to release the power to adjust, of the trustee's intention to convert the trust into a unitrust, **of the unitrust percentage selected, of the smoothing period selected,** and of how the unitrust will operate, including what initial decisions the trustee **intends to** [WILL] make under **AS 13.38.340** [THIS SECTION], to all the sui juris beneficiaries who

(A) are currently eligible to receive income from the trust;

(B) would be eligible, if a power of appointment were not exercised, to receive income from the trust if the interest of all of the beneficiaries eligible to receive income under (A) of this paragraph were to terminate immediately before the giving of the notice; and

(C) would, if a power of appointment were not exercised, receive a distribution of principal if the trust were to terminate immediately before the giving of the notice;

(3) there are at least one sui juris beneficiary under (2)(A) of this section and at least one sui juris beneficiary under (2)(B) or (C) of this section; and

(4) a sui juris beneficiary does not object to the conversion to a unitrust in a writing delivered to the trustee within 60 days after the mailing of the notice under (2) of this section.

*** Sec. 12.** AS 13.38.310(a) is amended to read:

(a) A trustee may petition the court to approve the conversion to a unitrust if

(1) a beneficiary timely objects to the conversion to a unitrust; [OR]

(2) there is not a sui juris beneficiary who is eligible under

AS 13.38.300(2); or

(3) the trustee is a beneficiary [AS 13.38.300(2)(A), AND THERE IS NOT A SUI JURIS BENEFICIARY WHO IS ELIGIBLE UNDER AS 13.38.300(2)(B) OR (C)].

*** Sec. 13.** AS 13.38.330(b) is amended to read:

(b) After a trust has been converted to a unitrust, "income" in the governing instrument means an annual distribution equal to **the amount produced by the application of a fixed unitrust percentage established under (d) of this section to** [FOUR PERCENT OF] the net fair market value, as determined annually, of the trust's assets, whether the assets would be considered income or principal under other provisions of this chapter**, averaged over the lesser of**

(1) the preceding years in the smoothing period selected by the trustee; or

(2) the period during which the trust has been in existence.

*** Sec. 14.** AS 13.38.330 is amended by adding a new subsection to read:

(d) The unitrust percentage to be used in determining the unitrust amount must be a reasonable current return from the unitrust of at least three percent and not more than five percent, taking into account the intentions of the trustor of the unitrust as expressed in the governing instrument, the needs of the beneficiaries, general economic conditions, projected current earnings for the unitrust, projected appreciation for the unitrust, and the effect of projected inflation on the unitrust.

*** Sec. 15.** AS 13.38.340 is amended to read:

Sec. 13.38.340. Trustee's discretionary powers regarding unitrust. The trustee may, in the trustee's discretion, from time to time, determine

(1) the effective date of a conversion to a unitrust;

(2) the provisions for prorating a unitrust distribution for a short year in which a beneficiary's right to payments commences or ceases;

(3) the frequency of unitrust distributions during the year;

(4) the effect of other payments from or contributions to the trust on the trust's valuation;

(5) whether to value the trust's assets annually or more frequently;

(6) **whether to use a smoothing period of three, four, or five years;**

(7) what valuation dates to use;

(8) [(7)] how frequently to value nonliquid assets and whether to estimate their value;

(9) [(8)] whether to omit trust property occupied or possessed by a beneficiary from the calculations; and

(10) [(9)] other matters necessary for the proper functioning of the unitrust.

*** Sec. 16.** AS 13.38.350(b) is amended to read:

(b) Unless otherwise provided by the governing instrument, a unitrust distribution shall be considered to have been paid from net income as net income would be determined if the trust were not a unitrust. To the extent net income is insufficient, the unitrust distribution shall be considered to have been paid from **ordinary income that is allocable under federal income tax rules to net income as determined for a unitrust. To the extent that the ordinary income is insufficient, the unitrust distribution is considered to have been paid from** net realized short-term capital gains. To the extent **net** income**, ordinary income,** and net realized short-term capital gains are insufficient, the unitrust distribution shall be considered to have been paid from net realized long-term capital gains. To the extent **net** income**, ordinary income,** and net realized short-term and long-term capital gains are insufficient, the unitrust distribution shall be paid from the principal of the trust.

