

CS FOR SENATE BILL NO. 146(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 5/2/07

Referred: Judiciary, Finance

Sponsor(s): SENATE STATE AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the issuance of shares of professional corporations to a trust, to**
2 **trusts, to trustees, to the removal of a trustee, to the compensation of a trustee and a**
3 **person employed by a trustee, to a trustee's accepting or rejecting a trusteeship, to co-**
4 **trustees, to a vacancy in a trusteeship, to the resignation of a trustee, to delivery of trust**
5 **property by former trustees, to the reimbursement of trustee expenses, to the**
6 **certification of a trust, to the suitability of a trustee, to the place of administration of a**
7 **trust, to a trustee's power to appoint property to another trust, to a change of the**
8 **percentage of trust property to be considered principal, to the determination of the**
9 **value of a trust, and to a settlor's intent when transferring property in trust; amending**
10 **Rules 54 and 82, Alaska Rules of Civil Procedure; and providing for an effective date."**

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

12 *** Section 1.** AS 10.45.050 is amended to read:

1 **Sec. 10.45.050. Issuance of shares.** A professional corporation may issue
 2 shares of its capital stock to persons licensed by a regulatory board of the state to
 3 render the professional service specified in the articles of incorporation, **or to a**
 4 **revocable or joint revocable trust if a settlor of the trust is a person licensed by a**
 5 **regulatory board of the state to render the professional service specified in the**
 6 **articles of incorporation.** It may not issue shares to any other person **or trust.**

7 * **Sec. 2.** AS 13.36.020 is amended to read:

8 **Sec. 13.36.020. Effect of failure to register.** A trustee who fails to register a
 9 trust in a proper place as required by AS 13.36.005 - 13.36.025, for purposes of any
 10 proceedings initiated by a beneficiary of the trust before registration is subject to the
 11 personal jurisdiction of any court in which the trust could have been registered. In
 12 addition, any trustee who, within 30 days after receipt of a written demand by a settlor
 13 or beneficiary of the trust, fails to register a trust as required by AS 13.36.005 -
 14 13.36.025 is subject to removal **under AS 13.36.076** and denial of compensation or to
 15 surcharge as the court may direct. A provision in the terms of the trust purporting to
 16 excuse the trustee from the duty to register, or directing that the trust or trustee is not
 17 subject to the jurisdiction of the court, is ineffective.

18 * **Sec. 3.** AS 13.36.035(a) is amended to read:

19 (a) The court has exclusive jurisdiction of proceedings initiated by interested
 20 parties concerning the internal affairs of trusts, including trusts covered by (c) of this
 21 section. Except as provided in (c) and (d) of this section, proceedings that may be
 22 maintained under this section are those concerning the administration and distribution
 23 of trusts, the declaration of rights, and the determination of other matters involving
 24 trustees and beneficiaries of trusts. These include proceedings to

25 (1) appoint or remove a trustee **under AS 13.36.076;**

26 (2) review trustees' fees and to review and settle interim or final
 27 accounts;

28 (3) ascertain beneficiaries, determine any question arising in the
 29 administration or distribution of any trust including questions of construction of trust
 30 instruments, instruct trustees, and determine the existence or nonexistence of any
 31 immunity, power, privilege, duty, or right; and

1 (4) release registration of a trust.

2 * **Sec. 4.** AS 13.36.035(d) is amended to read:

3 (d) The validity, construction, and administration of a trust with a state
4 jurisdiction provision are determined by the laws of this state, including the

5 (1) capacity of the settlor;

6 (2) powers, obligations, liabilities, and rights of the trustees and the
7 appointment and removal of the trustees under AS 13.36.076; and

8 (3) existence and extent of powers, conferred or retained, including a
9 trustee's discretionary powers, the powers retained by a beneficiary of the trust, and
10 the validity of the exercise of a power.

11 * **Sec. 5.** AS 13.36.055 is amended by adding a new subsection to read:

12 (b) If the terms of a trust do not specify the compensation or method for
13 determining the compensation of the trustee, the trustee is entitled to compensation
14 that is reasonable under the circumstances. If the terms of a trust do not specify the
15 compensation or method for determining the compensation of a person employed by
16 the trustee, the person employed by the trustee is entitled to compensation that is
17 reasonable under the circumstances. If the terms of a trust specify the compensation or
18 method for determining the compensation of a trustee and if the trustee is compensated
19 according to these terms, the compensation paid to the trustee is presumed to be
20 reasonable. If the terms of a trust specify the compensation or method for determining
21 the compensation of a person employed by the trustee and if the person employed by
22 the trustee is compensated according to these terms, the compensation paid to the
23 person employed by the trustee is presumed to be reasonable. If a trust specifies the
24 compensation or method for determining the compensation paid to the trustee or
25 person employed by the trustee and if the trustee or person employed by the trustee is
26 compensated accordingly, an interested person who seeks review of the compensation
27 has the burden of proving by clear and convincing evidence that the compensation
28 paid to the trustee or the person employed by the trustee is not reasonable.

