

SENATE BILL NO. 344

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

BY SENATOR SEEKINS

Introduced: 2/16/04

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the Uniform Probate Code and trusts, including pleadings, orders,**
2 **nonprobate assets, estates of decedents, minors, protected persons, incapacitated**
3 **persons, guardians, conservators, trustees, foreign trusts, principal and income, and**
4 **transfer restrictions; relating to corporate voting trusts; and providing for an effective**
5 **date."**

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

7 *** Section 1.** AS 10.06.425(a) is amended to read:

8 (a) Any number of shareholders of a corporation may create a voting trust for
9 the purpose of conferring upon a trustee or trustees the right to vote or otherwise
10 represent their shares [, FOR A PERIOD NOT TO EXCEED 10 YEARS,] by entering
11 into a written voting trust agreement specifying the terms and conditions of the voting
12 trust, by depositing a copy of the agreement with the corporation at its registered
13 office, and by transferring their shares to the trustee or trustees for the purpose of the

1 agreement. The trustee or trustees shall keep a record of the holders of voting trust
 2 certificates evidencing a beneficial interest in the voting trust, giving the names and
 3 addresses of all the holders and the number and class of the shares for which the
 4 voting trust certificates are issued, and shall deposit a copy of the record with the
 5 corporation at its registered office. The copies of the voting trust agreement and the
 6 record deposited with the corporation are subject to the same right of examination by a
 7 shareholder of the corporation, in person or by agent or attorney, as are the books and
 8 records of the corporation under AS 10.06.430, and the copies of the agreement and
 9 the record are subject to examination by a holder of record of voting trust certificates,
 10 either in person or by agent or attorney, at a reasonable time for a proper purpose.
 11 This subsection does not invalidate an irrevocable proxy complying with
 12 AS 10.06.418(e).

13 * **Sec. 2.** AS 13.06.120 is amended to read:

14 **Sec. 13.06.120. Pleadings; when parties bound by orders; notice.** In any
 15 [FORMAL] proceedings involving trusts, nonprobate assets, or estates of decedents,
 16 minors, protected persons, or incapacitated persons brought under AS 13.06 -
 17 AS 13.36 or AS 13.38, including any [AND IN] judicially supervised settlements
 18 and any nonjudicial proceedings and settlements, the following apply:

19 (1) interests to be affected shall be described in pleadings that give
 20 reasonable information to owners by name or class, by reference to the instrument
 21 creating the interests, or in other appropriate manner;

22 (2) persons are bound by orders binding others in the following cases:

23 (A) orders binding the sole holder or all co-holders of a power
 24 of revocation or a [PRESENTLY EXERCISABLE] general or nongeneral
 25 power of appointment, including one in the form of a power of amendment,
 26 bind other persons to the extent their interests (as objects, takers in default, or
 27 otherwise) are subject to the power;

28 (B) to the extent there is no conflict of interest between them or
 29 among persons represented, orders binding a conservator bind the person
 30 whose estate the conservator controls; orders binding a guardian bind the ward
 31 if no conservator of the estate has been appointed; orders binding a trustee bind

1 beneficiaries of the trust in proceedings to probate a will establishing or adding
 2 to a trust, to review the acts or accounts of a prior fiduciary and in proceedings
 3 involving creditors or other third parties; [AND] orders binding a personal
 4 representative bind persons interested in the undistributed assets of a
 5 decedent's estate in actions or proceedings by or against the estate; **and orders**
 6 **binding an agent having authority to act with respect to the particular**
 7 **questions or dispute bind the principal;** if there is no conflict of interest and
 8 no conservator or guardian has been appointed, a parent may represent the
 9 minor child;

10 (C) an unborn [OR UNASCERTAINED] person, **a minor, an**
 11 **incapacitated person, or a person whose identity or location is unknown or**
 12 **not reasonably ascertainable** who is not otherwise represented is bound by an
 13 order to the extent the interest is adequately represented by another party
 14 having a substantially identical interest in the proceeding;

15 **(D) with regard to interests given upon the happening of a**
 16 **certain event to persons who comprise a certain class, orders binding the**
 17 **living persons who would constitute the class, if the event had happened**
 18 **immediately before the commencement of the proceeding, bind all**
 19 **members of the class;**

20 **(E) with regard to an interest given to a living person when**
 21 **the same interest or a share of the interest is to pass to the surviving**
 22 **spouse or to persons who are or might be the distributees, devisees, heirs,**
 23 **or issue of the living person upon the happening of a future event, orders**
 24 **binding the living person bind the surviving spouse, distributees, devisees,**
 25 **heirs, or issue of the living person;**

