

SENATE BILL NO. 131

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Introduced: 3/15/95

Referred: L&C, FIN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to investments by fiduciaries."

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

3 * **Section 1.** AS 06.35.010 is repealed and reenacted to read:

4 Sec. 06.35.010. COMMON TRUST FUNDS. (a) A bank or trust company
5 that is qualified to act as a fiduciary in this state, or in another state if affiliated with
6 a bank or trust company that is qualified to act as a fiduciary in this state, may
7 establish common trust funds for the purpose of furnishing investments to

- 8 (1) itself as fiduciary;
- 9 (2) itself and others as cofiduciaries; or
- 10 (3) its affiliated bank or trust company as fiduciary.

11 (b) A bank or trust company may invest, as fiduciary or cofiduciary, in the
12 common trust funds it establishes under (a) of this section, the funds that the bank or
13 trust company lawfully holds for investment, if the investment is not prohibited by the
14 instrument, court judgment, court decree, or court order creating the fiduciary
15 relationship, and if, in the case of cofiduciaries, the bank or trust company procures

1 the consent of its cofiduciary or cofiduciaries to the investment.

2 (c) Notwithstanding (a) and (b) of this section, a bank or trust company that
3 is qualified to act as a fiduciary in the state where the bank or trust company is
4 organized or otherwise formed and that is not a member of the Federal Reserve System
5 shall in the establishment of or investment in a common trust fund under (a) - (b) of
6 this section comply with the law regulating financial institutions in the state where the
7 bank or trust company is organized or otherwise formed.

8 (d) The Department of Commerce and Economic Development may adopt
9 regulations under AS 44.62 (Administrative Procedure Act) to implement this section.

10 (e) In this section,

11 (1) "affiliated" means two or more banks or trust companies in which

12 (A) 25 percent or more of the voting shares, excluding shares
13 owned by the United States or by a corporation or other entity wholly owned
14 by the United States, is directly or indirectly owned or controlled by a holding
15 company; or

16 (B) the election of a majority of the directors is controlled in
17 any manner by a holding company;

18 (2) "bank" means an organization that is authorized by the United
19 States Comptroller of the Currency, or by the director of banking or the equivalent
20 position in the state of organization, to accept deposits and to make commercial loans,
21 and whose deposits are insured by the Federal Deposit Insurance Corporation;

22 (3) "trust company" means a financial institution, corporation, or other
23 legal entity, authorized to exercise general trust powers, but does not include a natural
24 person.

25 * **Sec. 2.** AS 13.46.110(b) is amended to read:

26 (b) In dealing with custodial property, a custodian shall observe the standard
27 of care that would be observed by a prudent person dealing with property of another
28 and is not limited by any other statute, **except AS 13.90.010**, restricting investments
29 by fiduciaries. If a custodian has a special skill or expertise or is named custodian on
30 the basis of representations of a special skill or expertise, the custodian shall use that
31 skill or expertise. However, a custodian, in the custodian's discretion and without

1 liability to the minor or the minor's estate, may retain custodial property received from
2 a transferor.

3 * **Sec. 3.** AS 13.60.060(b) is amended to read:

4 (b) If the beneficiary is not incapacitated, a custodial trustee shall follow the
5 directions of the beneficiary in the management, control, investment, or retention of
6 the custodial trust property. In the absence of effective contrary direction by the
7 beneficiary while not incapacitated, the custodial trustee shall observe the standard of
8 care that would be observed by a prudent person dealing with property of another and
9 is not limited by another law, except AS 13.60.060(b), restricting investments by
10 fiduciaries. However, a custodial trustee, in the custodial trustee's discretion, may
11 retain custodial trust property received from the transferor. If a custodial trustee has
12 a special skill or expertise or is named custodial trustee on the basis of representation
13 of a special skill or expertise, the custodial trustee shall use that skill or expertise.

14 * **Sec. 4.** AS 13 is amended by adding a new chapter to read:

15 CHAPTER 90. MISCELLANEOUS PROVISIONS.

16 Sec. 13.90.010. INVESTMENTS BY FIDUCIARIES. (a) Notwithstanding
17 other provisions of law, except for AS 13.36.300 and the standards of judgment and
18 care established by law, and subject to any express provision or limitation contained
19 in a particular instrument creating the fiduciary relationship, fiduciaries are authorized
20 to acquire and hold securities of an open-end or closed-end management type
21 investment company or investment trust if the company or trust is registered under 15
22 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940), as that act exists now or
23 is amended in the future.

24 (b) Under (a) of this section, whenever an instrument creating a fiduciary
25 relationship directs, requires, authorizes, or permits investment in obligations of the
26 United States government, the fiduciary may invest in and hold the obligations either
27 directly or in the form of, or as another interest in, an investment company if the
28 portfolio of the company is limited to obligations of the United States government and
29 to repurchase agreements fully collateralized by the obligations, and, if a repurchase
30 agreement is involved, the investment company takes delivery of the collateral either
31 directly or through an authorized custodian.

1 (c) Under (a) of this section, if a bank or trust company is the fiduciary, the
2 bank or trust company may invest or reinvest in the securities of an investment
3 company even if the fiduciary or an affiliated bank or trust company provides services
4 to the investment company and the fiduciary or affiliate receives reasonable
5 compensation for the services. Upon request of the person, the fiduciary shall furnish
6 a copy of the prospectus relating to the securities acquired under this subsection to a
7 person to whom a regular periodic accounting is ordinarily rendered under an
8 instrument creating a fiduciary relationship.

9 (d) In this section,

10 (1) "affiliated" means two or more banks or trust companies in which

11 (A) 25 percent or more of the voting shares, excluding shares
12 owned by the United States or by a corporation or another entity wholly owned
13 by the United States, is directly or indirectly owned or controlled by a holding
14 company; or

15 (B) the election of a majority of the directors is controlled in
16 any manner by a holding company;

17 (2) "bank" means an organization that is authorized by the United
18 States Comptroller of the Currency, or by the director of banking or the equivalent
19 position in the state of its organization, to accept deposits and to make commercial
20 loans, and whose deposits are insured by the Federal Deposit Insurance Corporation;

21 (3) "fiduciary" includes guardians and conservators under AS 13.26,
22 persons performing the trustee activities described under AS 06.05.180 whether or not
23 the persons are covered by AS 06.05.180, and other persons acting in a fiduciary
24 capacity;

25 (4) "investment company" means an open-end or closed-end
26 management type investment company or investment trust registered under 15 U.S.C.
27 80a-1 - 80a-64 (Investment Company Act of 1940), as that act exists now or as
28 amended in the future;

29 (5) "services" includes acting as an investment advisor, custodian,
30 transfer agent, registrar, sponsor, distributor, or manager;

31 (6) "trust company" means a financial institution, corporation, or other

1 legal entity, authorized to exercise general trust powers, but does not include a natural
2 person.