29 * **Sec. 6.** AS 13.36 is amended by adding new sections to read:

30 **Sec. 13.36.071. Accepting or rejecting trusteeship.** (a) Except as otherwise
31 provided in (c) or (d) of this section, a person designated as a trustee accepts the

1 trusteeship

2 (1) by substantially complying with a method of acceptance provided
3 by the terms of the trust; or

4 (2) if the terms of the trust do not provide a method, or the method
5 provided in the terms of the trust is not expressly made exclusive, and except as
6 otherwise provided by the trust instrument, by accepting delivery of the trust property,
7 exercising powers as a trustee, performing duties as a trustee, or otherwise indicating
8 acceptance of the trusteeship.

9 (b) A person designated as a trustee who has not yet accepted the trusteeship
10 may reject the trusteeship. A person designated as a trustee who does not accept the
11 trusteeship within a reasonable time after knowing of the designation is considered to
12 have rejected the trusteeship.

13 (c) A person designated as a trustee, without accepting the trusteeship, may act
14 to preserve the trust property if, within a reasonable time after acting, the person sends
15 a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to
16 a qualified beneficiary.

17 (d) A person designated as a trustee, without accepting the trusteeship, may
18 inspect or investigate trust property to determine potential liability under
19 environmental or other law or for another purpose.

20 **Sec. 13.36.072. Co-trustees.** (a) Except as otherwise provided in the trust
21 instrument,

22 (1) co-trustees who are unable to reach a unanimous decision may
23 decide to act by majority decision;

24 (2) if a vacancy occurs in a co-trusteeship, the remaining co-trustee or
25 co-trustees may continue to act for the trust with full authority;

26 (3) a co-trustee shall participate in the performance of the co-trustee's
27 function unless

28 (A) the co-trustee is unavailable to perform the function
29 because of absence, illness, disqualification under other law, or temporary
30 incapacity; or

31 (B) the co-trustee has properly delegated the performance of

1 the function to another co-trustee;

2 (4) if a co-trustee is unavailable to perform duties because of absence,
3 illness, disqualification under other law, or temporary incapacity, and prompt action is
4 necessary to achieve the purposes of the trust or to avoid injury to the trust property,
5 the remaining co-trustee or a majority of the remaining co-trustees may act with full
6 authority for the trust.

7 (b) Except as prohibited by the terms of the trust, a co-trustee may, by a
8 signed, written instrument, delegate to a co-trustee the performance of a function.
9 Unless a delegation is irrevocable, a co-trustee may revoke a delegation.

10 **Sec. 13.36.073. Vacancy in trusteeship; appointment of successor.** (a)

11 Except as otherwise provided in the trust instrument, a vacancy in a trusteeship occurs
12 if

13 (1) a person designated as a trustee rejects the trusteeship or is
14 considered to have rejected the trusteeship under AS 13.36.071;

15 (2) a person designated as a trustee cannot be identified or does not
16 exist;

17 (3) a trustee resigns;

18 (4) a trustee is disqualified or removed under AS 13.36.076;

19 (5) a trustee dies;

20 (6) a guardian or conservator is appointed for an individual serving as
21 a trustee.

22 (b) Except as otherwise provided in the trust instrument, if one or more co-
23 trustees remain in office, it is not necessary to fill a vacancy in a trusteeship, but a
24 vacancy in a trusteeship shall be filled if the trust does not have a remaining trustee.

25 (c) A vacancy in a trusteeship of a noncharitable trust that is required to be
26 filled shall be filled in the following order of priority:

27 (1) under the terms of the trust;

28 (2) by a person, other than a beneficiary, appointed by unanimous
29 agreement of the qualified beneficiaries; or

30 (3) by a person appointed by the court.

31 (d) A vacancy in a trusteeship of an exclusively charitable trust that is required

1 to be filled shall be filled in the following order of priority:

2 (1) under the terms of the trust;

3 (2) by a person selected by the unanimous consent of the charitable
4 organizations expressly designated to receive distributions under the terms of the trust;
5 or

6 (3) by a person appointed by the court.

