

HB

1966

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- Joe Ryan Tray 3875

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
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MEMORANDUM

March 26, 1998

SUBJECT: CSHB 196() (Work Order No. 20-LS0521\F)

TO: Representative Joe Green, Chair
House Judiciary Committee
Attn: Kevin

FROM: 
Theresa Bannister
Legislative Counsel

This memo accompanies the bill described above.

1. Sec. 13.36.165. This section appears to address the situation where the trustee has mingled its own funds with the two or more trust funds, although the section does not mention this directly. This section does not seem to apply to the situation where the trustee mingles its own funds with the funds of only one trust fund. However, in that situation, the question would still arise as to which funds to charge the withdrawal to. Would you like this section to be drafted to apply to that situation also?

2. Sec. 13.36.290(2). The term, "relative," is used in secs. 13.36.140(a) and 13.36.150(a)(3) to prohibit certain transactions by the trustee to certain persons close to the trustee. Do you want to enlarge the definition to cover other persons who may be close to the trustee, such as step-parents, step-children, stepsisters, stepbrothers, and persons to whom the trustee is not married but with whom the trustee is living.

If I may be of further assistance, please advise.

TLB:lmb
98-045.lmb

Alaska State Legislature

Representative Brian S. Porter

HOUSE MAJORITY LEADER

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HOUSE SPECIAL COMMITTEE ON TELECOMMUNICATIONS

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March 23, 1998 *Joe*

To: Joe Ryan *Brian*

Fm: Brian Porter

Re: HB 196 ["E" version]

Joe:

My staff and I have reviewed HB 196 in its most recent version. I have some concerns about the effects of this legislation. Please help by confirming my understanding of how this bill works:

1. Page 6, lines 11-14:

If you have co-trustees, and both of them join in a transaction involving trust assets, all one of the trustees has to do to avoid liability for breach of trust is submit a written dissent before joining in the transaction. If a trustee thinks a transaction is not appropriate, to the point of submitting a written dissent, it seems to me that he should not sign on the dotted line at all. Why should a trustee escape liability for breach of fiduciary duties merely by filing a perfunctory dissent?

2. Page 7, lines 3-20:

A nominee arrangement is sometimes used by sophisticated investors to keep their names out of the public records. It is theoretically possible, I think, that a judgment creditor of the nominee could execute upon all property in the name of the nominee, including the assets of some undisclosed trust beneficiary. The language on lines 17-20 makes the trustee liable only for "an ACT OF THE NOMINEE in connection with the stocks, bonds, etc. If the nominees "act" was in causing a car wreck, but the stocks were executed upon pursuant to a tort-based judgment, the language purportedly imposing liability on the trustee would not be operative. Is my interpretation accurate?

Why would a trustee want to put a beneficiary's assets in the name of a nominee?

Under existing case law, is there any liability on a trustee for putting such assets in the name of a nominee whose assets are levied upon because of an unrelated tortious act of the nominee?

3. Page 7, lines 26-31, and page 8, lines 1-28:

Does existing trust case law forbid self-dealing by the trustee as a breach of fiduciary duty to the beneficiary? If so, this section appears to legitimate self-dealing between a trust department of a financial institution and the financial institution itself. Do you disagree on this point?

Do you agree that under this section, a trust department of a financial institution theoretically could place a beneficiary's cash assets into a passbook savings account that yields 2.5%, and then put up securities yielding 7.5% in a security account. If so, is there not a temptation for the financial institution to play the spread, and pocket the 5% difference? On a million dollars, that amounts to depriving a trust beneficiary of \$50,000 per year.

As a refinement of the above, it seems that the financial institution would not even have to put up the security account in the trust department if the passbook account is FDIC insured. Page 8, line 6. Do you agree that a financial institution could reinvest the funds deposited into the passbook account at a substantially higher yield, and pocket the difference?

As written, the financial institution would not have to put up the security account if the deposit is "given a preference by state or federal law." What "state or federal law" is being referred to? How does the preference work?

4. Page 8, lines 17-28:

As noted above, it is possible that self-dealing by a trustee with a beneficiary's trust assets could be a breach of fiduciary duty. If so, do you agree that this section appears to legitimize what would otherwise be a breach of fiduciary obligation?

Dangerous language appears to be on line 18. If the trust document itself allows self-dealing, it is ok to do so. The problem I have is that if I walked into the trust department of a financial institution, they could have free preprinted forms to use. Those trust document forms could easily have boiler plate language allowing self-dealing. Do you agree that this undermines the protection existing case law gives to unsophisticated settlors and beneficiaries of trusts?

More potentially dangerous language is on line 26. What is a "trust service office"? Why would anyone want to invest in one? What are the risks in investing in a "trust service office"?

5. Page 8, lines 29-31 and page 9, lines 1-6:

This language appears to allow a trustee to take securities from one trust and sell them to another trust. Do you agree that under existing case law, this could be a form of improper dealing and a breach of fiduciary duty absent this section? If the trustee makes the purchase and sale, how big are the fees to do the stock transfers? Is it the same thing as a commission to a stockbroker? Is so, do you agree that it creates a temptation for a trustee to "churn" the accounts, thereby generating fees for the trustee? Why not open a separate account for each trust at a brokerage firm, and buy and sell securities on the open market? What is in it for the beneficiary? What language is there in the section to protect the beneficiary from overreaching by the trustee?

I have a deeper concern about this section. What is "fair" to both trusts? If you sell a stock at a low price from one trust, say after a severe market correction, you are giving the other trust a bargain. Same problem if you sell a fully priced stock from one trust at a handsome profit, and the next day the market crashes because of an oil embargo--one trust makes out, and the other takes a hit. Do you agree this section has the potential of being inherently unfair to one trust? Do you agree that the trustee is in an inherent conflict of interest anytime it tries to sell to one trust and buy from another. Does existing case law allow a trustee to do what the proposed language seeks to legitimate?

6. Page 9, lines 10-20:

Do you agree that this language assumes and allows the commingling of the trustee's personal funds with the beneficiary's funds. Is this permissible under existing trust case law? Do you agree it is not a good idea for a trustee to commingle his own assets with those of a trust? Do you agree that absent this language, it could be a breach of fiduciary duty to so commingle assets?

Why is it good public policy to allow commingling of a trustee's personal assets with assets of trust beneficiaries to whom the trustee has the highest fiduciary duties?

Do most trust departments of large financial institutions have one huge stock and bond portfolio in which a multitude of trusts are invested? If so, do you know of any that commingle the trustee's personal funds with those of trust beneficiaries?

7. Page 10, lines 13-16:

In this section, if a trustee enters into a contract, with or without the beneficiary's knowledge, and the trustee is sued on the contract, the beneficiary has the right to intervene. The section is silent on whether the trust pays for the attorney fees of the beneficiary. Do you agree that the issue of the trust paying the intervention attorney fees and costs ought to be addressed? Under the earlier "B" version of this bill, if the beneficiary wanted to sue the trustee for breach of fiduciary duties, the trustee could have exhausted the trust assets to pay the defense costs of the trustee.

8. Page 11, line 4: Typo, I believe that "trusts" should be "trustee".

9. Page 11, lines 7-23:

This section appears to allow a trustee who has incurred personal tort liability to be reimbursed and exonerated by the trust assets. Why should an innocent beneficiary be punished by a tortious trustee? Why should the innocent beneficiary be the insurer of the trustee, rather than the trustee getting its own liability insurance?

What is a "common incident"? What is "personal fault"? How can a trustee be adjudged a tortfeasor by a third party in one lawsuit, and then claim the trustee was "not at fault" in a second lawsuit by the beneficiary? Why should the beneficiary have to run the risk of a second proceeding finding the trustee was not at fault?

10. Page 11, lines 24-31:

Same concerns as immediately above.

11. Page 12, lines 29-30:

Same concerns as immediately above. Can you think of a valid state interest in allowing tortious trustees to be reimbursed from trust assets at the expense of innocent trust beneficiaries?

12. Page 14, lines 4-14:

Definitions do not include "trust service office", "common incident", "personal fault" "insured", and "nominee". Do you agree these need to be defined?

13. Page 14, line 16:

I need to see the Uniform Trusts Act upon which this draft was made. Can you please tell me which states that have enacted the Uniform Trusts Act?

Thanks for your help in addressing my concerns. Probably a written response would be a big help, given the detailed nature of my concerns.

Je,

This is a heap of concerns, but I didn't want to "blackjack" you with them at committee.

Brian

Alaska State Legislature

House of Representatives

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Sponsor Statement for HB 196

Estate and Trust Improvement Act

This bill makes a number of important improvements to Alaska's estate and trust laws. Sections 1-8, 18 and 19 of the bill change Alaska law to permit a person who is domiciled outside of Alaska to select Alaska as the jurisdiction for the probate of her estate. This provision should bring significant business to our state.

Sections 9 and 10 of the bill allow a person to limit the liability of a trustee in her trust when more than one trustee is serving. The person could provide that only the trustee who exercises a power will be held liable for its actions and that the other trustees who did not participate in the exercise of the power would not be held liable. This provision will encourage trustees in Alaska to work with other trustees of the same trust.

The Uniform Trusts Act is included in Section 11 which clarifies many issues involving the administration of trusts in Alaska.

Section 12 protects an Alaska trustee who in good faith defends an Alaska trust from the claims of a creditor who seeks to set the trust aside. If the trustee acts in good faith, then the trustee gets a first lien on all trust assets for payment of its fees, costs and attorneys' fees. Delaware has adopted a similar provision to protect its trustees.

Section 13 allows a trustee who has the power to invade the corpus of a trust to appoint the assets of the trust to another trust for the beneficiaries to postpone estate and similar taxes. This provision would allow a trustee to move a trust to Alaska and to appoint the assets to an Alaska trust.

Section 14 clarifies that a trust created in another state or country can be moved to Alaska even though the trust was settled before the Alaska Trust Act was passed last year.

The Uniform Trustee's Powers Act is enacted in Section 16. Alaska does not have a statutory provision that sets out the powers of a trustee. These statutory powers would supplement the powers set forth in a trust agreement.

A number of miscellaneous provisions are included elsewhere in the bill. Section 15 allows a person to include a penalty clause in her trust. Section 17 clarifies the accounting of bond premiums and discounts. Section 20 amends AS 34.40.110(d) to be consistent with the Uniform Fraudulent Transfers Act. Section 21 precludes an action by creditors of the grantor of the trust against those who assist in the creation of the trust.

This bill will improve our estate and trust laws and will make Alaska's laws more favorable to our residents. In addition, the bill will make our laws more attractive to people outside of Alaska who are considering Alaska for the administration of their estates and trusts.

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CS FOR HOUSE BILL NO. 196()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsors: REPRESENTATIVES RYAN, Therriault

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to wills, intestacy, nonprobate transfers, and trusts; and
2 amending Rule 24, Alaska Rules of Civil Procedure."

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

4 * Section 1. AS 13.06 is amended by adding a new section to read:

5 Sec. 13.06.068. Choice of law: validity. (a) Subject to the other provisions
6 of this section, the formal validity, intrinsic validity, effect, interpretation, revocation,
7 or alteration of a testamentary disposition of real property and the manner in which the
8 property descends at death when not disposed of by will are determined by the law of
9 the jurisdiction in which the land is situated.

10 (b) Subject to the other provisions of this section, the intrinsic validity, effect,
11 revocation, or alteration of a testamentary disposition of personal property and the
12 manner in which the property devolves at death when not disposed of by will are
13 determined by the law of the jurisdiction in which the decedent was domiciled at
14 death.

1 (c) A will disposing of personal property, wherever situated, or real property
2 situated in this state made within or outside this state by a domiciliary or
3 nondomiciliary of the state where the property is situated, is formally valid and
4 admissible to probate in this state if the will is in writing and signed by the testator
5 and otherwise executed and attested to under the local law of

6 (1) this state;

7 (2) the jurisdiction where the will was executed at the time of
8 execution; or

9 (3) the jurisdiction where the testator was domiciled, either at the time
10 of execution or at death.

11 (d) A testamentary disposition of personal property intrinsically valid under
12 the law of the jurisdiction where the testator was domiciled when the will was
13 executed is not affected by a subsequent change in the domicile of the testator to a
14 jurisdiction under the law of which the disposition is intrinsically invalid.

15 (e) The interpretation of a testamentary disposition of personal property shall
16 be made under the local law of the jurisdiction where the testator was domiciled when
17 the will was executed.

18 (f) Whether a testamentary disposition of personal property is effectively
19 revoked or altered by a subsequent testamentary instrument or by a physical act to or
20 on the will by which the testamentary disposition was made is determined by the local
21 law of the jurisdiction where the testator was domiciled when the subsequent
22 instrument was executed or the physical act performed.

23 (g) Subject to (d) - (f) of this section, the intrinsic validity, effect, revocation
24 or alteration of a testamentary disposition by which a power of appointment over
25 personal property is exercised and the question of whether the power has been
26 exercised at all are determined by

27 (1) in the case of a presently exercisable general power of appointment,
28 the local law of the jurisdiction where the donee of the power was domiciled at the
29 time of death;

30 (2) in the case of a general power of appointment exercisable by will
31 alone or a special power of appointment, the local law of the jurisdiction

1 (A) that the donor of the power expressly selected in the
2 governing instrument to govern the disposition; or

3 (B) where the donor of the power was domiciled at the time of
4 death if the donor did not expressly select in the governing instrument a
5 jurisdiction to govern the disposition.