*** Sec. 17.** AS 13.38.360 is amended to read:

Sec. 13.38.360. Court orders regarding unitrust. The trustee or, if the trustee declines to petition the court, a beneficiary may petition the court to

[(1) SELECT A PAYOUT PERCENTAGE DIFFERENT THAN FOUR PERCENT;

(2)] provide for a distribution of net income, as would be determined if the **unitrust** [TRUST] were not a unitrust, in excess of the unitrust distribution if the distribution is necessary to preserve a tax benefit [;

(3) AVERAGE THE VALUATION OF THE TRUST'S NET ASSETS OVER A PERIOD OTHER THAN THREE YEARS].

* **Sec. 18.** AS 13.38.390(b) is amended to read:

(b) If AS 13.38.380(a)(3), (4), or (6) applies to all the trustees, the trustees may petition the court to direct a conversion. **In the alternative, the trustees may appoint an independent person who shall be granted the authority, while acting in a fiduciary capacity, to make decisions in place of the trustees relating to a conversion, reconversion, and the exercise of discretionary powers under AS 13.38.340.**

* **Sec. 19.** AS 13.38.400 is amended to read:

Sec. 13.38.400. Reconversion from a unitrust. A trustee may reconvert a trust that has been converted into a unitrust under AS 13.38.300 by following the same procedures provided in **AS 13.38.300 - 13.38.435** [AS 13.38.300 - 13.38.410] for converting a trust into a unitrust. If a unitrust is reconverted under this section, the trustee's power to adjust under AS 13.38.210 applies to the trustee after the reconversion.

* **Sec. 20.** AS 13.38 is amended by adding new sections to article 2 to read:

Sec. 13.38.420. Additional unitrust provisions. (a) The unitrust amount may be determined by reference to the net fair market value of the unitrust's assets in one or more years.

(b) Distribution of a unitrust amount is considered a distribution of all of the income of a unitrust and is considered to be an income interest.

(c) Distribution of a unitrust amount is considered to be a reasonable apportionment of the total return of a unitrust.

(d) A unitrust that provides for a distribution based on a unitrust percentage in excess of five percent of the net fair market value of the unitrust assets a year is considered to have paid out all of the income of the unitrust and to have paid out principal of the unitrust to the extent that the distribution exceeds five percent a year.

(e) The governing instrument of a unitrust may grant discretion to the trustee to adopt a consistent practice of treating capital gains as part of the unitrust amount to the extent that the unitrust amount exceeds the income determined as if the trust were not a unitrust, or the governing instrument may specify the ordering of classes of income.

(f) Unless the terms of the unitrust specifically provide otherwise, a unitrust amount is considered to have been made from the following sources, which are listed in order of priority:

(1) net income determined as if the trust were not a unitrust;

(2) ordinary income not allocable to net income;

(3) net realized short-term capital gains;

(4) net realized long-term capital gains; and

(5) the principal of the trust estate.

(g) The unitrust governing instrument may provide that the trustee may exclude assets used by the unitrust beneficiary, such as a residence property or tangible personal property, from the net fair market value of the unitrust assets for the purposes of computing the unitrust amount. These assets may be considered equivalent to income or to the unitrust amount.

Sec. 13.38.430. Power to treat gains as part of distribution of principal. Unless prohibited by the unitrust's governing instrument or specifically addressed by AS 13.38.350 or 13.38.420, the trustee of a unitrust may treat gains from the sale of capital assets of the unitrust to be part of a distribution of principal to a beneficiary, and, if the trustee treats these gains as part of a distribution of principal to a beneficiary, the trustee shall treat these gains consistently on the unitrust's books, records, and tax returns as part of a distribution to a beneficiary.

Sec. 13.38.435. Definitions. In AS 13.38.300 - 13.38.435,

(1) "smoothing period" means the period of years over which the fair market value of the assets of a unitrust are averaged;

(2) "unitrust amount" means the amount that is distributed from a unitrust to a beneficiary;

(3) "unitrust percentage" means the unitrust percentage established under AS 13.38.330(d).