7 (e) Except as otherwise provided in the trust instrument, a qualified
8 beneficiary who may be represented and bound by another person under AS 13.06.120
9 may have the qualified beneficiary's consent to the appointment of a trustee as
10 specified in this section given by the person who may represent the qualified
11 beneficiary under AS 13.06.120.

12 **Sec. 13.36.074. Resignation of trustee.** (a) Except as otherwise provided in
13 the trust instrument, a trustee may resign

14 (1) not less than 30 days after providing written notice of the intent to
15 resign to the qualified beneficiaries and all co-trustees; or

16 (2) with the approval of the court.

17 (b) In approving the resignation of a trustee, the court may issue orders and
18 impose conditions on the resigning trustee that are reasonably necessary for the
19 protection of the trust property.

20 (c) Except as otherwise provided in the trust instrument, a liability of a
21 resigning trustee for acts or omissions of the trustee is not discharged or affected by
22 the trustee's resignation.

23 * **Sec. 7.** AS 13.36 is amended by adding new sections to read:

24 **Sec. 13.36.076. Removal of trustee.** (a) A trustee may be removed from office

25 (1) by the decision of a trust protector under AS 13.36.370(b)(1);

26 (2) by the decision of another person specified in the trust instrument;

27 (3) under a procedure specified in the trust instrument;

28 (4) by a court on petition by the settlor, a co-trustee, a qualified
29 beneficiary, or the court on its own initiative, if

30 (A) the court finds there is a basis for removal under (b) of this

31 section, there is not a trust protector or another specified person who is

1 currently acting and who may be contacted by the settlor, trustee or qualified
2 beneficiary in person, by mail, electronically, or another means, and there is
3 not a procedure for removal specified in the trust instrument; or

4 (B) notwithstanding the appointment of a trust protector under
5 AS 13.36.370 or the existence of a procedure for trustee removal specified in
6 the trust instrument, there has been a serious breach of trust as specified under
7 (b)(1) of this section.

8 (b) A trustee may be removed from office under (a)(4) of this section if the
9 court finds that removal would be in the best interests of all the beneficiaries and,

10 (1) for (a)(4)(A) or (B) of this section, the trustee has committed a
11 serious breach of trust under the terms of the trust and AS 13.36.070 - 13.36.290; or

12 (2) for (a)(4)(A) of this section,

13 (i) lack of cooperation among co-trustees substantially
14 impairs the administration of the trust;

15 (ii) a trustee is unfit, is unwilling, or persistently fails to
16 administer the trust effectively; or

17 (iii) there has been a substantial change of
18 circumstances not anticipated by the settlor, removal is requested by all
19 of the qualified beneficiaries, the court finds that removal of the trustee
20 best serves the interests of all of the beneficiaries and is not
21 inconsistent with a material purpose of the trust, and a suitable co-
22 trustee or successor trustee is available.

23 (c) When appointing a successor trustee, the court shall first consider the
24 successor trustees named in the trust or, if the trust is a testamentary trust, in the
25 testator's will, or, if a successor is not named, another procedure contained in the
26 instrument for the appointment of a successor. When selecting a successor trustee, the
27 court shall also consider the tax, creditor liability, and similar consequences of
28 selecting a certain individual or institution.

29 (d) Pending a final decision on a petition to remove a trustee, or instead of or
30 in addition to removing a trustee, the court may order relief that is appropriate and
31 necessary to protect the trust property or the interest of the beneficiaries.

1 (e) A qualified beneficiary who may be represented and bound by another
 2 person under AS 13.06.120 may have the qualified beneficiary's consent to the
 3 removal of a trustee as specified in this section given by the person who may represent
 4 the qualified beneficiary under AS 13.06.120.

5 **Sec. 13.36.077. Delivery of property by former trustee.** Except as otherwise
 6 provided in the trust instrument,

7 (1) unless a co-trustee remains or the court otherwise orders, and until
 8 the trust property is delivered to a successor trustee or another person entitled to the
 9 trust property, a trustee who has resigned or been removed has the duties of a trustee
 10 and the powers necessary to protect the trust property;

11 (2) a trustee who has resigned or been removed shall proceed
 12 expeditiously to deliver the trust property in the trustee's possession to a co-trustee, a
 13 successor trustee, or another person entitled to the trust property.

14 **Sec. 13.36.078. Reimbursement of expenses.** Except as otherwise provided in
 15 the trust instrument,

16 (1) a trustee is entitled to be reimbursed out of the trust property, with
 17 interest as appropriate, for

18 (A) expenses that were properly incurred in the administration
 19 of the trust; and

20 (B) expenses that were not properly incurred in the
 21 administration of the trust to the extent necessary to prevent unjust enrichment
 22 of the trust;

23 (2) if the trustee advances money for the protection of the trust, the
 24 trustee has a lien against trust property to secure reimbursement of the money and
 25 payment of reasonable interest on the money.