6 (h) The formal validity of a will by which a power of appointment over
7 personal property is exercised is determined under (b) of this section on the basis that
8 the testator referred to in (b) of this section is the donor of the power.

9 (i) When a testator, who is not domiciled in this state at the time of death,
10 provides in the testator's will that the testator elects to have the disposition of the
11 testator's property situated in this state governed by the local law of this state, the
12 intrinsic validity, including the testator's general capacity, effect, interpretation,
13 revocation, or alteration of the provision, is determined by the local law of this state.
14 The formal validity of the will is determined under (b) of this section.

15 (j) Notwithstanding the definition of "real property", as set out in (l) of this
16 section, whether an estate in, leasehold of, fixture, mortgage, or other lien on land is
17 real property governed by (a) of this section or personal property governed by (b) of
18 this section is determined by the local law of the jurisdiction where the land is
19 situated.

20 (k) Notwithstanding the other provisions of AS 13.06 - AS 13.36, the
21 provisions of this section govern in AS 13.06 - AS 13.36.

22 (l) In this section:

23 (1) "effect" means the legal consequences attributed under the local law
24 of a jurisdiction to a valid testamentary disposition;

25 (2) "formal validity" means the formalities established by the local law
26 of a jurisdiction for the execution and attestation of a will;

27 (3) "interpretation" means the procedure of applying the law of a
28 jurisdiction to determine the meaning of language employed by the testator if the
29 testator's intention is not otherwise ascertainable;

30 (4) "intrinsic validity" means the rules of substantive local law by
31 which a jurisdiction determines the legality of a testamentary disposition, including the

1 general capacity of the testator:

2 (5) "local law" means the law that the courts of a jurisdiction apply
3 when adjudicating legal questions that are not related to another jurisdiction;

4 (6) "personal property" means property other than real property, and
5 includes tangible and intangible property;

6 (7) "real property" means land or an estate in land, and includes
7 leaseholds, fixtures, and mortgages or other liens on land;

8 (8) "testamentary disposition" means disposition under a will.

9 * Sec. 2. AS 13.12.401 is amended to read:

10 **Sec. 13.12.401. Applicable law.** Except as provided in AS 13.06.068,
11 AS 12.13.401 - 12.13.405 apply to the estate of a decedent who dies domiciled in this
12 state, and rights [. RIGHTS] to homestead allowance, exempt property, and family
13 allowance for a decedent who dies not domiciled in this state are governed by the law
14 of the decedent's domicile at death.

15 * Sec. 3. AS 13.12.502 is amended to read:

16 **Sec. 13.12.502. Execution; witnessed wills; holographic wills.** (a) Except
17 as provided in (b) of this section, [AND] in AS 13.06.068, and in AS 13.12.513
18 [AS 13.12.506 AND 13.12.513], a will must be

19 (1) in writing;

20 (2) signed by the testator or in the testator's name by another individual
21 in the testator's conscious presence and by the testator's direction; and

22 (3) signed by at least two individuals, each of whom signs within a
23 reasonable time after the witness witnesses either the signing of the will as described
24 in (2) of this subsection or the testator's acknowledgment of that signature or the will.

25 (b) Except as provided in AS 13.06.068, a [A] will that does not comply with
26 (a) of this section is valid as a holographic will, whether or not witnessed, if the
27 signature and material portions of the document are in the testator's handwriting.

28 * Sec. 4. AS 13.12.601 is amended to read:

29 **Sec. 13.12.601. Scope.** Except as provided in AS 13.06.068, in [IN] the
30 absence of a finding of a contrary intention, the rules of construction in AS 13.12.601
31 - 13.12.609 control the construction of a will.

1 * Sec. 5. AS 13.12.703 is amended by adding a new subsection to read:

2 (b) The provisions of (a) of this section are subject to AS 13.06.068.

3 * Sec. 6. AS 13.12.912(a) is amended to read:

4 (a) Except as provided by AS 13.06.068, a [A] will is valid as regards form,
5 irrespective of the place where the will is made, of the location of the assets, and of
6 the nationality, domicile, or residence of the testator, if the will is made in the form
7 of an international will complying with the requirements of AS 13.12.912 - 13.12.921.

8 * Sec. 7. AS 13.16.090(c) is amended to read:

9 (c) A will that appears to have the required signatures and that contains an
10 attestation clause showing that requirements of execution under AS 13.12.502
11 [AS 13.12.502 OR 13.12.506] have been met shall be probated without further proof.
12 In other cases, the registrar may assume execution if the will appears to have been
13 properly executed, or the registrar may accept a sworn statement or affidavit of a
14 person having knowledge of the circumstances of execution, whether or not the person
15 was a witness to the will.

16 * Sec. 8. AS 13.16.175 is amended to read:

17 **Sec. 13.16.175. Formal testacy proceedings; will construction; effect of**
18 **final order in another jurisdiction.** Subject to AS 13.06.068, a [A] final order of
19 a court of another state determining testacy, the validity, or construction of a will [,]
20 made in a proceeding involving notice to and an opportunity for contest by all
21 interested persons must be accepted as determinative by the courts of this state if it
22 includes, or is based upon, a finding that the decedent was domiciled at death in the
23 state where the order was made.

24 * Sec. 9. AS 13.36 is amended by adding a new section to read:

25 **Sec. 13.36.043. Change of situs to Alaska.** (a) The situs of a foreign trust
26 is moved to this state when the trust satisfies AS 13.36.035(c) and a qualified person
27 serving as trustee registers the trust under AS 13.36.010.

28 (b) If the situs of a foreign trust is moved to this state as provided in this
29 section, a provision in the trust that restricts the transfer of trust assets in a manner
30 similar to AS 34.40.110, that allows the trust to be perpetual, or that is not expressly
31 prohibited by the law of this state is effective and enforceable under the laws of this

1 state.

2 (c) A foreign trust that moves its situs to this state is valid whether or not the
3 trust complied with the laws of this state at the time of its creation or after its creation.

4 (d) In this section, "foreign trust" means a trust that is created in another state
5 or country and that is valid in that state or country.

6 * Sec. 10. AS 13.36.075 is amended to read:

7 **Sec. 13.36.075. Trustee's standard of care and performance.** Except as
8 otherwise provided by the terms of the trust or by AS 13.36.105 - 13.36.295, the
9 trustee shall observe the standards in dealing with the trust assets that would be
10 observed by a prudent person [MAN] dealing with the property of another, and, if the
11 trustee has special skills or is named trustee on the basis of representations of special
12 skills or expertise, the trustee is under a duty to use those skills.

13 * Sec. 11. AS 13.36.095(b) is amended to read:

14 (b) Subject to AS 13.36.105 - 13.36.295, a [A] trustee is personally liable for
15 obligations arising from ownership or control of property of the trust estate or for torts
16 committed in the course of administration of the trust estate only if personally at fault.

17 * Sec. 12. AS 13.36 is amended by adding new sections to article 3 to read:

18 **Sec. 13.36.105. Powers attached to the office of trustee.** Unless otherwise
19 provided by the trust instrument, an amendment of the trust instrument, or a court
20 order, the powers of a trustee are attached to the office and are not personal.

21 **Sec. 13.36.107. General powers; fiduciary duties.** (a) Without authorization
22 by a court, a trustee may exercise the powers conferred by the terms of the trust and,
23 except as limited by the terms of the trust, the powers conferred by this chapter.

24 (b) This chapter does not affect the power of a court to

25 (1) relieve a trustee from provisions contained in the terms of the trust
26 that restrict the exercise of powers;

27 (2) confer on a trustee additional powers, whether or not the powers
28 are authorized by the terms of the trust; or

29 (3) restrict the exercise of a power otherwise given to the trustee by the
30 terms of the trust or this chapter.

31 (c) The grant of a power to a trustee, whether under the terms of the trust, this

1 chapter, or a court does not alone govern the exercise of the power.

2 **Sec. 13.36.109. Specific powers of trustees.** Except as otherwise provided
3 by this chapter, in addition to the powers conferred by the terms of the trust, a trustee
4 may perform all actions necessary to accomplish the proper management, investment,
5 and distribution of the trust property, including the power

6 (1) to collect, hold, and retain trust property received from a settlor or
7 another person; the property may be retained even if it includes property in which the
8 trustee is personally interested;

9 (2) to accept additions to the property of the trust from a settlor or
10 another person;

11 (3) to continue or to participate in the operation of a business or other
12 enterprise that is part of the trust property and to effect an incorporation, dissolution,
13 or other change in the form of the organization of the business or enterprise;

14 (4) to acquire or dispose of property, for cash or on credit, at public or
15 private sale or by exchange;

16 (5) to manage, control, divide, develop, improve, exchange, partition,
17 change the character of, or abandon trust property;

18 (6) to encumber, mortgage, or pledge trust property for a term within
19 or extending beyond the term of the trust in connection with the exercise of a power
20 vested in the trustee;

21 (7) to make ordinary or extraordinary repairs, alterations, or
22 improvements in buildings or other trust property; to demolish improvements; and to
23 raze existing or erect new party walls or buildings;

24 (8) to subdivide or develop land; to dedicate land to public use; to
25 make or obtain the vacation of plats and to adjust boundaries; to adjust differences in
26 valuation on exchange or partition by giving or receiving consideration; and to dedicate
27 easements to public use without consideration;

28 (9) to enter into a lease for any purpose as lessor or lessee with or
29 without the option to purchase or renew and for a term within or extending beyond the
30 term of the trust;

31 (10) to enter into a lease or arrangement for exploration and removal

1 of gas, oil, or other minerals or geothermal energy; and to enter into a community oil
2 lease, a pooling agreement, or a unitization agreement:

3 (11) to grant an option involving disposition of trust property or to take
4 an option for the acquisition of property, including an option that is exercisable beyond
5 the duration of the trust:

6 (12) with respect to shares of stock of a domestic or foreign
7 corporation, a membership in a nonprofit corporation, or other property, to

8 (A) vote in person and to give proxies to exercise any voting
9 rights with respect to the shares, memberships, or property;

10 (B) waive notice of a meeting or to give consent to the holding
11 of a meeting; and

12 (C) authorize, ratify, approve, or confirm an action that could
13 be taken by shareholders, members, or property owners;

14 (13) to pay calls, assessments, and other sums chargeable to or accruing
15 against or on a securities account:

16 (14) to sell or exercise stock subscription or conversion rights:

17 (15) to consent, directly or through a committee or other agent, to the
18 reorganization, consolidation, merger, dissolution, or liquidation of a corporation or
19 other business enterprise, to participate in voting trusts, pooling arrangements, and
20 foreclosures; and, in connection with a reorganization, consolidation, merger,
21 dissolution, liquidation, voting trust, pooling arrangement, or foreclosure, to deposit
22 securities with transfer title, and delegate discretion to a protective or other committee
23 as the trustee considers advisable:

24 (16) to deposit securities in a securities depository;

25 (17) to insure the property of the trust against damage or loss and to
26 insure the trustee against liability with respect to third persons;

27 (18) to borrow money for a trust purpose to be repaid from trust
28 property;

29 (19) to pay or contest a claim, to settle a claim by or against the trust
30 by compromise, arbitration, or otherwise, and to release, in whole or in part, a claim
31 belonging to the trust:

1 (20) to pay taxes, assessments, reasonable compensation of the trustee,
2 employees, and agents of the trust, and other expenses incurred in the collection, care,
3 administration, and protection of the trust;

4 (21) to make loans out of trust property to a beneficiary on terms and
5 conditions the trustee considers to be fair and reasonable under the circumstances and
6 to guarantee loans to the beneficiary by encumbrances on trust property;

7 (22) to pay an amount distributable to a beneficiary, whether or not the
8 beneficiary is under a legal disability, by paying the amount to the beneficiary or by
9 paying the amount to another person for the use or benefit of the beneficiary;

10 (23) to make a distribution of property and money in divided or
11 undivided interests, pro rata or otherwise, and to adjust resulting differences in
12 valuation;

13 (24) to employ accountants, attorneys, investment advisers, appraisers,
14 or other persons, even if they are associated or affiliated with the trustee, to advise or
15 assist the trustee in the performance of administrative duties;

16 (25) to inspect or investigate property that the trustee has been asked
17 to hold or property owned or operated by an entity in which the trustee holds or has
18 been asked to hold an interest for the purpose of determining the application of
19 environmental law to the property and to take action to prevent, abate, or otherwise
20 remedy an actual or potential violation of an environmental law affecting property held
21 directly or indirectly by the trustee;

22 (26) to establish for an asset a reserve for depreciation, depletion, or
23 obsolescence, and to decide, under law, how and in what proportions a receipt or
24 disbursement is to be credited, charged, or apportioned between principal and income;

25 (27) to execute and deliver instruments that are useful to accomplish
26 or facilitate the exercise of the trustee's powers; and

27 (28) to prosecute or defend an action, claim, or proceeding in order to
28 protect trust property and the trustee in the performance of the trustee's duties.

29 **Sec. 13.36.110. Liability of trustee relating to exercise of power.** A trustee
30 who has not joined another trustee in exercising a power is not liable to the
31 beneficiaries or to others for the consequences of the exercise of the power. A

1 dissenting trustee is not liable to the beneficiaries or to others for the consequences of
2 an act in which the dissenting trustee joins at the direction of the majority trustees if
3 the dissenting trustee expresses the dissenting trustee's dissent in writing to a co-trustee
4 at or before the time of joinder. A trustee who is not authorized to exercise a power
5 is not liable to the beneficiaries or to others for

- 6 (1) the exercise by a co-trustee of the power; or
7 (2) the failure to exercise the power.

