

**HOUSE BILL NO. 196**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES RYAN, Therriault

Introduced: 3/14/97

Referred: Judiciary, Finance

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to wills, intestacy, nonprobate transfers, and trusts; and  
2 amending Rule 24, Alaska Rules of Civil Procedure."

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

4 \* **Section 1.** AS 13.06 is amended by adding a new section to read:

5 **Sec. 13.06.068. Choice of law; validity.** (a) Subject to the other provisions  
6 of this section, the formal validity, intrinsic validity, effect, interpretation, revocation,  
7 or alteration of a testamentary disposition of real property and the manner in which the  
8 property descends at death when not disposed of by will are determined by the law of  
9 the jurisdiction in which the land is situated.

10 (b) Subject to the other provisions of this section, the intrinsic validity, effect,  
11 revocation, or alteration of a testamentary disposition of personal property and the  
12 manner in which the property devolves at death when not disposed of by will are  
13 determined by the law of the jurisdiction in which the decedent was domiciled at  
14 death.

1 (c) A will disposing of personal property, wherever situated, or real property  
2 situated in this state made within or outside this state by a domiciliary or  
3 nondomiciliary of the state where the property is situated, is formally valid and  
4 admissible to probate in this state if the will is in writing and signed by the testator  
5 and otherwise executed and attested to under the local law of

6 (1) this state;

7 (2) the jurisdiction where the will was executed at the time of  
8 execution; or

9 (3) the jurisdiction where the testator was domiciled, either at the time  
10 of execution or at death.

11 (d) A testamentary disposition of personal property intrinsically valid under  
12 the law of the jurisdiction where the testator was domiciled when the will was  
13 executed is not affected by a subsequent change in the domicile of the testator to a  
14 jurisdiction under the law of which the disposition is intrinsically invalid.

15 (e) The interpretation of a testamentary disposition of personal property shall  
16 be made under the local law of the jurisdiction where the testator was domiciled when  
17 the will was executed.

18 (f) Whether a testamentary disposition of personal property is effectively  
19 revoked or altered by a subsequent testamentary instrument or by a physical act to or  
20 on the will by which the testamentary disposition was made is determined by the local  
21 law of the jurisdiction where the testator was domiciled when the subsequent  
22 instrument was executed or the physical act performed.

23 (g) Subject to (d) - (f) of this section, the intrinsic validity, effect, revocation  
24 or alteration of a testamentary disposition by which a power of appointment over  
25 personal property is exercised and the question of whether the power has been  
26 exercised at all are determined by

27 (1) in the case of a presently exercisable general power of appointment,  
28 the local law of the jurisdiction where the donee of the power was domiciled at the  
29 time of death;

30 (2) in the case of a general power of appointment exercisable by will  
31 alone or a special power of appointment, the local law of the jurisdiction

1 (A) that the donor of the power expressly selected in the  
2 governing instrument to govern the disposition; or

3 (B) where the donor of the power was domiciled at the time of  
4 death if the donor did not expressly select in the governing instrument a  
5 jurisdiction to govern the disposition.

6 (h) The formal validity of a will by which a power of appointment over  
7 personal property is exercised is determined under (b) of this section on the basis that  
8 the testator referred to in (b) of this section is the donee of the power.

9 (i) When a testator, who is not domiciled in this state at the time of death,  
10 provides in the testator's will that the testator elects to have the disposition of the  
11 testator's property situated in this state governed by the local law of this state, the  
12 intrinsic validity, including the testator's general capacity, effect, interpretation,  
13 revocation, or alteration of the provision, is determined by the local law of this state.  
14 The formal validity of the will is determined under (b) of this section.

15 (j) Notwithstanding the definition of "real property", as set out in (l) of this  
16 section, whether an estate in, leasehold of, fixture, mortgage, or other lien on land is  
17 real property governed by (a) of this section or personal property governed by (b) of  
18 this section is determined by the local law of the jurisdiction where the land is  
19 situated.

20 (k) Notwithstanding the other provisions of AS 13.06 - AS 13.36, the  
21 provisions of this section govern in AS 13.06 - AS 13.36.

