

**ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE**

January 25, 2010

3:19 p.m.

MEMBERS PRESENT

Representative Kurt Olson, Chair
Representative Mark Neuman, Vice Chair
Representative Mike Chenault
Representative Tammie Wilson
Representative Robert L. "Bob" Buch
Representative Lindsey Holmes

MEMBERS ABSENT

Representative Bob Lynn

COMMITTEE CALENDAR

HOUSE BILL NO. 146

"An Act relating to transfer restrictions on trust interests."

- MOVED HB 146 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 146

SHORT TITLE: TRANSFER RESTRICTIONS ON TRUSTS

SPONSOR(S): REPRESENTATIVE(S) RAMRAS

02/23/09	(H)	READ THE FIRST TIME - REFERRALS
02/23/09	(H)	L&C, JUD
01/25/10	(H)	L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

JANE W. PIERSON, Staff
Representative Jay Ramras
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 146 on behalf of the prime sponsor, Representative Ramras.

BETH ANN CHAPMAN, Attorney
Faulkner Banfield
Juneau, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 146.

DOUGLAS BLATTMACHR, President
Alaska Trust Company
Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 146.

ACTION NARRATIVE

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CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at 3:19 p.m. Representatives Neuman, Buch, Chenault, Holmes, T. Wilson, and Olson were present at the call to order. Representative Ramras was also in attendance.

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HB 146-TRANSFER RESTRICTIONS ON TRUSTS

CHAIR OLSON announced that the only order of business would be HOUSE BILL NO. 146, "An Act relating to transfer restrictions on trust interests."

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JANE W. PIERSON, Staff, Representative Jay Ramras, Alaska State Legislature, presented HB 146 on behalf of the prime bill sponsor, Representative Jay Ramras. She explained that HB 146 clarifies the burden of proof a creditor must meet to establish to show a transfer in trust was done with the intent to defraud a creditor. It clarifies the spendthrift provision in statute, which will apply to a trust if distributions are made under the exercise of discretion by a trustee who is not the settlor, whether or not the exercise of the discretion is governed by a standard.

MS. PIERSON continued. This bill provides that the spendthrift provision in a trust will apply even though the trustee may distribute income or principal to the settlor or to pay income taxes. It clarifies that a beneficiary's interest in a trust, whether or not vested, is not considered a factor or economic circumstance in the division of property subject to divorce.

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MS. PIERSON provided a sectional analysis for HB 146. She explained that Section 1 of HB 146 would amend AS 34.40.110(b), which makes exemptions to transfer trust restrictions. Subsection (b), paragraph (1) requires that a creditor must establish criteria by clear and convincing evidence. The subsection (b), paragraph (2) exception makes a conforming amendment to reflect the additional materials under subsection (b), paragraph (3) of HB 146. The two changes in paragraph (3) of HB 146 would allow a creditor to satisfy a claim out of the restricted trust interest if the trust requires its income or principal to be distributed to the settlor. A new exception would allow the settlor to receive certain discretionary distributions made by the trustee, who is not the settlor. And the first new exemption to subsection (b), paragraph (3) of HB 146 allows the settlor to receive certain discretionary distributions made by a trustee, while a second new exemption relates to the receipt of certain income or principal to pay income tax due on the trust.

MS. PIERSON explained Section 2 of HB 146 would amend AS 34.40.110(h) to provide that a transfer restriction on a beneficiary's trust interest is enforceable, even if the settlor has certain powers relating to the appointment, removal, or replacement of a trustee, trust protector, or an advisor.

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MS. PIERSON explained that Section 3 of HB 146 would amend existing AS 34.40.110(l). If the trust has a transfer restriction, the beneficiary's trust interest is not subject to a division in the event of a divorce or dissolution of the marriage of a beneficiary of the trust, whether or not the trust's interest is vested. This bill clarifies that the trust interest may not be considered a factor or economic circumstance in the division of property at divorce or dissolution.

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REPRESENTATIVE HOLMES referred to page 1, line 8, of HB 146, to the standard of clear and convincing evidence, and asked why that standard was chosen instead of a propensity of evidence or other legal standard.

MS. PIERSON deferred to one of the experts on the bill.

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REPRESENTATIVE BUCH asked whether the sponsor had any letters of support or opposition for the bill.

MS. PIERSON answered that this is one of the bills developed through the trust group and while there were not any letters of support for the bill, one group supports HB 146 and will provide testimony today.

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REPRESENTATIVE NEUMAN asked for the reason for the bill.

MS. PIERSON responded that Representative Ramras has been working to keep Alaska as one of the premier places for trust and investments, which is attractive since Alaska does not have an income tax. The goal has been to encourage people to invest in the state and to place money into trusts, which are taxed and benefit the state. Thus far, this effort has been quite successful.

REPRESENTATIVE NEUMAN recalled Representative Ramras has had several bills come before the committee on trust topics. He asked whether the purpose of these bills is to attract investors.

MS. PIERSON answered yes.

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MS. PIERSON, in response to Chair Olson, recalled testimony last year which indicated that trust investments bring \$8 million to the state. In further response to a comment, she said she thought one more bill, which is not a trust bill, is planned for this year.

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REPRESENTATIVE NEUMAN referred to a letter in member's packets from Dana Olson and asked for an explanation.

