

**SENATE BILL NO. 258**

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST

Introduced: 2/2/96

Referred: L&C, JUD

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the jurisdiction governing a trust, to challenges to trusts or  
2 property transfers in trust, to the validity of trust interests, and to transfers of  
3 certain trust interests."

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

5 \* **Section 1.** AS 13.36.035(a) is amended to read:

6 (a) The court has exclusive jurisdiction of proceedings initiated by interested  
7 parties concerning the internal affairs of trusts, including trusts covered by (c) of this  
8 section. Except as provided in (c) - (d) of this section, proceedings that [.  
9 PROCEEDINGS WHICH] may be maintained under this section are those concerning  
10 the administration and distribution of trusts, the declaration of rights and the  
11 determination of other matters involving trustees and beneficiaries of trusts. These  
12 include [, BUT ARE NOT LIMITED TO,] proceedings to

13 (1) appoint or remove a trustee;

14 (2) review trustees' fees and to review and settle interim or final

1 accounts;

2 (3) ascertain beneficiaries, determine any question arising in the  
3 administration or distribution of any trust including questions of construction of trust  
4 instruments, instruct trustees, and determine the existence or nonexistence of any  
5 immunity, power, privilege, duty or right; and

6 (4) release registration of a trust.

7 \* **Sec. 2.** AS 13.36.035 is amended by adding new subsections to read:

8 (c) A provision that the laws of this state govern the validity, construction, and  
9 administration of the trust and that the trust is subject to the jurisdiction of this state  
10 is valid, effective, and conclusive for the trust if

11 (1) some or all of the trust assets are deposited in this state or are being  
12 managed by a qualified person; or

13 (2) the trustee is a qualified person.

14 (d) The validity, construction, and administration of a trust with a state  
15 jurisdiction provision are determined by the laws of this state, including the

16 (1) capacity of the settlor;

17 (2) powers, obligations, liabilities, and rights of the trustees and the  
18 appointment and removal of the trustee; and

19 (3) existence and extent of powers, conferred or retained, including a  
20 trustee’s discretionary powers, the powers retained by a beneficiary of the trust, and  
21 the validity of the exercise of a power.

22 \* **Sec. 3.** AS 13.36.045(a) is amended to read:

23 (a) The court will not, over the objection of a party, entertain proceedings  
24 under AS 13.36.035 involving a trust registered or having its principal place of  
25 administration in another state, unless

26 (1) all appropriate parties could not be bound by litigation in the courts  
27 of the state where the trust is registered or has its principal place of administration;

28 [OR]

29 (2) the interests of justice otherwise would seriously be impaired; **or**

30 **(3) the trust contains a state jurisdiction provision; and**

31 **(A) some or all of the trust assets are deposited in this state**

1 or are being managed by a qualified person; or

2 (B) the trustee is a qualified person.

3 \* **Sec. 4.** AS 13.36 is amended by adding new sections to read:

4 Sec. 13.36.310. CHALLENGES TO TRUST. Except as provided in  
5 AS 34.40.110, a trust that is covered by AS 13.36.035(c) or that is otherwise governed  
6 by the laws of this state, or a property transfer in trust that is covered by  
7 AS 13.36.035(c) or that is otherwise governed by the laws of this state, is not void,  
8 voidable, liable to be set aside, defective in any fashion, or questionable as to the  
9 settlor's capacity, on the grounds that the trust or transfer avoids or defeats a right,  
10 claim, or interest, or contravenes a law or a judicial or administrative order or action  
11 that recognizes, protects, enforces, or gives effect to the right, claim, or interest. In  
12 this subsection, "right, claim, or interest" means a right, claim, or interest conferred by  
13 law on a person by reason of a personal or business relationship with the settlor or by  
14 way of a marital or similar right.

15 Sec. 13.36.390. DEFINITIONS. In AS 13.36,

16 (1) "qualified person" means

17 (A) an individual who, except for brief intervals, military  
18 service, attendance at an educational or training institution, or for absences for  
19 good cause shown, resides in this state, whose true and permanent home is in  
20 this state, who does not have a present intention of moving from this state, and  
21 who has the intention of returning to this state when away; or

22 (B) a trust company that is organized under AS 06.25 and that  
23 has its principal place of business in this state;

24 (2) "settlor" means a person who transfers property in trust; "settlor"  
25 includes a person who furnishes the property transferred to a trust even if the trust is  
26 created by another person;

27 (3) "state jurisdiction provision" means a provision that the laws of this  
28 state govern the validity, construction, and administration of a trust and that the trust  
29 is subject to the jurisdiction of this state.