22 (l) In this section,

23 (1) "effect" means the legal consequences attributed under the local law  
24 of a jurisdiction to a valid testamentary disposition;

25 (2) "formal validity" means the formalities established by the local law  
26 of a jurisdiction for the execution and attestation of a will;

27 (3) "interpretation" means the procedure of applying the law of a  
28 jurisdiction to determine the meaning of language employed by the testator if the  
29 testator's intention is not otherwise ascertainable;

30 (4) "intrinsic validity" means the rules of substantive local law by  
31 which a jurisdiction determines the legality of a testamentary disposition, including the

1 general capacity of the testator;

2 (5) "local law" means the law that the courts of a jurisdiction apply  
3 when adjudicating legal questions that are not related to another jurisdiction;

4 (6) "personal property" means property other than real property, and  
5 includes tangible and intangible property;

6 (7) "real property" means land or an estate in land, and includes  
7 leaseholds, fixtures, and mortgages or other liens on land;

8 (8) "testamentary disposition" means disposition under a will.

9 \* **Sec. 2.** AS 13.12.401 is amended to read:

10 **Sec. 13.12.401. Applicable law.** Except as provided in AS 13.06.068,  
11 AS 12.13.401 - 12.13.405 apply to the estate of a decedent who dies domiciled in this  
12 state, and rights [. RIGHTS] to homestead allowance, exempt property, and family  
13 allowance for a decedent who dies not domiciled in this state are governed by the law  
14 of the decedent's domicile at death.

15 \* **Sec. 3.** AS 13.12.502 is amended to read:

16 **Sec. 13.12.502. Execution; witnessed wills; holographic wills.** (a) Except  
17 as provided in (b) of this section, [AND] in AS 13.06.068, and AS 13.12.513  
18 [AS 13.12.506 AND 13.12.513], a will must be

19 (1) in writing;

20 (2) signed by the testator or in the testator's name by another individual  
21 in the testator's conscious presence and by the testator's direction; and

22 (3) signed by at least two individuals, each of whom signs within a  
23 reasonable time after the witness witnesses either the signing of the will as described  
24 in (2) of this subsection or the testator's acknowledgment of that signature or the will.

25 (b) Except as provided in AS 13.06.068, a [A] will that does not comply with  
26 (a) of this section is valid as a holographic will, whether or not witnessed, if the  
27 signature and material portions of the document are in the testator's handwriting.

28 \* **Sec. 4.** AS 13.12.601 is amended to read:

29 **Sec. 13.12.601. Scope.** Except as provided in AS 13.06.068, in [IN] the  
30 absence of a finding of a contrary intention, the rules of construction in AS 13.12.601  
31 - 13.12.609 control the construction of a will.

1 \* **Sec. 5.** AS 13.12.703 is amended by adding a new subsection to read:

2 (b) The provisions of (a) of this section are subject to AS 13.06.068.

3 \* **Sec. 6.** AS 13.12.912(a) is amended to read:

4 (a) **Except as provided by AS 13.06.068, a** [A] will is valid as regards form,  
5 irrespective of the place where the will is made, of the location of the assets, and of  
6 the nationality, domicile, or residence of the testator, if the will is made in the form  
7 of an international will complying with the requirements of AS 13.12.912 - 13.12.921.

8 \* **Sec. 7.** AS 13.16.090(c) is amended to read:

9 (c) A will that appears to have the required signatures and that contains an  
10 attestation clause showing that requirements of execution under **AS 13.12.502**  
11 [AS 13.12.502 OR 13.12.506] have been met shall be probated without further proof.  
12 In other cases, the registrar may assume execution if the will appears to have been  
13 properly executed, or the registrar may accept a sworn statement or affidavit of a  
14 person having knowledge of the circumstances of execution, whether or not the person  
15 was a witness to the will.

16 \* **Sec. 8.** AS 13.16.175 is amended to read:

17 **Sec. 13.16.175. Formal testacy proceedings; will construction; effect of**  
18 **final order in another jurisdiction. Subject to AS 13.06.068, a** [A] final order of  
19 a court of another state determining testacy, the validity, or construction of a will [,]  
20 made in a proceeding involving notice to and an opportunity for contest by all  
21 interested persons must be accepted as determinative by the courts of this state if it  
22 includes, or is based upon, a finding that the decedent was domiciled at death in the  
23 state where the order was made.