8 **Sec. 13.36.120. Voting of corporate stock owned by trustee.** A trustee of
9 a trust owning corporate stock is liable for a loss resulting to the beneficiaries from
10 a failure to use reasonable care in deciding how to vote the stock and in voting the
11 stock only if personally at fault.

12 **Sec. 13.36.125. Creation of trust bank account to pay special debts.**
13 Whenever a bank account is, by entries made on the books of the depositor and the
14 bank at the time of the deposit, created exclusively for the purpose of paying
15 dividends, interest, interest coupons, salaries, wages, or pensions or other employee
16 benefits, and the depositor at the time of opening the account does not expressly
17 declare otherwise, the depositor is considered a trustee of the account for the creditors
18 to be paid from the account, subject to any power of revocation that the depositor may
19 have reserved by agreement with the bank.

20 **Sec. 13.36.130. Failure of beneficiary to present claim for payment.** If a
21 beneficiary for whom a trust bank account is created under AS 13.36.125 does not
22 present the beneficiary's claim to the bank for payment within one year after the claim
23 is due, the depositor who created the trust may revoke the trust as to the beneficiary.

24 **Sec. 13.36.135. Holding stock in name of nominee.** (a) A trustee of a trust
25 owning stocks, bonds, notes, debentures, or other written obligations of a public or
26 private corporation may hold the obligations in the name of a nominee, without
27 mention of the trust in the records of the corporation or in the stock certificate or stock
28 registration book of the corporation, if

29 (1) the trust records and all reports or accounts rendered by the trustee
30 clearly show the ownership of the stocks, bonds, notes, debentures, or other written
31 obligations of the public or private corporation by the trustee and the facts regarding

1 the holding by the trustee; and

2 (2) the nominee deposits with the trustee a signed statement showing
3 the trust ownership, endorses the stock certificate or other title instruments for the
4 obligations in blank, and does not have possession of or access to the stock certificate
5 or other title instruments for the obligations except under the immediate supervision
6 of the trustee.

7 (b) A trustee holding obligations under (a) of this section is personally liable
8 for a loss to the trust resulting from an act of the nominee in connection with the
9 stocks, bonds, notes, debentures, or other written obligations held under (a) of this
10 section.

11 **Sec. 13.36.140. Loan of trust funds.** Except as provided in AS 13.36.145,
12 a corporate trustee may not lend trust funds to itself or an affiliate, or to a director, an
13 officer, or an employee of itself or an affiliate, and a noncorporate trustee may not
14 lend trust funds to itself or to a relative, an employer, an employee, or a partner or
15 other business associate.

16 **Sec. 13.36.145. Corporate trustee depositing trust funds with itself.** (a)
17 A corporate trustee that is subject to regulation and supervision by state or federal
18 authorities may deposit with itself trust funds that are being held out of necessity
19 pending investment, distribution, or payment of debts if the corporate trustee

20 (1) pays into the trust for the deposit the interest the corporate trustee
21 is required by state or federal law to pay on uninvested trust funds or, if there is not
22 a state or federal law requiring the payment of interest, at the same rate of interest the
23 corporate trustee pays on similar nontrust deposits; and

24 (2) maintains in its trust department as security for the deposit a
25 separate fund consisting of securities that are legal for trust investments and that are
26 at all times equal in total market value to the amount of the deposit, except that the
27 security is not required to the extent that the deposit is insured or given a preference
28 by state or federal law.

29 (b) The separate fund of securities required by (a)(2) of this section shall be
30 marked as a separate fund for (a)(2) of this section. Withdrawals from or additions
31 to the separate fund may be made from time to time, as long as the required value is

1 maintained. The income of the securities in the separate fund belongs to the corporate
2 trustee. In the statements of its financial condition published or delivered to the
3 division of banking, securities, and corporations in the Department of Commerce and
4 Economic Development, the corporate trustee shall show as separate items the amount
5 of trust funds that it has deposited with itself and the amount of securities that it holds
6 as security for the payment of the deposits.

7 **Sec. 13.36.150. Trustee buying from or selling to itself.** (a) A trustee,
8 unless expressly authorized by the trust instrument, may not directly or indirectly lease,
9 buy, or sell property for the trust from or to

10 (1) itself or an affiliate;

11 (2) a director, an officer, or an employee of the trustee or an affiliate;

12 or

13 (3) a relative, an employer, or a partner or other business associate.

14 (b) Notwithstanding (a) of this section or another law to the contrary, a trustee
15 may lease, buy, or sell property, including a lease, purchase, or sale in the
16 establishment of a trust service office, from or to the trust the trustee represents as a
17 trustee if specifically authorized to make the lease, purchase, or sale in a decedent's
18 will or in the instrument creating the trustee relationship.

19 **Sec. 13.36.155. Permitted sales between trusts held by same corporate**
20 **trustee.** If the transaction is fair to both trusts and if the transaction is not prohibited
21 by the instruments creating the trustee relationship, a corporate trustee may sell to
22 itself as trustee of a trust the following held by the corporate trustee as trustee for
23 another trust:

24 (1) stocks, bonds, and other securities listed on a securities exchange
25 supervised by the United States Securities and Exchange Commission; and

26 (2) obligations of the United States treasury and obligations of United
27 States government agencies.

28 **Sec. 13.36.157. Trustee's special power to appoint to other trust.** (a)
29 Unless the terms of the instrument expressly provide otherwise, a trustee who has the
30 absolute discretion under the terms of a testamentary instrument or irrevocable inter
31 vivos agreement to invade the principal of a trust for the benefit of the beneficiary who

1 is eligible or entitled to the income of the trust may exercise without prior court
2 approval the trustee's discretion by appointing part or all of the principal of the trust
3 in favor of a trustee of a trust under an instrument other than that under which the
4 power to invade was created if the exercise of this discretion

5 (1) does not reduce any fixed income interest of an income beneficiary
6 of the trust;

7 (2) is in favor of the beneficiary of the trust; and

8 (3) does not violate the limitations on validity under AS 34.27.050(a).

9 (b) This section applies to a trust governed by the laws of this state, including
10 a trust whose governing jurisdiction is transferred to this state.

11 (c) The exercise of the power to invade the principal of a trust under (a) of
12 this section is considered to be the exercise of a special power of appointment.

13 **Sec. 13.36.160. Corporate trustee buying its own stock.** A corporate trustee
14 may not purchase for a trust shares of its own stock, or its bonds, or other securities,
15 or the stock, bonds, or other securities of an affiliate.

16 **Sec. 13.36.165. Withdrawals from mingled trust funds.** If a person who is
17 a trustee of two or more trusts mingles the funds of two or more trusts in the same
18 aggregate of cash or in the same bank or brokerage account or other investment, and
19 if a withdrawal is made from the cash aggregate, account, or investment by the trustee
20 for the trustee's own benefit, for the benefit of a third person who is not a beneficiary
21 or creditor of one or more of the trusts, or for an unknown purpose, the withdrawal
22 must be charged first to the amount of the personal cash, credit, or other property, if
23 any, of the trustee in the mingled fund, and, after the exhaustion of the trustee's cash,
24 credit, or other property, then to the several trusts in proportion to their several
25 interests in the cash, credit, or other property in the cash aggregate, account, or
26 investment at the time of the withdrawal.

27 **Sec. 13.36.170. Unenforceable oral trust created by deed.** (a) When an
28 interest in real property is conveyed by deed to a person in a trust that is unenforceable
29 under AS 09.25.010 - 09.25.020 and the intended trustee or the trustee's successor in
30 interest holds title but refuses to carry out the trust because of AS 09.25.010 -
31 09.25.020, the intended trustee or the trustee's successor in interest, except to the

1 extent that the successor in interest is a bona fide purchaser of a legal interest in the
2 real property, shall convey the interest in real property to the settlor or the settlor's
3 successor in interest. A court having jurisdiction may prescribe the conditions for
4 conveying the interest to the settlor or the settlor's successor in interest.

5 (b) If the intended trustee of an unenforceable trust under (a) of this section
6 transfers part or all of the trustee's interest and the interest is transferred to a bona fide
7 purchaser, the intended trustee is liable to the settlor or the settlor's successor in
8 interest for the value, at the time of the transfer, of the interest transferred, less any
9 offsets that a court determines to be equitable.

10 **Sec. 13.36.175. Action on contract against trustee in representative**
11 **capacity.** (a) When a trustee makes a contract that is within the trustee's powers as
12 trustee or when a predecessor trustee has made a contract within the predecessor
13 trustee's powers as trustee and a cause of action arises on the contract, the party in
14 whose favor the cause of action has accrued may collect the judgment by execution
15 on the trust property.

16 (b) In an action under this section, the plaintiff is not required to prove that
17 the trustee could have been reimbursed from the trust fund if the trustee had paid the
18 plaintiff's claim.

19 (c) A beneficiary or, in the case of a charitable trust, the attorney general and
20 a corporation that is a beneficiary or agent in the performance of the charitable trust,
21 may intervene in an action under this section and contest the right of the plaintiff to
22 recover.

23 (d) A judgment may not be rendered in favor of the plaintiff in an action under
24 this section unless the plaintiff proves that, within 30 days after the beginning of the
25 action or within another period set by the court and more than 30 days before
26 obtaining the judgment, the plaintiff has notified each of the beneficiaries who is
27 known to the trustee and who then has a present interest in the existence and nature
28 of the action, or, in the case of a charitable trust, the attorney general of this state and
29 a corporation that is a beneficiary or agent in the performance of the charitable trust.
30 The notice shall be given by mailing copies of the notice with postage prepaid to the
31 beneficiaries at their last known addresses. The trustee shall furnish the plaintiff with

1 a list of names and addresses of the beneficiaries within 10 days after the plaintiff
2 makes a written demand for the list. Notification of the persons on the list constitutes
3 compliance with the duty placed on the plaintiff by this section.

4 (e) The plaintiff in an action under this section may also hold the trustee who
5 made the contract personally liable on the contract if the contract does not exclude the
6 trustee's personal liability. In a contract action under this section, the addition of the
7 word "trustee" or the words "as trustee" after the signature of a trustee to a contract
8 constitutes prima facie evidence of an intent to exclude the trustee from personal
9 liability, and the addition of the words "and not individually" following the word
10 "trusts" or the words "as trustee" after the signature of a trustee to a contract
11 constitutes irrebuttable evidence of an intent to exclude the trustee from personal
12 liability, and the trustee is not personally liable under the contract.

13 **Sec. 13.36.180. Exoneration or reimbursement for tort.** (a) A trustee who
14 has incurred personal liability for a tort committed in the administration of the trust
15 is entitled to exoneration for the liability from the trust property if the trustee has not
16 discharged the claim, or to reimbursement for the liability out of trust funds if the
17 trustee has paid the claim, if

18 (1) the tort was a common incident of the kind of business activity in
19 which the trustee was properly engaged for the trust; or

20 (2) although the tort was not a common incident under (1) of this
21 subsection, the trustee or an officer or employee of the trustee was not guilty of
22 personal fault in incurring the liability.

23 (b) If a trustee commits a tort that increases the value of the trust property, the
24 trustee is entitled to exoneration or reimbursement with respect to the tort to the extent
25 of the increase in value, even though the trustee would not otherwise be entitled to
26 exoneration or reimbursement.

27 (c) Nothing in this section shall be construed to change the existing law with
28 regard to the liability of trustees of charitable trusts for torts of the trustees or their
29 employees.

30 **Sec. 13.36.185. Tort liability of trust.** (a) If a trustee or a predecessor of the
31 trustee incurs personal liability for a tort committed in the course of the trustee's

1 administration, the trustee in the trustee's representative capacity may be sued and
2 collection made from the trust property if the court determines in the tort action that

3 (1) the tort was a common incident of the kind of business activity in
4 which the trustee or the trustee's predecessor was properly engaged for the trust:

5 (2) although the tort was not a common incident under (1) of this
6 subsection, the trustee or the trustee's predecessor, or an officer or employee of the
7 trustee or the trustee's predecessor, was not guilty of personal fault in incurring the
8 liability; or

9 (3) although the tort does not fall under (1) or (2) of this subsection,
10 the tort increased the value of the trust property.

11 (b) If the tort is within (a)(1) or (2) of this section, the full amount of proven
12 damages may be collected from the trust property.

13 (c) If the tort is within (a)(3) of this section, collection may not be made from
14 the trust property except to the extent of the increase in the value of the trust property.

15 (d) A beneficiary may intervene in an action under this section and contest the
16 right of the plaintiff to recover.

17 (e) In an action against the trustee in the trustee's representative capacity under
18 this section, the plaintiff is not required to prove that the trustee could have secured
19 reimbursement from the trust fund if the trustee paid the plaintiff's claim.

20 (i) A judgment may not be rendered in favor of the plaintiff in an action under
21 this section unless the trustee proves that within 30 days after the beginning of the
22 action, or within another period set by the court and more than 30 days before
23 obtaining the judgment, the trustee notifies each of the beneficiaries who is known to
24 the trustee who then has a present interest in the existence and nature of the action.
25 The notice shall be given by mailing copies of the notice with postage prepaid to the
26 beneficiaries at their last known addresses. The trustee shall furnish the plaintiff with
27 a list of names and address of the beneficiaries within 10 days after the plaintiff makes
28 a written demand for the list. Notification of the persons on the list constitutes
29 compliance with the duty placed on the plaintiff by this subsection.

30 (g) Nothing in this section may be construed to change the existing law with
31 regard to the liability of trustees of charitable trusts for torts of the trustees or their

1 employees.

