

**CS FOR HOUSE BILL NO. 102(L&C)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 3/27/13

Referred: Judiciary

Sponsor(s): REPRESENTATIVES KELLER, Thompson, Millett, Gruenberg

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to property exemptions for retirement plans, individual retirement  
2 accounts, and Roth IRAs; relating to transfers of individual retirement plans; relating to  
3 the rights of judgment creditors of members of limited liability companies and partners  
4 of limited liability partnerships; relating to the Uniform Probate Code, including  
5 pleadings, orders, liability, and notices under the Uniform Probate Code and the Alaska  
6 Principal and Income Act, the appointment of trust property, the Alaska Uniform  
7 Prudent Investor Act, co-trustees, trust protectors, and trust advisors; relating to the  
8 Alaska Principal and Income Act; relating to the Alaska Uniform Transfers to Minors  
9 Act; relating to the disposition of human remains; relating to the tax on insurers for life  
10 insurance policies; relating to insurable interests for certain insurance policies; relating  
11 to restrictions on transfers of trust interests; relating to discretionary interests in  
12 irrevocable trusts; relating to the community property of married persons; amending

1 **Rule 64, Alaska Rules of Civil Procedure, and Rule 301(a), Alaska Rules of Evidence;**  
 2 **and providing for an effective date."**

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

4 \* **Section 1.** AS 09.38.017(a) is amended to read:

5 (a) In addition to the exemption under AS 09.38.015(b), the following are  
 6 exempt from a claim of an individual's **or beneficiary's** creditor:

7 (1) the interest of the individual **or beneficiary** in a retirement plan;

8 [AND]

9 (2) the money or other assets payable to the individual from a  
 10 retirement plan;

11 **(3) the interest of a beneficiary in**

12 **(A) a retirement plan if the beneficiary acquired the**  
 13 **interest as a result of the death of an individual; the beneficiary's interest**  
 14 **is exempt to the same extent that the individual's interest was exempt**  
 15 **immediately before the individual died;**

16 **(B) an individual retirement account that has been**  
 17 **transferred by the individual to the beneficiary during the individual's**  
 18 **lifetime; the beneficiary's interest is exempt to the same extent that the**  
 19 **individual's interest was exempt immediately before the transfer to the**  
 20 **beneficiary;**

21 **(4) the money or other assets payable to a beneficiary from**

22 **(A) a retirement plan if the beneficiary acquired the money**  
 23 **or other assets as a result of the death of an individual who would have**  
 24 **had, during the individual's life, an exemption in the money or other**  
 25 **assets;**

26 **(B) an individual retirement account if the beneficiary**  
 27 **acquired the money or other assets as a result of the transfer of the money**  
 28 **or other assets by an individual who would have had, at the time of the**  
 29 **transfer, an exemption in the money or other assets.**

30 \* **Sec. 2.** AS 09.38.017(d) is amended to read:

1 (d) A retirement plan exempt from claims under (a) of this section is  
 2 conclusively presumed to be a spendthrift trust under this section, **except for**  
 3 **transfers or assignments under AS 34.40.118.**

4 \* **Sec. 3.** AS 09.38.017(e) is amended to read:

5 (e) In this section,

6 (1) "alternate payee" has the meaning given in 26 U.S.C. 414(p)(8);

7 (2) **"beneficiary" includes a person, trust, or trustee who has,**  
 8 **before or after the death of an individual, a direct or indirect beneficial interest**  
 9 **in a retirement plan; in this paragraph, "beneficial interest" includes an interest**  
 10 **that is acquired**

11 **(A) as a designated beneficiary, survivor, co-annuitant,**  
 12 **heir, or legatee; or**

13 **(B) if excludible from gross income under 26 U.S.C.**  
 14 **(Internal Revenue Code), as a**

15 **(i) rollover under 26 U.S.C. 408 or 26 U.S.C. 408A;**

16 **(ii) a distribution from one retirement plan to**  
 17 **another retirement plan; or**

18 **(iii) a distribution that is similar to (i) or (ii) of this**  
 19 **subparagraph;**

20 **(3) "individual" means [AN INDIVIDUAL WHO IS] a participant in,**  
 21 **an owner [A BENEFICIARY] of, or an alternate payee of a retirement plan;**

22 **(4) "individual retirement account" means an individual**  
 23 **retirement account established under 26 U.S.C. 408 or a Roth IRA established**  
 24 **under 26 U.S.C. 408A;**

25 **(5) [(3)] "retirement plan" means**

26 **(A) a retirement plan that is qualified under 26 U.S.C. 401(a),**  
 27 **26 U.S.C. 403(a), 26 U.S.C. 403(b), [26 U.S.C. 408, 26 U.S.C. 408A, OR] 26**  
 28 **U.S.C. 409, 26 U.S.C. 414(d), 26 U.S.C. 414(e), or 26 U.S.C. 457 (Internal**  
 29 **Revenue Code);**

30 **(B) an individual retirement account; and**

31 **(C) the teachers' retirement system under AS 14.25, the**

1            **judicial retirement system under AS 22.25, the public employees'**  
2            **retirement system under AS 39.35, and the elected public officers'**  
3            **retirement system under former AS 39.37.**

4            \* **Sec. 4.** AS 10.50.380(c) is amended to read:

5                    (c) This section provides the exclusive remedy that a judgment creditor of a  
6                    member or a member's assignee may use to satisfy a judgment out of the judgment  
7                    debtor's interest in the limited liability company. Other **legal or equitable** remedies,  
8                    including foreclosure on the member's limited liability company interest and a court  
9                    order for directions, accounts, and inquiries that the debtor member might have made,  
10                    are not available to the judgment creditor attempting to satisfy a judgment out of the  
11                    judgment debtor's interest in the limited liability company and may not be ordered by  
12                    a court.

13            \* **Sec. 5.** AS 10.50.380 is amended by adding a new subsection to read:

14                    (e) This section applies to limited liability companies with only one member  
15                    as well as to limited liability companies with more than one member.

16            \* **Sec. 6.** AS 13.06.120 is amended to read:

17                    **Sec. 13.06.120. Pleadings; when parties bound by orders; notice.** In any  
18                    proceedings involving trusts, nonprobate assets, or estates of decedents, minors,  
19                    protected persons, or incapacitated persons brought under AS 13.06 - AS 13.36 or  
20                    AS 13.38, [INCLUDING ANY JUDICIALLY SUPERVISED SETTLEMENTS AND  
21                    ANY NONJUDICIAL PROCEEDINGS AND SETTLEMENTS,] the following  
22                    apply:

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

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

27                                    (A) orders binding the sole holder or all co-holders of a power  
28                                    of revocation or a general or nongeneral power of appointment, including one  
29                                    in the form of a power of amendment, bind other persons to the extent their  
30                                    interests, as objects, takers in default, or otherwise, are subject to the power;

31                                    (B) to the extent there is no conflict of interest between them or

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

13 (C) an unborn person, a minor, an incapacitated person, or a  
14 person whose identity or location is unknown or not reasonably ascertainable  
15 who is not otherwise represented is bound by an order to the extent the interest  
16 is adequately represented by another party having a substantially identical  
17 interest in the proceeding;

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

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

28 (F) with regard to interests given to a person or a class of  
29 persons, or to both, upon the happening of a future event, if the same interest  
30 or a share of the interest is to pass to another person or class of persons, or to  
31 both, upon the happening of an additional future event, orders binding the

1 living person or class of persons who would take the interest upon the  
 2 happening of the first event bind the persons and classes of persons who might  
 3 take on the happening of the additional future event;

4 (G) if a person is designated by a trust instrument to represent  
 5 and bind a born or unborn beneficiary of the trust and receive a notice,  
 6 information, accounting, or report for the beneficiary, then the beneficiary is  
 7 bound by an order binding the designated person; in this subparagraph,

8 (i) the settlor may make the designation in the trust  
 9 instrument, in a separate document, or by a trust protector authorized in  
 10 the trust instrument to make the designation;

11 (ii) except as otherwise provided in this subparagraph, a  
 12 person designated under (i) of this subparagraph may not represent and  
 13 bind a beneficiary while the designated person is serving as trustee;

14 (iii) except as otherwise provided in this subparagraph,  
 15 a person designated under (i) of this subparagraph may not represent  
 16 and bind another beneficiary if the designated person also is a  
 17 beneficiary, unless the designated person was named by the settlor, is  
 18 the beneficiary's spouse, or is a grandparent or descendant of a  
 19 grandparent of the beneficiary or the beneficiary's spouse; in this sub-  
 20 subparagraph, "spouse" means the individual to whom the beneficiary  
 21 is married and with whom the beneficiary is living, and a physical  
 22 separation primarily for education, business, health, and similar reasons  
 23 does not prevent the individual from being considered to be living with  
 24 the beneficiary;

25 (3) a person representing another person under (2)(A) - (F) of this  
 26 section and a person designated under (2)(G)(i) of this section are not liable to the  
 27 beneficiary whose interests are represented, or to a person claiming through that  
 28 beneficiary, for an action or omission to act made in good faith;

29 (4) notice is required as follows:

30 (A) notice as prescribed by AS 13.06.110 shall be given to  
 31 every interested person or to one person who can bind an interested person as

1 described in (2)(A), (B), or (D) - (G) of this section; notice may be given both  
2 to a person and to another person who may bind the person;

3 (B) notice is given to unborn persons, a minor, an incapacitated  
4 person, or a person whose identity or location is unknown or not reasonably  
5 ascertainable, and persons who are not represented under (2)(A), (B), or (D) -  
6 (G) of this section, by giving notice to all known persons whose interests in the  
7 proceedings are substantially identical to those of the unborn persons, the  
8 minor, the incapacitated person, or the person whose identity or location is  
9 unknown or not reasonably ascertainable;

10 (5) at any point in a proceeding, a court may appoint a guardian ad  
11 litem to represent the interest of an unborn person, a minor, an incapacitated person, or  
12 a person whose identity or address is unknown or not reasonably ascertainable, if the  
13 court determines that representation of the interest otherwise would be inadequate; if  
14 not precluded by conflict of interests, a guardian ad litem may be appointed to  
15 represent several persons or interests; the court shall set out its reasons for appointing  
16 a guardian ad litem as a part of the record of the proceeding.