24 \* **Sec. 9.** AS 13.36.075 is amended to read:

25 **Sec. 13.36.075. Trustee's standard of care and performance.** Except as  
26 otherwise provided by the terms of the trust **or by AS 13.36.105 - 13.36.295**, the  
27 trustee shall observe the standards in dealing with the trust assets that would be  
28 observed by a prudent **person** [MAN] dealing with the property of another, and, if the  
29 trustee has special skills or is named trustee on the basis of representations of special  
30 skills or expertise, the trustee is under a duty to use those skills.

31 \* **Sec. 10.** AS 13.36.095(b) is amended to read:

1 (b) **Subject to AS 13.36.105 - 13.36.295, a** [A] trustee is personally liable for  
 2 obligations arising from ownership or control of property of the trust estate or for torts  
 3 committed in the course of administration of the trust estate only if personally at fault.

4 \* **Sec. 11.** AS 13.36 is amended by adding new sections to article 3 to read:

5 **Sec. 13.36.105. Powers attached to the office of trustee.** Unless otherwise  
 6 provided by the trust instrument, an amendment of the trust instrument, or a court  
 7 order, the powers of a trustee are attached to the office and are not personal.

8 **Sec. 13.36.110. Liability of trustee not joining in exercise of power.** A  
 9 trustee who has not joined another trustee in exercising a power is not liable to the  
 10 beneficiaries or to others for the consequences of the exercise of the power. A  
 11 dissenting trustee is not liable to the beneficiaries or to others for the consequences of  
 12 an act in which the dissenting trustee joins at the direction of the majority trustees if  
 13 the dissenting trustee expresses the dissenting trustee's dissent in writing to a co-trustee  
 14 at or before the time of joinder. A trustee who is not authorized to exercise a power  
 15 is not liable to the beneficiaries or to others for

16 (1) the exercise by a co-trustee of the power; or

17 (2) the failure to exercise the power.

18 **Sec. 13.36.120. Voting of corporate stock owned by trustee.** A trustee of  
 19 a trust owning corporate stock is not prohibited by the trustee relationship from voting  
 20 the stock by proxy but is liable for a loss resulting to the beneficiaries from a failure  
 21 to use reasonable care in deciding how to vote the stock and in voting the stock.

22 **Sec. 13.36.125. Creation of trust bank account to pay special debts.**  
 23 Whenever a bank account is, by entries made on the books of the depositor and the  
 24 bank at the time of the deposit, created exclusively for the purpose of paying  
 25 dividends, interest, interest coupons, salaries, wages, or pensions or other employee  
 26 benefits, and the depositor at the time of opening the account does not expressly  
 27 declare otherwise, the depositor is considered a trustee of the account for the creditors  
 28 to be paid from the account, subject to any power of revocation that the depositor may  
 29 have reserved by agreement with the bank.

30 **Sec. 13.36.130. Failure of beneficiary to present claim for payment.** If a  
 31 beneficiary for whom a trust bank account is created under AS 13.36.125 does not

1 present the beneficiary's claim to the bank for payment within one year after the claim  
2 is due, the depositor who created the trust may revoke the trust as to the beneficiary.

3 **Sec. 13.36.135. Holding stock in name of nominee.** (a) A trustee of a trust  
4 owning stocks, bonds, notes, debentures, or other written obligations of a public or  
5 private corporation may hold the obligations in the name of a nominee, without  
6 mention of the trust in the records of the corporation or in the stock certificate or stock  
7 registration book of the corporation, if

8 (1) the trust records and all reports or accounts rendered by the trustee  
9 clearly show the ownership of the stocks, bonds, notes, debentures, or other written  
10 obligations of the public or private corporation by the trustee and the facts regarding  
11 the holding by the trustee; and

12 (2) the nominee deposits with the trustee a signed statement showing  
13 the trust ownership, endorses the stock certificate or other title instruments for the  
14 obligations in blank, and does not have possession of or access to the stock certificate  
15 or other title instruments for the obligations except under the immediate supervision  
16 of the trustee.