26 **Sec. 13.36.079. Certification of trust; penalty.** (a) Except as otherwise
 27 provided in the trust instrument, instead of furnishing a copy of the trust instrument to
 28 a person other than a beneficiary, the trustee may furnish to the person a certification
 29 of trust containing the following information:

30 (1) that the trust exists and the date the trust instrument was executed;

31 (2) the identity of the settlor;

- 1 (3) the identity and address of the currently acting trustee;
- 2 (4) the powers of the trustee;
- 3 (5) the revocability or irrevocability of the trust and the identity of any
4 person holding a power to revoke the trust;
- 5 (6) the authority of co-trustees to sign or otherwise authenticate
6 documents related to the trust and whether all or fewer than all co-trustees are required
7 to exercise the trustee powers;
- 8 (7) the trust's taxpayer identification number, if the trust has a taxpayer
9 identification number; and
- 10 (8) the manner of taking title to the property of the trust.
- 11 (b) A certification of trust may be signed or otherwise authenticated by any
12 trustee.
- 13 (c) A certification of trust must state that the trust has not been revoked,
14 modified, or amended in a manner that would cause the representations contained in
15 the certification of trust to be incorrect.
- 16 (d) A certification of trust is not required to contain the dispositive terms of a
17 trust.
- 18 (e) A recipient of a certification of trust may require the trustee to furnish
19 copies of the excerpts from the original trust instrument, including amendments to the
20 trust that designate the trustee and confer on the trustee the power to act in the pending
21 transaction for which the certification of trust is being furnished.
- 22 (f) A person who acts in reasonable reliance on a certification of trust without
23 knowledge that the representations contained in the certification of trust are incorrect
24 is not liable to another person for acting in reasonable reliance on the certification of
25 trust and may assume without inquiry the existence of the facts contained in the
26 certification. Knowledge of the terms of the trust may not be inferred solely because
27 the person relying on the certification is holding a copy of part of the trust instrument.
- 28 (g) A person who in good faith enters into a transaction in reasonable reliance
29 on a certification of trust may enforce the transaction against the trust property as if
30 the representations contained in the certification were correct.
- 31 (h) A person making a demand for the trust instrument in addition to a

1 certification of trust or excerpts from the trust instrument is liable to the state for a
 2 civil penalty not to exceed \$1,000, plus the actual damages associated with the
 3 demand for the trust instrument, if a court determines that the person did not act in
 4 good faith in demanding the trust instrument.

5 (i) A person who is found liable for a civil penalty under (h) of this section
 6 shall also be liable for actual court costs and attorney fees associated with a demand
 7 made under (h) of this section.

8 (j) This section does not limit the right of a person to obtain a copy of the trust
 9 instrument in a judicial proceeding concerning the trust.

10 * **Sec. 8.** AS 13.36.090 is amended to read:

11 **Sec. 13.36.090. Trustee's duties; appropriate place of administration;**
 12 **deviation.** A trustee is under a continuing duty to administer the trust at a place
 13 appropriate to the purposes of the trust and to its sound, efficient management. If the
 14 principal place of administration becomes inappropriate for any reason, the court may
 15 enter any order furthering efficient administration and the interests of beneficiaries,
 16 including, if appropriate, release of registration, removal of the trustee under
 17 AS 13.36.076, and appointment of a trustee in another state. Trust provisions relating
 18 to the place of administration and to changes in the place of administration or of
 19 trustee control unless compliance would be contrary to efficient administration or the
 20 purposes of the trust. [VIEWS OF ADULT BENEFICIARIES SHALL BE GIVEN
 21 WEIGHT IN DETERMINING THE SUITABILITY OF THE TRUSTEE AND THE
 22 PLACE OF ADMINISTRATION.]

23 * **Sec. 9.** AS 13.36.157(b) is amended to read:

24 (b) This section applies to a trust governed by the laws of this state, including
 25 a trust

26 (1) whose governing jurisdiction is transferred to this state; or

27 (2) that has a trustee who is a qualified person, if the majority of
 28 the trustees sign an instrument that

29 (A) provides that the primary administration of the trust
 30 will be located in this state; and

31 (B) is acknowledged under AS 09.63 or the equivalent

1 **provision of the laws of another jurisdiction.**

2 * **Sec. 10.** AS 13.36.198 is amended to read:

3 **Sec. 13.36.198. Liability for violations.** If a trustee violates a provision of
4 AS 13.36.105 - 13.36.220, the trustee may be removed as trustee **under AS 13.36.076**
5 and denied compensation in whole or in part, and a beneficiary, co-trustee, or
6 successor trustee may treat the violation as a breach of trust.