2 **Sec. 13.36.190. Personal liability for tort committed by trustee.** A trustee
3 may be held personally liable for a tort committed by the trustee, or by the trustee's
4 agents or employees in the course of their agency or employment, subject to the rights
5 of exoneration or reimbursement under AS 13.36.180.

6 **Sec. 13.36.195. Power of settlor of trust.** (a) The settlor of a trust affected
7 by AS 13.36.105 - 13.36.295 may, by provision in the instrument creating the trust if
8 the trust is created by a writing, by oral statement to the trustee at the time of the
9 creation of the trust if the trust is created orally, or by an amendment of the trust if the
10 settlor reserved the power to amend the trust,

11 (1) relieve the trustee from any or all of the duties, restrictions, and
12 liabilities that would otherwise be imposed on the trustee by AS 13.36.105 - 13.36.295;

13 (2) alter or deny to the trustee any or all of the privileges and powers
14 conferred on the trustee by AS 13.36.105 - 13.36.295; or

15 (3) add duties, restrictions, liabilities, privileges, or powers, to those
16 imposed or granted by AS 13.36.105 - 13.36.295.

17 (b) Notwithstanding (a) of this section, an act of the settlor may not relieve a
18 trustee from the duties, restrictions, and liabilities imposed on the trustee by
19 AS 13.36.140, 13.36.145, or 13.36.150.

20 **Sec. 13.36.200. Power of beneficiary of trust.** A beneficiary of a trust
21 affected by AS 13.36.105 - 13.36.295 may, if the beneficiary has full legal capacity
22 and acts on full information, by written instrument delivered to the trustee, relieve the
23 trustee, as regards the beneficiary, from any or all of the duties, restrictions, and
24 liabilities that would otherwise be imposed on the trustee by AS 13.36.105 - 13.36.295,
25 except for the duties, restrictions, and liabilities imposed by AS 13.36.140 - 13.36.150.
26 The beneficiary may release the trustee from liability to the beneficiary for past
27 violations of AS 13.36.105 - 13.36.295.

28 **Sec. 13.36.205. Relieving trustee of duties; power of the court.** A court of
29 competent jurisdiction may, for cause shown and on notice to the beneficiaries, relieve
30 a trustee from any or all of the duties and restrictions that would otherwise be placed
31 on the trustee by AS 13.36.105 - 13.36.295 or wholly or partly excuse a trustee who

1 has acted honestly and reasonably from liability for violations of AS 13.36.105 -
2 13.36.295.

3 **Sec. 13.36.210. Liability for violations.** If a trustee violates a provision of
4 AS 13.36.105 - 13.36.295, the trustee may be removed as trustee and denied
5 compensation in whole or in part, and a beneficiary, co-trustee, or successor trustee
6 may treat the violation as a breach of trust.

7 **Sec. 13.36.280. Uniformity of interpretation.** AS 13.36.105 - 13.36.295 shall
8 be interpreted and construed so as to effectuate their general purpose to make uniform
9 the law of the states that enact the sections.

10 **Sec. 13.36.290. Definitions.** In AS 13.36.105 - 13.36.295, unless the context
11 or subject matter otherwise requires,

12 (1) "affiliate" means a person directly or indirectly controlling or
13 controlled by another person or a person under direct or indirect common control with
14 another person, including a person with whom a trustee has an express or implied
15 agreement regarding the purchase of trust investments by each from the other, directly
16 or indirectly, except a broker or stock exchange;

17 (2) "relative" means a spouse, ancestor, descendant, brother, or sister;

18 (3) "trust" means an express trust only;

19 (4) "trustee" includes a trustee that is a corporation or a natural person
20 and a successor or substitute trustee.

21 **Sec. 13.36.295. Short title.** AS 13.36.105 - 13.36.295 may be cited as the
22 Uniform Trusts Act.

23 * Sec. 13. AS 13.36.310 is amended to read:

24 **Sec. 13.36.310. Challenges to trusts.** Except as provided in AS 34.40.110,
25 a trust that is covered by AS 13.36.035(c) or that is otherwise governed by the laws
26 of this state, or a property transfer to a trust that is covered by AS 13.36.035(c) or that
27 is otherwise governed by the laws of this state, is not void, voidable, liable to be set
28 aside, defective in any fashion, or questionable as to the settlor's capacity, on the
29 grounds that the trust or transfer avoids or defeats a right, claim, or interest conferred
30 by law on a person by reason of a personal or business relationship with the settlor or
31 by way of a marital or similar right. [IN THIS SECTION, "SETTLOR" MEANS A

1 PERSON WHO TRANSFERS PROPERTY IN TRUST; "SETTLOR" INCLUDES A
2 PERSON WHO FURNISHES THE PROPERTY TRANSFERRED TO A TRUST
3 EVEN IF THE TRUST IS CREATED BY ANOTHER PERSON.]

4 * Sec. 14. AS 13.36.310 is amended by adding new subsections to read:

5 (b) If a trust or a property transfer to a trust is voided or set aside under (a)
6 of this section, then the trust or property transfer shall be voided or set aside only to
7 the extent necessary to satisfy the settlor's debt to the creditor or other person at whose
8 instance the trust or property transfer is voided or set aside and the costs and attorney
9 fees allowed under the rules of court.

10 (c) If a trust or a property transfer to a trust is voided or set aside under (a)
11 of this section, and if the court is satisfied that the trustee has not acted in bad faith
12 in accepting or administering the property that is the subject of the trust,

13 (1) the trustee has a first and paramount lien against the property that
14 is the subject of the trust in an amount equal to the entire cost, including attorney fees,
15 properly incurred by the trustee in a defense of the action or proceedings to void or
16 set aside the trust or the property transfer;

17 (2) the trust or property transfer that is voided or set aside is subject
18 to the proper fees, costs, preexisting rights, claims, and interest of the trustee and any
19 predecessor trustee that have not acted in bad faith; and

20 (3) the beneficiary, including the settlor, may retain a distribution made
21 by exercising a trust power or discretion vested in the trustee of the trust, if the power
22 or discretion was properly exercised before the commencement of the action or
23 proceeding to void or set aside the trust or property transfer.

24 (d) In this section, "settlor" means a person who transfers property in trust and
25 includes a person who furnishes the property transferred to a trust even if the trust is
26 created by another person.

27 * Sec. 15. AS 13.36 is amended by adding a new section to read:

28 **Sec. 13.36.320. Penalty clause.** A provision in an inter vivos or testamentary
29 trust purporting to penalize a beneficiary by charging the beneficiary's interest in the
30 trust, or in another manner, for instituting a proceeding to challenge the acts of the
31 trustee or other fiduciary of a trust, or for instituting other proceedings relating to the

1 trust, is enforceable even if probable cause exists for instituting the proceedings.

2 * **Sec. 16.** AS 13.38.060 is repealed and reenacted to read:

3 **Sec. 13.38.060. Bond premium and discount; other obligations; increase**
4 **as income.** (a) A bond or other obligation for the payment of money is principal at
5 its inventory value **except** as provided in (b) of this section. The trustee may not make
6 a provision for amortization of a premium or for accumulation for discount.

7 (b) Unless otherwise provided in the trust instrument, an increase in the value
8 of the following above inventory value is distributable as income:

9 (1) a zero coupon bond;

10 (2) an annuity contract before annuitization;

11 (3) a life insurance contract before the death of the insured;

12 (4) an interest in a common trust fund; in this paragraph, "common
13 trust fund" has the meaning given in 26 U.S.C. 584 (Internal Revenue Code);

14 (5) an interest in a limited liability company, limited liability
15 partnership, or a limited partnership; and

16 (6) another obligation for the payment of money if the money is
17 payable at a future time under a fixed, variable, or discretionary schedule of
18 appreciation and if the payment exceeds the price at which the obligation was issued.

19 (c) The increase in value of the obligations described in (b) of this section is
20 distributable to the beneficiary who was the income beneficiary at the time of the
21 increase. The increase is distributable from the first cash available from the principal
22 or, if cash is not available from the principal, when cash is first available from the
23 principal due to a sale, a redemption, or another disposition. When an unrealized
24 increase is distributed as income from principal, the principal shall be reimbursed when
25 the increase is realized.

26 (d) In this section, the increase in value of an obligation described in (b) of
27 this section is not available for distribution unless the trustee receives cash on account
28 of the obligation.

29 * **Sec. 17.** AS 13.41.005 is amended to read:

30 **Sec. 13.41.005. Application.** Except as provided by AS 13.06.068, this
31 [THIS] chapter applies to the disposition at death of the following property acquired

1 by a married person:

2 (1) all personal property, wherever situated,

3 (A) that was acquired as or became, and remained, community
4 property under the laws of another jurisdiction; or

5 (B) all or the proportionate part of which was acquired with the
6 rents, issues, or income of, or the proceeds from, or in exchange for, that
7 community property; or

8 (C) traceable to that community property;

9 (2) all or the proportionate part of any real property situated in this
10 state that was acquired with the rents, issues, or income of, the proceeds from, or in
11 exchange for, property acquired as or that [WHICH] became, and remained,
12 community property under the laws of another jurisdiction, or property traceable to that
13 community property.

14 * Sec. 18. AS 13.41.010 is amended to read:

15 **Sec. 13.41.010. Rebuttable presumptions.** Subject to AS 13.06.068, in [IN]
16 determining whether this chapter applies to specific property, the following rebuttable
17 presumptions apply:

18 (1) property acquired during marriage by a spouse of that marriage
19 while domiciled in a jurisdiction under whose laws property could then be acquired as
20 community property is presumed to have been acquired as or to have become, and
21 remained, property to which this chapter applies; and

22 (2) real property situated in this state and personal property wherever
23 situated acquired by a married person while domiciled in a jurisdiction under whose
24 laws property could not then be acquired as community property, title to which was
25 taken in a form that created rights of survivorship, are [IS] presumed not to be
26 property to which this chapter applies.

27 * Sec. 19. AS 34.40.110(d) is amended to read:

28 (d) A cause of action or claim for relief [PERSON MAY NOT BRING AN
29 ACTION] with respect to a fraudulent transfer [CLAIM ALLOWED] under (b)(1)
30 of this section, or otherwise, is extinguished unless the action is brought as to a
31 person who [IF THE PERSON]

1 (1) is a creditor when the trust is created [UNLESS THE ACTION IS
2 BROUGHT] within the later of

3 (A) four years after the transfer is made; or

4 (B) one year after the transfer is or reasonably could have been
5 discovered by the person; or

6 (2) becomes a creditor subsequent to the transfer into trust [UNLESS
7 THE ACTION IS BROUGHT] within four years after the transfer is made.

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

9 (f) If a trust contains a transfer restriction allowed under (a) of this section, the
10 transfer restriction prevents a creditor existing when the trust is created, a person who
11 subsequently becomes a creditor, or another person from asserting any cause of action
12 or claim for relief against a trustee of the trust or against others involved in the
13 preparation of funding of the trust for conspiracy to commit fraudulent conveyance,
14 aiding and abetting a fraudulent conveyance, or participation in the trust transaction.
15 The creditor and other person prevented from asserting a cause of action or claim for
16 relief is limited to recourse against the trust assets and the settlor to the extent allowed
17 under AS 34.40.010.

18 * Sec. 21. AS 13.12.506 and AS 13.36.095(a) are repealed.

19 * Sec. 22. COURT RULES. (a) AS 13.36.175(c), enacted by sec. 12 of this Act, changes
20 Rule 24, Alaska Rules of Civil Procedure, by allowing a beneficiary, or the attorney general
21 and certain corporations under certain circumstances, to intervene in an action on a contract
22 against a trustee without satisfying the criteria in the court rule.

23 (b) AS 13.36.185(d), enacted by sec. 12 of this Act, changes Rule 24, Alaska Rules
24 of Civil Procedure, by allowing a beneficiary to intervene in a tort action against a trust
25 without satisfying the criteria in the court rule.

26 * Sec. 23. AS 13.06.068, enacted by sec. 1 of this Act, does not apply to a will except for
27 the will of a person dying on or after the effective date of this Act.

28 * Sec. 24. AS 13.36.043, enacted by sec. 9 of this Act, AS 13.36.105 - 13.36.295, enacted
29 by sec. 12 of this Act, AS 13.36.310, amended by secs. 13 and 14 of this Act, and
30 AS 13.36.320, enacted by sec. 15 of this Act, apply only to

31 (1) testamentary trusts created by wills, or codicils, of persons dying on or

1 after the effective date of this Act regardless of when the trusts and codicils are executed;
2 (2) nontestamentary trusts created on or after the effective date of this Act; and
3 (3) testamentary or nontestamentary trusts that are registered or reregistered
4 after the effective date of this Act if the registrations state that the trusts will be governed by
5 this Act.

6 * Sec. 25. AS 13.38.060, as amended by sec. 16 of this Act, does not apply to a trust
7 unless the trust is created on or after the effective date of this Act.

8 * Sec. 26. AS 13.36.175(c) and 13.36.185(d), enacted by sec. 12 of this Act, take effect
9 only if sec. 22 of this Act receives the two-thirds majority vote of each house required by art.
10 IV, sec. 15, Constitution of the State of Alaska.



Comptroller of the Currency
Administrator of National Banks

Comptroller's Handbook for Fiduciary Activities

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Title 12 — Banks and Banking

Chapter 1 — Bureau of the Comptroller of the Currency, Department of the Treasury

Part 9 — Fiduciary Powers of National Banks and Collective Investment Funds

Sec.

