

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 316
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE MCGUIRE

Introduced: 3/1/02
Referred: Judiciary

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to trusts, including trust protectors, trustee advisors, and transfers of**
2 **trust interests, and to creditors' claims against property subject to a power of**
3 **appointment; and providing for an effective date."**

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

5 *** Section 1.** AS 13.36 is amended by adding new sections to read:

6 **Sec. 13.36.370. Trust protector.** (a) A trust instrument may provide for the
7 appointment of a disinterested third party to act as a trust protector.

8 (b) A trust protector appointed under (a) of this section has the powers,
9 delegations, and functions conferred on the protector by the trust instrument, including
10 the power to

11 (1) remove and appoint a trustee;

12 (2) modify or amend the trust instrument to achieve favorable tax
13 status or to respond to changes in 26 U.S.C. (Internal Revenue Code) or state law, or
14 the rulings and regulations under those laws;

1 (3) increase or decrease the interests of any beneficiary to the trust; and

2 (4) modify the terms of a power of appointment granted by the trust.

3 (c) A modification authorized under (b) of this section may not grant a
4 beneficial interest to an individual or a class of individuals unless the individual or
5 class of individuals is specifically provided for under the trust instrument.

6 (d) Subject to the terms of the trust instrument, a trust protector is not liable or
7 accountable as a trustee or fiduciary because of an act or omission of the trust
8 protector taken when performing the function of a trust protector under the trust
9 instrument.

10 **Sec. 13.36.375. Trustee advisor.** (a) A trust instrument may provide for the
11 appointment of a person to act as an advisor to the trustee with regard to all or some of
12 the matters relating to the property of the trust.

13 (b) If an advisor is appointed under (a) of this section, the property and
14 management of the trust and the exercise of all powers and discretionary acts
15 exercisable by the trustee remain vested in the trustee as fully and effectively as if an
16 advisor were not appointed, the trustee is not required to follow the advice of the
17 advisor, and the advisor is not liable as or considered to be a trustee of the trust when
18 acting as an advisor to the trust.

19 * **Sec. 2.** AS 34.40.110(a) is amended to read:

20 (a) A person who in writing transfers [PROPERTY] in trust **real property,**
21 **personal property, or an interest in real or personal property** may provide that the
22 interest of a beneficiary of the trust, **including a beneficiary who is the settlor of the**
23 **trust,** may not be either voluntarily or involuntarily transferred before payment or
24 delivery of the interest to the beneficiary by the trustee. **Payment or delivery of the**
25 **interest to the beneficiary does not include a beneficiary's use or occupancy of**
26 **real property or tangible personal property owned by the trust if the use or**
27 **occupancy is in accordance with the trustee's discretionary authority under the**
28 **trust instrument.** In this subsection,

29 [(1) "PROPERTY" INCLUDES REAL PROPERTY, PERSONAL
30 PROPERTY, AND INTERESTS IN REAL OR PERSONAL PROPERTY;

31 (2)] "transfer" means any form of transfer, including deed,

1 conveyance, or assignment.

2 * **Sec. 3.** AS 34.40.110(b) is amended to read:

3 (b) If a trust contains a transfer restriction allowed under (a) of this section,
4 the transfer restriction prevents a creditor existing when the trust is created, a person
5 who subsequently becomes a creditor, or another person from satisfying a claim out of
6 the beneficiary's interest in the trust, unless [THE]

7 (1) **the** transfer was intended **primarily** [IN WHOLE OR IN PART] to
8 hinder, delay, or defraud creditors or other persons under AS 34.40.010;

9 (2) **the** trust provides that the settlor may revoke or terminate all or
10 part of the trust without the consent of a person who has a substantial beneficial
11 interest in the trust and the interest would be adversely affected by the exercise of the
12 power held by the settlor to revoke or terminate all or part of the trust; in this
13 paragraph, "revoke or terminate" does not include a power to veto a distribution from
14 the trust, a testamentary special power of appointment or similar power, or the right to
15 receive a distribution of income, corpus, or both in the discretion of a person,
16 including a trustee, other than the settlor;

17 (3) **the** trust requires that all or a part of the trust's income or principal,
18 or both, must be distributed to the settlor; **however, this paragraph does not apply**
19 **to a settlor's right to receive**

20 **(A) income or principal from a charitable remainder**
21 **annuity trust or charitable remainder unitrust; in this subparagraph,**
22 **"charitable remainder annuity trust" and "charitable remainder**
23 **unitrust" have the meanings given in 26 U.S.C. 664 (Internal Revenue**
24 **Code) as that section reads on the effective date of this bill section and as**
25 **it may be amended;**

26 **(B) a percentage of the value of the trust each year as**
27 **determined from time to time under the trust instrument, but not**
28 **exceeding the amount that may be defined as income under AS 13.38 or**
29 **under**

30 **(i) 26 U.S.C. 643(b) (Internal Revenue Code) as that**
31 **subsection reads on the effective date of this bill section and as it**

1 may be amended; or

2 (ii) the permanent or temporary regulations adopted
 3 under 26 U.S.C. 643(b); or

4 (4) at the time of the transfer, the settlor is in default by 30 or more
 5 days of making a payment due under a child support judgment or order.