*** Sec. 21.** AS 13.38.690(a) is repealed and reenacted to read:

(a) A trustee shall allocate

(1) to income that portion of a payment that equals the greater of the following:

(A) the portion that the payor characterizes as interest, a dividend, a remittance in place of interest, or a remittance in place of a dividend; or

(B) the portion that is characterized as imputed interest for federal income purposes;

(2) to principal that portion of a payment that remains after the allocation is made under (1) of this subsection.

*** Sec. 22.** AS 13.38.690(b) is amended to read:

(b) If **no** [A] part of a payment under a contract calling for equal installments over a fixed period of time is [NOT] allocable to income under the provisions of (a) of this section, the difference between the trust's acquisition value of the contract and the total expected return **is** [SHALL BE] considered to be interest. The trustee shall allocate to income the portion of each payment equivalent to interest on the then unpaid principal balance at the rate specified in the contract or at a rate necessary to amortize the difference between the expected return and the acquisition value, where that rate is readily ascertainable by the trustee.

*** Sec. 23.** AS 13.38.690(c) is amended to read:

(c) If **no** [THERE IS NOT A] portion of a payment from a separate fund held exclusively for the benefit of the trust [THAT] is allocable to income under (a) or (b) of this section, but the internal net income of the fund determined as if the fund were a separate trust subject to **AS 13.38.200 - 13.38.410, 13.38.500 - 13.38.690, or 13.38.710 - 13.38.860** [AS 13.38.500 - 13.38.860] is readily ascertainable by the trustee, the **internal net income of the fund is considered to be the income earned by the fund, and the** portion of the payment equal to the then undistributed net income of the fund realized since the trust acquired its interest in the fund is considered to be a distribution of **that internal net** income **of the fund** and shall be allocated to the trust income account. The balance of the payment described in this subsection shall be allocated to principal. **The power to adjust under AS 13.38.210, the power to convert to a unitrust under AS 13.38.300, and the provisions of AS 13.38.420 apply to retirement benefits covered by this subsection that are payable to a trust. These powers and provisions may be exercised by the payee**

trustee or in the governing instrument for the retirement benefits separately and independently from the exercise by the payee trustee or in the governing instrument of these powers and provisions for the trust, as if the retirement benefits and the trust were separate trusts subject to this chapter.

*** Sec. 24.** AS 13.38.690(d) is amended to read:

(d) A trustee shall allocate 10 percent of the part of the payment that is required to be made during the accounting period to income and the balance to principal if there is **no** [NOT A] part of the payment that is allocable to income under (a) - (c) of this section and all or part of the payment is required to be made. The trustee shall allocate the entire payment to principal if **no** [A] part of a payment is [NOT] required to be made or the payment received is the entire amount to which the trustee is entitled. In this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

*** Sec. 25.** AS 13.38.690(e) is amended to read:

(e) If, to obtain a federal estate or gift tax marital deduction for a trust, the trustee must allocate more of a payment to income than provided for by this section, the trustee shall allocate **to income** the additional amount necessary to obtain the marital deduction [TO INCOME].

*** Sec. 26.** AS 13.46.190 is amended to read:

Sec. 13.46.190. Termination of custodianship. The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of the

(1) minor's attainment of 21 years of age with respect to property transferred under AS 13.46.030 or 13.46.040 unless the time of transfer of the custodial property to the minor is changed under AS 13.46.195 **or 13.46.197**;

(2) minor's attainment of 18 years of age with respect to property transferred under AS 13.46.050 or 13.46.060**, unless the time of transfer of the custodial property to the minor is changed under AS 13.46.197**;

(3) time specified in the transfer under AS 13.46.080 if the time of transfer of the custodial property to the minor is changed under AS 13.46.195 **or 13.46.197**; or

(4) minor's death.

* **Sec. 27.** AS 13.46 is amended by adding a new section to read:

Sec. 13.46.197. Extension of custodial term by custodian. (a) A custodian may extend the custodial term under this section to an age older than the age that is specified by this chapter or a transferring document made under AS 13.46.080, subject to the right of the minor to compel immediate distribution under (c) of this section.