30 \* **Sec. 5.** AS 34.27.050(a) is amended to read:

31 (a) A nonvested property interest is invalid unless

1 (1) when the interest is created, it is certain to vest or terminate no later  
2 than 21 years after the death of an individual then alive; [OR]

3 (2) the interest either vests or terminates within 90 years after its  
4 creation; or

5 (3) the interest is in a trust and all or part of the income or  
6 principal of the trust may be distributed, in the discretion of the trustee, to a  
7 person who is living when the trust is created.

8 \* **Sec. 6.** AS 34.27.060 is amended to read:

9 Sec. 34.27.060. REFORMATION. Upon the petition of an interested person,  
10 a court shall reform a disposition in the manner that most closely approximates the  
11 transferor's manifested plan of distribution and is within the 90 years allowed by  
12 AS 34.27.050(a)(2), (b)(2), or (c)(2) if

13 (1) a nonvested property interest or a power of appointment becomes  
14 invalid under AS 34.27.050;

15 (2) a class gift is not but might become invalid under AS 34.27.050 and  
16 the time has arrived when the share of any class member is to take effect in possession  
17 or enjoyment; or

18 (3) a nonvested property interest that is not validated by  
19 AS 34.27.050(a)(1) or (3) can vest but not within 90 years after its creation.

20 \* **Sec. 7.** AS 34.40.010 is amended to read:

21 Sec. 34.40.010. INVALIDITY GENERALLY. Except as provided in  
22 AS 34.40.110, a [A] conveyance or assignment, in writing or otherwise, of an estate  
23 or interest in land, or in goods, or things in action, or of rents or profits issuing from  
24 them or a charge upon land, goods, or things in action, or upon the rents or profits  
25 from them, made with the intent to hinder, delay, or defraud creditors or other persons  
26 of their lawful suits, damages, forfeitures, debts, or demands, or a bond or other  
27 evidence of debt given, action commenced, decree or judgment suffered, with the like  
28 intent, as against the persons so hindered, delayed, or defrauded is void.

29 \* **Sec. 8.** AS 34.40.110 is repealed and reenacted to read:

30 Sec. 34.40.110. RESTRICTING TRANSFERS OF TRUST INTERESTS. (a)  
31 A person who in writing transfers property in trust may provide that the interest of a

1 beneficiary of the trust may not be either voluntarily or involuntarily transferred before  
2 payment or delivery of the interest to the beneficiary by the trustee. In this subsection,

3 (1) "property" includes real property, personal property, and interests  
4 in real or personal property;

5 (2) "transfer" means any form of transfer, including deed, conveyance,  
6 or assignment.

7 (b) If a trust contains a transfer restriction allowed under (a) of this section,  
8 the transfer restriction prevents a creditor existing when the trust is created, a person  
9 who subsequently becomes a creditor, or another person from satisfying a claim out  
10 of the beneficiary's interest in the trust, unless the

11 (1) transfer was intended in whole or in part to hinder, delay, or  
12 defraud creditors or other persons under AS 34.40.010;

13 (2) trust provides that the settlor may revoke or terminate all or part  
14 of the trust without the consent of a person who has a substantial beneficial interest  
15 in the trust and the interest would be adversely affected by the exercise of the power  
16 held by the settlor to revoke or terminate all or part of the trust; in this paragraph,  
17 "revoke or terminate" does not include a power to veto a distribution from the trust or  
18 a similar power; or

19 (3) trust requires that all or a part of the trust's income or principal, or  
20 both, must be distributed to the settlor.

21 (c) The satisfaction of a claim under (b)(1) - (3) of this section is limited to  
22 that part of the trust to which (b)(1) - (3) of this section applies.

23 (d) In this section, "settlor" means a person who transfers real property,  
24 personal property, or an interest in real or personal property, in trust.

25 \* **Sec. 9.** This Act does not apply to a trust unless the trust is created on or after the  
26 effective date of this Act.