MS. PIERSON responded that she held a long conversation with Ms. Olson, who holds some agricultural trust land. She appears to be in the process of a multi-faceted bifurcated divorce, and expressed concerns to the sponsor that provisions in this bill could affect her trust lands, she stated.

REPRESENTATIVE NEUMAN inquired as to whether Ms. Pierson was able to address her concerns.

MS. PIERSON offered her belief that Ms. Olson has many concerns, some of which are not related to changes made by HB 146.

REPRESENTATIVE NEUMAN suggested that perhaps some of Ms. Olson's concerns will be addressed as this bill goes through the legislative process.

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BETH ANN CHAPMAN, Attorney, Faulkner Banfield, stated she has been practicing in the trust and estates area for the past 22 years. She offered her support for HB 146. She related that she is part of an informal group of trust attorneys throughout the state who work together to improve Alaska's trust laws. She recalled testimony last year that discussed the amount of trust assets in the state. Alaska now retains many assets that would have left the state. Many families keep their trust funds in Alaska for future generations. She addressed the constituent concern raised earlier today. She explained the bill addresses self-settled trusts, that in the context of divorce, this bill, in particular, does not apply to trusts established during a marriage unless there is an agreement that they will apply. Thus, any trust established during a marriage would not be affected by HB 146.

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REPRESENTATIVE BUCH asked for an example of successes in estate trusts that keep monies in the state.

MS. CHAPMAN stated she represents a family that has significant wealth, which was generated in Alaska, but the family now resides in the Lower 48. Their assets would be distributed upon their deaths and normally would move to the state in which their children or survivors resided. As a result of the trust laws, and since Alaska does not have a state income tax but also has creditor protection, family members are keeping their estate in Alaska and in Alaskan banks. Otherwise the estate would have been liquidated and the assets would have moved out of state, she stated.

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REPRESENTATIVE HOLMES asked Ms. Chapman about standard of proof.

MS. CHAPMAN said she could not, but suggested that Mr. Shaftel would be able to answer the question.

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REPRESENTATIVE NEUMAN asked for the basic explanation of the purpose of a trust and the mechanism of how it works.

MS. CHAPMAN answered that a trust can be established in a variety of ways. For example, if she were to establish a trust for her 17-year-old son, an attorney would draft the document, and she would ask either a friend or family member to manage the trust. For example, she could ask the Alaska Trust Company, Wells Fargo, or her sister to be the trustee. The trustee would invest the trust funds for her son, subject to the directions of the trust document, would make distributions for his education if that is what she had directed, and would use discretion to insure the funds were invested to fulfill the purposes set out in the trust.

REPRESENTATIVE NEUMAN asked whether the person who establishes the trust has the full authority to explain the management and disbursement of the funds contained in the trust. He asked for changes to trust law contained in the bill.

MS. CHAPMAN responded, stating HB 146 will clarify that certain types of trusts will have creditor protection and not all trusts are discretionary trusts. For example, she could write a trust to designate that assets shall be distributed for education, or may be distributed for education, or she may decide to trust the trustee to use the funds for any expenditure he/she deems appropriate. This bill makes clear certain types of trusts with mandatory distributions, such as income tax distribution, will not subject the trust to the creditors of the settlor; creditor protection is one reason to use such a trust.

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REPRESENTATIVE BUCH asked whether this covers probate law or land trusts.

MS. CHAPMAN answered that this bill covers self-settled trusts, but would not affect what might happen if a will has undergone the probate process; these are very specific types of trust and can affect land or investments as the trusts are not limited to what can be placed in these types of trusts.

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DOUGLAS BLATTMACHR, President, Alaska Trust Company, stated that he supports HB 146. He related that since Alaska adopted its first trust law in 1997, well over \$500 million has come to Alaska and is managed in Alaska by his trust company and other trust institutions and individuals. In addition, Alaska receives about \$1 million per year in insurance premium taxes.

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REPRESENTATIVE HOLMES asked Mr. Blattmachr to discuss the standard of review in HB 146.

MR. BLATTMACHR said he is not best person to answer the question, although he related Alaska is competing with other states for trusts. He understood that some states have stronger standards, but the clear and convincing standard seemed like a reasonable standard but would still allow the state to remain competitive. He explained he has been working with the trust and estate attorneys since 1997 to try to make Alaska the premier trust jurisdiction and the group thinks it has accomplished that goal, and has enhanced a number of jobs in the trust industry, insurance, and legal communities.

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MR. BLATTMACHR, in response to Chair Olson, offered that his brother, Jonathan Blattmachr, is a leading estate-planning attorney based in New York but is licensed in Alaska. He explained that he, his brother, and Mr. David Shaftel are currently attending an estate planning conference in Miami. He thought the other testifiers may have had trouble getting on-line or might be attending seminars.

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CHAIR OLSON, after first determining no one else wished to testify, closed public testimony on HB 146.

[3:40:28 PM](#)

REPRESENTATIVE NEUMAN moved to report HB 146, Version 26-LS0633\A out of committee with individual recommendations and the accompanying fiscal notes.

There being no objection, HB 146 was reported from the House Labor and Commerce Standing Committee.

[3:41:08 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 3:41 p.m.