

SENATE BILL NO. 163

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE BY REQUEST

Introduced: 4/22/99

Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to a trustee's duties to inform and account to beneficiaries;
2 relating to the revocation, modification, termination, reformation, construction, and
3 trustees of trusts; and relating to transfer restrictions in trusts."

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

5 * **Section 1.** AS 13.16.595(a) is amended to read:

6 (a) Before distributing to a trustee, the personal representative may require that
7 the trust be registered if the state in which it is to be administered provides for
8 registration and that the trustee inform the **current** beneficiaries as provided in
9 AS 13.36.080.

10 * **Sec. 2.** AS 13.36.080 is amended to read:

11 **Sec. 13.36.080. Duty to inform and account to current beneficiaries.** The
12 trustee shall keep the **current** beneficiaries of the trust reasonably informed of the trust
13 and its administration. In addition, [:]

14 (1) within 30 days after acceptance of the trust, the trustee shall inform

1 in writing the current beneficiaries and, if possible, one or more persons who under
 2 AS 13.06.120 may represent current beneficiaries [WITH FUTURE INTERESTS], of
 3 the court in which the trust is registered and of the trustee's name and address;

4 (2) upon reasonable request, the trustee shall provide the current
 5 beneficiary with a copy of the terms of the trust that [WHICH] describe or affect the
 6 beneficiary's interest and with relevant information about the assets of the trust and the
 7 particulars relating to the administration;

8 (3) upon reasonable request, a current beneficiary is entitled to a
 9 statement of the accounts of the trust annually and on termination of the trust or
 10 change of the trustee.

11 * **Sec. 3.** AS 13.36.080 is amended by adding new subsections to read:

12 (b) The trust agreement may modify the trustee's duties under this section and
 13 may prohibit the trustee from providing any notification or information to a current
 14 beneficiary regarding the trust unless that beneficiary receives a distribution from the
 15 trust, and then the notification or information may be limited to the accounting period
 16 during which the distribution was made.

17 (c) In this section, "current beneficiary" means a beneficiary who is entitled
 18 to a mandatory distribution of income or principal from the trust on an annual or more
 19 frequent basis.

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

21 **Sec. 13.36.335. Presumption of revocability.** (a) Unless a trust is expressly
 22 made irrevocable, a trust executed on or after the effective date of this Act is revocable
 23 by the settlor.

24 (b) Notwithstanding AS 13.36.035 - 13.36.050, this section applies only if the
 25 settlor is domiciled in this state when the trust is created, the trust instrument is
 26 executed in this state, or the trust provides that the law of this state governs the trust.

27 **Sec. 13.36.340. Modification and revocation of revocable trusts.** (a) A
 28 trust that is revocable by the settlor may be modified or revoked in whole or in part
 29 by

30 (1) substantial compliance with a method of modification or revocation
 31 provided in the trust instrument; or

1 (2) a writing, other than a will, signed by the settlor and delivered to
 2 the trustee during the lifetime of the settlor, except that, if the trust instrument
 3 expressly makes the method of revocation provided in the trust instrument the
 4 exclusive method of revocation, the trust may not be revoked under this paragraph.

5 (b) Unless otherwise provided in the trust instrument, if a trust that is
 6 revocable by the settlor is created or funded by more than one settlor,

7 (1) the trust may be modified or revoked as provided in AS 34.77.100
 8 to the extent the trust consists of community property under AS 34.77 (Alaska
 9 Community Property Act);

10 (2) each settlor may modify or revoke the trust as to the portion of the
 11 trust property contributed by that settlor that is not community property under
 12 AS 34.77.

13 (c) A revocable trust may not be modified or revoked by an attorney-in-fact
 14 under a power of attorney unless the modification or revocation is expressly permitted
 15 by the trust instrument.

16 **Sec. 13.36.345. Modification or termination of irrevocable trusts because**
 17 **of unanticipated circumstances.** (a) On petition by a trustee, settlor, or beneficiary,
 18 a court may modify the administrative or dispositive terms of an irrevocable trust or
 19 terminate an irrevocable trust if, because of circumstances not anticipated by the
 20 settlor, modification or termination would substantially further the settlor's purposes
 21 in creating the trust.

22 (b) Upon termination of a trust under this section, the trust property shall be
 23 distributed in accordance with the settlor's probable intention.

24 **Sec. 13.36.350. Reformation to correct mistakes in irrevocable trusts.** (a)
 25 On petition by a trustee, settlor, or beneficiary, a court may reform the terms of an
 26 irrevocable trust, even if the trust instrument is not ambiguous, to conform to the
 27 settlor's intention if the failure to conform was due to a mistake of fact or law,
 28 whether in expression in the trust or inducement to create the trust, and if the settlor's
 29 intent can be established by clear and convincing evidence.