17 \* **Sec. 7.** AS 13.06.120 is amended by adding a new subsection to read:

18 (b) In this section,

19 (1) "order" means a judicial order, nonjudicial order, the result of the  
20 settlement of an account of a fiduciary under a procedure authorized by AS 13.06 -  
21 13.36 or AS 13.38, and a settlement agreement resulting from a proceeding;

22 (2) "proceeding" means a judicial proceeding, nonjudicial proceeding,  
23 the settlement of an account of a fiduciary under a procedure authorized by AS 13.06 -  
24 13.36 or AS 13.38, and a settlement negotiation, even if the settlement negotiation  
25 does not involve a judicial or nonjudicial third party who decides or facilitates a  
26 settlement.

27 \* **Sec. 8.** AS 13.36.072 is amended by adding a new subsection to read:

28 (c) Notwithstanding the other provisions of this section, if the terms of a trust  
29 instrument provide for the appointment of more than one trustee but confer on one or  
30 more of the trustees, to the exclusion of other trustees, the power to direct or prevent  
31 specified actions of other trustees, the excluded trustees shall act in accordance with

1 the exercise of the power. An excluded trustee under this subsection is not liable,  
 2 individually or as a fiduciary, for a consequence that results from complying with the  
 3 exercise of the power, regardless of the information available to the excluded trustee.  
 4 An excluded trustee does not have an obligation to review, inquire, investigate, or  
 5 make recommendations or evaluations with respect to the exercise of the power. A  
 6 trustee having the power is liable to the beneficiaries as a fiduciary with respect to the  
 7 exercise of the power as if the excluded trustees were not in office and has the  
 8 exclusive obligation to account to and to defend an action brought by the beneficiaries  
 9 with respect to the exercise of the power. In this subsection, "power" means the power  
 10 to direct or prevent specified actions by other trustees.

11 \* **Sec. 9.** AS 13.36.157 is repealed and reenacted to read:

12 **Sec. 13.36.157. Exercise of power of appointment.** (a) An authorized trustee  
 13 with unlimited discretion to invade trust principal may appoint part or all of that  
 14 principal to a trustee of an appointed trust for, and only for the benefit of, one or more  
 15 current beneficiaries of the invaded trust to the exclusion of other current  
 16 beneficiaries. A permissible appointee of a power of appointment held by a  
 17 beneficiary of the appointed trust is not considered a beneficiary of the appointed trust,  
 18 regardless of whether the permissible appointee is a current beneficiary or a successor  
 19 and remainder beneficiary.

20 (b) An authorized trustee exercising the power under (a) of this section may  
 21 grant a discretionary power of appointment, including a presently exercisable power of  
 22 appointment, in the appointed trust to one or more of the current beneficiaries of the  
 23 invaded trust, to the extent that the beneficiary who is granted the power to appoint is  
 24 authorized to receive the principal outright under the terms of the invaded trust. A  
 25 permissible appointee is not limited to the beneficiaries of the invaded trust.

26 (c) Under (a) and (b) of this section, if the beneficiaries of the invaded trust  
 27 are described by a class, the beneficiaries of the appointed trust may include present or  
 28 future members of that class.

29 (d) An authorized trustee with the power to invade trust principal but without  
 30 unlimited discretion may appoint part or all of the principal of the trust to a trustee of  
 31 an appointed trust if the current beneficiaries of the appointed trust are the same as the

1 current beneficiaries of the invaded trust and the successor and remainder beneficiaries  
 2 of the appointed trust are the same as the successor and remainder beneficiaries of the  
 3 invaded trust. The shares of the current beneficiaries of the appointed trust must be the  
 4 same as the shares of the current beneficiaries of the invaded trust, and the shares of  
 5 the successor and remainder beneficiaries of the appointed trust must be the same as  
 6 the shares of the successor and remainder beneficiaries of the invaded trust.

7 (e) If the authorized trustee exercises the power under (d) of this section, the  
 8 appointed trust must include the same standard authorizing the trustee to distribute the  
 9 income or invade the principal of the appointed trust as the standard in the invaded  
 10 trust. However, the standard authorizing the trustee to distribute the income or invade  
 11 the principal of the appointed trust may be changed if the trustee appoints to an  
 12 appointed trust that is a special needs trust, a pooled trust, or a third-party trust.

13 (f) If an authorized trustee exercises the power under (d) and (e) of this section  
 14 to extend the duration of the appointed trust beyond the duration of the invaded trust  
 15 for any period after the invaded trust would have otherwise terminated under the  
 16 provisions of the invaded trust, the appointed trust, in addition to the language  
 17 required to be included in the appointed trust under (e) of this section, may also  
 18 provide an additional trustee with unlimited discretion to invade the principal of the  
 19 appointed trust during the extended duration. The trustee with unlimited discretion  
 20 continues to be subject to the restrictions in (d) - (h) of this section.

21 (g) Under (d) - (f) of this section, if the beneficiaries of the invaded trust are  
 22 described by a class, the beneficiaries of the appointed trust include present or future  
 23 members of that class.

24 (h) If the authorized trustee exercises the power under (d) - (g) of this section  
 25 and if the invaded trust grants a power of appointment to a beneficiary of the trust, the  
 26 appointed trust must grant this power of appointment in the appointed trust, and the  
 27 class of permissible appointees shall be the same as in the invaded trust.

28 \* **Sec. 10.** AS 13.36 is amended by adding new sections to read:

29 **Sec. 13.36.158. Additional provisions relating to exercise of a power of**  
 30 **appointment.** (a) An exercise of the power to invade trust principal under  
 31 AS 13.36.157 is the exercise of a special power of appointment.

1 (b) The appointed trust to which an authorized trustee appoints the assets of  
2 the invaded trust under AS 13.36.157 may have a duration that is longer than the  
3 duration set out in the invaded trust.

4 (c) If an authorized trustee has unlimited discretion to invade the principal of a  
5 trust and if the same trustee or another trustee has a power, not dependent on unlimited  
6 discretion, to invade principal under the trust instrument, the authorized trustee having  
7 unlimited discretion may exercise the power of appointment under AS 13.36.157(a) -  
8 (c).

9 (d) An authorized trustee may exercise the power to appoint in favor of an  
10 appointed trust under AS 13.36.157 whether or not there is a current need to invade  
11 principal under the terms of the invaded trust.

12 (e) An authorized trustee exercising the power under AS 13.36.157 -  
13 13.36.159 has a fiduciary duty to exercise the power in the best interests of one or  
14 more proper objects of the exercise of the power and as a prudent person would  
15 exercise the power under the prevailing circumstances. The authorized trustee may not  
16 exercise the power under AS 13.36.157 - 13.36.159 if there is substantial evidence of a  
17 contrary intent of the settlor and it cannot be established that the settlor would be  
18 likely to have changed this intention under the circumstances existing at the time the  
19 trustee exercises the power. The provisions of the invaded trust may not be viewed  
20 alone as substantial evidence of a contrary intent of the settlor unless the invaded trust  
21 expressly prohibits the exercise of the power in the manner intended by the authorized  
22 trustee.

23 (f) The provisions of AS 13.36.157 - 13.36.159 may not be construed to  
24 abridge the right of a trustee to appoint property further in trust under the terms of the  
25 governing instrument of a trust, another provision of law, or common law, or as  
26 directed by a court having jurisdiction over the trust.

27 (g) Nothing in AS 13.36.157 - 13.36.159 creates or implies a duty to exercise  
28 a power to invade principal. An inference of impropriety may not be made, and  
29 liability is not incurred, as a result of an authorized trustee not exercising the power  
30 conferred under AS 13.36.157.

31 (h) A power authorized by AS 13.36.157 may be exercised, subject to the

1 provisions of AS 13.36.159(a), unless expressly prohibited by the terms of the  
 2 governing instrument. A general prohibition against amending or revoking the invaded  
 3 trust and a provision that constitutes a spendthrift clause do not preclude the exercise  
 4 of a power under AS 13.36.157.

5 (i) An authorized trustee may not exercise a power authorized by  
 6 AS 13.36.157 to

7 (1) reduce, limit, or modify a beneficiary's current right to a mandatory  
 8 distribution of income or principal, a mandatory annuity or unitrust interest, a right to  
 9 withdraw a percentage of the value of the trust, or a right to withdraw a specified  
 10 dollar amount, if the mandatory right has come into effect with respect to the  
 11 beneficiary, but the mandatory right may be reduced, limited, or modified during any  
 12 extended duration of the trust; however, notwithstanding the other provisions in this  
 13 paragraph, but subject to the other limitations in AS 13.36.157 - 13.36.159, an  
 14 authorized trustee may exercise a power authorized by AS 13.36.157 to appoint to an  
 15 appointed trust that is a special needs trust, a pooled trust, or a third-party trust;

16 (2) decrease or indemnify against a trustee's liability or exonerate a  
 17 trustee from liability for failure to exercise reasonable care, diligence, and prudence  
 18 unless the court having jurisdiction over the trust specifies otherwise;

19 (3) eliminate a provision granting another person the right to remove  
 20 or replace the authorized trustee exercising the power under AS 13.36.157 unless a  
 21 court having jurisdiction over the trust specifies otherwise;

22 (4) fix as binding and conclusive the value of an asset for purposes of  
 23 distribution, allocation, or otherwise; or

24 (5) jeopardize

25 (A) the deduction or exclusion originally claimed with respect  
 26 to a contribution to the invaded trust that qualified for the annual exclusion  
 27 under 26 U.S.C. 2503(b), the marital deduction under 26 U.S.C. 2056(a) or 26  
 28 U.S.C. 2523(a), or the charitable deduction under 26 U.S.C. 170(a), 26 U.S.C.  
 29 642(c), 26 U.S.C. 2055(a), or 26 U.S.C. 2522(a) (Internal Revenue Code);

30 (B) the qualification of a transfer as a direct skip under 26  
 31 U.S.C. 2642(c) (Internal Revenue Code);

1 (C) the election to treat a corporation as a subchapter S  
2 corporation under 26 U.S.C. 1362 (Internal Revenue Code); or

3 (D) another specific tax benefit for which a contribution  
4 originally qualified for income, gift, estate, or generation-skipping transfer tax  
5 purposes under 26 U.S.C. (Internal Revenue Code).

6 (j) Before exercising the power under AS 13.36.157, an authorized trustee  
7 shall consider the tax implications of the exercise of the power.

8 (k) An authorized trustee may not exercise a power described in AS 13.36.157  
9 - 13.36.159 in violation of the limitations on validity in AS 34.27.051 or 34.27.100, or  
10 the restrictions on exercising certain powers in AS 13.36.153 by trustees who are not  
11 independent. A violation voids the entire exercise of the power unless the exercise is  
12 modified to correct the violation.