17 (b) A trustee holding obligations under (a) of this section is personally liable  
18 for a loss to the trust resulting from an act of the nominee in connection with the  
19 stocks, bonds, notes, debentures, or other written obligations held under (a) of this  
20 section.

21 **Sec. 13.36.140. Loan of trust funds.** Except as provided in AS 13.36.145,  
22 a corporate trustee may not lend trust funds to itself or an affiliate, or to a director, an  
23 officer, or an employee of itself or an affiliate, and a noncorporate trustee may not  
24 lend trust funds to itself or to a relative, an employer, an employee, or a partner or  
25 other business associate.

26 **Sec. 13.36.145. Corporate trustee depositing trust funds with itself.** (a)  
27 A corporate trustee that is subject to regulation and supervision by state or federal  
28 authorities may deposit with itself trust funds that are being held out of necessity  
29 pending investment, distribution, or payment of debts if the corporate trustee

30 (1) pays into the trust for the deposit the interest the corporate trustee  
31 is required by state or federal law to pay on uninvested trust funds or, if there is not

1 a state or federal law requiring the payment of interest, at the same rate of interest the  
2 corporate trustee pays on similar nontrust deposits; and

3 (2) maintains in its trust department as security for the deposit a  
4 separate fund consisting of securities that are legal for trust investments and that are  
5 at all times equal in total market value to the amount of the deposit, except that the  
6 security is not required to the extent that the deposit is insured or given a preference  
7 by state or federal law.

8 (b) The separate fund of securities required by (a)(2) of this section shall be  
9 marked as a separate fund for (a)(2) of this section. Withdrawals from or additions  
10 to the separate fund may be made from time to time, as long as the required value is  
11 maintained. The income of the securities in the separate fund belongs to the corporate  
12 trustee. In the statements of its financial condition published or delivered to the  
13 division of banking, securities, and corporations in the Department of Commerce and  
14 Economic Development, the corporate trustee shall show as separate items the amount  
15 of trust funds that it has deposited with itself and the amount of securities that it holds  
16 as security for the payment of the deposits.

17 **Sec. 13.36.150. Trustee buying from or selling to itself.** (a) A trustee,  
18 unless expressly authorized by the trust instrument, may not directly or indirectly lease,  
19 buy, or sell property for the trust from or to

20 (1) itself or an affiliate;

21 (2) a director, an officer, or an employee of the trustee or an affiliate;

22 or

23 (3) a relative, an employer, or a partner or other business associate.

24 (b) Notwithstanding (a) of this section or another law to the contrary, a trustee  
25 may lease, buy, or sell property, including a lease, purchase, or sale in the  
26 establishment of a trust service office, from or to the trust the trustee represents as a  
27 trustee if specifically authorized to make the lease, purchase, or sale in a decedent's  
28 will or in the instrument creating the trustee relationship.

29 **Sec. 13.36.155. Permitted sales between trusts held by same corporate**  
30 **trustee.** If the transaction is fair to both trusts and if the transaction is not prohibited  
31 by the instruments creating the trustee relationship, a corporate trustee may sell to

1 itself as trustee of a trust the following held by the corporate trustee as trustee for  
2 another trust:

3 (1) stocks, bonds, and other securities listed on a securities exchange  
4 supervised by the United States Securities and Exchange Commission; and

5 (2) obligations of the United States treasury and obligations of United  
6 States government agencies.

7 **Sec. 13.36.160. Corporate trustee buying its own stock.** A corporate trustee  
8 may not purchase for a trust shares of its own stock, or its bonds, or other securities,  
9 or the stock, bonds, or other securities of an affiliate.