(b) To extend the custodial term under (a) of this section, the custodian shall give the minor written notice of the custodian's intent to extend the custodial term. The notice must specify the duration of the extension by indicating the new custodial term and must inform the minor of the minor's right to compel immediate distribution under (c) of this section. The custodian shall give the notice during the later of the following periods:

(1) the six-month period that precedes the last day of the custodial term; or

(2) the six-month period that begins on the minor's 18th birthday.

(c) Rather than permit the extension of the custodial term, the minor may compel immediate distribution of all or part of the custodial property by giving written notice to the custodian

(1) during the six-month period that begins on the day that is the last day of the current custodial term; or

(2) within 90 days after receiving the custodian's notice under (b) of this section.

(d) If a minor does not exercise the minor's right to compel distribution under (c) of this section, the custodial term shall be extended as indicated in the custodian's notice given under (b) of this section, and the minor may not compel the immediate distribution of custodial property before the end of the custodial term, as extended.

(e) A custodian may extend the custodial term more than once under this section.

(f) In this section, "custodial term" means the period of time provided in or allowed by this chapter during which the custodian is directed to hold custodial property until the property is transferred to the minor.

* **Sec. 28.** AS 13.46.990(11) is amended to read:

(11) "minor" means an individual who has not attained the age of 18 years, except that when used in reference to the beneficiary for whose benefit custodial property is held or to be held, "minor" means an individual who has not attained the age at which the custodian is required under AS 13.46.190**,** [AND] 13.46.195**, and 13.46.197** to transfer the custodial property to the beneficiary;

* **Sec. 29.** AS 13 is amended by adding a new chapter to read:

Chapter 75. Disposition of Human Remains.

Sec. 13.75.010. Directions by decedent. (a) A person may provide directions for the disposition of the person's remains by placing the directions in a disposition document. The directions may include or be limited to designating an agent to control the disposition of the person's remains.

(b) A disposition document must be signed by the person and acknowledged before a notary public, and contain the form and contents required by AS 13.75.030. A disposition document may be a separate document or it may be contained in another document, including a will or prepaid funeral or burial contract. The disposition document may be modified or revoked only by a subsequent disposition document that complies with this subsection.

Sec. 13.75.020. Persons authorized to control disposition. (a) The following persons, in the priority listed, may control disposition of a decedent's remains:

(1) a person designated in a disposition document as the disposition agent for the decedent;

(2) a person serving, or nominated by the decedent in the decedent's will to serve, as the personal representative of the decedent's estate, if the person is acting according to the decedent's written instructions contained in the decedent's will;

(3) the individual who was the spouse of the decedent at the time of the decedent's death;

(4) the sole surviving competent adult child of the decedent, or, if there is more than one surviving competent adult child of the decedent, the majority of the surviving competent adult children; fewer than one-half of the surviving competent adult children may exercise the rights and duties of this section if these surviving adult

children use reasonable efforts to notify all other surviving competent adult children that they are exercising these rights and duties and are not aware of any opposition by one-half or more of all of the surviving competent adult children;

(5) the surviving competent parents of the decedent; if one of the surviving competent parents is absent, the remaining competent parent may exercise the rights and duties of this section after reasonable efforts have been unsuccessful in locating the absent surviving competent parent; in this paragraph, "absent" means a person who is unable to communicate decisions or participate in making decisions regarding the disposition of a decedent's remains personally, telephonically, or through electronic communication;

(6) the surviving competent adult person in the next degrees of kindred, the two surviving competent adult persons of the same degree of kindred if there are two, or, if there are more than two surviving competent adult persons of the same degree of kindred, the majority of those persons; fewer than the majority of surviving competent adult persons of the same degree of kindred may exercise the rights and duties of this section if those persons use reasonable efforts to notify all other surviving competent adult persons of the same degree of kindred that they are exercising these rights and duties and are not aware of any opposition by one-half or more of all surviving competent adult persons of the same degree of kindred;

(7) in the case of an indigent or another individual whose final disposition is the responsibility of the state or a municipality, a public administrator, medical examiner, coroner, or another public official charged with arranging the final disposition of the decedent; or

(8) another person who is willing to assume legal and financial responsibility.

(b) If a person takes control of the disposition under (a) of this section, the person is liable for the reasonable costs of the disposition.