- 9.1 Definitions.
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- 9.12 Self-dealing.
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Authority: Sec. 1, 76 Stat. 668 (12 U.S.C. 92a), and R.S. 5240, as amended (12 U.S.C. 481).

Effective as of April 5, 1963 as amended through December 23, 1982.

§9.1 — Definitions.

For the purposes of this regulation, the term:

- (a) "Account" means the trust, estate or other fiduciary relationship which has been established with a bank.
- (b) "Fiduciary" means a bank undertaking to act alone or jointly with others primarily for the benefit of another in all matters connected with its undertaking and includes trustee, executor, administrator, registrar of

stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, managing agent and any other similar capacity.

(c) "Fiduciary powers" means the power to act in any fiduciary capacity authorized by the Act of September 28, 1962, 76 Stat. 660, 12 U.S.C. 92a. Under that Act, a national bank may be authorized to act, when not in contravention of local law, as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity which state banks, trust companies, or other corporations which came into competition with the national bank may exercise under local law.

(d) "Fiduciary records" means all matters which are written, transcribed, recorded, received or otherwise come into possession of a bank and are necessary to preserve information concerning the acts and events relevant to the fiduciary activities of a bank.

(e) "Guardian" means the guardian or committee by whatever name employed by local law, of the estate of an infant, an incompetent individual, an absent individual, or a competent individual over whose estate a court has taken jurisdiction, other than under bankruptcy or insolvency laws.

(f) "Investment authority" means the responsibility conferred by action of law or a provision of an appropriate governing instrument to make, select or change investments, review investment decisions made by others, or to provide investment advice or counsel to others.

(g) "Local law" means the law of the state or other jurisdiction governing the fiduciary relationship.

(h) "Managing agent" means the fiduciary relationship assumed by a bank upon the creation of an account which names the bank as agent and confers investment discretion upon the bank.

(i) "State bank" means any bank, trust company, savings bank, or other banking institution, which is not a national bank and the principal office of which is located in the District of Columbia, any state, commonwealth, or territorial possession of the United States.

(j) "Trust department" means that group or groups of officers and employees of a bank organized under the supervision of officers or employees to whom are delegated by the board of directors the performance of the fiduciary responsibilities of the bank, whether or not the group or groups are so named.

(k) "Bank" shall include two or more banks which are members of the same affiliated group with respect to any fund established pursuant to §9.18 of this part of which any of such affiliated banks is trustee, or two or more of such affiliated banks are co-trustees.

(i) "Custodian under a Uniform Gifts to Minors Act" means an account established pursuant to a state law which is substantially similar to the Uniform Gifts to Minors Act as published by the American Law Institute and with respect to which the bank operating such account has established to the satisfaction of the Secretary of the Treasury that it has duties and responsibilities similar to duties and responsibilities of a trustee or guardian.

§9.2 — Applications.

A national bank desiring to exercise fiduciary powers shall file an application with the Comptroller of the Currency pursuant to 12 CFR 5.26, but an application to exercise fiduciary powers by a national bank limited to trust powers shall be filed pursuant to 12 CFR 5.22.

§9.3 — (Reserved).

§9.4 — Consolidation or merger of two or more national banks.

Where two or more national banks consolidate or merge, and any one of such banks has, prior to such consolidation or merger, received a permit from the Board of Governors of the Federal Reserve System or the Comptroller of the Currency to exercise fiduciary powers which is in force at the time of the consolidation or merger, the rights existing under such permit pass to the resulting bank, and the resulting bank may exercise such fiduciary powers in the same manner and to the same extent as the bank to which such permit was originally issued; and no new application to continue to exercise such powers is necessary. However, where the name or charter number of the resulting bank differs from that of the bank to which the right to exercise fiduciary powers was originally granted, in order that the records of the resulting bank may be complete and that it have convenient evidence of its right to exercise fiduciary powers, the Comptroller of the Currency will issue a certificate to that bank showing its right to exercise the fiduciary powers theretofore granted to any of the national banks participating in the consolidation or merger.

§9.5 — Adoption of policies and procedures with respect to brokerage placement practices.

Each national bank exercising investment discretion (as defined in 12 CFR 12.2(c)) with respect to an account shall adopt and follow written policies and procedures intended to ensure that its brokerage placement practices comply with all applicable laws and regulations. Among other relevant matters, such written policies and procedures should address, where appropriate, (i) the selection of persons to effect securities transactions and the evaluation of the reasonableness of any brokerage commissions paid to such persons (including the factors considered in these determinations); (ii) any acquisition of services or products, including research services, in return for brokerage commissions; (iii) the allocation of research or other

services among accounts, including those which did not generate commissions to pay for such research or other services; and (iv) the need in appropriate instances, to make disclosures concerning such policies and procedures to prospective and existing customers.

§9.6 — (Reserved).

§9.7 — Administration of fiduciary powers.

(a)(1) The board of directors is responsible for the proper exercise of fiduciary powers by the bank. All matters pertinent thereto, including the determination of policies, the investment and disposition of property held in a fiduciary capacity, and the direction and review of the actions of all officers, employees, and committees utilized by the bank in the exercise of its fiduciary powers, are the responsibility of the board. In discharging this responsibility, the board of directors may assign, by action duly entered in the minutes, the administration of such of the bank's fiduciary powers as it may consider proper to assign to such director(s), officer(s), employee(s) or committee(s) as it may designate.

(2) No fiduciary account shall be accepted without the prior approval of the board, or of the director(s), officer(s), or committee(s) to whom the board may have designated the performance of that responsibility. A written record shall be made of such acceptances and of the relinquishment or closing out of all fiduciary accounts. Upon the acceptance of an account for which the bank has investment responsibilities, a prompt review of the assets shall be made. The board shall also ensure that at least once during every calendar year thereafter, and within 15 months of the last review, all the assets held in or for each fiduciary account, where the bank has investment responsibilities are reviewed to determine the advisability of retaining or disposing of such assets.

(b) All officers and employees taking part in the operation of the trust department shall be adequately bonded.

(c) Every national bank exercising fiduciary powers shall designate, employ or retain legal counsel who shall be readily available to pass upon fiduciary matters and to advise the bank and its trust department.

(d) The trust department may utilize personnel and facilities of other departments of the bank, and other departments of the bank may utilize personnel and facilities of the trust department only to the extent not prohibited by law. Every national bank exercising fiduciary powers shall adopt written policies and procedures to ensure that the Federal securities laws are complied with in connection with any decision or recommendation to purchase or sell any security. Such policies and procedures, in particular, shall ensure that national bank trust departments shall not use material inside information in connection with any decision or recommendation to purchase or sell any security.

9.8 — Books and accounts.

a) Every national bank exercising fiduciary powers shall keep its fiduciary records separate and distinct from other records of the bank. All fiduciary records shall be so kept and retained for such time as to enable the bank to furnish such information or reports with respect thereto as may be required by the Comptroller of the Currency. The fiduciary records shall contain full information relative to each account.

b) Every such national bank shall keep an adequate record of all pending litigation to which it is a party in connection with its exercise of fiduciary powers.

c) Solely for purposes of examination by the Comptroller of the Currency, a national bank shall retain the records required by this Part for a period of 3 years from the date of termination of the fiduciary account relationship to which the records relate or of litigation relating to such account, unless applicable law specifically prescribes a different period.

9.9 — Audit of trust department.

A committee of directors, exclusive of any active officers of the bank, shall at least once during each calendar year and within 15 months of the last such audit, make suitable audits of the trust department or cause suitable audits to be made by auditors responsible only to the board of directors and at such time shall ascertain whether the department has been administered in accordance with law, this regulation and sound fiduciary principles. The board of directors may elect, in lieu of such periodic audits, to adopt an adequate continuous audit system. A report of the audits and examination required under this section, together with the action taken thereon, shall be noted in the minutes of the board of directors.

9.10 — Funds awaiting investment or distribution.

a) Funds held by a national bank in a fiduciary capacity which are awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account. Each national bank exercising fiduciary powers shall adopt and follow written policies and procedures intended to assure that the maximum rate of return available for trust-quality, short-term investments is obtained upon funds so held, consistent with the requirements of the governing instrument and local law. Such policies and procedures shall take into consideration all relevant factors, including but not limited to the anticipated return that could be obtained while the cash remains uninvested or undistributed, the cost of investing such funds, and the anticipated need for the funds.

b) Funds held in trust by a national bank, including managing agency accounts, awaiting investment or distribution may, unless prohibited by the instrument creating the trust or by local law, be deposited in the commercial or savings or other department of the bank,

provided that it shall first act aside under control of the trust department as collateral security:

- (1) Direct obligations of the United States, or other obligations fully guaranteed by the United States as to principal and interest, or
- (2) Readily marketable securities of the classes in which state banks exercising fiduciary powers are authorized or permitted to invest trust funds under the laws of the state in which such national bank is located, or
- (3) Other readily marketable securities that qualify as investment securities pursuant to the Investment Securities Regulation of the Comptroller of the Currency, 12 CFR, Chapter 1, Part 1.

The securities so deposited or securities substituted therefore as collateral shall at all times be at least equal in face value to the amount of trust funds so deposited, but such security shall not be required to the extent that the funds so deposited are insured by the Federal Deposit Insurance Corporation. The requirements of this section are not when qualifying assets of the bank are pledged to secure a deposit in compliance with local law, and no duplicate pledge shall be required in such case.

9.11 — Investment of funds held as fiduciary

(a) Funds held by a national bank in a fiduciary capacity shall be invested in accordance with the instrument establishing the fiduciary relationship and local law. When such instrument does not specify the character or class of investments to be made and does not vest in the bank, its directors or its officers a discretion in the matter, funds held pursuant to such instrument shall be invested in any investment in which corporate fiduciaries may invest under local law.

(b) If, under local law, corporate fiduciaries appointed by a court are permitted to exercise a discretion in investments, or if a national bank acting as fiduciary under appointment by a court is vested with a discretion in investments by an order of such court, funds of such accounts may be invested in investments which are permitted by local law. Otherwise, a national bank acting as fiduciary under appointment by a court must make all investments of funds in such accounts under an order of that court. Such orders in either case shall be preserved with the fiduciary records of the bank.

(c) The collective investment of funds received or held by a national bank as fiduciary is governed by §9.18.

(d) As a part of each examination of the trust department of a national bank and as provided by the Comptroller's Handbook for National Trust Examiners, the Comptroller of the Currency will examine the investments held by such bank as fiduciary, including the investment of funds under the provisions of §9.18, in order to determine whether such investments are in accordance with law, this regulation and sound fiduciary principles.

UNIFORM TRUSTS ACT

Table of Jurisdictions Wherein Act Has Been Adopted

Jurisdiction	Laws	Effective Date	Statutory Citation
Louisiana	1964, No. 338	7-29-1964	LSA-R.S. 9:1725; 9:2062; 9:2063; 9:2065; 9:2084 to 9:2086; 9:2112; 9:2114; 9:2122; 9:2124 to 9:2126; 9:2196; 9:2207; 9:2208.
Nevada	1941, c. 136	6-1-1941	N.R.S. 163.010 to 163.210.
New Mexico	1951, c. 193	3-16-1951*	NMSA 1978, §§ 46-2-1 to 46-2-19.
North Carolina ...	1939, c. 197	7-1-1939	G.S. §§ 36A-60 to 36A-84.
Oklahoma	1941, p. 256	8-21-1941	60 Okl.St. Ann. §§ 175.1 to 175.23.
South Dakota	1943, c. 308	2-10-1943*	SDCL 55-4-1 to 55-4-36.
Virgin Islands ...	1957, No. 160	9-1-1957	15 V.I.C. §§ 1091 to 1111.

* Date of approval.

Historical Note

The Uniform Trusts Act was approved by the American Bar Association in 1937.

PREFATORY NOTE

The Uniform Trusts Act, adopted by the National Conference of Commissioners on Uniform State Laws at its meeting at Kansas City, Missouri, September 20-25, 1937 has been in process of preparation since 1931. The project of drawing such an act was first suggested by the Trust Division of the American Bankers Association and has been carried through by the Commissioners on Uniform Laws with the advice of the Trust Division of the Bankers Association and the help of many other lawyers and business men. Committees from the American Bar Association, Illinois Bar Association, Minneapolis Bar Association, American Association of Law Schools, and other agencies have criticized the act and made suggestions for its improvement. Six drafts have been considered at the annual meetings of the Conference and debated section by section.

The purposes of the Uniform Trusts Act are three in number:

- (1) To do away with a few obsolete and unjust rules of trust law which have come about through unfortunate judicial decisions or are survivals of ancient property law;
- (2) To clarify and tighten the rules regarding loyalty by a trustee to the interests of his beneficiary;
- (3) To relax a few equity rules regarding trust administration, under careful restriction, in order to facilitate convenience in the administration of trusts.

(1) *Change of Obsolete or Unjust Rules.*

1. *Bank Account for Special Debts.* Under the common law decisions it has been held that if a debtor sets up a bank account to pay dividends, he is trustee of that account for the stockholders, but if he sets up a bank account to pay bondholders coupons, he is not a trustee for the bondholders. It is generally admitted that this is a distinction without justification and that all such accounts, including pay roll accounts, should be deemed to be held in trust for the special class of creditors named. Section 2 of the Uniform Trusts Act so provides. This does not make the bank a trustee for anybody.

2. The rule of "first in, first out," or Clayton's case, has been usually applied to withdrawals by a trustee from a fund or account containing the assets of two or more trusts. The trustee, by a mere rule of thumb and not of logic, is deemed to have drawn out for his own purposes and stolen first the first moneys put into the account. A much fairer rule is that he be deemed to have stolen from the several trusts in proportion to the amount of cash or credit they had in the mixed fund at the time. This change is made in Section 15 of the Uniform Trusts Act.