10 **Sec. 13.36.165. Withdrawals from mingled trust funds.** If a person who is  
11 a trustee of two or more trusts mingles the funds of two or more trusts in the same  
12 aggregate of cash or in the same bank or brokerage account or other investment, and  
13 if a withdrawal is made from the cash aggregate, account, or investment by the trustee  
14 for the trustee's own benefit, for the benefit of a third person who is not a beneficiary  
15 or creditor of one or more of the trusts, or for an unknown purpose, the withdrawal  
16 must be charged first to the amount of the personal cash, credit, or other property, if  
17 any, of the trustee in the mingled fund, and, after the exhaustion of the trustee's cash,  
18 credit, or other property, then to the several trusts in proportion to their several  
19 interests in the cash, credit, or other property in the cash aggregate, account, or  
20 investment at the time of the withdrawal.

21 **Sec. 13.36.170. Unenforceable oral trust created by deed.** (a) When an  
22 interest in real property is conveyed by deed to a person in a trust that is unenforceable  
23 under AS 09.25.010 - 09.25.020 and the intended trustee or the trustee's successor in  
24 interest holds title but refuses to carry out the trust because of AS 09.25.010 -  
25 09.25.020, the intended trustee or the trustee's successor in interest, except to the  
26 extent that the successor in interest is a bona fide purchaser of a legal interest in the  
27 real property, shall convey the interest in real property to the settlor or the settlor's  
28 successor in interest. A court having jurisdiction may prescribe the conditions for  
29 conveying the interest to the settlor or the settlor's successor in interest.

30 (b) If the intended trustee of an unenforceable trust under (a) of this section  
31 transfers part or all of the trustee's interest and the interest is transferred to a bona fide

1 purchaser, the intended trustee is liable to the settlor or the settlor's successor in  
2 interest for the value, at the time of the transfer, of the interest transferred, less any  
3 offsets that a court determines to be equitable.

4 **Sec. 13.36.175. Action on contract against trustee in representative**  
5 **capacity.** (a) When a trustee makes a contract that is within the trustee's powers as  
6 trustee or when a predecessor trustee has made a contract within the predecessor  
7 trustee's powers as trustee and a cause of action arises on the contract, the party in  
8 whose favor the cause of action has accrued may collect the judgment by execution  
9 on the trust property.

10 (b) In an action under this section, the plaintiff is not required to prove that  
11 the trustee could have been reimbursed from the trust fund if the trustee had paid the  
12 plaintiff's claim.

13 (c) A beneficiary or, in the case of a charitable trust, the attorney general and  
14 a corporation that is a beneficiary or agent in the performance of the charitable trust,  
15 may intervene in an action under this section and contest the right of the plaintiff to  
16 recover.

17 (d) A judgment may not be rendered in favor of the plaintiff in an action under  
18 this section unless the plaintiff proves that, within 30 days after the beginning of the  
19 action or within another period set by the court and more than 30 days before  
20 obtaining the judgment, the plaintiff has notified each of the beneficiaries who is  
21 known to the trustee and who then has a present interest in the existence and nature  
22 of the action, or, in the case of a charitable trust, the attorney general of this state and  
23 a corporation that is a beneficiary or agent in the performance of the charitable trust.  
24 The notice shall be given by mailing copies of the notice with postage prepaid to the  
25 beneficiaries at their last known addresses. The trustee shall furnish the plaintiff with  
26 a list of names and addresses of the beneficiaries within 10 days after the plaintiff  
27 makes a written demand for the list. Notification of the persons on the list constitutes  
28 compliance with the duty placed on the plaintiff by this section.

29 (e) The plaintiff in an action under this section may also hold the trustee who  
30 made the contract personally liable on the contract if the contract does not exclude the  
31 trustee's personal liability. In a contract action under this section, the addition of the

1 word "trustee" or the words "as trustee" after the signature of a trustee to a contract  
 2 constitutes prima facie evidence of an intent to exclude the trustee from personal  
 3 liability, and the addition of the words "and not individually" following the word  
 4 "trusts" or the words "as trustee" after the signature of a trustee to a contract  
 5 constitutes irrebuttable evidence of an intent to exclude the trustee from personal  
 6 liability, and the trustee is not personally liable under the contract.

