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MEMORANDUM

April 4, 2017

SUBJECT: Sectional summary of HB 208 relating to trusts and powers of appointment (Work Order No. 30-LS0770\A)

TO: Representative DeLena Johnson
Attn: Shea Siegert

FROM: 
Theresa Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Bill section 1. Adds new subsections to AS 13.12.704 relating to powers of appointment.

In (b), states that a power of appointment will be considered to be held as a nonfiduciary power of appointment unless granted to a trustee or other fiduciary as a trustee or other fiduciary.

In (c), states that nonfiduciary power of appointment may be exercised in any lawful manner subject to any limitations in the granting instrument.

In (d), the exercise of a nonfiduciary power of appointment may not be limited because the holder is a trustee or other fiduciary under the granting instrument.

In (e), states that a person, court, or authority may not compel the exercise of a nonfiduciary power of appointment, and the holder may not be foreclosed from exercising the power in any lawful manner.

In (f), with one exception, states that property subject to a nonfiduciary power of appointment, is not subject to the claims of creditors of the person holding the power or in whose favor the power may be exercised.

Bill section 2. Amends AS 13.36.109 (specific powers of trustees). In (17), adds language to give a trustee the power to insure the trustee against the liability with respect to beneficiaries of the trust.

Bill section 3. Adds a subsection to AS 13.36.109 (trustee's specific powers). Allows a trustee to charge against trust property the cost incurred to perform an action authorized by (a) of the section.

Bill section 4. Amends AS 13.36.157(a) (exercise of power of appointment). Allows an unlimited authorized trustee to appoint the trust principal to a trustee of an appointed trust for the current or future benefit of one or more of the current beneficiaries of the invaded trust and for the future benefit of non-current beneficiaries.

Bill section 5. Amends AS 13.36.157(b) (exercise of power of appointment). Allows an unlimited authorized trustee who exercises power under (a) to grant a discretionary power of appointment in the appointed trust to one or more current beneficiaries of the invaded trust, if the current beneficiary is authorized to receive the principal outright under the invaded trust. The discretionary power of appointment that may be granted includes a presently exercisable power of appointment in favor of permissible appointees. Lists who and what a "permissible appointment" includes.

Bill section 6. Amends AS 13.36.157(c) (exercise of power of appointment). Under (a), if the invaded trust's beneficiaries are described as a class, the appointed trust's beneficiaries may include present or future members of the class. States, however, that a person may not become a beneficiary sooner than the invaded trust provides.

Bill section 7. Amends AS 13.36.157(d) (exercise of power of appointment). Allows a limited authorized trustee to appoint trust principal to a trustee of an appointed trust if the current beneficiaries and the successor and remainder beneficiaries of the appointed trust are the same as for invaded trust.

Requires that, if trust principal appointment power is exercised in favor of more than one appointment trust, the appointed trusts must grant, in the aggregate, substantially similar interests as in the invaded trust.

Clarifies that a power to make a distribution for a beneficiary under an appointed trust is considered to be substantially similar to a power to make a distribution to the beneficiary under the invaded trust.

Bill section 8. Amends AS 13.36.157(e) (exercise of power of appointment). Requires the appointed trust to include the same income and principal distribution/invasion standard as that of the invaded when a limited authorized trustee exercises the power under (d). But allows a limited authorized trustee (other than the settlor) to change the standard when certain types of trust are involved.

Bill section 9. Amends AS 13.36.157(g) (exercise of power of appointment). Makes a reference change to a new subsection.

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Bill section 10. Amends AS 13.36.157(h) (exercise of power of appointment). Provides that, under certain circumstances, an appointed trust must grant the same power of appointment as in the invaded trust.

Bill sec. 11. Adds new subsections to AS 13.36.157 (exercise of power of appointment).

In (i) Allows an unlimited authorized trustee to establish a different standard for the distribution of income or invasion of principal in the appointed trust. Allows the trustee to appoint the invaded trust to certain types of appointed trusts.

In (j), allows, subject to a restriction, an unlimited authorized trustee to reduce a beneficiary's current right to a mandatory distribution.

In (k), prohibits a limited authorized trustee from exercising a power of appointment under this section to reduce a beneficiary's current right to a mandatory distribution of income or principal. Makes an exception to this rule.

Bill section 12. Amends AS 13.36.158(b) (additional provisions related to exercise of power). Permits an appointed trust to have a duration longer than the invaded trust. Term may be measured by the life of a current beneficiary.

Bill section 13. Amends AS 13.36.158(c) (additional provisions related to exercise of power). States that an unlimited authorized trustee may exercise a power of appointment under certain subsections of AS 13.36.157 if both an unlimited and limited authorized trustee have the power to pay the trust principal of the same trust to or for a current beneficiary.

Bill section 14. Amends AS 13.36.158(e) (additional provisions related to exercise of power). Removes a limitation related to the settlor's intent on exercising a power under AS 13.36.157 - 13.36.159. States that an authorized trustee exercising a power under AS 13.36.157 - 13.36.159 has a fiduciary duty to act in the best interests of one or more proper objects of the exercise of the power and to act as a prudent person.

