

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 275

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE THERRIAULT

Introduced: 2/16/00

Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the Uniform Probate Code, including trusts and governing**
2 **instruments; relating to trustees; relating to underproductive trust property; and**
3 **relating to conveyances of real property and interests in real property by or**
4 **to trusts."**

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

6 *** Section 1.** AS 13.12.606(a) is amended to read:

7 (a) A specific devisee has a right to the specifically devised property in the
8 testator's estate at death and

9 (1) [ANY BALANCE OF THE PURCHASE PRICE, TOGETHER
10 WITH ANY SECURITY AGREEMENT, OWING FROM A PURCHASER TO THE
11 TESTATOR AT DEATH BY REASON OF SALE OF THE PROPERTY;

12 (2)] any amount of a condemnation award for the taking of the property
13 unpaid at death;

14 (2) [(3)] any proceeds unpaid at death on fire or casualty insurance on

1 or other recovery for injury to the property; and

2 (3) [(4)] property owned by the testator at death and acquired as a
3 result of foreclosure, or obtained in lieu of foreclosure, of the security interest for the
4 specifically devised obligation.

5 * **Sec. 2.** AS 13.12 is amended by adding new sections to article 7 to read:

6 **Sec. 13.12.712. Nonademption of specific transfers in trust; unpaid**
7 **proceeds of sale, condemnation, or insurance; sale by conservator or agent.** (a)

8 A beneficiary of a trust has a right to the specific property transferred by the trust and

9 (1) any amount of a condemnation award for the taking of the property
10 unpaid at the time of the transfer;

11 (2) any proceeds unpaid at the time of the transfer on fire or casualty
12 insurance on or other recovery for injury to the property; and

13 (3) property owned by the settlor at the time of the transfer and
14 acquired as a result of foreclosure, or obtained in lieu of foreclosure, of the security
15 interest for the specifically transferred obligation.

16 (b) If property that is specifically transferred to a beneficiary of a trust is sold
17 or mortgaged by a conservator or by an agent acting within the authority of a durable
18 power of attorney for an incapacitated principal, or if a condemnation award, insurance
19 proceeds, or recovery for injury to the property are paid to a conservator or to an agent
20 acting within the authority of a durable power of attorney for an incapacitated
21 principal, the beneficiary has the right to a general pecuniary property transfer that is
22 equal to the net sale price, the amount of the unpaid loan, the condemnation award,
23 the insurance proceeds, or the recovery.

24 (c) The right of a beneficiary under (b) of this section is reduced by any right
25 the beneficiary has under (a) of this section.

26 (d) For the purposes of the references in (b) of this section to a conservator,
27 (b) of this section does not apply if, after the sale, mortgage, condemnation, casualty,
28 or recovery, it was adjudicated that the settlor's incapacity ceased and the settlor
29 survived the adjudication by one year.

30 (e) For the purposes of the references in (b) of this section to an agent acting
31 within the authority of a durable power of attorney for an incapacitated principal,

1 (1) "incapacitated principal" means a principal who is an incapacitated
2 person;

3 (2) adjudication of incapacity before death is not necessary; and

4 (3) the acts of an agent within the authority of a durable power of
5 attorney are presumed to be for an incapacitated principal.

6 **Sec. 13.12.720. Family-owned business deduction.** (a) If an individual
7 includes a provision in a will, trust document, or beneficiary designation that is
8 designed to reduce federal estate tax liability to zero, or to the lowest possible amount
9 payable, by describing a portion or amount measured by reference to the unified credit,
10 applicable exclusion amount, or exemption equivalent under 26 U.S.C. 2010 (Internal
11 Revenue Code), or to other credits or deductions under 26 U.S.C. (Internal Revenue
12 Code), then unless specifically stated otherwise, the reference to the unified credit,
13 applicable exclusion amount, exemption equivalent, other credit, or other deduction
14 shall be considered to include a reference to the family-owned business deduction
15 available and allowed under 26 U.S.C. 2057 (Internal Revenue Code).

16 (b) Unless specifically stated otherwise, the reference in the will, trust
17 document, or beneficiary designation to the unified credit, applicable exclusion amount,
18 exemption equivalent, family-owned business deduction, other credit, or other
19 deduction shall be considered to refer to the unified credit, applicable exclusion
20 amount, exemption equivalent, family-owned business deduction, other credit, or other
21 deduction as it exists at the time of death of the individual.