26 **(F) with regard to interests given to a person or a class of**
 27 **persons, or to both, upon the happening of a future event, if the same**
 28 **interest or a share of the interest is to pass to another person or class of**
 29 **persons, or to both, upon the happening of an additional future event,**
 30 **orders binding the living person or class of persons who would take the**
 31 **interest upon the happening of the first event bind the persons and classes**

1 **of persons who might take on the happening of the additional future**
 2 **event;**

3 (3) notice is required as follows:

4 (A) notice as prescribed by AS 13.06.110 shall be given to
 5 every interested person or to one **person** who can bind an interested person as
 6 described in **(2)(A), (B), or (D) - (F)** [(2)(A) OR (B)] of this section; notice
 7 may be given both to a person and to another **person** who may bind the person;

8 (B) notice is given to unborn [OR UNASCERTAINED]
 9 persons, **a minor, an incapacitated person, or a person whose identity or**
 10 **location is unknown or not reasonably ascertainable, and persons** who are
 11 not represented under (2)(A) or (B) of this section, by giving notice to all
 12 known persons whose interests in the proceedings are substantially identical to
 13 those of the unborn [OR UNASCERTAINED] persons, **the minor, the**
 14 **incapacitated person, or the person whose identity or location is unknown**
 15 **or not reasonably ascertainable;**

16 (4) at any point in a proceeding, a court may appoint a guardian ad
 17 litem to represent the interest of **an unborn person,** a minor, an incapacitated [,
 18 UNBORN, OR UNASCERTAINED] person, or a person whose identity or address is
 19 unknown **or not reasonably ascertainable,** if the court determines that representation
 20 of the interest otherwise would be inadequate; if not precluded by conflict of interests,
 21 a guardian ad litem may be appointed to represent several persons or interests; the
 22 court shall set out its reasons for appointing a guardian ad litem as a part of the record
 23 of the proceeding.

24 * **Sec. 3.** AS 13.36.043(a) is amended to read:

25 (a) The situs of a foreign trust is moved to this state when the trust satisfies
 26 **the conditions listed in AS 13.36.035(c)(1) - (4)** [AS 13.36.035(c)] and a qualified
 27 person serving as trustee registers the trust under AS 13.36.010.

28 * **Sec. 4.** AS 13.36.100 is amended to read:

29 **Sec. 13.36.100. Limitations on proceedings against trustees [AFTER**
 30 **FINAL ACCOUNT].** Unless previously barred by adjudication, consent, or
 31 limitation, any claim against a trustee for breach of trust is barred as to any beneficiary

1 who has received a **report that adequately discloses the existence of a potential**
 2 **claim for breach of trust and informs the beneficiary of the time allowed for**
 3 **commencing a proceeding**, [FINAL ACCOUNT OR OTHER STATEMENT
 4 FULLY DISCLOSING THE MATTER AND SHOWING TERMINATION OF THE
 5 TRUST RELATIONSHIP BETWEEN THE TRUSTEE AND THE BENEFICIARY]
 6 unless a proceeding to assert the claim is commenced within six months after receipt
 7 of the **report** [FINAL ACCOUNT OR STATEMENT]. In any event and
 8 notwithstanding lack of **adequate** [FULL] disclosure, **all claims against** a trustee who
 9 has issued a final account or statement received by the beneficiary and has informed
 10 the beneficiary of the location and availability of records for examination by the
 11 beneficiary **are barred unless a proceeding to assert the claim is commenced**
 12 **within** [IS PROTECTED AFTER] three years **after the beneficiary's receipt of the**
 13 **final account or statement**. A beneficiary is considered to have received a **report, a**
 14 **final account,** or **a** statement if, being an adult, it is received by the beneficiary
 15 personally or if, being a [MINOR OR DISABLED] person **who may be represented**
 16 **and bound by another person under AS 13.06.120**, it is received by **the person**
 17 **who may represent the person under AS 13.06.120** [A REPRESENTATIVE AS
 18 DESCRIBED IN AS 13.06.120(1) AND (2)].

19 * **Sec. 5.** AS 13.36.100 is amended by adding a new subsection to read:

20 (b) A report adequately discloses the existence of a potential claim for breach
 21 of trust if it provides sufficient information so that the beneficiary knows of the
 22 potential claim or could be expected to reasonably have inquired into the existence of
 23 a claim with respect to that matter.