13 (l) Unless a court having jurisdiction over the trust directs otherwise, an  
14 authorized trustee may not exercise a power authorized by AS 13.36.157 to change the  
15 provisions regarding the determination of the compensation of a trustee. The  
16 commissions or other compensation payable to the trustees of the invaded trust may  
17 continue to be paid to the trustees of the appointed trust during the term of the  
18 appointed trust and shall be determined in the same manner as for the invaded trust.

19 (m) A trustee may not receive a payment, a commission, or other  
20 compensation for appointing property from the invaded trust to an appointed trust  
21 under AS 13.36.157. However, a trustee may be compensated at a reasonable rate for  
22 the time spent considering and implementing the exercise of a power to appoint.

23 (n) Unless the invaded trust expressly provides otherwise, the provisions in  
24 AS 13.36.157 - 13.36.159 apply to

25 (1) a trust, whether testamentary or inter vivos, governed by the laws  
26 of this state, including a trust whose governing law has been changed to the laws of  
27 this state; and

28 (2) a trust that has a trustee who is an individual domiciled in this state,  
29 or a trustee that is an entity having an office in this state, if a majority of the trustees  
30 select this state as the location for the primary administration of the trust and the  
31 selection is made by an instrument in writing that is signed and acknowledged by a

1 majority of the trustees; the instrument exercising this selection shall be kept with the  
2 records of the invaded trust.

3 (o) In this section, "internal revenue code" means the Internal Revenue Code  
4 of the United States (26 U.S.C.) as it exists on the effective date of this Act and as it is  
5 amended from time to time.

6 **Sec. 13.36.159. Implementation of power of appointment.** (a) Unless the  
7 authorized trustee provides otherwise, the appointment of

8 (1) all of the assets making up the principal of the invaded trust to an  
9 appointed trust includes subsequently discovered assets of the invaded trust and  
10 undistributed principal of the invaded trust acquired after the appointment to the  
11 appointed trust;

12 (2) a part but not all of the assets making up the principal of the  
13 invaded trust to an appointed trust may not include subsequently discovered assets  
14 belonging to the invaded trust or principal paid to or acquired by the invaded trust  
15 after the appointment to the appointed trust; those subsequently discovered assets  
16 remain the assets of the invaded trust.

17 (b) The exercise of the power to appoint to an appointed trust under  
18 AS 13.36.157 shall be evidenced by an instrument in writing that is signed, dated, and  
19 acknowledged by the authorized trustee. The exercise of the power is effective 30 days  
20 after the date of service of the instrument as specified in (d) of this section, unless the  
21 persons entitled to notice consent in writing to a sooner effective date.

22 (c) An authorized trustee may exercise the power authorized by AS 13.36.157  
23 without the consent of the settlor or a person interested in the invaded trust and  
24 without court approval. However, an authorized trustee may seek court approval for  
25 the exercise. When seeking court approval, notice shall be sent to all qualified  
26 beneficiaries.

27 (d) A copy of the invaded trust, the appointed trust, and the instrument  
28 exercising the power shall be delivered to

29 (1) the settlor, if living, of the invaded trust;

30 (2) a person having the right, under the terms of the invaded trust, to  
31 remove or replace the authorized trustee exercising the power under AS 13.36.157;

1 and

2 (3) a qualified beneficiary or a person who may represent and bind a  
3 qualified beneficiary under AS 13.06.120.

4 (e) Notice under (d) of this section to a qualified beneficiary is not required if  
5 the settlor has exempted the authorized trustee from providing notification or  
6 information to beneficiaries under AS 13.36.080(b). Notice under (d) of this section  
7 shall be provided under AS 13.06.110.

8 (f) The instrument exercising the power must state whether the appointment is  
9 of all or part of the assets making up the principal of the invaded trust and, if a part,  
10 the approximate percentage of the value of the principal of the invaded trust that is the  
11 subject of the appointment. A failure to state whether the appointment is of all or part  
12 of the assets creates a presumption that only part of the assets is to be appointed.

13 (g) A person entitled to notice under (d) of this section may object to the  
14 trustee's exercise of the power under AS 13.36.157 - 13.36.159 by serving a written  
15 notice of objection on the trustee before the effective date of the exercise of the power.  
16 The failure to object does not constitute consent.

17 (h) The receipt of a copy of the instrument exercising the power does not,  
18 before the expiration of the limitation period in AS 13.36.100 with respect to a report  
19 disclosing the exercise, affect the right of a qualified beneficiary to object to the  
20 exercise of the power under AS 13.36.157 and to request the court to modify or to  
21 reverse the exercise.

22 (i) A copy of the instrument exercising the power shall be kept with the  
23 records of the invaded trust.

24 \* **Sec. 11.** AS 13.36.215 is amended by adding a new subsection to read:

25 (b) In AS 13.36.157 - 13.36.159,

26 (1) "appointed trust" means an irrevocable trust that receives principal  
27 from an invaded trust under AS 13.36.157, including a new trust created by the settlor  
28 of the invaded trust or by the trustees, acting in that capacity, of the invaded trust;

29 (2) "authorized trustee" means, with regard to an invaded trust, a  
30 trustee with the authority to pay trust principal to or for a current beneficiary; in this  
31 paragraph, "trustee" does not include a settlor or a beneficiary to whom income or

1 principal must be paid, currently or in the future, or who is or will become eligible to  
 2 receive a distribution of income or principal in the discretion of the trustee other than  
 3 by the exercise of a power of appointment held in a nonfiduciary capacity;

4 (3) "current beneficiary" means a person or, with regard to a class of  
 5 persons, a person who is a member of the class, to whom a trustee may distribute  
 6 principal when exercising a power under AS 13.36.157;

7 (4) "invade" means pay directly to the beneficiary of a trust or apply to  
 8 the benefit of a beneficiary;

9 (5) "invaded trust" means an irrevocable inter vivos or testamentary  
 10 trust the principal of which is appointed under AS 13.36.157;

11 (6) "pooled trust" means a trust described in 42 U.S.C. 1396p(d)(4)(C)  
 12 that meets the requirements for a pooled trust under the regulations of this state  
 13 relating to the Medicaid treatment of trusts;

14 (7) "principal" means the assets of a trust, including accrued and  
 15 accumulated income, but excluding income that is currently required to be distributed;

16 (8) "special needs trust" means a trust under 42 U.S.C. 1396p(d)(4)(A)  
 17 that meets the requirements for a special needs trust under the regulations of this state  
 18 relating to the Medicaid treatment of trusts;

19 (9) "third-party trust" means a trust that is

20 (A) established by a third party with the assets of the third party  
 21 to provide for supplemental needs for a person eligible when the trust is  
 22 created or at a future time for needs-based public assistance; and

23 (B) exempt from the provisions of the regulations of this state  
 24 relating to the Medicaid treatment of trusts;

25 (10) "unlimited discretion" means the unlimited right to distribute  
 26 principal if the right is not restricted by an ascertainable standard under 26 C.F.R.  
 27 25.2514-1.

28 \* **Sec. 12.** AS 13.36.225(a) is amended to read:

29 (a) Except as otherwise provided in (b) of this section **and AS 13.36.273**, a  
 30 trustee who invests and manages trust assets owes a duty to the beneficiaries of the  
 31 trust to comply with the prudent investor rule set out in AS 13.36.230 - 13.36.290.

1 \* **Sec. 13.** AS 13.36 is amended by adding a new section to read:

2 **Sec. 13.36.273. Trustee duties relating to insurance.** (a) With respect to a  
3 contract for life insurance acquired or retained for a trust on the life of a qualified  
4 person, a trustee does not have a duty to determine whether the contract was procured  
5 or effected in accordance with AS 21.42.020 unless the trust instrument provides  
6 otherwise or unless the trustee applied for or accepted ownership of a contract of life  
7 insurance and had knowledge that

8 (1) when the contract of life insurance was issued, the benefits were  
9 not payable to a person specified in AS 21.42.020; or

10 (2) the contract was purchased with resources or guarantees directly or  
11 indirectly provided by a person who, when the contract was entered into, did not have  
12 an insurable interest in the insured, and, when the contract was entered into there was  
13 a verbal or written arrangement, agreement, or plan with a third party to transfer  
14 ownership of the policy or the policy benefits in a manner that would violate the law  
15 of this state.

16 (b) With respect to a contract for life insurance acquired or retained for a trust  
17 on the life of a qualified person, if this subsection applies under (c) of this section, a  
18 trustee does not have a duty to

19 (1) determine whether a contract of life insurance is a proper  
20 investment;

21 (2) investigate the financial strength of the person issuing the life  
22 insurance policy;

23 (3) determine whether to exercise a policy option available under the  
24 contract;

25 (4) diversify the contract or the assets of the trust with respect to the  
26 contract; or

27 (5) inquire about or investigate the health or financial condition of an  
28 insured.

29 (c) Unless the trust instrument provides otherwise, (b) of this section applies  
30 to a trustee if

31 (1) the trust instrument refers to this section and makes this section

1 applicable to contracts for life insurance held by the trust; or

2 (2) the trustee notifies the qualified beneficiaries or a person who may  
3 represent and bind the qualified beneficiaries under AS 13.06.120 that the trustee is  
4 electing to have this section apply to a contract for life insurance held by the trust.

5 (d) The notice provided under (c)(2) of this section must include a copy or  
6 restatement of (b) of this section and shall be provided

7 (1) by mailing a copy of the notice by certified, registered, or ordinary  
8 first-class mail addressed to the person being notified at the post office address given  
9 in the person's demand for notice, if any, or at the person's office or place of residence,  
10 if known;

11 (2) by delivering a copy of the notice personally to the person being  
12 notified; or

13 (3) if the address or identity of the person is not known and cannot be  
14 ascertained with reasonable diligence, by publishing, at least once a week for three  
15 consecutive weeks, a copy of the notice in a newspaper having general circulation in  
16 the judicial district where one of the trustees is located.

17 (e) If, within 30 days after a person receives notice under (d)(1) or (2) of this  
18 section or 30 days after the last date of publication of the notice under (d)(3) of this  
19 section, a person delivers to the trustee a written objection to the application of (b) of  
20 this section, (b) of this section does not apply until the objection is withdrawn.

21 (f) Under (a) and (b) of this section, the trustee is not liable to the beneficiaries  
22 of the trust or to another person for a loss sustained with respect to a life insurance  
23 contract to which (a) and (b) of this section apply.

24 (g) Notwithstanding the other provisions of this section, unless the duties have  
25 been delegated to another person under AS 13.36.270, (a) and (b) of this section do  
26 not apply to a contract for life insurance purchased from an affiliate of a trustee or for  
27 which a trustee or an affiliate of the trustee receives a commission. In this subsection,  
28 "affiliate" means a person who controls, is controlled by, or is under common control  
29 with the trustee.

