

HOUSE CS FOR CS FOR SENATE BILL NO. 298(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 4/5/06

Referred: Judiciary

Sponsor(s): SENATORS SEEKINS, Wilken, Bunde, Cowdery, Green, Stedman, Therriault, Wagoner, Dyson, Huggins, Ben Stevens, Gary Stevens

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to loans from trust property; relating to a trustee's power to appoint
2 the principal of a trust to another trust; relating to challenges to, claims against, and
3 liabilities of trustees, beneficiaries, and creditors of trusts and of trusts and estates;
4 relating to individual retirement accounts and plans; relating to certain trusts in divorce
5 and dissolutions of marriage situations; and providing for an effective date."

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

7 * **Section 1.** AS 13.36.109(21) is amended to read:

8 (21) to make loans out of trust property to an eligible [A] beneficiary
9 or an eligible third-party entity on terms and conditions the trustee considers to be
10 fair and reasonable under the circumstances and to guarantee loans to the eligible
11 beneficiary or eligible third-party entity by encumbrances on trust property; in this
12 paragraph,

13 (A) "eligible beneficiary" means a beneficiary of the trust

1 who is currently eligible for or entitled to a distribution of income or
 2 principal of the trust;

3 (B) "eligible third-party entity" means a third-party entity
 4 if more than 50 percent of the equity of the entity is owned by the trust or
 5 by one or more beneficiaries of the trust;

6 * **Sec. 2.** AS 13.36.157(a) is amended to read:

7 (a) Subject to (d) of this section, unless [UNLESS] the terms of the
 8 instrument expressly provide otherwise, a trustee who has authority [THE
 9 ABSOLUTE DISCRETION] under the terms of an [A TESTAMENTARY]
 10 instrument or irrevocable inter vivos agreement to invade the principal of a trust for
 11 the benefit of a [THE] beneficiary who is eligible or entitled to the income of the trust
 12 may exercise without prior court approval the trustee's authority [DISCRETION] by
 13 appointing, whether or not there is a current need to invade the principal under
 14 any standard stated in the governing instrument, part or all of the principal of the
 15 trust in favor of a trustee of another [A] trust under an instrument other than that
 16 under which the power to invade was created if the exercise of this authority
 17 [DISCRETION]

18 (1) does not reduce any fixed income interest of a [AN INCOME]
 19 beneficiary of the invaded trust;

20 (2) is in favor of the beneficiaries [BENEFICIARY] of the invaded
 21 trust; [AND]

22 (3) does not violate the limitations on validity under AS 34.27.051 or
 23 34.27.100; and

24 (4) results, in the appointed trust, in a standard for invading
 25 principal that is the same as the standard for invading principal in the invaded
 26 trust.

27 * **Sec. 3.** AS 13.36.157 is amended by adding new subsections to read:

28 (d) The governing instrument of an appointed trust may provide that, after a
 29 time or an event specified in the governing instrument, the trust assets of the appointed
 30 trust remaining after the time or event shall be held for the benefit of the beneficiaries
 31 of the invaded trust on terms and conditions regarding the nature and extent of the

1 interests of the beneficiaries of the invaded trust that are substantially identical to the
2 terms and conditions governing the interests of the beneficiaries in the invaded trust.

3 (e) In this section,

4 (1) "appointed trust" means the trust to which principal is appointed
5 under (a) of this section;

6 (2) "invaded trust" means the trust whose principal is invaded under
7 (a) of this section.

8 * **Sec. 4.** AS 13.16 is amended by adding a new section to article 8 to read:

9 **Sec. 13.16.530. Application to trustees.** Notwithstanding AS 13.16.450 -
10 13.16.525, the trustee of a trust may, under AS 13.36.368(b)(3), take the action a
11 personal representative may take under AS 13.16.450 - 13.16.525.

12 * **Sec. 5.** AS 13.36.100(a) is amended to read:

13 (a) Unless resolved or barred under (b) or (c) of this section, and
14 notwithstanding the lack of adequate disclosure, all claims against a trustee who has
15 issued a [FINAL] report received by the beneficiary and who has informed the
16 beneficiary of the location and availability of records for examination by the
17 beneficiary are barred unless a proceeding to assert the claims is commenced within
18 three years after the beneficiary's receipt of the [FINAL] report.