24 * **Sec. 6.** AS 13.38.500 is amended to read:

25 **Sec. 13.38.500. Determination and distribution of net income.** After a
 26 decedent dies in the case of an estate, or after an income interest in a trust ends, a
 27 fiduciary

28 (1) of an estate or of a terminating income interest shall determine the
 29 amount of net income and net principal receipts received from property specifically
 30 given to a beneficiary under (5) of this section and the provisions applicable to trustees
 31 in AS 13.38.550 - 13.38.860; the fiduciary shall distribute the net income and net

1 principal receipts to the beneficiary who is to receive the specific property;

2 (2) shall distribute to a beneficiary or trust that receives a pecuniary
3 amount a share of net income equal to the beneficiary's or trust's fractional interest in
4 undistributed principal assets as determined under **AS 13.38.510(a), (b)(1), (b)(3),**
5 **and (c) - (e)** [AS 13.38.510]; the share accrues from the date of death of a decedent, in
6 the case of an estate, or the date of death of a settlor or specified event, in the case of a
7 revocable or irrevocable trust;

8 (3) shall determine the remaining net income of a decedent's estate or a
9 terminating income interest under the provisions applicable to trustees in
10 AS 13.38.550 - 13.38.860 and by

11 (A) including in net income all income from property used to
12 discharge liabilities; and

13 (B) paying from principal the debts, the funeral expenses, the
14 costs of disposition of remains, the family allowance under AS 13.12.404, fees
15 of personal representatives and their attorneys and accountants, and the taxes,
16 related interest, and penalties described in AS 13.38.810(a)(7) that are
17 apportioned to the estate or terminating income interest by the governing
18 instrument or applicable law;

19 (4) shall distribute the net income remaining after distributions
20 required by (2) of this section in the manner described in AS 13.38.510 to all other
21 beneficiaries;

22 (5) may not reduce principal or income receipts from property
23 described in (1) of this section because of a payment described in **AS 13.38.800 or**
24 **13.38.810** [AS 13.38.710 OR 13.38.720] to the extent that the governing instrument or
25 applicable law requires the fiduciary to make the payment from assets other than the
26 property or to the extent that the fiduciary recovers or expects to recover the payment
27 from a third party; the net income and principal receipts from the property are
28 determined by

29 (A) including all of the amounts the fiduciary receives or pays
30 with respect to the property, whether those amounts accrued or became due
31 before, on, or after the date of a decedent's death or an income interest's

1 terminating event; and

2 (B) making a reasonable provision for amounts that the
3 fiduciary believes the estate or terminating income interest may become
4 obligated to pay after the property is distributed.

5 * **Sec. 7.** AS 13.38.730(a) is amended to read:

6 (a) If a federal estate or gift tax marital deduction is allowed for all or part of a
7 trust whose income is required to be paid to the settlor's or testator's spouse and whose
8 assets consist substantially of property that does not provide the spouse with sufficient
9 income from or use of the trust assets, and if the amounts that the trustee transfers
10 from principal to income under AS 13.38.210 and that the trustee distributes to the
11 spouse from principal under the governing instrument are insufficient to provide the
12 spouse with the beneficial enjoyment required to obtain the marital deduction, the
13 spouse may require the trustee to make property productive of income, convert
14 property within a reasonable time, or exercise the power conferred by
15 AS 13.38.210(a). The trustee may decide which action or combination of actions to
16 take. **The income interest for a marital deduction trust described in this**
17 **subsection shall be paid at least annually.**

18 * **Sec. 8.** AS 34.40.110(a) is amended to read:

19 (a) A person who in writing transfers property in trust may provide that the
20 interest of a beneficiary of the trust, including a beneficiary who is the settlor of the
21 trust, may not be either voluntarily or involuntarily transferred before payment or
22 delivery of the interest to the beneficiary by the trustee. Payment or delivery of the
23 interest to the beneficiary does not include a beneficiary's use or occupancy of real
24 property or tangible personal property owned by the trust if the use or occupancy is in
25 accordance with the trustee's discretionary authority under the trust instrument. **A**
26 **provision in a trust instrument that provides the restrictions described in this**
27 **subsection is considered to be a restriction that is a restriction on the transfer of**
28 **the transferor's beneficial interest in the trust and that is enforceable under**
29 **applicable nonbankruptcy law within the meaning of 11 U.S.C. 541(c)(2)**
30 **(Bankruptcy Code), as that paragraph reads on the effective date of this bill**
31 **section or as it may be amended in the future.** In this subsection,