30 (h) A trustee who performs fiduciary or advisory services related to a policy of  
31 life insurance to which (a)(1) or (2) of this section applies may not be compensated for

1 performing the services to which (a)(1) or (2) of this section applies.

2 (i) In this section, "qualified person" means a person who

3 (1) is an insured or a proposed insured under a policy of life insurance  
4 or the spouse of that person; and

5 (2) provides

6 (A) the actual funds used to acquire or pay the premiums for  
7 the policy; or

8 (B) assets the income or principal of which are used to acquire  
9 or pay the premiums for the policy.

10 \* **Sec. 14.** AS 13.36.370(a) is amended to read:

11 (a) A trust instrument may provide for the appointment of a  
12 [DISINTERESTED THIRD PARTY TO ACT AS A] trust protector.

13 \* **Sec. 15.** AS 13.36.375 is amended by adding a new subsection to read:

14 (c) Notwithstanding (b) of this section, if, by the terms of the trust instrument,  
15 a trustee is designated to follow the directions of an advisor who is not designated in  
16 the trust instrument as being a trustee, the trustee who, by the terms of the trust  
17 instrument, is required to follow the directions of the advisor is not liable, individually  
18 or as a fiduciary, to a beneficiary for a consequence of the trustee's compliance with  
19 the advisor's directions, regardless of the information available to the trustee, and the  
20 trustee does not have an obligation to review, inquire, investigate, or make  
21 recommendations or evaluations with respect to the exercise of a power of the trustee  
22 if the exercise of the power complies with the directions given to the trustee. An  
23 advisor under this subsection is liable to the beneficiaries as a fiduciary with respect to  
24 the exercise of the advisor's directions by a trustee as if the trustee were not in office,  
25 and the advisor has the exclusive obligation to account to the beneficiaries and to  
26 defend an action brought by the beneficiaries with respect to the exercise of the  
27 advisor's directions by the trustee.

28 \* **Sec. 16.** AS 13.38.200(b) is amended to read:

29 (b) In exercising a discretionary power of administration regarding a matter  
30 within the scope of this chapter, whether granted by the governing instrument or this  
31 chapter, including AS 13.38.210 and 13.38.300 - 13.38.435 [13.38.300 - 13.38.410], a

1           fiduciary shall administer a trust or estate impartially based on what is fair and  
2           reasonable to all of the beneficiaries, except to the extent that the governing  
3           instrument clearly manifests an intention that the fiduciary shall or may favor one or  
4           more of the beneficiaries. A determination in accordance with this chapter is presumed  
5           to be fair and reasonable to all of the beneficiaries.

6           \* **Sec. 17.** AS 13.38.210(c) is amended to read:

7                   (c) A trustee may not make an adjustment under this section if

8                           (1) the adjustment would diminish the income interest in a trust that  
9                           requires all of the income to be paid at least annually to a spouse and for which a  
10                           federal estate tax or gift tax marital deduction would be allowed, in whole or in part, if  
11                           the trustee did not have the power to make the adjustment; the prohibition in this  
12                           paragraph does not apply to a trust after the trustee determines that the marital  
13                           deduction has not been claimed or has not been allowed;

14                           (2) the adjustment would reduce the actuarial value of the income  
15                           interest in a trust to which a person transfers property with the intent to qualify for a  
16                           federal gift tax exclusion;

17                           (3) the adjustment would change the amount payable to a beneficiary  
18                           as a fixed annuity or a fixed fraction of the value of the trust assets;

19                           (4) the adjustment is from any amount that is permanently set aside for  
20                           charitable purposes under the governing instrument and for which a federal estate or  
21                           gift tax charitable deduction has been taken, unless both income and principal are  
22                           permanently set aside for charitable purposes under the governing instrument;

23                           (5) possessing or exercising the power to make an adjustment would  
24                           cause an individual to be treated as the owner of all or part of the trust for federal  
25                           income tax purposes, and the individual would not be treated as the owner if the  
26                           trustee did not possess the power to make an adjustment;

27                           (6) possessing or exercising the power to make an adjustment would  
28                           cause all or part of the trust assets to be subject to federal estate or gift tax with respect  
29                           to an individual, and the assets would not be subject to federal estate or gift tax with  
30                           respect to the individual if the trustee did not possess the power to make an  
31                           adjustment;

1 (7) the trustee is a beneficiary of the trust; or

2 (8) the trust has been converted to a unitrust under AS 13.38.300 -  
 3 13.38.435 [AS 13.38.300 - 13.38.410].

4 \* **Sec. 18.** AS 13.38.300 is amended to read:

5 **Sec. 13.38.300. Power to convert to unitrust.** Unless expressly prohibited by  
 6 the governing instrument, a trustee may release the power to adjust under  
 7 AS 13.38.210 and may convert a trust into a unitrust as described in AS 13.38.300 -  
 8 13.38.435 [AS 13.38.300 - 13.38.410] if

9 (1) the trustee determines that the conversion will enable the trustee to  
 10 better carry out the intent of the settlor or testator and the purposes of the trust;

11 (2) the trustee gives written notice of the trustee's intention to release  
 12 the power to adjust, of the trustee's intention to convert the trust into a unitrust, **of the**  
 13 **unitrust percentage selected, of the smoothing period selected,** and of how the  
 14 unitrust will operate, including what initial decisions the trustee **intends to** [WILL]  
 15 make under AS 13.38.340 [THIS SECTION], to all the sui juris beneficiaries who

16 (A) are currently eligible to receive income from the trust;

17 (B) would be eligible, if a power of appointment were not  
 18 exercised, to receive income from the trust if the interest of all of the  
 19 beneficiaries eligible to receive income under (A) of this paragraph were to  
 20 terminate immediately before the giving of the notice; and

21 (C) would, if a power of appointment were not exercised,  
 22 receive a distribution of principal if the trust were to terminate immediately  
 23 before the giving of the notice;

24 (3) there are at least one sui juris beneficiary under (2)(A) of this  
 25 section and at least one sui juris beneficiary under (2)(B) or (C) of this section; and

26 (4) a sui juris beneficiary does not object to the conversion to a unitrust  
 27 in a writing delivered to the trustee within 60 days after the mailing of the notice under  
 28 (2) of this section.

29 \* **Sec. 19.** AS 13.38.310(a) is amended to read:

30 (a) A trustee may petition the court to approve the conversion to a unitrust if

31 (1) a beneficiary timely objects to the conversion to a unitrust; [OR]

1 (2) there is not a sui juris beneficiary who is **currently** eligible under  
 2 **AS 13.38.300(2)(A) or who would be eligible under AS 13.38.300(2)(B) or (C); or**  
 3 **(3) the trustee is a beneficiary** [AS 13.38.300(2)(A), AND THERE  
 4 IS NOT A SUI JURIS BENEFICIARY WHO IS ELIGIBLE UNDER  
 5 AS 13.38.300(2)(B) OR (C)].

6 \* **Sec. 20.** AS 13.38.330(b) is amended to read:

7 (b) After a trust has been converted to a unitrust, "income" in the governing  
 8 instrument means an annual distribution equal to **the amount produced by the**  
 9 **application of a fixed unitrust percentage established under (d) of this section to**  
 10 [FOUR PERCENT OF] the net fair market value, as determined annually, of the trust's  
 11 assets, whether the assets would be considered income or principal under other  
 12 provisions of this chapter, **averaged over the lesser of**

13 **(1) the preceding years in the smoothing period selected by the**  
 14 **trustee; or**

15 **(2) the period during which the trust has been in existence.**

16 \* **Sec. 21.** AS 13.38.330 is amended by adding a new subsection to read:

17 (d) The unitrust percentage to be used in determining the amount to be  
 18 distributed from a unitrust to a beneficiary must be a reasonable current return from  
 19 the unitrust of at least three percent and not more than five percent, taking into account  
 20 the intentions of the trustor of the unitrust as expressed in the governing instrument,  
 21 the needs of the beneficiaries, general economic conditions, projected current earnings  
 22 for the unitrust, projected appreciation for the unitrust, and the effect of projected  
 23 inflation on the unitrust.

24 \* **Sec. 22.** AS 13.38.340 is amended to read:

25 **Sec. 13.38.340. Trustee's discretionary powers regarding unitrust.** The  
 26 trustee may, in the trustee's discretion, from time to time, determine

- 27 (1) the effective date of a conversion to a unitrust;  
 28 (2) the provisions for prorating a unitrust distribution for a short year  
 29 in which a beneficiary's right to payments commences or ceases;  
 30 (3) the frequency of unitrust distributions during the year;  
 31 (4) the effect of other payments from or contributions to the trust on

1 the trust's valuation;

2 (5) whether to value the trust's assets annually or more frequently;

3 (6) **whether to use a smoothing period of three, four, or five years;**

4 (7) what valuation dates to use;

5 (8) [(7)] how frequently to value nonliquid assets and whether to  
6 estimate their value;

7 (9) [(8)] whether to omit trust property occupied or possessed by a  
8 beneficiary from the calculations; and

9 (10) [(9)] other matters necessary for the proper functioning of the  
10 unitrust.

11 \* **Sec. 23.** AS 13.38.350(b) is amended to read:

12 (b) Unless otherwise provided by the governing instrument, a unitrust  
13 distribution shall be considered to have been paid from net income as net income  
14 would be determined if the trust were not a unitrust. To the extent net income is  
15 insufficient, the unitrust distribution shall be considered to have been paid from  
16 **ordinary income that is allocable under federal income tax rules to net income as**  
17 **determined for a unitrust. To the extent that the ordinary income is insufficient,**  
18 **the unitrust distribution is considered to have been paid from** net realized short-  
19 term capital gains. To the extent **net** income, **ordinary income,** and net realized short-  
20 term capital gains are insufficient, the unitrust distribution shall be considered to have  
21 been paid from net realized long-term capital gains. To the extent **net** income,  
22 **ordinary income,** and net realized short-term and long-term capital gains are  
23 insufficient, the unitrust distribution shall be paid from the principal of the trust.

24 \* **Sec. 24.** AS 13.38.360 is amended to read:

25 **Sec. 13.38.360. Court orders regarding unitrust.** The trustee or, if the trustee  
26 declines to petition the court, a beneficiary may petition the court to

27 [(1) SELECT A PAYOUT PERCENTAGE DIFFERENT THAN  
28 FOUR PERCENT;

29 (2)] provide for a distribution of net income, as would be determined if  
30 the **unitrust** [TRUST] were not a unitrust, in excess of the unitrust distribution if the  
31 distribution is necessary to preserve a tax benefit [;

1 (3) AVERAGE THE VALUATION OF THE TRUST'S NET ASSETS  
2 OVER A PERIOD OTHER THAN THREE YEARS].