(c) In this section,

(1) "adult" means a person who is 18 years of age or older;

(2) "competent" means a person who does not suffer from disabilities that prevent the person from managing the person's property or affairs.

Sec. 13.75.030. Form of disposition document. A disposition document must be in substantially the following form:

DISPOSITION DOCUMENT

You can select Part 1, Part 2, or both, by completing the part(s) you select, including providing any signatures indicated. Part 3 contains general statements and a place for your signature. You must sign in front of a notary.

PART 1. APPOINTMENT OF AGENT TO CONTROL DISPOSITION OF REMAINS. If you appoint an agent, you and your agent must complete this part as indicated, and the agent must sign this part.

I, _____, being of sound mind, wilfully and voluntarily make known my desire that, on my death, the disposition of my remains shall be controlled by _____ (name of agent first named below), and, with respect to that subject only, I appoint that person as my agent. All decisions made by my agent with respect to the disposition of my remains, including cremation, are binding.

ACCEPTANCE BY AGENT OF APPOINTMENT.

THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS APPOINTMENT, AGREES TO AND ASSUMES THE OBLIGATIONS PROVIDED IN THIS DOCUMENT. AN AGENT MAY SIGN AT ANY TIME, BUT AN AGENT'S AUTHORITY TO ACT IS NOT EFFECTIVE UNTIL THE AGENT SIGNS BELOW TO INDICATE THE ACCEPTANCE OF APPOINTMENT. ANY NUMBER OF AGENTS MAY SIGN, BUT ONLY THE SIGNATURE OF THE AGENT ACTING AT ANY TIME IS REQUIRED.

AGENT:

Name: _____

Address: _____

Telephone Number: _____

Signature Indicating Acceptance of Appointment:

_____

Date of Signature: _____

SUCCESSORS:

If my agent dies, becomes legally disabled, resigns, or refuses to act, I appoint the following persons (each to act alone and successively, in the order named) to serve as my agent to control the disposition of my remains as authorized by this document:

(1) First Successor

Name: _____

Address: _____

Telephone Number: _____

Signature of First Successor Indicating Acceptance of Appointment:

_____

Date of Signature: _____

(2) Second Successor

Name: _____

Address: _____

Telephone Number: _____

Signature of Second Successor Indicating Acceptance of Appointment:

_____

Date of Signature: _____

PART 2. DIRECTIONS FOR THE DISPOSITION OF MY REMAINS.

Stated below are my directions for the disposition of my remains:

_____

_____

_____

_____

If the disposition of my remains is by cremation, then (pick one):

( ) I do not wish to allow any of my survivors the option of

canceling my cremation and selecting alternative arrangements, regardless of whether my survivors consider a change to be appropriate.

( ) I wish to allow only the survivors I have designated below to have the option of canceling my cremation and selecting alternative arrangements, if they consider that a change to be appropriate:

_____

_____

_____

_____

PART 3. GENERAL PROVISIONS AND SIGNATURE.

WHEN DIRECTIONS BECOME EFFECTIVE. The directions, including any appointment of an agent, in this disposition document become effective on my death.

REVOCATION OF PRIOR APPOINTMENTS. I revoke any prior appointment of any person to control the disposition of my remains.

SIGNATURE OF PERSON MAKING DISPOSITION DOCUMENT

Signature: _____

Date of signature: _____

(Notary acknowledgment of signature)

Sec. 13.75.040. Agent's appointment. The person appointed as an agent in a disposition document may sign the disposition document at any time, but the agent's authority to act is not effective until the agent signs the instrument.

Sec. 13.75.050. Exercise of authority. If a person fails to exercise the person's authority to control disposition under AS 13.75.020 within 48 hours after receiving notification of the decedent's death or within 48 hours after the decedent's death, whichever is earlier, the person may not control the disposition of the decedent's remains, and the right to control the disposition of the decedent's remains passes to the person who is next listed in priority under AS 13.75.020. If the person to whom the right to control the disposition passes under this section fails to exercise the person's authority to control the disposition within 48 hours after being notified that the

authority to control the disposition has passed to the person, the authority to control the disposition passes to the person who is next listed in priority under AS 13.75.020.