22 * **Sec. 3.** AS 13.16.550 is amended to read:

23 **Sec. 13.16.550. Interest on general pecuniary devise.** General pecuniary
24 devises, whether made outright or in trust, bear interest at the stated [LEGAL] rate
25 beginning two years [ONE YEAR] after the decedent's death [FIRST
26 APPOINTMENT OF A PERSONAL REPRESENTATIVE] until payment, unless a
27 contrary intent is indicated by the governing instrument [WILL]. **In this subsection,**
28 **"stated rate" means the annual rate charged member banks for advances by the**
29 **12th Federal Reserve District in effect on the first day of the month that is the**
30 **23rd month following the decedent's death, not counting the month of the**
31 **decedent's death.**

1 * **Sec. 4.** AS 13.16.550 is amended by adding a new subsection to read:

2 (b) The provisions of (a) of this section do not apply to a marital pecuniary
3 devise, whether stated as a formula or otherwise and whether made outright to the
4 decedent's spouse or in trust for the benefit of the spouse, if the devise is intended to
5 qualify for the marital deduction under 26 U.S.C. (Internal Revenue Code). A marital
6 pecuniary devise to which this subsection applies shares ratably with the residue of the
7 estate in the income earned by the estate during the period of administration, unless
8 a contrary intention is expressed by the governing instrument.

9 * **Sec. 5.** AS 13.16.560(a) is amended to read:

10 (a) Unless a contrary intention is indicated by the will, the distributable assets
11 of a decedent's estate shall be distributed in kind to the extent possible through
12 application of the following provisions:

13 (1) a specific devisee is entitled to distribution of the thing devised, and
14 a spouse or child who has selected particular assets of an estate as provided in
15 AS 13.12.402 - 13.12.405 shall receive the items selected;

16 (2) a homestead or family allowance or devise payable in money may
17 be satisfied by value in kind if

18 (A) the person entitled to the payment has not demanded
19 payment in cash;

20 (B) the property distributed in kind is valued at fair market
21 value as of the date of its distribution; and

22 (C) no residuary devisee has requested that the asset in question
23 remain a part of the residue of the estate;

24 (3) for the purpose of valuation under (2) of this subsection, securities
25 regularly traded on recognized exchanges, if distributed in kind, are valued at the price
26 for the last sale of like securities traded on the business day before distribution [,] or,
27 if there was no sale on that day, at the median between amounts bid and offered at the
28 close of that day; assets consisting of sums owed the decedent or the estate by solvent
29 debtors as to which there is no known dispute or defense are valued at the sum due
30 with accrued interest or discounted to the date of distribution; for assets that do not
31 have readily ascertainable values, a valuation as of a date not more than 30 days

1 before the date of distribution, if otherwise reasonable, controls; for purposes of
 2 facilitating distribution, the personal representative may ascertain the value of the
 3 assets as of the time of the proposed distribution in any reasonable way, including the
 4 employment of qualified appraisers, even if the assets may have been previously
 5 appraised;

6 (4) the residuary estate shall be distributed in any equitable manner,
 7 **including distribution in kind, in cash, partially in kind, partially in cash, in**
 8 **divided interests, in undivided interests, pro rata among all the distributees, or**
 9 **by a method other than pro rata among all distributees; distribution under this**
 10 **paragraph may be made without regard to the income tax basis or other special**
 11 **tax attributes of the assets; a distribution under this paragraph may be made in**
 12 **whatever manner the personal representative finds to be the most practicable and**
 13 **in the best interests of the distributees.**

14 * **Sec. 6.** AS 13.36 is amended by adding a new section to read:

15 **Sec. 13.36.153. Restrictions on exercising certain trustee powers.** (a)

16 Notwithstanding AS 13.36.107, a trustee who is not an independent trustee may not
 17 exercise a power to make or cause to be made a discretionary distribution of either
 18 principal or income

19 (1) to or for the direct or indirect benefit of the trustee individually or
 20 to any person holding a power to remove and replace the trustee, except to the extent
 21 that the power is exercised in accordance with an ascertainable standard that relates
 22 to the health, education, maintenance, or support of the trustee or person;

23 (2) to satisfy a legal obligation that is owed by the trustee individually
 24 or by any person holding a power to remove and replace this trustee; or

25 (3) if the distribution would constitute a taxable gift from the trustee
 26 individually or from a person holding a power to remove and replace the trustee.