7 **Sec. 13.36.180. Exoneration or reimbursement for tort.** (a) A trustee who  
 8 has incurred personal liability for a tort committed in the administration of the trust  
 9 is entitled to exoneration for the liability from the trust property if the trustee has not  
 10 discharged the claim, or to reimbursement for the liability out of trust funds if the  
 11 trustee has paid the claim, if

12 (1) the tort was a common incident of the kind of business activity in  
 13 which the trustee was properly engaged for the trust; or

14 (2) although the tort was not a common incident under (1) of this  
 15 subsection, the trustee or an officer or employee of the trustee was not guilty of  
 16 personal fault in incurring the liability.

17 (b) If a trustee commits a tort that increases the value of the trust property, the  
 18 trustee is entitled to exoneration or reimbursement with respect to the tort to the extent  
 19 of the increase in value, even though the trustee would not otherwise be entitled to  
 20 exoneration or reimbursement.

21 (c) Nothing in this section shall be construed to change the existing law with  
 22 regard to the liability of trustees of charitable trusts for torts of the trustees or their  
 23 employees.

24 **Sec. 13.36.185. Tort liability of trust.** (a) If a trustee or a predecessor of the  
 25 trustee incurs personal liability for a tort committed in the course of the trustee's  
 26 administration, the trustee in the trustee's representative capacity may be sued and  
 27 collection made from the trust property if the court determines in the tort action that

28 (1) the tort was a common incident of the kind of business activity in  
 29 which the trustee or the trustee's predecessor was properly engaged for the trust;

30 (2) although the tort was not a common incident under (1) of this  
 31 subsection, the trustee or the trustee's predecessor, or an officer or employee of the

1 trustee or the trustee's predecessor, was not guilty of personal fault in incurring the  
2 liability; or

3 (3) although the tort does not fall under (1) or (2) of this subsection,  
4 the tort increased the value of the trust property.

5 (b) If the tort is within (a)(1) or (2) of this section, the full amount of proven  
6 damages may be collected from the trust property.

7 (c) If the tort is within (a)(3) of this section, collection may not be made from  
8 the trust property except to the extent of the increase in the value of the trust property.

9 (d) A beneficiary may intervene in an action under this section and contest the  
10 right of the plaintiff to recover.

11 (e) In an action against the trustee in the trustee's representative capacity under  
12 this section, the plaintiff is not required to prove that the trustee could have secured  
13 reimbursement from the trust fund if the trustee paid the plaintiff's claim.

14 (f) A judgment may not be rendered in favor of the plaintiff in an action under  
15 this section unless the trustee proves that within 30 days after the beginning of the  
16 action, or within another period set by the court and more than 30 days before  
17 obtaining the judgment, the trustee notifies each of the beneficiaries who is known to  
18 the trustee who then has a present interest in the existence and nature of the action.  
19 The notice shall be given by mailing copies of the notice with postage prepaid to the  
20 beneficiaries at their last known addresses. The trustee shall furnish the plaintiff with  
21 a list of names and address of the beneficiaries within 10 days after the plaintiff makes  
22 a written demand for the list. Notification of the persons on the list constitutes  
23 compliance with the duty placed on the plaintiff by this subsection.

24 (g) Nothing in this section may be construed to change the existing law with  
25 regard to the liability of trustees of charitable trusts for torts of the trustees or their  
26 employees.

27 **Sec. 13.36.190. Personal liability for tort committed by trustee.** A trustee  
28 may be held personally liable for a tort committed by the trustee, or by the trustee's  
29 agents or employees in the course of their agency or employment, subject to the rights  
30 of exoneration or reimbursement under AS 13.36.180.

31 **Sec. 13.36.195. Power of settlor of trust.** (a) The settlor of a trust affected

1 by AS 13.36.105 - 13.36.295 may, by provision in the instrument creating the trust if  
 2 the trust is created by a writing, by oral statement to the trustee at the time of the  
 3 creation of the trust if the trust is created orally, or by an amendment of the trust if the  
 4 settlor reserved the power to amend the trust,

5 (1) relieve the trustee from any or all of the duties, restrictions, and  
 6 liabilities that would otherwise be imposed on the trustee by AS 13.36.105 - 13.36.295;

7 (2) alter or deny to the trustee any or all of the privileges and powers  
 8 conferred on the trustee by AS 13.36.105 - 13.36.295; or

9 (3) add duties, restrictions, liabilities, privileges, or powers, to those  
 10 imposed or granted by AS 13.36.105 - 13.36.295.