6 * **Sec. 4.** AS 34.40.110(c) is amended to read:

7 (c) The satisfaction of a claim under (b)(1) - (4) of this section is limited to
 8 that part of the trust **for** [TO] which a transfer restriction is not allowed under
 9 (b)(1) - (4) of this section, and an attachment or other order may not be made
 10 against the trustee with respect to a beneficiary's interest in the trust or against
 11 property that is subject to a transfer restriction, except to the extent that a
 12 transfer restriction is determined not to be allowed under (b)(1) - (4) of this
 13 section [APPLIES].

14 * **Sec. 5.** AS 34.40.110(d) is amended to read:

15 (d) A cause of action or claim for relief with respect to a fraudulent transfer **of**
 16 a settlor's assets under (b)(1) of this section [,] or under other law [,] is extinguished
 17 unless the action under (b)(1) of this section is brought **by a creditor** [AS TO A
 18 PERSON] who

19 (1) is a creditor before the settlor's assets are transferred to the
 20 trust, and the action is brought [WHEN THE TRUST IS CREATED,] within the
 21 later of

22 (A) four years after the transfer is made; or

23 (B) one year after the transfer is or reasonably could have been
 24 discovered by the **creditor** [PERSON]; or

25 (2) becomes a creditor subsequent to the transfer into trust, **and the**
 26 action is brought within four years after the transfer is made.

27 * **Sec. 6.** AS 34.40.110 is amended by adding new subsections to read:

28 (g) An action or claim under (d)(1) of this section is limited to a cause of
 29 action or claim for relief where the creditor

30 (1) can demonstrate, by a preponderance of the evidence, that the
 31 creditor asserted a specific claim against the settlor before the settlor transferred assets

1 to the trust; or

2 (2) files an action against the settlor within four years after the settlor
3 transferred assets to the trust, and the action asserts a specific cause of action based on
4 an act or omission of the settlor that occurred before the transfer.

5 (h) A transfer restriction allowed under (a) of this section applies to a settlor
6 who is also a beneficiary of the trust even if the settlor serves as a co-trustee or as an
7 advisor to the trustee under AS 13.36.375 if the settlor does not have a trustee power
8 over discretionary distributions.

9 (i) A transfer restriction allowed under (a) of this section applies to a
10 beneficiary who is not the settlor of the trust, whether or not the beneficiary serves as a
11 sole trustee, a co-trustee, or an advisor to the trustee under AS 13.36.375.

12 (j) A transfer restriction is allowed under (a) of this section even if a settlor
13 has the authority under the terms of the trust instrument to appoint a trust protector
14 under AS 13.36.370 or an advisor to the trustee under AS 13.36.375.

15 (k) A settlor whose beneficial interest in a trust is subject to a transfer
16 restriction that is allowed under (a) of this section may not benefit from, direct a
17 distribution of, or use trust property except as may be stated in the trust instrument.
18 An agreement or understanding, express or implied, between the settlor and the trustee
19 that attempts to grant or permit the retention of greater rights or authority than is stated
20 in the trust instrument is void.

21 * **Sec. 7.** AS 34.40 is amended by adding a new section to read:

22 **Sec. 34.40.115. Powers as subjecting property to creditors.** The property
23 that a donee of a power of appointment is authorized to appoint is not subject to the
24 claims of the creditors of the donee except to the extent that a donee of an inter vivos
25 or testamentary power of appointment

26 (1) is permitted by the donor of the power to appoint the property to
27 the donee's estate or to the creditors of the donee's estate; and

28 (2) effectively exercises the power of appointment in favor of the
29 donee's estate or the creditors of the donee's estate.

30 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

1 APPLICABILITY. This Act applies to a trust regardless of whether the trust was
2 created before, on, or after the effective date of the applicable section of this Act.

3 * **Sec. 9.** AS 34.40.110(b), as amended by sec. 3 of this Act, takes effect immediately under
4 AS 01.10.070(c).