27 (b) The prohibitions of (a) of this section apply to a trustee even if the
 28 governing instrument states that the trustee may make distributions in the trustee's
 29 uncontrolled, absolute, or total discretion, or that distributions are not subject to review
 30 by a court, or the governing instrument otherwise indicates that distributions by the
 31 trustee are not subject to reasonableness when the trustee exercises discretion.

1 (c) If a trustee is prohibited by (a) of this section from exercising a power and
2 if one or more other trustees are not prohibited by (a) of this section from exercising
3 the power, the other trustees may exercise the power. If there is not a trustee who can
4 exercise a power prohibited under (a) of this section, a party in interest may apply to
5 the superior court to appoint an independent trustee to exercise the power.

6 (d) The provisions of (a) of this section do not prohibit a trustee from making
7 payments, including reimbursement of and compensation of an independent trustee
8 appointed under (c) of this section, for the protection of the trust or the assets of the
9 trust, or for the expenses, losses, or liabilities incurred in the collection, care,
10 administration, or protection of the trust or the assets of the trust.

11 (e) Except as provided in (f) of this section, this section applies to

12 (1) a trust that is created on or after the effective date of this Act; or

13 (2) the decisions and actions of a trust that is in existence on the
14 effective date of this Act if the decisions are made, or the actions occur, on or after
15 the effective date of this Act.

16 (f) The application provisions of (e) of this section do not apply if

17 (1) the terms of the trust, including the terms as amended, expressly
18 provide that this section does not apply and either specifically refer to this section or
19 otherwise clearly demonstrate the intent that this section does not apply; or

20 (2) the trust is irrevocable and all parties in interest elect under (g) of
21 this section not to be subject to the application of this section; an election under this
22 paragraph must be made on or before January 1, 2003, or three years after the date on
23 which the trust becomes irrevocable, whichever date is later; however, notwithstanding
24 AS 13.36.080, the trustee does not have a duty to inform the parties in interest of this
25 election.

26 (g) The election allowed under (f) of this section shall be made by a written
27 declaration that is delivered to the trustee.

28 (h) The prohibitions of (a) of this section do not apply to a trustee with respect
29 to trust property, including income from the trust property, if the trust property would,
30 upon the death of the trustee, be included, for any reason other than the exercise of a
31 power prohibited by (a) of this section, in the gross estate of the trustee for federal

1 estate tax purposes.

2 (i) This section does not create a new cause of action, or impair a cause of
3 action existing before the effective date of this Act, if the new or existing cause of
4 action relates to the exercise of a power prohibited by (a) of this section that was
5 exercised before the effective date of this Act.

6 (j) In this section, "independent trustee" means a trustee that is not related or
7 subordinate, as defined in 26 U.S.C. 672(c), to the person having the power to remove
8 the trustee or to any beneficiary.

9 * **Sec. 7.** AS 13.36 is amended by adding a new section to read:

10 **Sec. 13.36.169. Elections to qualify property for marital deduction and**
11 **generation-skipping transfer tax allocations.** (a) Unless a governing instrument
12 specifically refers to this section and provides otherwise, a trustee who makes an
13 election under 26 U.S.C. 2056, 2056A, or 2523 (Internal Revenue Code), or who
14 makes an allocation under 26 U.S.C. 2632 (Internal Revenue Code), may benefit
15 personally from the election or allocation and is not required to reimburse another
16 person interested in the election or allocation, to make an equitable adjustment, or to
17 treat interested persons impartially with respect to the election or allocation.

18 (b) Unless a governing instrument specifically refers to this section and
19 provides otherwise, if an election is made under 26 U.S.C. 2056, 2056A, or 2523
20 (Internal Revenue Code), if an allocation is made under 26 U.S.C. 2632 (Internal
21 Revenue Code), or if division of a trust benefits the persons interested in the trust, the
22 trustee may divide the trust into two or more separate trusts of equal or unequal value
23 if the terms of the separate resulting trusts are substantially identical to the terms of
24 the trust before the division. The allocation of assets must be based on the fair market
25 value of the assets at the time of the division.

26 (c) Except as provided in (d) of this section, this section applies to

27 (1) a trust that is created on or after the effective date of this Act; or

28 (2) the decisions and actions of a trust that is in existence on the
29 effective date of this Act if the decisions are made or actions occur on or after the
30 effective date of this Act.