19 * **Sec. 6.** AS 13.36.100(b) is amended to read:

20 (b) If a trustee petitions a court for an order approving a report that adequately
21 discloses the existence of a potential claim, serves the report on all beneficiaries to be
22 bound by the report, [AND] gives the beneficiaries at least 60 [90] days' notice of the
23 court proceeding, **and notifies the beneficiary that a claim must be begun within**
24 **45 days after the beneficiary is served with notice of the court proceeding,** all
25 potential claims of the beneficiaries against the trustee are barred unless the claims are
26 served on the trustee and filed with the court within 45 [60] days after the beneficiaries
27 **are served with notice of** [RECEIVE THE REPORT, OR DURING] the **court**
28 proceeding.

29 * **Sec. 7.** AS 13.36.100(c) is amended to read:

30 (c) If a trustee serves a report on a beneficiary that adequately discloses the
31 existence of a potential claim against the trustee, the trustee informs the beneficiary

1 that a proceeding to assert any claim against the trustee must be commenced by the
 2 beneficiary within [24 MONTHS AFTER RECEIPT OF THE REPORT IF IT IS AN
 3 INTERIM REPORT OR WITHIN] six months after receipt of the report [IF IT IS A
 4 FINAL REPORT], and the beneficiary fails to assert a claim against the trustee, all
 5 claims of the beneficiary are barred.

6 * **Sec. 8.** AS 13.36.100 is amended by adding a new subsection to read:

7 (h) The report of a trustee under this section is considered to provide adequate
 8 notice to the beneficiary that there is a time limitation for filing a claim against the
 9 trustee if the cover page or top of the first page of the report contains the following
 10 language in at least 14 point bold type: "BY RECEIPT OF THIS REPORT, ANY
 11 ACTION YOU MAY HAVE AS A BENEFICIARY AGAINST THE TRUSTEE
 12 FOR BREACH OF TRUST BASED ON ANY MATTER ADEQUATELY
 13 DISCLOSED IN THIS REPORT MAY BE BARRED UNLESS THE ACTION IS
 14 BEGUN WITHIN SIX MONTHS AFTER YOU RECEIVE THIS REPORT. IF YOU
 15 HAVE ANY QUESTIONS, YOU MAY WISH TO OBTAIN PROFESSIONAL
 16 ADVICE REGARDING THIS REPORT."

17 * **Sec. 9.** AS 13.36.310(a) is amended to read:

18 (a) Except as provided in **AS 34.40.110(b)** [AS 34.40.110], a trust that is
 19 covered by AS 13.36.035(c) or that is otherwise governed by the laws of this state, or
 20 a property transfer to a trust that is covered by AS 13.36.035(c) or that is otherwise
 21 governed by the laws of this state, is not void, voidable, liable to be set aside,
 22 defective in any fashion, or questionable as to the settlor's capacity, **and the assets of**
 23 **the trust are not subject to the claim of a creditor of the settlor or a creditor of a**
 24 **beneficiary**, on the grounds that the trust or transfer avoids or defeats a right, claim, or
 25 interest conferred by law on a person by reason of a personal or business relationship
 26 with the settlor **or beneficiary** or by way of a marital or similar right.

27 * **Sec. 10.** AS 13.36.310(b) is amended to read:

28 (b) If a trust or a property transfer to a trust is voided or set aside under
 29 **AS 34.40.110(b)** [(a) OF THIS SECTION], then the trust or property transfer shall be
 30 voided or set aside only to the extent necessary to satisfy the settlor's debt to the
 31 creditor or other person at whose instance the trust or property transfer is voided or set

1 aside and the costs and attorney fees allowed under the rules of court.

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

3 **Sec. 13.36.368. Claims against revocable trusts.** (a) Whether or not the terms
4 of the trust contain a spendthrift restriction,

5 (1) during the lifetime of the settlor of a revocable trust, the property of
6 the trust is subject to claims of the settlor's creditors; and

7 (2) except as otherwise provided in (b) of this section, after the death
8 of the settlor of a trust that was revocable at the settlor's death, and subject to the
9 settlor's right to direct the source from which claims may be paid, the property of the
10 trust is subject to claims to the extent the settlor's estate is not adequate to satisfy the
11 claims.

12 (b) With respect to claims in connection with the settlement after the death of
13 the settlor of a trust that was revocable at the settlor's death,

14 (1) a creditor's claim that would be allowed or barred against a
15 decedent's estate under AS 13.16.450 - 13.16.525 shall be allowed or barred against
16 the trustee of the trust, the trust property, and the creditors and beneficiaries of the
17 trust;

18 (2) if the personal representative of the decedent's estate follows the
19 procedures provided by AS 13.16.450 - 13.16.525, then claims that are allowed or
20 barred against the decedent's estate shall also be allowed or barred against the assets of
21 the trust;

22 (3) if the personal representative of the decedent's estate fails to follow
23 the procedures stated by AS 13.16.450 - 13.16.525, the trustee of the trust may file a
24 petition with the superior court for a determination of claims and follow the
25 procedures established by AS 13.16.450 - 13.16.525, and claims against the trust and
26 against the decedent's estate shall be allowed or barred under those procedures.