Sec. 13.75.060. Certain persons prohibited from control. If a person is charged with a felonious killing in connection with a decedent's death and if the funeral director or the cemetery knows about the charge, then the person may not control disposition, and the right to control disposition passes to the person who is next listed in priority under AS 13.75.020.

Sec. 13.75.070. Prohibition of cremation; written instructions. A person may not authorize cremation for a decedent's remains if a decedent has left directions in a disposition document that the decedent does not wish to be cremated.

Sec. 13.75.080. Implementation of directions. (a) The person authorized to control the disposition shall carry out the directions of the decedent to the extent that the decedent's estate or the person is financially able to carry out the directions.

(b) Notwithstanding any other provision in AS 13.06 - 13.36 (Uniform Probate Code), if a person provides directions in a disposition document that is contained in a will, the directions shall be carried out immediately without the necessity of probate. If the will is not probated or is declared invalid for testamentary purposes, the directions are valid to the extent to which they have been acted on in good faith.

Sec. 13.75.090. Misrepresentation; liability. If a person represents that the person knows the identity of a decedent, and, with the intent to procure the disposition of the decedent's remains, signs a statement, other than a death certificate, that identifies the decedent, the person guarantees the identity of the decedent and is liable for any damages that result, directly or indirectly, from that guarantee.

Sec. 13.75.100. Liability. (a) A disposition organization is not liable for carrying out the directions of a decedent if the disposition organization carries out the directions of a decedent or a person who establishes that the person is entitled to control the disposition.

(b) This section may not be construed to reduce or eliminate the liability of a disposition organization for its negligence or reckless acts.

Sec. 13.75.110. Disputes. (a) A person listed in AS 13.75.020 who is involved in a dispute with one or more persons listed in AS 13.75.020 about which of the

persons has the authority to control disposition may bring an action in the superior court to resolve the dispute.

(b) If there is a dispute with one or more persons listed in AS 13.75.020 about which person has the authority to control disposition, a cemetery organization or funeral establishment is not liable for refusing to accept, to inter, or otherwise to dispose of the decedent's remains until the cemetery organization or funeral establishment receives a court order or another suitable confirmation that the dispute has been resolved.

Sec. 13.75.120. Exemptions. The disposition of the remains of a member of the organized militia under AS 26.05.262, the disposition of the remains of a member of the armed forces under AS 26.10.065(a), and the disposition of the remains of a member of the United States Coast Guard under AS 26.10.065(b) are exempt from this chapter.

Sec. 13.75.190. Definitions. In this chapter,

(1) "control" means the authority to control disposition;

(2) "directions" means

(A) instructions for the disposition of a person's remains;

(B) the appointment of an agent to handle the disposition of a person's remains; or

(C) both (A) and (B) of this paragraph;

(3) "disposition" means disposition of a decedent's remains, including cremation, but does not include an anatomical gift; in this paragraph, "anatomical gift" has the meaning given in AS 13.52.390;

(4) "disposition document" means a disposition document authorized by AS 13.75.010

(A) in which a person provides directions regarding the disposition of the person's remains; and

(B) that complies with AS 13.75.030;

(5) "disposition organization" means

(A) a cemetery association formed under AS 10.30.010;

(B) a nonprofit cemetery corporation authorized by

AS 10.30.055;

(C) a person operating a crematory;

(D) a person operating a columbarium;

(E) a funeral home or other type of funeral establishment;

(F) a funeral director or an embalmer.

Sec. 13.75.195. Short title. This chapter may be cited as the Disposition of Human Remains Act.

*** Sec. 30.** AS 21.42.020 is amended by adding new subsections to read:

(e) Notwithstanding (a) of this section, a trustee, acting in a fiduciary capacity, may procure or cause to be procured an insurance contract that is on the life or body of an individual and under which the proceeds of the insurance contract are payable to the trustee, acting in a fiduciary capacity, if

(1) the trustee, acting in a fiduciary capacity, owns the insurance contract or the trust itself owns the insurance contract;

(2) on the date the contract is made, a settlor of the trust is the individual insured, has an insurable interest in the individual insured, or would have had an insurable interest in the individual insured if the settlor were living at the time the contract was made; in this paragraph, "settlor" means a person, including a person for whom a fiduciary or agent is acting, who executes the trust instrument; and

(3) the proceeds of the contract are primarily for the benefit of a trust beneficiary who has an insurable interest in the individual insured, except that, if the determination of the trust beneficiary's insurable interest is based on (d)(1) of this section, the trust beneficiary's relation by blood or law must be within the third degree.