3 \* **Sec. 25.** AS 13.38.390(b) is amended to read:

4 (b) If AS 13.38.380(a)(3), (4), or (6) applies to all the trustees, the trustees  
5 may petition the court to direct a conversion. **In the alternative, the trustees may**  
6 **appoint an independent person who shall be granted the authority, while acting**  
7 **in a fiduciary capacity, to make decisions in place of the trustees relating to a**  
8 **conversion, reconversion, and the exercise of discretionary powers under**  
9 **AS 13.38.340.**

10 \* **Sec. 26.** AS 13.38.400 is amended to read:

11 **Sec. 13.38.400. Reconversion from a unitrust.** A trustee may reconvert a  
12 trust that has been converted into a unitrust under AS 13.38.300 by following the same  
13 procedures provided in **AS 13.38.300 - 13.38.435** [AS 13.38.300 - 13.38.410] for  
14 converting a trust into a unitrust. If a unitrust is reconverted under this section, the  
15 trustee's power to adjust under AS 13.38.210 applies to the trustee after the  
16 reconversion.

17 \* **Sec. 27.** AS 13.38 is amended by adding new sections to article 2 to read:

18 **Sec. 13.38.420. Express total return unitrusts.** (a) This section applies to a  
19 trust that, by its governing instrument, requires the distribution, at least annually, of a  
20 unitrust amount.

21 (b) The trustee of an express total return unitrust may determine the unitrust  
22 amount by reference to the net fair market value of the unitrust's assets in one or more  
23 years.

24 (c) Distribution of a unitrust amount is considered a distribution of all of the  
25 income of an express total return unitrust and is considered to be an income interest.

26 (d) Distribution of a unitrust amount is considered to be a reasonable  
27 apportionment of the total return of an express total return unitrust.

28 (e) An express total return unitrust that provides for a distribution based on a  
29 unitrust percentage in excess of five percent of the net fair market value of the unitrust  
30 assets a year is considered a distribution of all of the income of the unitrust and a  
31 distribution of principal of the unitrust to the extent that the distribution exceeds five

1 percent a year.

2 (f) The governing instrument of an express total return unitrust may grant  
3 discretion to the trustee to adopt a consistent practice of treating capital gains as part  
4 of the unitrust amount to the extent that the unitrust amount exceeds the income  
5 determined as if the trust were not an express total return unitrust, or the governing  
6 instrument may specify the ordering of classes of income.

7 (g) Unless the terms of the express total return unitrust specifically provide  
8 otherwise, a unitrust amount is considered a distribution made from the following  
9 sources, which are listed in order of priority:

- 10 (1) net income determined as if the trust were not a unitrust;
- 11 (2) ordinary income not allocable to net income;
- 12 (3) net realized short-term capital gains;
- 13 (4) net realized long-term capital gains; and
- 14 (5) the principal of the trust estate.

15 (h) The governing instrument of an express total return unitrust may provide  
16 that the trustee may exclude assets used by the unitrust's beneficiary, including a  
17 residence property or tangible personal property, from the net fair market value of the  
18 unitrust's assets for the purposes of computing the unitrust amount. These assets may  
19 be considered equivalent to income or to the unitrust amount.

20 (i) In this section,

21 (1) "express total return unitrust" means a trust that, by its governing  
22 instrument, requires the distribution, at least annually, of a unitrust amount;

23 (2) "unitrust amount" means an amount equal to a fixed percentage of  
24 not less than three nor more than five percent each year of the net fair market value of  
25 the annual value of the trust's assets distributed from an express total return unitrust to  
26 a beneficiary.

27 **Sec. 13.38.430. Power to treat gains as part of distribution of principal.**

28 Unless prohibited by the unitrust's governing instrument or specifically addressed by  
29 AS 13.38.350 or 13.38.420, the trustee of a unitrust may treat gains from the sale of  
30 capital assets of the unitrust to be part of a distribution of principal to a beneficiary,  
31 and, if the trustee treats those gains as part of a distribution of principal to a

1 beneficiary, the trustee shall treat those gains consistently on the unitrust's books,  
2 records, and tax returns as part of a distribution to a beneficiary.

3 **Sec. 13.38.435. Definitions.** In AS 13.38.300 - 13.38.435,

4 (1) "smoothing period" means the period of years over which the fair  
5 market value of the assets of a unitrust are averaged;

6 (2) "unitrust percentage" means the unitrust percentage established  
7 under AS 13.38.330(d).

8 \* **Sec. 28.** AS 13.38.690(a) is repealed and reenacted to read:

9 (a) A trustee shall allocate

10 (1) to income that portion of a payment that equals the greater of the  
11 following:

12 (A) the portion that the payor characterizes as interest, a  
13 dividend, a remittance in place of interest, or a remittance in place of a  
14 dividend; or

15 (B) the portion that is characterized as imputed interest for  
16 federal income purposes;

17 (2) to principal that portion of a payment that remains after the  
18 allocation is made under (1) of this subsection.

19 \* **Sec. 29.** AS 13.38.690(b) is amended to read:

20 (b) If **no** [A] part of a payment under a contract calling for equal installments  
21 over a fixed period of time is [NOT] allocable to income under the provisions of (a) of  
22 this section, the difference between the trust's acquisition value of the contract and the  
23 total expected return **is** [SHALL BE] considered to be interest. The trustee shall  
24 allocate to income the portion of each payment equivalent to interest on the then  
25 unpaid principal balance at the rate specified in the contract or at a rate necessary to  
26 amortize the difference between the expected return and the acquisition value, where  
27 that rate is readily ascertainable by the trustee.

28 \* **Sec. 30.** AS 13.38.690(c) is amended to read:

29 (c) If **no** [THERE IS NOT A] portion of a payment from a separate fund held  
30 exclusively for the benefit of the trust [THAT] is allocable to income under (a) or (b)  
31 of this section, but the internal net income of the fund determined as if the fund were a

1 separate trust subject to AS 13.38.200 - 13.38.410, 13.38.500 - 13.38.690, or  
 2 13.38.710 - 13.38.860 [AS 13.38.500 - 13.38.860] is readily ascertainable by the  
 3 trustee, the internal net income of the fund is considered to be the income earned  
 4 by the fund, and the portion of the payment equal to the then undistributed net  
 5 income of the fund realized since the trust acquired its interest in the fund is  
 6 considered to be a distribution of that internal net income of the fund and shall be  
 7 allocated to the trust income account. The balance of the payment described in this  
 8 subsection shall be allocated to principal. The power to adjust under AS 13.38.210,  
 9 the power to convert to a unitrust under AS 13.38.300, and the provisions of  
 10 AS 13.38.420 apply to retirement benefits covered by this subsection that are  
 11 payable to a trust. Those powers and provisions may be exercised by the payee  
 12 trustee or in the governing instrument for the retirement benefits separately and  
 13 independently from the exercise by the payee trustee or in the governing  
 14 instrument of those powers and provisions for the trust, as if the retirement  
 15 benefits and the trust were separate trusts subject to this chapter.

16 \* **Sec. 31.** AS 13.38.690(d) is amended to read:

17 (d) A trustee shall allocate 10 percent of the part of the payment that is  
 18 required to be made during the accounting period to income and the balance to  
 19 principal if there is no [NOT A] part of the payment that is allocable to income under  
 20 (a) - (c) of this section and all or part of the payment is required to be made. The  
 21 trustee shall allocate the entire payment to principal if no [A] part of a payment is  
 22 [NOT] required to be made or the payment received is the entire amount to which the  
 23 trustee is entitled. In this subsection, a payment is not "required to be made" to the  
 24 extent that it is made because the trustee exercises a right of withdrawal.

25 \* **Sec. 32.** AS 13.38.690(e) is amended to read:

26 (e) If, to obtain a federal estate or gift tax marital deduction for a trust, the  
 27 trustee must allocate more of a payment to income than provided for by this section,  
 28 the trustee shall allocate to income the additional amount necessary to obtain the  
 29 marital deduction [TO INCOME].

30 \* **Sec. 33.** AS 13.46.190 is amended to read:

31 **Sec. 13.46.190. Termination of custodianship.** The custodian shall transfer in

1 an appropriate manner the custodial property to the minor or to the minor's estate upon  
2 the earlier of the

3 (1) minor's attainment of 21 years of age with respect to property  
4 transferred under AS 13.46.030 or 13.46.040 unless the time of transfer of the  
5 custodial property to the minor is changed under AS 13.46.195 or 13.46.197;

6 (2) minor's attainment of 18 years of age with respect to property  
7 transferred under AS 13.46.050 or 13.46.060, unless the time of transfer of the  
8 custodial property to the minor is changed under AS 13.46.197;

9 (3) time specified in the transfer under AS 13.46.080 if the time of  
10 transfer of the custodial property to the minor is changed under AS 13.46.195 or  
11 13.46.197; or

12 (4) minor's death.

13 \* **Sec. 34.** AS 13.46 is amended by adding a new section to read:

14 **Sec. 13.46.197. Extension of custodial term by custodian.** (a) A custodian  
15 may extend the custodial term under this section to an age older than the age that is  
16 specified by this chapter or a transferring document made under AS 13.46.080, subject  
17 to the right of the minor to compel immediate distribution under (c) of this section.

18 (b) To extend the custodial term under (a) of this section, the custodian shall  
19 give the minor written notice of the custodian's intent to extend the custodial term. The  
20 notice must specify the duration of the extension by indicating the new custodial term  
21 and must inform the minor of the minor's right to compel immediate distribution under  
22 (c) of this section. The custodian shall give the notice during the later of the following  
23 periods:

24 (1) the six-month period that precedes the last day of the custodial  
25 term; or

26 (2) the six-month period that begins on the minor's 18th birthday.

27 (c) Rather than permit the extension of the custodial term, the minor may  
28 compel immediate distribution of all or part of the custodial property by giving written  
29 notice to the custodian

30 (1) during the six-month period that begins on the day that is the last  
31 day of the current custodial term; or

1 (2) within 90 days after receiving the custodian's notice under (b) of  
2 this section.

3 (d) If a minor does not exercise the minor's right to compel distribution under  
4 (c) of this section, the custodial term shall be extended as indicated in the custodian's  
5 notice given under (b) of this section, and the minor may not compel the immediate  
6 distribution of custodial property before the end of the custodial term, as extended.