11 (b) Notwithstanding (a) of this section, an act of the settlor may not relieve a  
 12 trustee from the duties, restrictions, and liabilities imposed on the trustee by  
 13 AS 13.36.140, 13.36.145, or 13.36.150.

14 **Sec. 13.36.200. Power of beneficiary of trust.** A beneficiary of a trust  
 15 affected by AS 13.36.105 - 13.36.295 may, if the beneficiary has full legal capacity  
 16 and acts on full information, by written instrument delivered to the trustee, relieve the  
 17 trustee, as regards the beneficiary, from any or all of the duties, restrictions, and  
 18 liabilities that would otherwise be imposed on the trustee by AS 13.36.105 - 13.36.295,  
 19 except for the duties, restrictions, and liabilities imposed by AS 13.36.140 -  
 20 13.36.150. The beneficiary may release the trustee from liability to the beneficiary for  
 21 past violations of AS 13.36.105 - 13.36.295.

22 **Sec. 13.36.205. Relieving trustee of duties; power of the court.** A court of  
 23 competent jurisdiction may, for cause shown and on notice to the beneficiaries, relieve  
 24 a trustee from any or all of the duties and restrictions that would otherwise be placed  
 25 on the trustee by AS 13.36.105 - 13.36.295 or wholly or partly excuse a trustee who  
 26 has acted honestly and reasonably from liability for violations of AS 13.36.105 -  
 27 13.36.295.

28 **Sec. 13.36.210. Liability for violations.** If a trustee violates a provision of  
 29 AS 13.36.105 - 13.36.295, the trustee may be removed as trustee and denied  
 30 compensation in whole or in part, and a beneficiary, co-trustee, or successor trustee  
 31 may treat the violation as a breach of trust.

1           **Sec. 13.36.280. Uniformity of interpretation.** AS 13.36.105 - 13.36.295 shall  
2 be interpreted and construed so as to effectuate their general purpose to make uniform  
3 the law of the states that enact the sections.

4           **Sec. 13.36.290. Definitions.** In AS 13.36.105 - 13.36.295, unless the context  
5 or subject matter otherwise requires,

6                   (1) "affiliate" means a person directly or indirectly controlling or  
7 controlled by another person or a person under direct or indirect common control with  
8 another person, including a person with whom a trustee has an express or implied  
9 agreement regarding the purchase of trust investments by each from the other, directly  
10 or indirectly, except a broker or stock exchange;

11                   (2) "relative" means a spouse, ancestor, descendant, brother, or sister;

12                   (3) "trust" means an express trust only;

13                   (4) "trustee" includes a trustee that is a corporation or a natural person  
14 and a successor or substitute trustee.

15           **Sec. 13.36.295. Short Title.** AS 13.36.105 - 13.36.295 may be cited as the  
16 Uniform Trusts Act.

17 \* **Sec. 12.** AS 13.38.060 is repealed and reenacted to read:

18           **Sec. 13.38.060. Bond premium and discount; increase as income.** (a) A  
19 bond or other obligation for the payment of money is principal at its inventory value  
20 except as provided in (b) of this section. The trustee may not make a provision for  
21 amortization of a premium or for accumulation for discount.

22           (b) Unless otherwise provided in the trust instrument, an increase in the value  
23 of the following above inventory value is distributable as income:

24                   (1) a zero coupon bond;

25                   (2) an annuity contract before annuitization;

26                   (3) a life insurance contract before the death of the insured;

27                   (4) an interest in a common trust fund; in this paragraph, "common  
28 trust fund" has the meaning given in 26 U.S.C. 584 (Internal Revenue Code);

29                   (5) a limited liability company, limited liability partnership, or a limited  
30 partnership; and

31                   (6) another obligation for the payment of money if the money is

1 payable at a future time under a fixed, variable, or discretionary schedule of  
2 appreciation and if the payment exceeds the price at which the obligation was issued.