3. *Violation of Oral Trust of Realty.* The majority of American decisions permits a grantee of realty on oral trust for the grantor or a third person, who sets up the Statute of Frauds, to keep the real estate as his own, and do not enforce any implied trust against him. The minority American rule and the English rule compel such trustee to return the property to the grantor if the trustee elects to set up the Statute, in order to prevent the grantee-trustee from being unjustly enriched at the expense of the grantor. Section 16 of the Uniform Trusts Act adopts this latter more equitable rule by the use of a constructive trust.

4. *Contract Liability of Trust Estate.* At common law the court of law did not recognize the trustee as trustee as being a legal person. He could not be sued at law on a contract he had made as trustee, but action at law had to be against the trustee in his individual capacity, collection out of his individual assets, and then a reimbursement of the trustee by the trust estate. In equity the contract creditor could sue the trustee as such in certain cases. It has been felt that this disability of the contract creditor, which is due to the ancient distinction between law and equity, should be removed, in the interest of facilitating collection of claims from trust estates. Section 12 of the Uniform Trusts Act allows suit against the trustee as such at law if the contract was within the powers of the trustee to make, and if notice is given to the beneficiaries so that they can intervene in the rare case where they may object to collection from the trust estate.

5. *Tort Liability of the Trustee and Trust Estate.* The same distinction mentioned above regarding contract liability applied in the law courts at common law regarding tort liability and the action at law had to be against the trustee in his private capacity. For the same reasons mentioned above regarding contract liability, it is felt that the tort creditor should have an opportunity to sue the trustee in his representative capacity and collect out of the trust property, on notice to the cestuis, if the tort is one for which the trustee could get reimbursement. This is provided by Section 14 of the Act.

Section 13 of the Act settles a question about which there has been doubt in the decisions and provides that a trustee is entitled to exoneration or reimbursement for tort liability only if neither he nor his

TRUSTS ACT

employee was guilty of personal fault in committing the tort, or if the tort was a common incident of business of the type the trustee was running for the trust, or if the trust estate was enriched by the tort.

(2) Clarifying and Tightening Loyalty Rules.

It is felt that many of the abuses of modern trust administration have come from indirect disloyalty of the trustee and that a clear statement of the full implications of the loyalty duty might help in securing honest administration. For this purpose Section 1 gives very broad definitions of "affiliate" and "relative"; Section 3 prohibits loans by a trustee to itself, its affiliates, the officers or employees of either, or to his relatives or business associates. Section 5 covers in a similar way purchases and sales of property from or to the trust, and Section 6 sales of property from one trust to another trust held by the same trustee. Section 7 likewise covers the buying of stock or bonds of the trustee or its affiliates.

(3) Relaxation of Trust Rules to Facilitate Convenience.

It is enormously convenient for a corporate trustee to be able to deposit trust funds awaiting investment or distribution with itself, instead of being obliged to deposit them in another bank. Yet this is in conflict with the loyalty principle, since the bank has a self interest in getting and keeping funds on deposit. In accord with the Federal Reserve Board regulations regarding National Banks and with many state statutes now in force, Section 4 of the Uniform Trusts Act permits a corporate trustee to deposit trust funds with itself, provided it sets aside as a security fund securities legal for trust investments of a value equal to the total of such trust fund deposits.

Section 8 permits a trustee to vote corporate stock by proxy, if reasonable care is used. This is a delegation of trust powers and so technically illegal, but it is believed that such proxy voting is now actually done by trustees and is practically necessary in any reasonable plan of administration.

Section 9 permits a trustee to hold corporate stock in the name of a nominee, if the nominee signs and delivers to the trustee a statement of such holding, the books of the trustee and all reports show the facts, the nominee has no access to the stock certificate and has indorsed it in blank. This is to enable the trustee to sell stock easily, and to avoid the requirements of stock exchanges that where stock is held in the name of a fiduciary elaborate proof of the power of the fiduciary to sell must be given.

Section 10 makes all powers of a trustee presumptively attached to the office and exercisable by a successor, instead of being personal.

Section 11 permits a majority of a group of three or more trustees to exercise the powers of the trust, but does not make a trustee liable for acts in which he does not take part. This abolishes a rule founded on the medieval incidents of joint tenancy.

(4) Statute Subject to Control by Settlor, and Court.

The creator of the trust, the beneficiary, and the court may relieve any particular trust from the effect of part or all of the provisions of the Uniform Trusts Act, by writing, or alter such provisions, or add further restrictions on the trustee.

GOERIG & ASSOCIATES

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April 10, 1998

Via Facsimile

Alaska State Legislature
Representative Joe Green
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

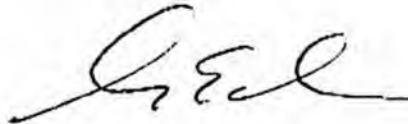
Dear Representative Green:

I have been a practicing attorney in Alaska for 21 years and specialize in trust and probate law. Prior to my private practice, I was the Internal Revenue Service estate tax examiner assigned to Alaska. I have reviewed House Bill 196 and I strongly encourage passage of this legislation.

This legislation will enhance the use of trusts for Alaskans by bringing Alaska statutes in line with modern planning. This legislation will allow for flexibility of clients setting up trusts, the attorney preparing the documents, and the trustees who must administer these trusts. This Bill will also encourage non-resident Alaskans to use Alaska for trust administration.

Again, I strongly urge passage of this important legislation.

Respectfully,



George E. Goerig

Sponsor Statement for HB 196

The Omnibus Estate and Trust Improvement Act

This bill makes a number of important improvements to Alaska's estate and trust laws. Sections 1-8, 18 and 19 of the bill change Alaska law to permit a person who is domiciled outside of Alaska to select Alaska as the jurisdiction for the probate of her estate. This provision should bring significant business to our state.

Sections 9 and 10 of the bill allow a person to limit the liability of a trustee in her trust when more than one trustee is serving. The person could provide that only the trustee who exercises a power will be held liable for its actions and that the other trustees who did not participate in the exercise of the power would not be held liable. This provision will encourage trustees in Alaska to work with other trustees of the same trust.

The Uniform Trusts Act is included in Section 11 which clarifies many issues involving the administration of trusts in Alaska.

Section 12 protects an Alaska trustee who in good faith defends an Alaska trust from the claims of a creditor who seeks to set the trust aside. If the trustee acts in good faith, then the trustee gets a first lien on all trust assets for payment of its fees, costs and attorneys' fees. Delaware has adopted a similar provision to protect its trustees.

Section 13 allows a trustee who has the power to invade the corpus of a trust to appoint the assets of the trust to another trust for the beneficiaries to postpone estate and similar taxes. This provision would allow a trustee to move a trust to Alaska and to appoint the assets to an Alaska trust.

Section 14 clarifies that a trust created in another state or country can be moved to Alaska even though the trust was settled before the Alaska Trust Act was passed last year.

The Uniform Trustee's Powers Act is enacted in Section 14. Alaska does not have a statutory provision that sets out the powers of a trustee. These statutory powers would supplement the powers set forth in a trust agreement.

A number of miscellaneous provisions are included elsewhere in the bill. Section 15 allows a person to include a penalty clause in her trust. Section 17 clarifies the accounting of bond premiums and discounts. Section 20 amends AS 34.40.110(d) to be consistent with the Uniform Fraudulent Transfers Act. Section 21 precludes an action by creditors of the grantor of the trust against those who assist in the creation of the trust.

This bill will improve our estate and trust laws and will make Alaska's laws more favorable to our residents. In addition, the bill will make our laws more attractive to people outside of Alaska who are considering Alaska for the administration of their estates and trusts.

Alaska State Legislature

House of Representatives

COMMITTEE ASSIGNMENTS

LABOR & COMMERCE
MILITARY & VETERANS AFFAIRS
COMMUNITY & REGIONAL AFFAIRS
OIL & GAS



Representative Joe Ryan

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Sponsor Statement for HB 196

Estate and Trust Improvement Act

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This bill will improve our estate and trust laws and will make Alaska's laws more favorable to our residents. In addition, the bill will make our laws more attractive to people outside of Alaska who are considering Alaska for the administration of their estates and trusts.

0-LS0521\F

Bannister

3/26/98

*Rep. Orew
Att. Kucic
w/ memo*

CS FOR HOUSE BILL NO. 196()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES RYAN, Therriault

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to wills, intestacy, nonprobate transfers, and trusts; and
2 amending Rule 24, Alaska Rules of Civil Procedure."

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

4 * Section 1. AS 13.06 is amended by adding a new section to read:

5 Sec. 13.06.068. Choice of law; validity. (a) Subject to the other provisions
6 of this section, the formal validity, intrinsic validity, effect, interpretation, revocation,
7 or alteration of a testamentary disposition of real property and the manner in which the
8 property descends at death when not disposed of by will are determined by the law of
9 the jurisdiction in which the land is situated.

10 (b) Subject to the other provisions of this section, the intrinsic validity, effect,
11 revocation, or alteration of a testamentary disposition of personal property and the
12 manner in which the property devolves at death when not disposed of by will are
13 determined by the law of the jurisdiction in which the decedent was domiciled at
14 death.

1 (c) A will disposing of personal property, wherever situated, or real property
2 situated in this state made within or outside this state by a domiciliary or
3 nondomiciliary of the state where the property is situated, is formally valid and
4 admissible to probate in this state if the will is in writing and signed by the testator
5 and otherwise executed and attested to under the local law of

6 (1) this state;

7 (2) the jurisdiction where the will was executed at the time of
8 execution; or

9 (3) the jurisdiction where the testator was domiciled, either at the time
10 of execution or at death.

11 (d) A testamentary disposition of personal property intrinsically valid under
12 the law of the jurisdiction where the testator was domiciled when the will was
13 executed is not affected by a subsequent change in the domicile of the testator to a
14 jurisdiction under the law of which the disposition is intrinsically invalid.

15 (e) The interpretation of a testamentary disposition of personal property shall
16 be made under the local law of the jurisdiction where the testator was domiciled when
17 the will was executed.

18 (f) Whether a testamentary disposition of personal property is effectively
19 revoked or altered by a subsequent testamentary instrument or by a physical act to or
20 on the will by which the testamentary disposition was made is determined by the local
21 law of the jurisdiction where the testator was domiciled when the subsequent
22 instrument was executed or the physical act performed.

23 (g) Subject to (d) - (f) of this section, the intrinsic validity, effect, revocation
24 or alteration of a testamentary disposition by which a power of appointment over
25 personal property is exercised and the question of whether the power has been
26 exercised at all are determined by

27 (1) in the case of a presently exercisable general power of appointment,
28 the local law of the jurisdiction where the donee of the power was domiciled at the
29 time of death;

30 (2) in the case of a general power of appointment exercisable by will
31 alone or a special power of appointment, the local law of the jurisdiction

1 (A) that the donor of the power expressly selected in the
2 governing instrument to govern the disposition; or

3 (B) where the donor of the power was domiciled at the time of
4 death if the donor did not expressly select in the governing instrument a
5 jurisdiction to govern the disposition.

6 (h) The formal validity of a will by which a power of appointment over
7 personal property is exercised is determined under (b) of this section on the basis that
8 the testator referred to in (b) of this section is the donee of the power.

9 (i) When a testator, who is not domiciled in this state at the time of death,
10 provides in the testator's will that the testator elects to have the disposition of the
11 testator's property situated in this state governed by the local law of this state, the
12 intrinsic validity, including the testator's general capacity, effect, interpretation,
13 revocation, or alteration of the provision, is determined by the local law of this state.
14 The formal validity of the will is determined under (b) of this section.

15 (j) Notwithstanding the definition of "real property", as set out in (l) of this
16 section, whether an estate in, leasehold of, fixture, mortgage, or other lien on land is
17 real property governed by (a) of this section or personal property governed by (b) of
18 this section is determined by the local law of the jurisdiction where the land is
19 situated.

20 (k) Notwithstanding the other provisions of AS 13.06 - AS 13.36, the
21 provisions of this section govern in AS 13.06 - AS 13.36.

22 (l) In this section,

23 (1) "effect" means the legal consequences attributed under the local law
24 of a jurisdiction to a valid testamentary disposition;

25 (2) "formal validity" means the formalities established by the local law
26 of a jurisdiction for the execution and attestation of a will;

27 (3) "interpretation" means the procedure of applying the law of a
28 jurisdiction to determine the meaning of language employed by the testator if the
29 testator's intention is not otherwise ascertainable;

30 (4) "intrinsic validity" means the rules of substantive local law by
31 which a jurisdiction determines the legality of a testamentary disposition, including the

1 general capacity of the testator;

2 (5) "local law" means the law that the courts of a jurisdiction apply
3 when adjudicating legal questions that are not related to another jurisdiction;

4 (6) "personal property" means property other than real property, and
5 includes tangible and intangible property;

6 (7) "real property" means land or an estate in land, and includes
7 leaseholds, fixtures, and mortgages or other liens on land;

8 (8) "testamentary disposition" means disposition under a will.

9 * Sec. 2. AS 13.12.401 is amended to read:

10 Sec. 13.12.401. Applicable law. Except as provided in AS 13.06.068,
11 AS 13.12.401 - 13.12.405 [AS 12.13.401 - 12.13.405] apply to the estate of a decedent
12 who dies domiciled in this state, and rights [. RIGHTS] to homestead allowance,
13 exempt property, and family allowance for a decedent who dies not domiciled in this
14 state are governed by the law of the decedent's domicile at death.