7 (e) A custodian may extend the custodial term more than once under this  
8 section.

9 (f) In this section, "custodial term" means the time provided in or allowed by  
10 this chapter during which the custodian is directed to hold custodial property until the  
11 property is transferred to the minor.

12 \* **Sec. 35.** AS 13.46.990(11) is amended to read:

13 (11) "minor" means an individual who has not attained the age of 18  
14 years, except that when used in reference to the beneficiary for whose benefit  
15 custodial property is held or to be held, "minor" means an individual who has not  
16 attained the age at which the custodian is required under AS 13.46.190, [AND]  
17 13.46.195, and 13.46.197 to transfer the custodial property to the beneficiary;

18 \* **Sec. 36.** AS 13 is amended by adding a new chapter to read:

19 **Chapter 75. Disposition of Human Remains.**

20 **Sec. 13.75.010. Directions by decedent.** (a) A person may provide directions  
21 for the disposition of the person's remains by placing the directions in a disposition  
22 document. The directions may include or be limited to designating an agent to control  
23 the disposition of the person's remains.

24 (b) A disposition document must be signed by the person and acknowledged  
25 before a notary public, and contain the form and contents required by AS 13.75.030. A  
26 disposition document may be a separate document or it may be contained in another  
27 document, including a will or prepaid funeral or burial contract. The disposition  
28 document may be modified or revoked only by a subsequent disposition document that  
29 complies with this subsection.

30 **Sec. 13.75.020. Persons authorized to control disposition.** (a) The following  
31 persons, in the priority listed, may control disposition of a decedent's remains:

1                   (1) a person designated in a disposition document as the disposition  
2 agent for the decedent;

3                   (2) a person serving, or nominated by the decedent in the decedent's  
4 will to serve, as the personal representative of the decedent's estate, if the person is  
5 acting according to the decedent's written instructions contained in the decedent's will;

6                   (3) the individual who was the spouse of the decedent at the time of the  
7 decedent's death;

8                   (4) the sole surviving competent adult child of the decedent, or, if there  
9 is more than one surviving competent adult child of the decedent, the majority of the  
10 surviving competent adult children; fewer than one-half of the surviving competent  
11 adult children may exercise the rights and duties of this section if these surviving adult  
12 children use reasonable efforts to notify all other surviving competent adult children  
13 that they are exercising these rights and duties and are not aware of any opposition by  
14 one-half or more of all of the surviving competent adult children;

15                   (5) the surviving competent parents of the decedent; if one of the  
16 surviving competent parents is absent, the remaining competent parent may exercise  
17 the rights and duties of this section after reasonable efforts have been unsuccessful in  
18 locating the absent surviving competent parent; in this paragraph, "absent" means a  
19 person who is unable to communicate decisions or participate in making decisions  
20 regarding the disposition of a decedent's remains personally, telephonically, or through  
21 electronic communication;

22                   (6) the surviving competent adult person in the next degrees of  
23 kindred, the two surviving competent adult persons of the same degree of kindred if  
24 there are two, or, if there are more than two surviving competent adult persons of the  
25 same degree of kindred, the majority of those persons; fewer than the majority of  
26 surviving competent adult persons of the same degree of kindred may exercise the  
27 rights and duties of this section if those persons use reasonable efforts to notify all  
28 other surviving competent adult persons of the same degree of kindred that they are  
29 exercising these rights and duties and are not aware of any opposition by one-half or  
30 more of all surviving competent adult persons of the same degree of kindred;

31                   (7) in the case of an indigent or another individual whose final

1 disposition is the responsibility of the state or a municipality, a public administrator,  
 2 medical examiner, coroner, or another public official charged with arranging the final  
 3 disposition of the decedent; or

4 (8) another person who is willing to assume legal and financial  
 5 responsibility.

6 (b) If a person takes control of the disposition under (a) of this section, the  
 7 person is liable for the reasonable costs of the disposition if the assets of the estate or  
 8 other available assets are not adequate to pay the costs of the disposition.

9 (c) In this section,

10 (1) "adult" means a person who is 18 years of age or older;

11 (2) "competent" means a person who does not suffer from disabilities  
 12 that prevent the person from managing the person's property or affairs.

13 **Sec. 13.75.030. Form of disposition document.** A disposition document must  
 14 be in substantially the following form:

#### 15 DISPOSITION DOCUMENT

16 You can select Part 1, Part 2, or both, by completing the part(s)  
 17 you select, including providing any signatures indicated. Part 3 contains  
 18 general statements and a place for your signature. You must sign in  
 19 front of a notary.

20 PART 1. APPOINTMENT OF AGENT TO CONTROL  
 21 DISPOSITION OF REMAINS. If you appoint an agent, you and your  
 22 agent must complete this part as indicated, and the agent must sign this  
 23 part.

24 I, \_\_\_\_\_, being of sound mind, wilfully and  
 25 voluntarily make known my desire that, on my death, the disposition of  
 26 my remains shall be controlled by \_\_\_\_\_ (name of agent first  
 27 named below), and, with respect to that subject only, I appoint that  
 28 person as my agent. All decisions made by my agent with respect to the  
 29 disposition of my remains, including cremation, are binding.

30 ACCEPTANCE BY AGENT OF APPOINTMENT.

31 THE AGENT, AND EACH SUCCESSOR AGENT, BY

1 ACCEPTING THIS APPOINTMENT, AGREES TO AND ASSUMES  
2 THE OBLIGATIONS PROVIDED IN THIS DOCUMENT. AN  
3 AGENT MAY SIGN AT ANY TIME, BUT AN AGENT'S  
4 AUTHORITY TO ACT IS NOT EFFECTIVE UNTIL THE AGENT  
5 SIGNS BELOW TO INDICATE THE ACCEPTANCE OF  
6 APPOINTMENT. ANY NUMBER OF AGENTS MAY SIGN, BUT  
7 ONLY THE SIGNATURE OF THE AGENT ACTING AT ANY  
8 TIME IS REQUIRED.

9 AGENT:

10 Name: \_\_\_\_\_

11 Address: \_\_\_\_\_

12 Telephone Number: \_\_\_\_\_

13 Signature Indicating Acceptance of Appointment:

14 \_\_\_\_\_

15 Date of Signature: \_\_\_\_\_

16 SUCCESSORS:

17 If my agent dies, becomes legally disabled, resigns, or refuses to  
18 act, I appoint the following persons (each to act alone and successively,  
19 in the order named) to serve as my agent to control the disposition of  
20 my remains as authorized by this document:

21 (1) First Successor

22 Name: \_\_\_\_\_

23 Address: \_\_\_\_\_

24 Telephone Number: \_\_\_\_\_

25 Signature of First Successor Indicating Acceptance of Appointment:

26 \_\_\_\_\_

27 Date of Signature: \_\_\_\_\_

28 (2) Second Successor

29 Name: \_\_\_\_\_

30 Address: \_\_\_\_\_

31 Telephone Number: \_\_\_\_\_

Signature of Second Successor Indicating Acceptance of Appointment:

\_\_\_\_\_

Date of Signature: \_\_\_\_\_

PART 2. DIRECTIONS FOR THE DISPOSITION OF MY REMAINS.

Stated below are my directions for the disposition of my remains:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

If the disposition of my remains is by cremation, then (pick one):

( ) I do not wish to allow any of my survivors the option of canceling my cremation and selecting alternative arrangements, regardless of whether my survivors consider a change to be appropriate.

( ) I wish to allow only the survivors I have designated below to have the option of canceling my cremation and selecting alternative arrangements, if they consider that a change to be appropriate:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

PART 3. GENERAL PROVISIONS AND SIGNATURE.

WHEN DIRECTIONS BECOME EFFECTIVE. The directions, including any appointment of an agent, in this disposition document become effective on my death.

REVOCATION OF PRIOR APPOINTMENTS. I revoke any prior appointment of any person to control the disposition of my remains.

SIGNATURE OF PERSON MAKING DISPOSITION DOCUMENT

Signature: \_\_\_\_\_

Date of signature: \_\_\_\_\_

(Notary acknowledgment of signature)

**Sec. 13.75.040. Agent's appointment.** The person appointed as an agent in a disposition document may sign the disposition document at any time, but the agent's authority to act is not effective until the agent signs the instrument.

**Sec. 13.75.050. Exercise of authority.** If a person fails to exercise the person's authority to control disposition under AS 13.75.020 within 48 hours after receiving notification of the decedent's death or within 48 hours after the decedent's death, whichever is earlier, the person may not control the disposition of the decedent's remains, and the right to control the disposition of the decedent's remains passes to the person who is next listed in priority under AS 13.75.020. If the person to whom the right to control the disposition passes under this section fails to exercise the person's authority to control the disposition within 48 hours after being notified that the authority to control the disposition has passed to the person, the authority to control the disposition passes to the person who is next listed in priority under AS 13.75.020.

**Sec. 13.75.060. Certain persons prohibited from control.** If a person is charged with a felonious killing in connection with a decedent's death and if the funeral director or the cemetery knows about the charge, then the person may not control disposition, and the right to control disposition passes to the person who is next listed in priority under AS 13.75.020.

**Sec. 13.75.070. Prohibition of cremation; written instructions.** A person may not authorize cremation for a decedent's remains if a decedent has left directions in a disposition document that the decedent does not wish to be cremated.

**Sec. 13.75.080. Implementation of directions.** (a) The person authorized to control the disposition shall carry out the directions of the decedent to the extent that the decedent's estate or the person is financially able to carry out the directions.

(b) Notwithstanding any other provision in AS 13.06 - 13.36 (Uniform Probate Code), if a person provides directions in a disposition document that is contained in a will, the directions shall be carried out immediately without the necessity of probate. If the will is not probated or is declared invalid for testamentary purposes, the directions are valid to the extent to which they have been acted on in good faith.

1           **Sec. 13.75.090. Misrepresentation; liability.** If a person represents that the  
 2 person knows the identity of a decedent, and, with the intent to procure the disposition  
 3 of the decedent's remains, signs a statement, other than a death certificate, that  
 4 identifies the decedent, the person guarantees the identity of the decedent and is liable  
 5 for any damages that result, directly or indirectly, from that guarantee.

6           **Sec. 13.75.100. Liability.** (a) A disposition organization is not liable for  
 7 carrying out the directions of a decedent if the disposition organization carries out the  
 8 directions of a decedent or a person who establishes that the person is entitled to  
 9 control the disposition.

10           (b) This section may not be construed to reduce or eliminate the liability of a  
 11 disposition organization for its negligence or reckless acts.

