



April 21, 2022

**Sent by email only to the Members of the House Labor & Commerce Committee**

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Re: HB 405 & 406

Dear Member of the House Labor & Commerce Committee,

We write to respectively oppose HB 405 and 406. The goal of this legislation—to prevent Russian oligarchs and other bad actors from using trusts in Alaska to hide their wealth—is noble. However, the problem the legislation intends to fix needs to be done at the federal, not the state level. To enact this legislation in Alaska would take the State from the forefront of the trusts and estates industry, a position it has spent the last 25 years cultivating, and instead relegate Alaska to a last tier jurisdiction.

Our firm works with a broad spectrum of Alaskans, many of which, consistent with the ethos of this state, strongly value their privacy. It is often difficult enough to help clients overcome the fear of planning for their demise and effectively put pen to paper on their estate planning goals, whether it be for family, friends, or charity. Advising these very clients that their trust is somehow ineffective until it passes a state registration requirement that would require the expansion of already strained state agencies with some indeterminant fee system/tax would have a chilling effect

on meaningful planning for Alaskans. Due to already strained state resources, and the associated delays in the issuance of opening probate documents from the Court system, we have many clients that engage in probate avoidance via trust-based planning to ensure the timely administration of their property and their affairs. These very clients would be caught up in this legislation, the registration requirement, and associated fee/tax regime.

Unlike many jurisdictions, Alaska already has a Registration of Trust requirement where certain information about trusts is filed with the Alaska Superior Court. This information includes the name of the trust, who created the trust, the identity of the trustee, and the address of the trustee. This provides a level of transparency with regard to who is creating trusts based in this state, while balancing the legitimate privacy concerns of Alaskans.

The legislation as presented raises a number of legal issues under state law. A serious debate needs to be had on the implications to hundreds of years of established common law governing trusts. Such debate has not occurred, and this legislation has been proposed in a rushed manner without the input of the trust and estate industry or the local bar. Never before has a state made a trust ineffective until it meets state regulatory muster. Questions as to how this impacts Alaska residents, the privileges and immunities clause, and the equal protection clause need to be given serious consideration and study. Such study should first be done by the Uniform Law Commission.

While there is much speculation as to what a Russian oligarch could do under Alaska law, the legislature has not demonstrated that such a problem meaningfully exists in Alaska. A regime of U.S. Sanctions and federal income tax reporting requirements for non-citizen income tax withholding already exists. However, HB 405 & 406 will have a real impact on our fellow Alaskans. In light of the lack of concrete evidence of what an oligarch could do, the legislature has failed to demonstrate a compelling state interest for legislation that impugns the personal right to privacy of Alaskans that create trust-based estate plans, as well as the long-standing common-law principal governing the freedom of disposition of one's property.

We cannot support legislation that would have such an invasive impact on the personal affairs of hard-working Alaskans that engage in legitimate estate planning when similar laws are not simultaneously enacted by the 49 other states. To truly achieve the purported goal of this legislation, this important policy debate needs to be had in the halls of Congress, not in Juneau.

Very truly yours,  
Foley & Pearson, P.C.



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