15 * Sec. 3. AS 13.12.502 is amended to read:

16 Sec. 13.12.502. Execution; witnessed wills; holographic wills. (a) Except
17 as provided in (b) of this section, AS 13.06.068, [AND IN] AS 13.12.506, and
18 13.12.513, a will must be

19 (1) in writing;

20 (2) signed by the testator or in the testator's name by another individual
21 in the testator's conscious presence and by the testator's direction; and

22 (3) signed by at least two individuals, each of whom signs within a
23 reasonable time after the witness witnesses either the signing of the will as described
24 in (2) of this subsection or the testator's acknowledgment of that signature or the will.

25 (b) Except as provided in AS 13.06.068, a [A] will that does not comply with
26 (a) of this section is valid as a holographic will, whether or not witnessed, if the
27 signature and material portions of the document are in the testator's handwriting.

28 * Sec. 4. AS 13.12.506 is amended to read:

29 Sec. 13.12.506. Choice of law as to execution. Except as provided by
30 AS 13.06.068, a [A] written will is valid if executed in compliance with AS 13.12.502
31 or if its execution complies with the law at the time of execution of the place where

1 the will is executed [,] or of the law of the place where, at the time of execution or
2 at the time of death, the testator is domiciled, has a place of abode, or is a national.

3 * Sec. 5. AS 13.12.601 is amended to read:

4 Sec. 13.12.601. Scope. Except as provided in AS 13.06.068, in [IN] the
5 absence of a finding of a contrary intention, the rules of construction in AS 13.12.601
6 - 13.12.609 control the construction of a will.

7 * Sec. 6. AS 13.12.703 is amended by adding a new subsection to read:

8 (b) The provisions of (a) of this section are subject to AS 13.06.068.

9 * Sec. 7. AS 13.12.912(a) is amended to read:

10 (a) Except as provided by AS 13.06.068, a [A] will is valid as regards form,
11 irrespective of the place where the will is made, of the location of the assets, and of
12 the nationality, domicile, or residence of the testator, if the will is made in the form
13 of an international will complying with the requirements of AS 13.12.912 - 13.12.921.

14 * Sec. 8. AS 13.16.175 is amended to read:

15 Sec. 13.16.175. Formal testacy proceedings; will construction; effect of
16 final order in another jurisdiction. Subject to AS 13.06.068, a [A] final order of
17 a court of another state determining testacy, the validity, or construction of a will [,]
18 made in a proceeding involving notice to and an opportunity for contest by all
19 interested persons must be accepted as determinative by the courts of this state if it
20 includes, or is based upon, a finding that the decedent was domiciled at death in the
21 state where the order was made.

*former sec. 17
(AS 13.16.090 (c)) deleted.*

22 * Sec. 9. AS 13.36 is amended by adding a new section to read:

23 Sec. 13.36.043. Change of situs to Alaska. (a) The situs of a foreign trust
24 is moved to this state when the trust satisfies AS 13.36.035(c) and a qualified person
25 serving as trustee registers the trust under AS 13.36.010.

26 (b) If the situs of a foreign trust is moved to this state as provided in this
27 section, a provision in the trust that restricts the transfer of trust assets in a manner
28 similar to AS 34.40.110, that allows the trust to be perpetual, or that is not expressly
29 prohibited by the law of this state is effective and enforceable under the laws of this
30 state.

31 (c) A foreign trust that moves its situs to this state is valid whether or not the

1 trust complied with the laws of this state at the time of its creation or after its creation.

2 (d) In this section, "foreign trust" means a trust that is created in another state
3 or country and that is valid in that state or country.

4 * Sec. 10. AS 13.36.075 is amended to read:

5 **Sec. 13.36.075. Trustee's standard of care and performance.** Except as
6 otherwise provided by the terms of the trust or by AS 13.36.105 - 13.36.295, the
7 trustee shall observe the standards in dealing with the trust assets that would be
8 observed by a prudent person [MAN] dealing with the property of another, and, if the
9 trustee has special skills or is named trustee on the basis of representations of special
10 skills or expertise, the trustee is under a duty to use those skills.

11 * Sec. 11. AS 13.36.095(b) is amended to read:

12 (b) Subject to AS 13.36.105 - 13.36.295, a [A] trustee is personally liable for
13 obligations arising from ownership or control of property of the trust estate or for torts
14 committed in the course of administration of the trust estate only if personally at fault.

15 * Sec. 12. AS 13.36 is amended by adding new sections to article 3 to read:

16 **Sec. 13.36.105. Powers attached to the office of trustee.** Unless otherwise
17 provided by the trust instrument, an amendment of the trust instrument, or a court
18 order, the powers of a trustee are attached to the office and are not personal.

19 **Sec. 13.36.107. General powers; fiduciary duties.** (a) Without authorization
20 by a court, a trustee may exercise the powers conferred by the terms of the trust and,
21 except as limited by the terms of the trust, the powers conferred by this chapter.

22 (b) This chapter does not affect the power of a court to
23 (1) relieve a trustee from provisions contained in the terms of the trust
24 that restrict the exercise of powers;

25 (2) confer on a trustee additional powers, whether or not the powers
26 are authorized by the terms of the trust; or

27 (3) restrict the exercise of a power otherwise given to the trustee by the
28 terms of the trust or this chapter.

29 (c) The grant of a power to a trustee, whether under the terms of the trust, this
30 chapter, or a court, does not alone govern the exercise of the power.

31 **Sec. 13.36.109. Specific powers of trustees.** Except as otherwise provided

1 by this chapter, in addition to the powers conferred by the terms of the trust, a trustee
2 may perform all actions necessary to accomplish the proper management, investment,
3 and distribution of the trust property, including the power

4 (1) to collect, hold, and retain trust property received from a settlor or
5 another person; the property may be retained even if it includes property in which the
6 trustee is personally interested;

7 (2) to accept additions to the property of the trust from a settlor or
8 another person;

9 (3) to continue or to participate in the operation of a business or other
10 enterprise that is part of the trust property and to effect an incorporation, dissolution,
11 or other change in the form of the organization of the business or enterprise;

12 (4) to acquire or dispose of property, for cash or on credit, at public or
13 private sale or by exchange;

14 (5) to manage, control, divide, develop, improve, exchange, partition,
15 change the character of, or abandon trust property;

16 (6) to encumber, mortgage, or pledge trust property for a term within
17 or extending beyond the term of the trust in connection with the exercise of a power
18 vested in the trustee;

19 (7) to make ordinary or extraordinary repairs, alterations, or
20 improvements in buildings or other trust property; to demolish improvements; and to
21 raze existing or erect new party walls or buildings;

22 (8) to subdivide or develop land; to dedicate land to public use; to
23 make or obtain the vacation of plats and to adjust boundaries; to adjust differences in
24 valuation on exchange or partition by giving or receiving consideration; and to dedicate
25 easements to public use without consideration;

26 (9) to enter into a lease for any purpose as lessor or lessee with or
27 without the option to purchase or renew and for a term within or extending beyond the
28 term of the trust;

29 (10) to enter into a lease or arrangement for exploration and removal
30 of gas, oil, or other minerals or geothermal energy; and to enter into a community oil
31 lease, a pooling agreement, or a unitization agreement;

1 (11) to grant an option involving disposition of trust property or to take
2 an option for the acquisition of property, including an option that is exercisable beyond
3 the duration of the trust;

4 (12) with respect to shares of stock of a domestic or foreign
5 corporation, a membership in a nonprofit corporation, or other property, to

6 (A) vote in person and to give proxies to exercise any voting
7 rights with respect to the shares, memberships, or property;

8 (B) waive notice of a meeting or to give consent to the holding
9 of a meeting; and

10 (C) authorize, ratify, approve, or confirm an action that could
11 be taken by shareholders, members, or property owners;

12 (13) to pay calls, assessments, and other sums chargeable to or accruing
13 against or on a securities account;

14 (14) to sell or exercise stock subscription or conversion rights;

15 (15) to consent, directly or through a committee or other agent, to the
16 reorganization, consolidation, merger, dissolution, or liquidation of a corporation or
17 other business enterprise; to participate in voting trusts, pooling arrangements, and
18 foreclosures; and, in connection with a reorganization, consolidation, merger,
19 dissolution, liquidation, voting trust, pooling arrangement, or foreclosure, to deposit
20 securities with, transfer title, and delegate discretion to a protective or other committee
21 as the trustee considers advisable;

22 (16) to deposit securities in a securities depository;

23 (17) to insure the property of the trust against damage or loss and to
24 insure the trustee against liability with respect to third persons;

25 (18) to borrow money for a trust purpose to be repaid from trust
26 property;

27 (19) to pay or contest a claim, to settle a claim by or against the trust
28 by compromise, arbitration, or otherwise, and to release, in whole or in part, a claim
29 belonging to the trust;

30 (20) to pay taxes, assessments, reasonable compensation of the trustee,
31 employees, and agents of the trust, and other expenses incurred in the collection, care,

1 administration, and protection of the trust;

2 (21) to make loans out of trust property to a beneficiary on terms and
3 conditions the trustee considers to be fair and reasonable under the circumstances and
4 to guarantee loans to the beneficiary by encumbrances on trust property;

5 (22) to pay an amount distributable to a beneficiary, whether or not the
6 beneficiary is under a legal disability, by paying the amount to the beneficiary or by
7 paying the amount to another person for the use or benefit of the beneficiary;

8 (23) to make a distribution of property and money in divided or
9 undivided interests, pro rata or otherwise, and to adjust resulting differences in
10 valuation;

11 (24) to employ accountants, attorneys, investment advisers, appraisers,
12 or other persons, even if they are associated or affiliated with the trustee, to advise or
13 assist the trustee in the performance of administrative duties;

14 (25) to inspect or investigate property that the trustee has been asked
15 to hold or property owned or operated by an entity in which the trustee holds or has
16 been asked to hold an interest for the purpose of determining the application of
17 environmental law to the property and to take action to prevent, abate, or otherwise
18 remedy an actual or potential violation of an environmental law affecting property held
19 directly or indirectly by the trustee;

20 (26) to establish for an asset a reserve for depreciation, depletion, or
21 obsolescence, and to decide, under law, how and in what proportions a receipt or
22 disbursement is to be credited, charged, or apportioned between principal and income;

23 (27) to execute and deliver instruments that are useful to accomplish
24 or facilitate the exercise of the trustee's powers; and

25 (28) to prosecute or defend an action, claim, or proceeding in order to
26 protect trust property and the trustee in the performance of the trustee's duties.

27 **Sec. 13.36.110. Liability of trustee relating to exercise of power.** A trustee
28 who has not joined another trustee in exercising a power is not liable to the
29 beneficiaries or to others for the consequences of the exercise of the power. A
30 dissenting trustee is not liable to the beneficiaries or to others for the consequences of
31 an act in which the dissenting trustee joins at the direction of the majority trustees if

1 the dissenting trustee expresses the dissenting trustee's dissent in writing to a co-trustee
2 at or before the time of joinder. A trustee who is not authorized to exercise a power
3 is not liable to the beneficiaries or to others for

4 (1) the exercise by a co-trustee of the power; or

5 (2) the failure to exercise the power.

6 **Sec. 13.36.120. Voting of corporate stock owned by trustee.** A trustee of
7 a trust owning corporate stock is liable for a loss resulting to the beneficiaries from
8 a failure to use reasonable care in deciding how to vote the stock and in voting the
9 stock only if personally at fault.

10 **Sec. 13.36.125. Creation of trust bank account to pay special debts.**
11 Whenever a bank account is, by entries made on the books of the depositor and the
12 bank at the time of the deposit, created exclusively for the purpose of paying
13 dividends, interest, interest coupons, salaries, wages, or pensions or other employee
14 benefits, and the depositor at the time of opening the account does not expressly
15 declare otherwise, the depositor is considered a trustee of the account for the creditors
16 to be paid from the account, subject to any power of revocation that the depositor may
17 have reserved by agreement with the bank.

18 **Sec. 13.36.130. Failure of beneficiary to present claim for payment.** If a
19 beneficiary for whom a trust bank account is created under AS 13.36.125 does not
20 present the beneficiary's claim to the bank for payment within one year after the claim
21 is due, the depositor who created the trust may revoke the trust as to the beneficiary.

22 **Sec. 13.36.135. Holding stock in name of nominee.** (a) A trustee of a trust
23 owning stocks, bonds, notes, debentures, or other written obligations of a public or
24 private corporation may hold the obligations in the name of a nominee, without
25 mention of the trust in the records of the corporation or in the stock certificate or stock
26 registration book of the corporation, if

27 (1) the trust records and all reports or accounts rendered by the trustee
28 clearly show the ownership of the stocks, bonds, notes, debentures, or other written
29 obligations of the public or private corporation by the trustee and the facts regarding
30 the holding by the trustee; and

31 (2) the nominee deposits with the trustee a signed statement showing

1 the trust ownership, endorses the stock certificate or other title instruments for the
2 obligations in blank, and does not have possession of or access to the stock certificate
3 or other title instruments for the obligations except under the immediate supervision
4 of the trustee.

5 (b) A trustee holding obligations under (a) of this section is personally liable
6 for a loss to the trust resulting from an act of the nominee in connection with the
7 stocks, bonds, notes, debentures, or other written obligations held under (a) of this
8 section.