12           **Sec. 13.75.110. Disputes.** (a) A person listed in AS 13.75.020 who is involved  
 13 in a dispute with one or more persons listed in AS 13.75.020 about which of the  
 14 persons has the authority to control disposition may bring an action in the superior  
 15 court to resolve the dispute.

16           (b) If there is a dispute with one or more persons listed in AS 13.75.020 about  
 17 which person has the authority to control disposition, a cemetery organization or  
 18 funeral establishment is not liable for refusing to accept, to inter, or otherwise to  
 19 dispose of the decedent's remains until the cemetery organization or funeral  
 20 establishment receives a court order or another suitable confirmation that the dispute  
 21 has been resolved.

22           **Sec. 13.75.120. Exemptions.** The disposition of the remains of a member of  
 23 the organized militia under AS 26.05.262, the disposition of the remains of a member  
 24 of the armed forces under AS 26.10.065(a), and the disposition of the remains of a  
 25 member of the United States Coast Guard under AS 26.10.065(b) are exempt from this  
 26 chapter.

27           **Sec. 13.75.190. Definitions.** In this chapter,

28                   (1) "control" means the authority to control disposition;

29                   (2) "directions" means

30                           (A) instructions for the disposition of a person's remains;

31                           (B) the appointment of an agent to handle the disposition of a

1 person's remains; or

2 (C) both (A) and (B) of this paragraph;

3 (3) "disposition" means disposition of a decedent's remains, including  
4 cremation, but does not include an anatomical gift; in this paragraph, "anatomical gift"  
5 has the meaning given in AS 13.52.390;

6 (4) "disposition document" means a disposition document authorized  
7 by AS 13.75.010

8 (A) in which a person provides directions regarding the  
9 disposition of the person's remains; and

10 (B) that complies with AS 13.75.030;

11 (5) "disposition organization" means

12 (A) a cemetery association formed under AS 10.30.010;

13 (B) a nonprofit cemetery corporation authorized by  
14 AS 10.30.055;

15 (C) a person operating a crematory;

16 (D) a person operating a columbarium;

17 (E) a funeral home or other type of funeral establishment;

18 (F) a funeral director or an embalmer.

19 **Sec. 13.75.195. Short title.** This chapter may be cited as the Disposition of  
20 Human Remains Act.

21 \* **Sec. 37.** AS 21.09.210(m) is amended to read:

22 (m) The tax imposed under this section for an individual life insurance policy,  
23 **or for a life insurance policy issued for delivery to a trust that was formed under**  
24 **the laws of this state or contains a provision that laws of this state govern the**  
25 **validity, construction, and administration of the trust,** shall be computed at the rate  
26 of

27 (1) 2.7 percent of policy year premium up to \$100,000; and

28 (2) one-tenth of one percent of policy year premium exceeding  
29 \$100,000.

30 \* **Sec. 38.** AS 21.09.210(m), as amended by sec. 37 of this Act, is amended to read:

31 (m) The tax imposed under this section for an individual life insurance policy

1           [, OR FOR A LIFE INSURANCE POLICY ISSUED FOR DELIVERY TO A TRUST  
2           THAT WAS FORMED UNDER THE LAWS OF THIS STATE OR CONTAINS A  
3           PROVISION THAT LAWS OF THIS STATE GOVERN THE VALIDITY,  
4           CONSTRUCTION, AND ADMINISTRATION OF THE TRUST,] shall be computed  
5           at the rate of

6                           (1) 2.7 percent of policy year premium up to \$100,000; and

7                           (2) one-tenth of one percent of policy year premium exceeding  
8           \$100,000.

9           \* **Sec. 39.** AS 21.42.020 is amended by adding new subsections to read:

10                   (e) Notwithstanding (a) of this section, a trustee, acting in a fiduciary capacity,  
11           may procure or cause to be procured an insurance contract that is on the life or body of  
12           an individual and under which the proceeds of the insurance contract are payable to  
13           the trustee, acting in a fiduciary capacity, if

14                           (1) the trustee, acting in a fiduciary capacity, owns the insurance  
15           contract or the trust itself owns the insurance contract;

16                           (2) on the date the contract is made, a settlor of the trust is the  
17           individual insured, has an insurable interest in the individual insured, or would have  
18           had an insurable interest in the individual insured if the settlor were living at the time  
19           the contract was made; in this paragraph, "settlor" means a person, including a person  
20           for whom a fiduciary or agent is acting, who executes the trust instrument; and

21                           (3) the proceeds of the contract are primarily for the benefit of a trust  
22           beneficiary who has an insurable interest in the individual insured, except that, if the  
23           determination of the trust beneficiary's insurable interest is based on (d)(1) of this  
24           section, the trust beneficiary's relation by blood or law must be within the third degree.

25                   (f) A person who has an insurable interest in the life or body of an individual  
26           may form a business firm that is substantially or solely for the purpose of purchasing,  
27           holding, or administering an insurance contract on the life or body of the individual. In  
28           this subsection, "firm" has the meaning given in AS 21.97.900, but also includes a  
29           business trust and a joint venture.

30           \* **Sec. 40.** AS 32.11.340(b) is amended to read:

31                   (b) This section provides the exclusive remedy that a judgment creditor of a

1 general or limited partner or of the general or limited partner's assignee may use to  
2 satisfy a judgment out of the judgment debtor's interest in the partnership. Other **legal**  
3 **or equitable** remedies, including foreclosure on the general or limited partner's  
4 partnership interest and a court order for directions, accounts, and inquiries that the  
5 debtor general or limited partner might have made, are not available to the judgment  
6 creditor attempting to satisfy the judgment out of the judgment debtor's interest in the  
7 limited partnership and may not be ordered by a court.

8 \* **Sec. 41.** AS 34.40.110(b) is amended to read:

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

13 (1) the creditor establishes by clear and convincing evidence that the  
14 settlor's transfer of property in trust was made with the intent to defraud that creditor,  
15 and a cause of action or claim for relief with respect to the fraudulent transfer  
16 complies with the requirements of (d) of this section; however, a settlor's expressed  
17 intention to protect trust assets from a beneficiary's potential future creditors is not  
18 evidence of an intent to defraud;

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

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

1 (A) income or principal from a charitable remainder annuity  
 2 trust or charitable remainder unitrust; in this subparagraph, "charitable  
 3 remainder annuity trust" and "charitable remainder unitrust" have the meanings  
 4 given in 26 U.S.C. 664 (Internal Revenue Code) [AS THAT SECTION  
 5 READS ON OCTOBER 8, 2003,] and as it may be amended;

6 (B) a percentage of the value of the trust each year as  
 7 determined from time to time under the trust instrument, but not exceeding the  
 8 amount that may be defined as income under AS 13.38 or under 26 U.S.C.  
 9 643(b) (Internal Revenue Code) [AS THAT SUBSECTION READS ON  
 10 OCTOBER 8, 2003,] and as it may be amended;

11 (C) the transferor's potential or actual use of real property held  
 12 under a qualified personal residence trust within the meaning of 26 U.S.C.  
 13 2702(c) (Internal Revenue Code) [AS THAT SUBSECTION READS ON  
 14 SEPTEMBER 15, 2004,] or as it may be amended in the future; or

15 (D) income or principal from a grantor retained annuity trust or  
 16 grantor retained unitrust that is allowed under 26 U.S.C. 2702 (Internal  
 17 Revenue Code) [AS THAT SECTION READS ON SEPTEMBER 15, 2004,]  
 18 or as it may be amended in the future; or

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

21 \* **Sec. 42.** AS 34.40.110(d) is amended to read:

22 (d) A cause of action or claim for relief with respect to a fraudulent transfer of  
 23 a settlor's assets under (b)(1) of this section is extinguished unless the action under  
 24 (b)(1) of this section is brought by a creditor of the settlor who

25 (1) is a creditor of the settlor before the settlor's assets are transferred  
 26 to the trust, and the action under (b)(1) of this section is brought within the later of

27 (A) two [FOUR] years after the transfer is made; or

28 (B) six months [ONE YEAR] after the transfer is or reasonably  
 29 could have been discovered by the creditor if the creditor

30 (i) can demonstrate, by a preponderance of the  
 31 evidence, that the creditor asserted a specific claim against the settlor

1 before the transfer; or

2 (ii) files another action, other than an action under  
3 (b)(1) of this section, against the settlor that asserts a claim based on an  
4 act or omission of the settlor that occurred before the transfer, and the  
5 action described in this sub-subparagraph is filed within two [FOUR]  
6 years after the transfer; or

7 (2) becomes a creditor subsequent to the transfer into trust, and the  
8 action under (b)(1) of this section is brought within two [FOUR] years after the  
9 transfer is made.

10 \* **Sec. 43.** AS 34.40 is amended by adding new sections to read:

11 **Sec. 34.40.113. Discretionary interests in irrevocable trusts.** (a) This section  
12 applies to a creditor's claim with respect to a discretionary interest in an irrevocable  
13 trust, unless the trust instrument provides otherwise.

14 (b) A discretionary interest in an irrevocable trust is not a property interest or  
15 an enforceable right. It is an expectancy that a creditor of a beneficiary may not attach  
16 or otherwise reach.

17 (c) A creditor of a beneficiary may not force a distribution with regard to a  
18 discretionary interest in an irrevocable trust. A creditor may not compel a trustee to  
19 exercise the trustee's discretion to make a distribution with regard to a discretionary  
20 interest in an irrevocable trust.

21 (d) Even if a beneficiary has an outstanding creditor, in the case of a  
22 discretionary interest in an irrevocable trust, a trustee who has the authority to pay  
23 income or principal to a beneficiary may pay it to a third party if the payment is for the  
24 benefit of the beneficiary. A trustee is not liable to a creditor for paying income or  
25 principal on behalf of the beneficiary.

26 (e) A creditor of a beneficiary may not maintain an action or a proceeding in  
27 court that interferes with the trustee's discretion to apply income or principal on behalf  
28 of the beneficiary.

29 (f) A creditor of a beneficiary may not obtain an order of attachment or similar  
30 relief that would prevent a trustee from making a discretionary payment to a third  
31 party on behalf of the beneficiary.

1 (g) This section does not prevent a creditor from obtaining relief from a  
2 fraudulent transfer under AS 34.40.110.

3 (h) In this section, a beneficiary's entitlement to a distribution is within the  
4 discretion of a trustee, whether or not the trust instrument states the purposes for the  
5 distribution or uses "may," "shall," "sole and absolute," "uncontrolled," or similar  
6 words.