3 (c) The increase in value of the obligations described in (b) of this section is  
4 distributable to the beneficiary who was the income beneficiary at the time of the  
5 increase. The increase is distributable from the first cash available from the principal  
6 or, if cash is not available from the principal, when cash is first available from the  
7 principal due to a sale, a redemption, or another disposition. When an unrealized  
8 increase is distributed as income from principal, the principal shall be reimbursed when  
9 the increase is realized.

10 (d) In this section, the increase in value of an obligation described in (b) of  
11 this section is not available for distribution unless the trustee receives cash on account  
12 of the obligation.

13 \* **Sec. 13.** AS 13.41.005 is amended to read:

14 **Sec. 13.41.005. Application.** Except as provided by AS 13.06.068, this  
15 [THIS] chapter applies to the disposition at death of the following property acquired  
16 by a married person:

17 (1) all personal property, wherever situated,

18 (A) that was acquired as or became, and remained, community  
19 property under the laws of another jurisdiction; or

20 (B) all or the proportionate part of which was acquired with the  
21 rents, issues, or income of, or the proceeds from, or in exchange for, that  
22 community property; or

23 (C) traceable to that community property;

24 (2) all or the proportionate part of any real property situated in this  
25 state that was acquired with the rents, issues, or income of, the proceeds from, or in  
26 exchange for, property acquired as or that [WHICH] became, and remained,  
27 community property under the laws of another jurisdiction, or property traceable to that  
28 community property.

29 \* **Sec. 14.** AS 13.41.010 is amended to read:

30 **Sec. 13.41.010. Rebuttable presumptions.** Subject to AS 13.06.068, in [IN]  
31 determining whether this chapter applies to specific property, the following rebuttable

1 presumptions apply:

2 (1) property acquired during marriage by a spouse of that marriage  
3 while domiciled in a jurisdiction under whose laws property could then be acquired as  
4 community property is presumed to have been acquired as or to have become, and  
5 remained, property to which this chapter applies; and

6 (2) real property situated in this state and personal property wherever  
7 situated acquired by a married person while domiciled in a jurisdiction under whose  
8 laws property could not then be acquired as community property, title to which was  
9 taken in a form that created rights of survivorship, **are** [IS] presumed not to be  
10 property to which this chapter applies.

11 \* **Sec. 15.** AS 13.12.506 and AS 13.36.095(a) are repealed.

12 \* **Sec. 16.** COURT RULES. (a) AS 13.36.175(c), enacted by sec. 11 of this Act, changes  
13 Rule 24, Alaska Rules of Civil Procedure, by allowing a beneficiary, or the attorney general  
14 and certain corporations under certain circumstances, to intervene in an action on a contract  
15 against a trustee without satisfying the criteria in the court rule.

16 (b) AS 13.36.185(d), enacted by sec. 11 of this Act, changes Rule 24, Alaska Rules  
17 of Civil Procedure, by allowing a beneficiary to intervene in a tort action against a trust  
18 without satisfying the criteria in the court rule.

19 \* **Sec. 17.** AS 13.06.068, enacted by sec. 1 of this Act, does not apply to a will except for  
20 the will of a person dying on or after the effective date of this Act.

21 \* **Sec. 18.** AS 13.36.105 - 13.36.295, enacted by sec. 11 of this Act, apply only to

22 (1) testamentary trusts created by wills, or codicils, of persons dying  
23 on or after the effective date of this Act regardless of when the trusts and codicils are  
24 executed; and

25 (2) nontestamentary trusts created on or after the effective date of this  
26 Act.

27 \* **Sec. 19.** AS 13.38.060, as amended by sec. 12 of this Act, does not apply to a trust  
28 unless the trust is created on or after the effective date of this Act.

29 \* **Sec. 20.** AS 13.36.175(c) and 13.36.185(d), enacted by sec. 11 of this Act, take effect  
30 only if sec. 16 of this Act receives the two-thirds majority vote of each house required by art.  
31 IV, sec. 15, Constitution of the State of Alaska.