

HOUSE BILL NO. 316

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE MCGUIRE

Introduced: 1/14/02
Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

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

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

4 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 PURPOSE. (a) The purpose of the amendment made by sec. 2 of this Act is to codify
7 a provision that is commonly found in trust instruments. The provision authorizes a trustee to
8 make an asset of a trust available for the use of a beneficiary without having to distribute the
9 asset to the beneficiary and without having the action be considered a distribution to the
10 beneficiary.

11 (b) The principal purpose of sec. 3 of this Act is to codify a provision of the common
12 law that provides that assets subject to a power of appointment are not subject to the claims of
13 the creditors of the person who holds the power, except to the extent an inter vivos or
14 testamentary general or nongeneral power of appointment is actually exercised to appoint the

1 assets to the holder's estate, the holder's creditors, or the creditors of the holder's estate.

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

3 (a) A person who in writing transfers property in trust may provide that the
4 interest of a beneficiary of the trust may not be either voluntarily or involuntarily
5 transferred before payment or delivery of the interest to the beneficiary by the trustee.

6 **Payment or delivery of the interest to the beneficiary does not include a**
7 **beneficiary's use or occupancy of property owned by the trust if the use or**
8 **occupancy is made by the trustee under the exercise of the trustee's discretionary**
9 **authority under the trust instrument.** In this subsection,

10 (1) "property" includes real property, personal property, and interests
11 in real or personal property;

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

14 * **Sec. 3.** AS 34.40 is amended by adding a new section to read:

15 **Sec. 34.40.115. Creditor claims against property subject to a power of**
16 **appointment.** Except to the extent that the donee of an inter vivos or testamentary
17 nongeneral or general power of appointment actually appoints property subject to the
18 power to the donee's estate, to the donee's creditors, or to the creditors of the donee's
19 estate, the property that the donee is authorized to appoint is not subject to the claims
20 of the creditors of the donee.

21 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
22 read:

23 APPLICABILITY. (a) AS 34.40.110(a), as amended by sec. 2 of this Act, applies to
24 a trust regardless of whether the trust was created before, on, or after the effective date of this
25 Act.

26 (b) AS 34.40.115, added by sec. 3 of this Act, applies to a power of appointment
27 regardless of whether the power of appointment was created before, on, or after the effective
28 date of this Act.

29 * **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).