7 (i) In this section, "discretionary interest" means a beneficiary's interest in an  
8 irrevocable trust if the beneficiary's entitlement to a distribution is within the  
9 discretion of the trustee.

10 **Sec. 34.40.118. Transfers of individual retirement accounts.** (a)  
11 Notwithstanding a provision in AS 09.38.017(d), AS 34.40.110, or another law to the  
12 contrary, a person may voluntarily transfer or assign the person's interest in an  
13 individual retirement account if the person

14 (1) is the owner of or a participant in the individual retirement account;

15 or

16 (2) acquired the interest as a result of the death of another individual.

17 (b) In this section, "individual retirement account" means an individual  
18 retirement account established under 26 U.S.C. 408 or a Roth IRA established under  
19 26 U.S.C. 408A.

20 \* **Sec. 44.** AS 34.77.030(g) is amended to read:

21 (g) Whether or not the community property agreement provides that all  
22 property acquired by either or both spouses during the marriage is community  
23 property, and except to the extent otherwise expressly provided **by the spouses** in the  
24 community property agreement **or by the settlors in a community property trust**,  
25 property acquired by a spouse during marriage and after the determination date is  
26 individual property if acquired

27 (1) by gift or a disposition at death made by a third person to the  
28 spouse and not to both spouses;

29 (2) in exchange for or with the proceeds of other individual property of  
30 the spouse;

31 (3) from appreciation or income of the spouse's individual property

1 except to the extent that the income or appreciation is classified as community  
2 property under AS 34.77.130;

3 (4) by a decree, community property agreement, written consent, or  
4 reclassification under AS 34.77.060(b) designating it as the individual property of the  
5 spouse;

6 (5) as a recovery for damage to property under AS 34.77.140, except  
7 as specifically provided otherwise in a decree, community property agreement,  
8 **community property trust**, or written consent; [OR]

9 (6) as a recovery for personal injury, except for the amount of the  
10 recovery attributable to expenses paid or otherwise satisfied from community  
11 property; **or**

12 **(7) as a transfer to a community property trust and declared by**  
13 **the trust to be the individual property of the spouse.**

14 \* **Sec. 45.** AS 34.77.050(b) is amended to read:

15 (b) A gift of community property to a third person that is not allowed under  
16 (a) of this section is subject to **AS 34.77.140(e) - (h)** [(d) OF THIS SECTION] unless  
17 both spouses act together in making the gift or the other spouse ratifies the gift.

18 \* **Sec. 46.** AS 34.77.110 is amended by adding new subsections to read:

19 (f) Property that spouses agree in a community property agreement is  
20 community property or property that is transferred to a community property trust and  
21 expressly declared by the trust to be community property is owned as community  
22 property regardless of the form of title to the property, even if the title indicates that  
23 the property is owned unequally by the spouses or is only in the name of one spouse.

24 (g) If the title to community property is in a form that provides for ownership  
25 by survivorship between the spouses, then ownership by survivorship is presumed to  
26 have been made with the consent of both spouses.

27 (h) If a spouse with management and control of community property  
28 designates a beneficiary for the property on the death of one or both of the spouses,  
29 and if the community property is held in a form of title that permits a beneficiary  
30 designation, the beneficiary designation is effective only for the designating spouse's  
31 one-half interest in the community property unless the other spouse consents in

1 writing to the designation. A designation of the following as the beneficiary is  
2 presumed to have been made with the consent of the other spouse:

3 (1) the other spouse or an ancestor or descendant of either spouse;

4 (2) a charity; or

5 (3) a trust, to the extent that the beneficiaries consist of persons or  
6 entities identified in (1) or (2) of this subsection.

7 (i) The testimony of one spouse is sufficient to rebut a presumption  
8 established under this section.

9 (j) A disposition of community property contrary to (e) - (h) of this section is  
10 voidable. An action in court to void the disposition must be commenced within the  
11 time specified by AS 34.77.140(e).

12 \* **Sec. 47.** AS 34.77.140(d) is amended to read:

13 (d) Except as provided otherwise in (e) - (h) of this section  
14 [AS 34.77.050(d)], a spouse must begin an action against the other spouse under (a) of  
15 this section within three years after acquiring actual knowledge of the facts giving rise  
16 to the claim.

17 \* **Sec. 48.** AS 34.77.140 is amended by adding new subsections to read:

18 (e) Except as provided by (f) - (h) of this section, if a gift of community  
19 property during marriage by a spouse does not comply with AS 34.77.050(a), the  
20 nondonor spouse may bring an action to recover the property or the amount of money  
21 by which the gift exceeded the limit under AS 34.77.050(a). The nondonor spouse  
22 may bring the action against the donor spouse, the gift recipient, or both. The  
23 nondonor spouse must commence the action within the earliest of the following times:

24 (1) one year after the nondonor spouse receives notice of the gift;

25 (2) one year after dissolution of the marriage; or

26 (3) on or before the deadline for filing a claim under AS 13.16.460  
27 after the death of the donor spouse.

28 (f) If a recovery under (e) of this section occurs during the marriage of the  
29 donor spouse and the nondonor spouse, the property or money that is recovered is  
30 considered community property. If the recovery occurs after the dissolution of the  
31 marriage of the donor and nondonor spouses or after the death of either the donor or

1 the nondonor spouse, the recovery is limited to 50 percent of the property or money  
2 that would have been recovered if the recovery had occurred during the marriage.

3 (g) If a transfer of community property to a third person during marriage by a  
4 spouse acting without the other spouse becomes a completed gift on the death of the  
5 donor spouse, or if an arrangement involving community property during marriage by  
6 a spouse acting without the other spouse is intended to be and becomes a gift to a third  
7 person on the death of the donor spouse, the surviving spouse may bring an action in  
8 court against the gift recipient to recover one-half of the gift. To bring an action under  
9 this subsection, the surviving spouse must commence the action on or before the  
10 deadline for filing a claim under AS 13.16.460.

11 (h) If a spouse who would have been entitled to bring an action under (e) - (g)  
12 of this section predeceases the donor spouse, the deceased spouse's successor in  
13 interest may bring an action for recovery under (e) - (g) of this section, but the action  
14 must be commenced within one year after the deceased spouse's death. Recovery in an  
15 action under this subsection is the same as if the donor spouse had predeceased the  
16 spouse entitled to the recovery, but the amount of the recovery is calculated as of the  
17 date of the death of the spouse entitled to the recovery.

18 \* **Sec. 49.** AS 13.38.330(c); AS 34.77.050(d), and 34.77.110(d) are repealed.

19 \* **Sec. 50.** The uncodified law of the State of Alaska is amended by adding a new section to  
20 read:

21 **INDIRECT COURT RULE AMENDMENTS.** (a) AS 34.40.113(f), enacted by sec. 43  
22 of this Act, has the effect of amending Rule 64, Alaska Rules of Civil Procedure, by  
23 prohibiting a creditor or beneficiary from obtaining an order of attachment or similar relief in  
24 certain cases.

25 (b) AS 34.77.110(i), enacted by sec. 46 of this Act, has the effect of amending Rule  
26 301(a), Alaska Rules of Evidence, by specifying the evidence that is sufficient to rebut a  
27 presumption under AS 34.77.110(i), enacted by sec. 46 of this Act.

28 \* **Sec. 51.** The uncodified law of the State of Alaska is amended by adding a new section to  
29 read:

30 **APPLICABILITY.** (a) AS 09.38.017(a), as amended by sec. 1 of this Act,  
31 AS 09.38.017(d), as amended by sec. 2 of this Act, and AS 09.38.017(e), as amended by sec.

1 3 of this Act, apply to a retirement plan that exists before, on, or after the effective date of this  
2 Act. In this section, "retirement plan" has the meaning given in AS 09.38.017(e), as amended  
3 by sec. 3 of this Act.

4 (b) AS 13.36.157, as repealed and reenacted by sec. 9 of this Act, AS 13.36.158 and  
5 13.36.159, enacted by sec. 10 of this Act, AS 13.36.072(c), enacted by sec. 8 of this Act,  
6 AS 13.36.215(b), enacted by sec. 11 of this Act, AS 13.36.225(a), as amended by sec. 12 of  
7 this Act, AS 13.36.273, enacted by sec. 13 of this Act, AS 13.36.370(a), as amended by sec.  
8 14 of this Act, and AS 13.36.375(c), enacted by sec. 15 of this Act, apply to a trust that exists  
9 before, on, or after the effective date of this Act.

10 (c) AS 13.46.190, as amended by sec. 33 of this Act, AS 13.46.197, enacted by sec.  
11 34 of this Act, and AS 13.46.990(11), as amended by sec. 35 of this Act, apply to a transfer  
12 that is made before, on, or after the effective date of this Act. In this section, "transfer" has the  
13 meaning given in AS 13.46.990.

14 (d) AS 21.09.210(m), as amended by sec. 37 of this Act, applies to a life insurance  
15 policy issued for delivery to a trust if the life insurance policy is issued for delivery to a trust  
16 on or after the effective date of AS 21.09.210(m), as amended by sec. 37 of this Act.

17 (e) AS 34.40.118, enacted by sec. 43 of this Act, applies to an individual retirement  
18 account that exists before, on, or after the effective date of this Act. In this section, "individual  
19 retirement account" means an individual retirement account established under 26 U.S.C. 408  
20 or a Roth IRA established under 26 U.S.C. 408A.

21 \* **Sec. 52.** The uncodified law of the State of Alaska is amended by adding a new section to  
22 read:

23 **APPLICABILITY.** AS 21.09.210(m), as amended by sec. 38 of this Act, applies to a  
24 policy offered, issued for delivery, or delivered on or after the effective date of  
25 AS 21.09.210(m), as amended by sec. 38 of this Act. In this section, "policy" has the meaning  
26 given in AS 21.97.900.

27 \* **Sec. 53.** The uncodified law of the State of Alaska is amended by adding a new section to  
28 read:

29 **CONDITIONAL EFFECT.** (a) AS 34.40.113(f), enacted by sec. 43 of this Act, takes  
30 effect only if sec. 50(a) of this Act receives the two-thirds majority vote of each house  
31 required by art. IV, sec. 15, Constitution of the State of Alaska.

1           (b) AS 34.77.110(i), enacted by sec. 46 of this Act, takes effect only if sec. 50(b) of  
2 this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,  
3 Constitution of the State of Alaska.

4       \* **Sec. 54.** AS 21.09.210(m), as amended by sec. 38 of this Act, and sec. 52 of this Act take  
5 effect five years after the effective date of sec. 37 of this Act.