Bill section 15. Amends AS 13.36.158(f) (additional provisions related to exercise of power). Allows the terms of a governing trust instrument to expand or restrict the right of a trustee to appoint the property of a trust. Provides a rule of construction for AS 13.36.157 - 13.36.159 with regard to the right of a trustee to appoint property further in trust.

Bill section 16. Amends AS 13.36.158(i) (additional provisions related to exercise of power). Amends a prohibition on the exercise by an authorized trustee of a power authorized by AS 13.36.157.

Bill section 17. Amends AS 13.36.158(n) (additional provisions related to exercise of power). States the trusts to which AS 13.36.157 - 13.36.159 apply based on connections

to this state. Clarifies that a condition in AS 13.36.158(n)(2) requires selection of this state and other formalities by authorized trustees of the invaded trust.

Bill section 18. Amends AS 13.36.158(o) (additional provisions related to exercise of power). Changes the definition of the "Internal Revenue Code" to refer to the code as it exists on the effective date of this Act.

Bill section 19. Amends AS 13.36.159(b) (Implementation of powers of appointment). Requires that a written instrument evidence the exercise of a power to appoint to an appointed trust under AS 13.36.157, and sets formal requirements for the instrument. Sets a time when the exercise becomes effective but allows persons entitled to notice of the exercise to permit an earlier effective date.

Bill section 20. Amends AS 13.36.159(d) (Implementation of powers of appointment). Lists the documents that must be delivered to certain listed parties when exercising a power to invade a trust.

Bill section 21. Amends AS 13.36.159(e) (Implementation of powers of appointment). Adds language permitting a trust instrument to authorize a trustee to exercise a power under AS 13.36.157 without giving notice to any beneficiaries.

Bill section 22. Adds a new subsection to AS 13.36.159 (Implementation of powers of appointment). Allows an authorized trustee to exercise the power authorized in AS 13.36.157 without other consent. Allows the authorized trustee to seek court approval. Indicates who gets notice when seeking court approval.

Bill section 23. Add a new sec. 13.36.173 (Dividing a trust into separate portions for income tax purposes). Allows a trustee, under certain circumstances to divide a trust created by more than one settlor into separate trusts.

Bill section 24. Adds a new sec. 13.36.210 (Standard). Defines what "standard" refers to in AS 13.36.157 - 13.36.159 and how a particular standard may be written.

Bill section 25. Amends AS 13.36.215(b)(1) ("appointed trust" definition). Adjusts the definition of "appointed trust" for AS 13.36.105 - 13.36.220.

Bill section 26. Amends AS 13.36.215(b)(2) ("authorized trustee" definition). Adjusts the definition of "authorized trustee" for AS 13.36.105 - 13.36.220.

Bill section 27. Amends AS 13.36.215(b)(5) ("invaded trust" definition). Adjusts the definition of "invaded trust" for AS 13.36.105 - 13.36.220.

Bill section 28. Adds new paragraphs to AS 13.36.215(b) (Definitions). Adds a definition of "beneficiary," "limited authorized trustee," and "unlimited authorized trustee."

Bill section 29. Adds a new sec. 13.36.380 (Distribution of principal).

In (a), authorizes a court to authorize a trustee to invade the principal of a trust if the court makes certain findings.

In (b), limits the application of this section to an irrevocable trust for which the trust instrument provides for certain distributions.

Bill section 30. Repeals and reenacts AS 34.27.051 (Statutory rule against perpetuities).

In (a), indicates that a second power, as defined in the subsection, created by a first power may be validly exercised to postpone the vesting of property without regard to the creation of the first power.

In (b), states that if a first power is exercised to create a second power, as defined in the subsection, the second power is not valid unless all property interests vest not later than 1,000 years after the creation of the first power.

In (c), Defines "first power" for the section.

Bill section 31. Amends AS 34.27.053 (Savings provision). Changes references to conform to changes in AS 34.27.051.

Bill section 32. Amends AS 34.27.070(a) (application of statutes). Except as provided by AS 34.27.070(b), states that AS 34.27.051 - 34.27.100, as those sections existed before April 2, 1997, apply to nonvested property interests and powers of appointment created on or after January 1, 1996 and before April 2, 1997.

Bill section 33. Amends AS 34.27.070(c) (application of statutes). Establishes that AS 34.27.051, as amended by this Act, applies to a trust instrument or conveyance executed on or after April 2, 1997, if two conditions are met.

Bill section 34. Repeals the listed statutes.

Bill section 35. Provides an applicability section for provisions of the bill. States that one section applies to powers of appointment that exist on or after the effective date of the Act. States that certain provisions of the bill apply to a trust that exists on or after the effective date of this Act.

Bill section 36. Makes certain statutes retroactive.

Bill section 37. Gives the bill an immediate effective date.

If I may be of further assistance, please advise.