31 (d) The application provisions of (c) of this section do not apply if

1 (1) the terms of the trust, including the terms as amended, expressly
 2 provide that this section does not apply and either specifically refer to this section or
 3 otherwise clearly demonstrate the intent that this section does not apply; or

4 (2) the trust is irrevocable and all parties in interest elect not to be
 5 subject to the application of this section; an election under this paragraph must be
 6 made on or before January 1, 2003, or three years after the date on which the trust
 7 becomes irrevocable, whichever date is later; however, notwithstanding AS 13.36.080,
 8 the trustee does not have a duty to inform the parties in interest of this election; the
 9 election allowed under this paragraph must be made by a written declaration delivered
 10 to the trustee.

11 * **Sec. 8.** AS 13.36 is amended by adding a new section to read:

12 **Sec. 13.36.335. Application of special distribution provisions.** The asset
 13 distribution provisions of AS 13.16.540 - 13.16.550, 13.16.560, and AS 13.38.030(a)
 14 apply to the administration of a revocable trust following the death of the settlor of the
 15 trust, unless the terms of the trust indicate a different intention.

16 * **Sec. 9.** AS 13.36.390 is amended by adding a new paragraph to read:

17 (4) "party in interest" means, if the trust is

18 (A) revocable and if the settlor is incapacitated, the settlor's
 19 legal representative under applicable law or the settlor's agent under a durable
 20 power of attorney; or

21 (B) irrevocable,

22 (i) each trustee serving at the time;

23 (ii) each beneficiary entitled to receive a mandatory
 24 distribution of income or principal from a trust or, if a beneficiary
 25 entitled to receive a mandatory distribution of income or principal from
 26 a trust is not 19 years of age or is incapacitated, the beneficiary's legal
 27 representative under applicable law or the beneficiary's agent under a
 28 durable power of attorney; and

29 (iii) each vested remainder beneficiary in existence at
 30 the time or, if a vested remainder beneficiary is not 19 years of age or
 31 is incapacitated, the vested remainder beneficiary's legal representative

1 under applicable law or the vested remainder beneficiary's agent under
2 a durable power of attorney.

3 * **Sec. 10.** AS 13.38.110 is amended by adding a new subsection to read:

4 (e) Notwithstanding (a) - (d) of this section, if a trust, except a trust that
5 provides for the payment of the entire remaining trust estate to the estate of the spouse
6 when the income interest terminates, is created under a will or trust for the benefit of
7 the spouse of the testator or the grantor of the trust, if the trust requires that all income
8 of the trust be paid at least annually to the spouse, and if a federal estate or gift tax
9 marital deduction is claimed with respect to the trust, then, unless the will or trust
10 specifically refers to this subsection and provides otherwise, an investment in or
11 retention of unproductive property as an asset of the trust is subject to the power of
12 the spouse to require that, within a reasonable time, the asset produce income or be
13 converted to assets that produce income.

14 * **Sec. 11.** AS 34.25 is amended by adding a new section to read:

15 **Sec. 34.25.055. Conveyances to or from trusts.** (a) A person may convey
16 or devise real property to or from a trust whether or not the trustee of the trust is
17 named as a grantee or grantor in the instrument of conveyance.

18 (b) In a conveyance or devise under (a) of this section, notice of the existence
19 of the trust does not affect the status of a purchaser as a bona fide purchaser.

20 (c) Real property that is owned by a trust and that is purchased by a bona fide
21 purchaser from a person in the person's capacity as trustee of the trust is acquired free
22 of any claim of the beneficiaries of the trust.

23 (d) Notwithstanding other provisions of law, a trust instrument may not change
24 the effect of (c) of this section.

25 (e) In this section,

26 (1) "bona fide purchaser" means a person who purchases real property
27 for value from a trust and who

28 (A) has not knowingly been a party to fraud or illegality
29 affecting the interest of persons who are parties to the purchase transaction or
30 beneficiaries of the trust;

31 (B) does not have notice of an adverse claim by a beneficiary

1 of the trust; and

2 (C) has acted in good faith in the purchase transaction;

3 (2) "conveyance" means a conveyance made before, on, or after the
4 effective date of this section;

5 (3) "purchaser" means a person who acquires real property by sale,
6 lease, mortgage, pledge, or lien, or who otherwise deals with real property in a
7 voluntary transaction other than by making a gift;

8 (4) "real property" includes an interest in real property;

9 (5) "value" means acquisition of property

10 (A) in return for a binding commitment to extend credit;

11 (B) as security for or in total or partial satisfaction of a claim
12 that existed before the giving of the security;

13 (C) by accepting delivery of the real property under a contract
14 that is for the purchase of the real property and that existed before the delivery;

15 or

16 (D) in return for other consideration sufficient to support a
17 contract.