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

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

5 * **Sec. 9.** AS 34.40.110(b) is amended to read:

6 (b) If a trust contains a transfer restriction allowed under (a) of this section,
7 the transfer restriction prevents a creditor existing when the trust is created or a person
8 who subsequently becomes a creditor from satisfying a claim out of the beneficiary's
9 interest in the trust, unless the creditor is a creditor of the settlor and

10 (1) the settlor's transfer of property in trust was made with the intent to
11 defraud that creditor, **and a cause of action or claim for relief with respect to the**
12 **fraudulent transfer complies with the requirements of (d) of this section;**

13 (2) the trust provides that the settlor may revoke or terminate all or part
14 of the trust without the consent of a person who has a substantial beneficial interest in
15 the trust and the interest would be adversely affected by the exercise of the power held
16 by the settlor to revoke or terminate all or part of the trust; in this paragraph, "revoke
17 or terminate" does not include a power to veto a distribution from the trust, a
18 testamentary nongeneral power of appointment or similar power, or the right to
19 receive a distribution of income, principal, or both in the discretion of a person,
20 including a trustee, other than the settlor, or a right to receive a distribution of income
21 or principal under (3)(A) or (B) of this subsection;

22 (3) the trust requires that all or a part of the trust's income or principal,
23 or both, must be distributed to the settlor; however, this paragraph does not apply to a
24 settlor's right to receive **the following types of distributions, which remain subject**
25 **to the restriction provided by (a) of this section until the distributions occur;**

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

31 (B) a percentage of the value of the trust each year as

1 determined from time to time under the trust instrument, but not exceeding the
 2 amount that may be defined as income under AS 13.38 or under 26 U.S.C.
 3 643(b) (Internal Revenue Code) as that subsection reads on the effective date
 4 of this bill section and as it may be amended;

5 **(C) the transferor's potential or actual use of real property**
 6 **held under a qualified personal residence trust within the meaning of 26**
 7 **U.S.C. 2702(c) (Internal Revenue Code) as that subsection reads on the**
 8 **effective date of this bill section or as it may be amended in the future; or**

9 **(D) income or principal from a grantor retained annuity**
 10 **trust or grantor retained unitrust that is allowed under 26 U.S.C. 2702**
 11 **(Internal Revenue Code) as that section reads on the effective date of this**
 12 **bill section or as it may be amended in the future; or**

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

15 * **Sec. 10.** AS 34.40.110(e) is amended to read:

16 (e) If a trust contains a transfer restriction allowed under (a) of this section, the
 17 transfer restriction prevents a creditor existing when the trust is created, a person who
 18 subsequently becomes a creditor, or another person from asserting any cause of action
 19 or claim for relief against a trustee of the trust or against others involved in the
 20 preparation or funding of the trust for conspiracy to commit fraudulent conveyance,
 21 aiding and abetting a fraudulent conveyance, or participation in the trust transaction.
 22 **Preparation or funding of the trust includes the preparation and funding of a**
 23 **limited partnership or a limited liability company if interests in the limited**
 24 **partnership or limited liability company are subsequently transferred to the**
 25 **trust.** The creditor and other person prevented from asserting a cause of action or
 26 claim for relief are limited to recourse against the trust assets and the settlor to the
 27 extent allowed under AS 34.40.010.

28 * **Sec. 11.** AS 34.40.110 is amended by adding a new subsection to read:

29 (l) Notwithstanding another provision of the law of this state, an action,
 30 including an action to enforce a judgment entered by a court or other body having
 31 adjudicative authority, may not be brought at law or in equity for an attachment or

1 other provisional remedy against property of a trust subject to this section or to avoid a
2 transfer of property to a trust that is the subject of this section unless the action is
3 brought under (b)(1) of this section and within the limitations period of (d) of this
4 section. The superior court in this state has exclusive jurisdiction over an action
5 brought under a cause of action or claim for relief that is based on a transfer of
6 property to a trust that is the subject of this section.

7 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 APPLICATION OF SECTIONS. (a) AS 13.06.120, as amended by sec. 2 of this Act,
10 applies to a proceeding begun on or after the effective date of sec. 2 of this Act.

11 (b) AS 13.36.100, as amended by sec. 4 of this Act, applies to a report, final account,
12 or statement received by a beneficiary on or after the effective date of sec. 4 of this Act.

13 * **Sec. 13.** Sections 2 and 4 - 6 of this Act, take effect immediately under AS 01.10.070(c).