(f) A person who has an insurable interest in the life or body of an individual may form a business firm that is substantially or solely for the purpose of purchasing, holding, or administering an insurance contract on the life or body of the individual. In this subsection, "firm" has the meaning given in AS 21.97.900, but also includes a business trust and a joint venture.

*** Sec. 31.** AS 34.40 is amended by adding a new section to read:

Sec. 34.40.113. Transfers of individual retirement accounts. (a) Notwithstanding a provision in AS 09.38.017(d), AS 34.40.110, or another law to the

contrary, a person may voluntarily transfer or assign the person's interest in an individual retirement account if the person

(1) is the owner of or a participant in the individual retirement account; or

(2) acquired the interest as a result of the death of another individual.

(b) In this section, "individual retirement account" means an individual retirement account established under 26 U.S.C. 408 or a Roth IRA established under 26 U.S.C. 408A.

*** Sec. 32.** AS 34.77.030(g) is amended to read:

(g) Whether or not the community property agreement provides that all property acquired by either or both spouses during the marriage is community property, and except to the extent otherwise expressly provided **by the spouses** in the community property agreement **or by the settlors in a community property trust**, property acquired by a spouse during marriage and after the determination date is individual property if acquired

(1) by gift or a disposition at death made by a third person to the spouse and not to both spouses;

(2) in exchange for or with the proceeds of other individual property of the spouse;

(3) from appreciation or income of the spouse's individual property except to the extent that the income or appreciation is classified as community property under AS 34.77.130;

(4) by a decree, community property agreement, written consent, or reclassification under AS 34.77.060(b) designating it as the individual property of the spouse;

(5) as a recovery for damage to property under AS 34.77.140, except as specifically provided otherwise in a decree, community property agreement, **community property trust,** or written consent; [OR]

(6) as a recovery for personal injury, except for the amount of the recovery attributable to expenses paid or otherwise satisfied from community property**; or**

(7) as a transfer to a community property trust and declared by the trust to be the individual property of the spouse.

*** Sec. 33.** AS 34.77.050(b) is amended to read:

(b) A gift of community property to a third person that is not allowed under (a) of this section is subject to **AS 34.77.140(e) - (h)** [(d) OF THIS SECTION] unless both spouses act together in making the gift or the other spouse ratifies the gift.

*** Sec. 34.** AS 34.77.110 is amended by adding new subsections to read:

(f) Property that spouses agree in a community property agreement is community property or property that is transferred to a community property trust and expressly declared by the trust to be community property is owned as community property regardless of the form of title to the property, even if the title indicates that the property is owned unequally by the spouses or is only in the name of one spouse.

(g) If the title to community property is in a form that provides for ownership by survivorship between the spouses, then ownership by survivorship is presumed to have been made with the consent of both spouses.

(h) If a spouse with management and control of community property designates a beneficiary for the property on the death of one or both of the spouses, and if the community property is held in a form of title that permits a beneficiary designation, the beneficiary designation is effective only for the designating spouse's one-half interest in the community property unless the other spouse consents in writing to the designation. A designation of the following as the beneficiary is presumed to have been made with the consent of the other spouse:

(1) the other spouse or an ancestor or descendant of either spouse;

(2) a charity; or

(3) a trust, to the extent that the beneficiaries consist of persons or entities identified in (1) or (2) of this subsection.

(i) The testimony of one spouse is sufficient to rebut a presumption established under this section.

(j) A disposition of community property contrary to (e) - (h) of this section is voidable. An action in court to void the disposition must be commenced within the time specified by AS 34.77.140(e).

* **Sec. 35.** AS 34.77.140(d) is amended to read:

(d) Except as provided otherwise in **(e) - (h) of this section** [AS 34.77.050(d)], a spouse must begin an action against the other spouse under (a) of this section within three years after acquiring actual knowledge of the facts giving rise to the claim.