27 (c) In (a)(2) and (b) of this section, "claim" means a claim

28 (1) of a creditor of the settlor;

29 (2) for the expenses of the administration of the settlor's estate;

30 (3) for the expenses of the settlor's funeral; and

31 (4) for the expenses of the disposal of the settlor's remains.

1 * **Sec. 12.** AS 34.40.110(b) is amended to read:

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

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

9 (2) the trust, **except for an eligible individual retirement account**
10 **trust**, provides that the settlor may revoke or terminate all or part of the trust without
11 the consent of a person who has a substantial beneficial interest in the trust and the
12 interest would be adversely affected by the exercise of the power held by the settlor to
13 revoke or terminate all or part of the trust; in this paragraph, "revoke or terminate"
14 does not include a power to veto a distribution from the trust, a testamentary
15 nongeneral power of appointment or similar power, or the right to receive a
16 distribution of income, principal, or both in the discretion of a person, including a
17 trustee, other than the settlor, or a right to receive a distribution of income or principal
18 under **(3)(A), (B), (C), or (D)** [(3)(A) OR (B)] of this subsection;

19 (3) the trust, **except for an eligible individual retirement account**
20 **trust**, requires that all or a part of the trust's income or principal, or both, must be
21 distributed to the settlor; however, this paragraph does not apply to a settlor's right to
22 receive the following types of distributions, which remain subject to the restriction
23 provided by (a) of this section until the distributions occur:

24 (A) income or principal from a charitable remainder annuity
25 trust or charitable remainder unitrust; in this subparagraph, "charitable
26 remainder annuity trust" and "charitable remainder unitrust" have the meanings
27 given in 26 U.S.C. 664 (Internal Revenue Code) as that section reads on
28 October 8, 2003, and as it may be amended;

29 (B) a percentage of the value of the trust each year as
30 determined from time to time under the trust instrument, but not exceeding the
31 amount that may be defined as income under AS 13.38 or under 26 U.S.C.

1 643(b) (Internal Revenue Code) as that subsection reads on October 8, 2003,
2 and as it may be amended;

3 (C) the transferor's potential or actual use of real property held
4 under a qualified personal residence trust within the meaning of 26 U.S.C.
5 2702(c) (Internal Revenue Code) as that subsection reads on September 15,
6 2004, or as it may be amended in the future; or

7 (D) income or principal from a grantor retained annuity trust or
8 grantor retained unitrust that is allowed under 26 U.S.C. 2702 (Internal
9 Revenue Code) as that section reads on September 15, 2004, or as it may be
10 amended in the future; or

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

13 * **Sec. 13.** AS 34.40.110(l) is amended by adding a new paragraph to read:

14 (2) "eligible individual retirement account trust" means an individual
15 retirement account under 26 U.S.C. 408(a) or an individual retirement plan under 26
16 U.S.C. 408A(b) (Internal Revenue Code), as those sections read on the effective date
17 of this paragraph or as they may be amended in the future, that is in the form of a trust,
18 if a trust company or bank with its principal place of business in this state is the trustee
19 or custodian.

20 * **Sec. 14.** AS 34.40.110 is amended by adding a new subsection to read:

21 (m) If a trust has a transfer restriction allowed under (a) of this section, in the
22 event of the divorce or dissolution of the marriage of a beneficiary of the trust, the
23 beneficiary's interest in the trust is not considered property subject to division under
24 AS 25.24.160 or 25.24.230 or a part of a property division under AS 25.24.160 or
25 25.24.230. Unless otherwise agreed to in writing by the parties to the marriage, this
26 subsection does not apply to a settlor's interest in a self-settled trust with respect to
27 assets transferred to the trust after the settlor's marriage.

28 * **Sec. 15.** AS 13.36.100(g)(1) is repealed.

29 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 TRANSITION. AS 13.36.157(a), as amended by sec. 2 of this Act, and

- 1 AS 13.36.157(d) and (e), as added by sec. 3 of this Act, apply to a trust that is created by a
- 2 will or another instrument before, on, or after the effective date of secs. 2 and 3 of this Act.
- 3 * **Sec. 17.** Sections 2 and 3 of this Act take effect immediately under AS 01.10.070(c).