7 * **Sec. 11.** AS 13.36.390 is amended by adding a new paragraph to read:

8 (5) "qualified beneficiary" means a beneficiary who

9 (A) on the date the beneficiary's qualification is determined, is
10 entitled or eligible to receive a distribution of trust income or principal; or

11 (B) would be entitled to receive a distribution of trust income
12 or principal if the event causing the trust's termination occurs.

13 * **Sec. 12.** AS 13.38.460(a) is amended to read:

14 (a) After a trustee has elected under AS 13.38.440 for the trust to be governed
15 by AS 13.38.440 - 13.38.490, the trustee shall, in a writing maintained as part of the
16 permanent records of the trust, select the percentage of the value of the trust that will
17 be considered income and determine that it is consistent with the long-term
18 preservation of the real value of the principal of the trust, but the percentage may not
19 be less than two percent or more than seven percent each year of the principal value of
20 the trust. The trustee may elect to change a percentage **whenever** [PREVIOUSLY
21 SELECTED IF] the trustee determines that the new percentage is **necessary and**
22 **prudent** [CONSISTENT WITH THE LONG-TERM PRESERVATION OF THE
23 REAL VALUE OF THE PRINCIPAL OF THE TRUST, BUT MAY NOT CHANGE
24 THE PERCENTAGE MORE FREQUENTLY THAN ONCE EVERY 10 YEARS].

25 * **Sec. 13.** AS 13.38.480 is amended to read:

26 **Sec. 13.38.480. Value determination.** For the purposes of applying
27 AS 13.38.440 - 13.38.490, the value of the trust is the fair market value of the cash
28 and other assets held by the trustee with respect to the trust, whether these assets
29 would be considered income or principal under the other provisions of this chapter,
30 determined at least annually. In the discretion of the trustee, the value of the trust may
31 be averaged over a period of three or more preceding years, **except that, if** [WHEN]

1 the trust has been **in existence less than** [ADMINISTERED AS A UNITRUST
 2 UNDER THIS SECTION FOR AT LEAST] three years **and the trustee decides to**
 3 **average the value, the average shall be determined over the period during which**
 4 **the trust has been in existence.**

5 * **Sec. 14.** 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; **however, a**
 13 **settlor's expressed intention to protect trust assets from a beneficiary's potential**
 14 **future creditors is not evidence of an intent to defraud;**

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

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

30 (A) income or principal from a charitable remainder annuity
 31 trust or charitable remainder unitrust; in this subparagraph, "charitable

1 remainder annuity trust" and "charitable remainder unitrust" have the meanings
 2 given in 26 U.S.C. 664 (Internal Revenue Code) as that section reads on
 3 October 8, 2003, and as it may be amended;

4 (B) a percentage of the value of the trust each year as
 5 determined from time to time under the trust instrument, but not exceeding the
 6 amount that may be defined as income under AS 13.38 or under 26 U.S.C.
 7 643(b)(Internal Revenue Code) as that subsection reads on October 8, 2003,
 8 and as it may be amended;

9 (C) the transferor's potential or actual use of real property held
 10 under a qualified personal residence trust within the meaning of 26 U.S.C.
 11 2702(c)(Internal Revenue Code) as that subsection reads on September 15,
 12 2004, or as it may be amended in the future; or

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

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

19 * **Sec. 15.** AS 13.36.360(d) is repealed.

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

22 **INDIRECT COURT RULE CHANGE.** The provisions of AS 13.36.079(i), enacted by
 23 sec. 7 of this Act, have the effect of amending

24 (1) Rule 54, Alaska Rules of Civil Procedure, by changing the award of court
 25 costs in certain cases; and

26 (2) Rule 82, Alaska Rules of Civil Procedure, by changing the award of
 27 attorney fees in certain cases.

28 * **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to
 29 read:

30 **APPLICABILITY.** Sections 2 - 8, 10 - 11, and 15 of this Act apply to trusts in
 31 existence on and after the effective date of this Act.

1 * **Sec. 18.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 CONDITIONAL EFFECT. AS 13.36.079(i), enacted by sec. 7 of this Act, takes effect
4 only if sec. 16 of this Act receives the two-thirds majority vote of each house required by art.
5 IV, sec. 15, Constitution of the State of Alaska.

6 * **Sec. 19.** This Act takes effect immediately under AS 01.10.070(c).