30 (b) A court may consider evidence, including direct evidence contradicting the
 31 plain meaning of the text, when determining the settlor's intent or for any other

1 purpose under this section.

2 **Sec. 13.36.355. Construction of trust to achieve settlor's tax objectives.** (a)

3 The terms of a trust shall be construed to achieve the settlor's tax objectives.

4 (b) On petition by a trustee, settlor, or beneficiary, a court may modify the
5 terms of an irrevocable trust to achieve the settlor's tax objectives in a manner that
6 does not violate the settlor's probable intent. The court may order that the
7 modification operate retroactively.

8 **Sec. 13.36.360. Modification or termination of irrevocable trust by consent.**

9 (a) Except as otherwise provided by this section, on petition by a trustee, settlor, or
10 beneficiary, a court may modify or terminate an irrevocable trust if all of the
11 beneficiaries consent and if continuation of the trust on the existing terms of the trust
12 is not necessary to further a material purpose of the trust. However, the court, in its
13 discretion, may determine that the reason for modifying or terminating the trust under
14 the circumstances outweighs the interest in accomplishing the material purposes of the
15 trust. The inclusion of a restriction on the voluntary or involuntary transfer of trust
16 interests under AS 34.40.110 may constitute a material purpose of the trust under this
17 subsection, but is not presumed to constitute a material purpose of the trust under this
18 subsection.

19 (b) Unless otherwise provided in the trust instrument, an irrevocable trust may
20 not be modified or terminated under this section while a settlor is also a discretionary
21 beneficiary of the trust.

22 (c) If a beneficiary other than a qualified beneficiary does not consent to a
23 modification or termination of an irrevocable trust that is proposed by the trustee,
24 settlor, or other beneficiaries, a court may approve the proposed modification or
25 termination if the court determines

26 (1) if all the beneficiaries had consented, the trust could have been
27 modified or terminated under this section; and

28 (2) the rights of a beneficiary who does not consent will be adequately
29 protected or not significantly impaired.

30 (d) In (c) of this section, "qualified beneficiary" means a beneficiary who

31 (1) on the date the beneficiary's qualification is determined, is entitled

1 or eligible to receive a distribution of trust income or principal; or

2 (2) would be entitled to receive a distribution of trust income or
3 principal if the event causing the trust's termination occurs.

4 **Sec. 13.36.365. Uneconomical irrevocable trust.** (a) Notwithstanding the
5 other provisions of AS 13.36.335 - 13.36.370, if the value of the property of an
6 irrevocable trust is less than \$50,000, the trustee may terminate the trust unless the
7 trust instrument provides otherwise.

8 (b) Notwithstanding the other provisions of AS 13.36.335 - 13.36.370 and the
9 terms of the trust, on petition to the superior court by a trustee, settlor, or beneficiary,
10 the court may modify or terminate an irrevocable noncharitable trust, or remove the
11 trustee and appoint a different trustee, if the court determines that the value of the trust
12 property is insufficient to justify the cost of administration.

13 (c) Upon termination of a trust under this section, the trustee shall distribute
14 the trust property in accordance with the settlor's probable intent.

15 **Sec. 13.36.370. Exclusive procedure.** Unless otherwise provided in the trust
16 instrument, except as provided by AS 13.12.212(c), 13.12.803, 13.12.804, 13.12.907,
17 AS 13.33.205, AS 13.36.130, and AS 13.60.010, AS 13.36.335 - 13.36.365 provide the
18 exclusive procedures for modifying, terminating, or revoking trusts.

19 * **Sec. 5.** AS 34.40.110 is amended by adding a new subsection to read:

20 (g) If a trust contains a transfer restriction allowed under (a) and effective
21 under (b) of this section, a beneficiary may not transfer an interest in the trust, and a
22 creditor or assignee of a beneficiary may not attach an interest in or a distribution from
23 the trust by the trustee before receipt of the interest or distribution by the beneficiary.
24 In this subsection, "receipt of the interest or distribution by the beneficiary" does not
25 include

26 (1) direct payment of a beneficiary's health, medical, or educational
27 expenses to the provider of the health, medical, or educational goods or services;

28 (2) the use or occupancy of property owned by the trust; or

29 (3) expenditures made for the maintenance or preservation of property
30 owned by the trust.

31 * **Sec. 6. APPLICABILITY.** AS 34.40.110(g), added by sec. 5 of this Act, applies to trusts

1 regardless of whether the trusts were created before, on, or after the effective date of this Act.