* **Sec. 36.** AS 34.77.140 is amended by adding new subsections to read:

(e) Except as provided by (f) - (h) of this section, if a gift of community property during marriage by a spouse does not comply with AS 34.77.050(a), the nondonor spouse may bring an action to recover the property or the amount of money by which the gift exceeded the limit under AS 34.77.050(a). The nondonor spouse may bring the action against the donor spouse, the gift recipient, or both. The nondonor spouse must commence the action within the earliest of the following times:

(1) one year after the nondonor spouse receives notice of the gift;

(2) one year after dissolution of the marriage; or

(3) on or before the deadline for filing a claim under AS 13.16.460 after the death of the donor spouse.

(f) If a recovery under (e) of this section occurs during the marriage of the donor spouse and the nondonor spouse, the property or money that is recovered is considered community property. If the recovery occurs after the dissolution of the marriage of the donor and nondonor spouses or after the death of either the donor or the nondonor spouse, the recovery is limited to 50 percent of the property or money that would have been recovered if the recovery had occurred during the marriage.

(g) If a transfer of community property to a third person during marriage by a spouse acting without the other spouse becomes a completed gift on the death of the donor spouse, or if an arrangement involving community property during marriage by a spouse acting without the other spouse is intended to be and becomes a gift to a third person on the death of the donor spouse, the surviving spouse may bring an action in court against the gift recipient to recover one-half of the gift. To bring an action under this subsection, the surviving spouse must commence the action on or before the deadline for filing a claim under AS 13.16.460.

(h) If a spouse who would have been entitled to bring an action under (e) - (g)

of this section predeceases the donor spouse, the deceased spouse's successor in interest may bring an action for recovery under (e) - (g) of this section, but the action must be commenced within one year after the deceased spouse's death. Recovery in an action under this subsection is the same as if the donor spouse had predeceased the spouse entitled to the recovery, but the amount of the recovery is calculated as of the date of the death of the spouse entitled to the recovery.

* **Sec. 37.** AS 13.38.330(c); AS 34.77.050(d), and 34.77.110(d) are repealed.

* **Sec. 38.** The uncodified law of the State of Alaska is amended by adding a new section to read:

INDIRECT COURT RULE CHANGE. AS 34.77.110(i), enacted by sec. 34 of this Act, has the effect of amending Rule 301(a), Alaska Rules of Evidence, by specifying the evidence that is sufficient to rebut a presumption under AS 34.77.110(i), enacted by sec. 34 of this Act.

* **Sec. 39.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) AS 09.38.017(a), as amended by sec. 1 of this Act, AS 09.38.017(d), as amended by sec. 2 of this Act, and AS 09.38.017(e), as amended by sec. 3 of this Act, apply to a retirement plan that exists before, on, or after the effective date of this Act. In this section, "retirement plan" has the meaning given in AS 09.38.017(e), as amended by sec. 3 of this Act.

(b) AS 13.36.157, repealed and reenacted by sec. 6 of this Act, AS 13.36.158 and 13.36.159, enacted by sec. 7 of this Act, and AS 13.36.215(b), enacted by sec. 8 of this Act, apply to a trust that exists before, on, or after the effective date of this Act.

(c) AS 13.46.190, as amended by sec. 26 of this Act, AS 13.46.197, enacted by sec. 27 of this Act, and AS 13.46.990(11), as amended by sec. 28 of this Act, apply to a transfer that is made before, on, or after the effective date of this Act. In this subsection, "transfer" has the meaning given in AS 13.46.990.

(d) AS 34.40.113, added by sec. 31 of this Act, applies to an individual retirement account that exists before, on, or after the effective date of this Act. In this section, "individual retirement account" means an individual retirement account established under 26 U.S.C. 408 or a Roth IRA established under 26 U.S.C. 408A.

*** Sec. 40.** The uncodified law of the State of Alaska is amended by adding a new section to read:

CONDITIONAL EFFECT. AS 34.77.110(i), enacted by sec. 34 of this Act, takes effect only if sec. 38 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.