9 **Sec. 13.36.140. Loan of trust funds.** Except as provided in AS 13.36.145,
10 a corporate trustee may not lend trust funds to itself or an affiliate, or to a director, an
11 officer, or an employee of itself or an affiliate, and a noncorporate trustee may not
12 lend trust funds to itself or to a relative, an employer, an employee, or a partner or
13 other business associate.

14 **Sec. 13.36.145. Corporate trustee depositing trust funds with itself.** (a)
15 A corporate trustee that is subject to regulation and supervision by state or federal
16 authorities may deposit with itself trust funds that are being held out of necessity
17 pending investment, distribution, or payment of debts if the corporate trustee

18 (1) pays into the trust for the deposit the interest the corporate trustee
19 is required by state or federal law to pay on uninvested trust funds or, if there is not
20 a state or federal law requiring the payment of interest, at the same rate of interest the
21 corporate trustee pays on similar nontrust deposits; and

22 (2) maintains in its trust department as security for the deposit a
23 separate fund consisting of securities that are legal for trust investments and that are
24 at all times equal in total market value to the amount of the deposit, except that the
25 security is not required to the extent that the deposit is insured or given a preference
26 by state or federal law.

27 (b) The separate fund of securities required by (a)(2) of this section shall be
28 marked as a separate fund for (a)(2) of this section. Withdrawals from or additions
29 to the separate fund may be made from time to time, as long as the required value is
30 maintained. The income of the securities in the separate fund belongs to the corporate
31 trustee. In the statements of its financial condition published or delivered to the

1 division of banking, securities, and corporations in the Department of Commerce and
2 Economic Development, the corporate trustee shall show as separate items the amount
3 of trust funds that it has deposited with itself and the amount of securities that it holds
4 as security for the payment of the deposits.

5 **Sec. 13.36.150. Trustee buying from or selling to itself.** (a) A trustee,
6 unless expressly authorized by the trust instrument, may not directly or indirectly lease,
7 buy, or sell property for the trust from or to

8 (1) itself or an affiliate;

9 (2) a director, an officer, or an employee of the trustee or an affiliate;

10 or

11 (3) a relative, an employer, or a partner or other business associate.

12 (b) Notwithstanding (a) of this section or another law to the contrary, a trustee
13 may lease, buy, or sell property, including a lease, purchase, or sale in the
14 establishment of a trust service office, from or to the trust the trustee represents as a
15 trustee if specifically authorized to make the lease, purchase, or sale in a decedent's
16 will or in the instrument creating the trustee relationship.

17 **Sec. 13.36.155. Permitted sales between trusts held by same corporate**
18 **trustee.** If the transaction is fair to both trusts and if the transaction is not prohibited
19 by the instruments creating the trustee relationship, a corporate trustee may sell to
20 itself as trustee of a trust the following held by the corporate trustee as trustee for
21 another trust:

22 (1) stocks, bonds, and other securities listed on a securities exchange
23 supervised by the United States Securities and Exchange Commission; and

24 (2) obligations of the United States treasury and obligations of United
25 States government agencies.

26 **Sec. 13.36.157. Trustee's special power to appoint to other trust.** (a)
27 Unless the terms of the instrument expressly provide otherwise, a trustee who has the
28 absolute discretion under the terms of a testamentary instrument or irrevocable inter
29 vivos agreement to invade the principal of a trust for the benefit of the beneficiary who
30 is eligible or entitled to the income of the trust may exercise without prior court
31 approval the trustee's discretion by appointing part or all of the principal of the trust

1 in favor of a trustee of a trust under an instrument other than that under which the
2 power to invade was created if the exercise of this discretion

3 (1) does not reduce any fixed income interest of an income beneficiary
4 of the trust;

5 (2) is in favor of the beneficiary of the trust; and

6 (3) does not violate the limitations on validity under AS 34.27.050(a).

7 (b) This section applies to a trust governed by the laws of this state, including
8 a trust whose governing jurisdiction is transferred to this state.

9 (c) The exercise of the power to invade the principal of a trust under (a) of
10 this section is considered to be the exercise of a special power of appointment.

11 **Sec. 13.36.160. Corporate trustee buying its own stock.** A corporate trustee
12 may not purchase for a trust shares of its own stock, or its bonds, or other securities,
13 or the stock, bonds, or other securities of an affiliate.

14 **Sec. 13.36.165. Withdrawals from mingled trust funds.** If a person who is
15 a trustee of two or more trusts mingles the funds of two or more trusts in the same
16 aggregate of cash or in the same bank or brokerage account or other investment, and
17 if a withdrawal is made from the cash aggregate, account, or investment by the trustee
18 for the trustee's own benefit, for the benefit of a third person who is not a beneficiary
19 or creditor of one or more of the trusts, or for an unknown purpose, the withdrawal
20 must be charged first to the amount of the personal cash, credit, or other property, if
21 any, of the trustee in the mingled fund, and, after the exhaustion of the trustee's cash,
22 credit, or other property, then to the several trusts in proportion to their several
23 interests in the cash, credit, or other property in the cash aggregate, account, or
24 investment at the time of the withdrawal.

25 **Sec. 13.36.170. Unenforceable oral trust created by deed.** (a) When an
26 interest in real property is conveyed by deed to a person in a trust that is unenforceable
27 under AS 09.25.010 - 09.25.020 and the intended trustee or the trustee's successor in
28 interest holds title but refuses to carry out the trust because of AS 09.25.010 -
29 09.25.020, the intended trustee or the trustee's successor in interest, except to the
30 extent that the successor in interest is a bona fide purchaser of a legal interest in the
31 real property, shall convey the interest in real property to the settlor or the settlor's

1 successor in interest. A court having jurisdiction may prescribe the conditions for
2 conveying the interest to the settlor or the settlor's successor in interest.

3 (b) If the intended trustee of an unenforceable trust under (a) of this section
4 transfers part or all of the trustee's interest and the interest is transferred to a bona fide
5 purchaser, the intended trustee is liable to the settlor or the settlor's successor in
6 interest for the value, at the time of the transfer, of the interest transferred, less any
7 offsets that a court determines to be equitable.

8 **Sec. 13.36.175. Action on contract against trustee in representative**
9 **capacity.** (a) When a trustee makes a contract that is within the trustee's powers as
10 trustee or when a predecessor trustee has made a contract within the predecessor
11 trustee's powers as trustee and a cause of action arises on the contract, the party in
12 whose favor the cause of action has accrued may collect the judgment by execution
13 on the trust property.

14 (b) In an action under this section, the plaintiff is not required to prove that
15 the trustee could have been reimbursed from the trust fund if the trustee had paid the
16 plaintiff's claim.

17 (c) A beneficiary or, in the case of a charitable trust, the attorney general and
18 a corporation that is a beneficiary or agent in the performance of the charitable trust,
19 may intervene in an action under this section and contest the right of the plaintiff to
20 recover.

21 (d) A judgment may not be rendered in favor of the plaintiff in an action under
22 this section unless the plaintiff proves that, within 30 days after the beginning of the
23 action or within another period set by the court and more than 30 days before
24 obtaining the judgment, the plaintiff has notified each of the beneficiaries who is
25 known to the trustee and who then has a present interest in the existence and nature
26 of the action, or, in the case of a charitable trust, the attorney general of this state and
27 a corporation that is a beneficiary or agent in the performance of the charitable trust.
28 The notice shall be given by mailing copies of the notice with postage prepaid to the
29 beneficiaries at their last known addresses. The trustee shall furnish the plaintiff with
30 a list of names and addresses of the beneficiaries within 10 days after the plaintiff
31 makes a written demand for the list. Notification of the persons on the list constitutes

1 compliance with the duty placed on the plaintiff by this section.

2 (e) The plaintiff in an action under this section may also hold the trustee who
3 made the contract personally liable on the contract if the contract does not exclude the
4 trustee's personal liability. In a contract action under this section, the addition of the
5 word "trustee" or the words "as trustee" after the signature of a trustee to a contract
6 constitutes prima facie evidence of an intent to exclude the trustee from personal
7 liability, and the addition of the words "and not individually" following the word
8 "trusts" or the words "as trustee" after the signature of a trustee to a contract
9 constitutes irrebuttable evidence of an intent to exclude the trustee from personal
10 liability, and the trustee is not personally liable under the contract.

11 **Sec. 13.36.180. Exoneration or reimbursement for tort.** (a) A trustee who
12 has incurred personal liability for a tort committed in the administration of the trust
13 is entitled to exoneration for the liability from the trust property if the trustee has not
14 discharged the claim, or to reimbursement for the liability out of trust funds if the
15 trustee has paid the claim, if

16 (1) the tort was a common incident of the kind of business activity in
17 which the trustee was properly engaged for the trust; or

18 (2) although the tort was not a common incident under (1) of this
19 subsection, the trustee or an officer or employee of the trustee was not guilty of
20 personal fault in incurring the liability.

21 (b) If a trustee commits a tort that increases the value of the trust property, the
22 trustee is entitled to exoneration or reimbursement with respect to the tort to the extent
23 of the increase in value, even though the trustee would not otherwise be entitled to
24 exoneration or reimbursement.

25 (c) Nothing in this section shall be construed to change the existing law with
26 regard to the liability of trustees of charitable trusts for torts of the trustees or their
27 employees.

28 **Sec. 13.36.185. Tort liability of trust.** (a) If a trustee or a predecessor of the
29 trustee incurs personal liability for a tort committed in the course of the trustee's
30 administration, the trustee in the trustee's representative capacity may be sued and
31 collection made from the trust property if the court determines in the tort action that

1 (1) the tort was a common incident of the kind of business activity in
2 which the trustee or the trustee's predecessor was properly engaged for the trust;

3 (2) although the tort was not a common incident under (1) of this
4 subsection, the trustee or the trustee's predecessor, or an officer or employee of the
5 trustee or the trustee's predecessor, was not guilty of personal fault in incurring the
6 liability; or

7 (3) although the tort does not fall under (1) or (2) of this subsection,
8 the tort increased the value of the trust property.

9 (b) If the tort is within (a)(1) or (2) of this section, the full amount of proven
10 damages may be collected from the trust property.

11 (c) If the tort is within (a)(3) of this section, collection may not be made from
12 the trust property except to the extent of the increase in the value of the trust property.

13 (d) A beneficiary may intervene in an action under this section and contest the
14 right of the plaintiff to recover.

15 (e) In an action against the trustee in the trustee's representative capacity under
16 this section, the plaintiff is not required to prove that the trustee could have secured
17 reimbursement from the trust fund if the trustee paid the plaintiff's claim.

18 (f) A judgment may not be rendered in favor of the plaintiff in an action under
19 this section unless the trustee proves that within 30 days after the beginning of the
20 action, or within another period set by the court and more than 30 days before
21 obtaining the judgment, the trustee notifies each of the beneficiaries who is known to
22 the trustee who then has a present interest in the existence and nature of the action.
23 The notice shall be given by mailing copies of the notice with postage prepaid to the
24 beneficiaries at their last known addresses. The trustee shall furnish the plaintiff with
25 a list of names and address of the beneficiaries within 10 days after the plaintiff makes
26 a written demand for the list. Notification of the persons on the list constitutes
27 compliance with the duty placed on the plaintiff by this subsection.

28 (g) Nothing in this section may be construed to change the existing law with
29 regard to the liability of trustees of charitable trusts for torts of the trustees or their
30 employees.

31 **Sec. 13.36.190. Personal liability for tort committed by trustee.** A trustee

1 may be held personally liable for a tort committed by the trustee, or by the trustee's
2 agents or employees in the course of their agency or employment, subject to the rights
3 of exoneration or reimbursement under AS 13.36.180.

4 **Sec. 13.36.195. Power of settlor of trust.** (a) The settlor of a trust affected
5 by AS 13.36.105 - 13.36.295 may, by provision in the instrument creating the trust if
6 the trust is created by a writing, by oral statement to the trustee at the time of the
7 creation of the trust if the trust is created orally, or by an amendment of the trust if the
8 settlor reserved the power to amend the trust,

9 (1) relieve the trustee from any or all of the duties, restrictions, and
10 liabilities that would otherwise be imposed on the trustee by AS 13.36.105 - 13.36.295;

11 (2) alter or deny to the trustee any or all of the privileges and powers
12 conferred on the trustee by AS 13.36.105 - 13.36.295; or

13 (3) add duties, restrictions, liabilities, privileges, or powers, to those
14 imposed or granted by AS 13.36.105 - 13.36.295.

15 (b) Notwithstanding (a) of this section, an act of the settlor may not relieve a
16 trustee from the duties, restrictions, and liabilities imposed on the trustee by
17 AS 13.36.140, 13.36.145, or 13.36.150.

18 **Sec. 13.36.200. Power of beneficiary of trust.** A beneficiary of a trust
19 affected by AS 13.36.105 - 13.36.295 may, if the beneficiary has full legal capacity
20 and acts on full information, by written instrument delivered to the trustee, relieve the
21 trustee, as regards the beneficiary, from any or all of the duties, restrictions, and
22 liabilities that would otherwise be imposed on the trustee by AS 13.36.105 - 13.36.295,
23 except for the duties, restrictions, and liabilities imposed by AS 13.36.140 - 13.36.150.
24 The beneficiary may release the trustee from liability to the beneficiary for past
25 violations of AS 13.36.105 - 13.36.295.

26 **Sec. 13.36.205. Relieving trustee of duties; power of the court.** A court of
27 competent jurisdiction may, for cause shown and on notice to the beneficiaries, relieve
28 a trustee from any or all of the duties and restrictions that would otherwise be placed
29 on the trustee by AS 13.36.105 - 13.36.295 or wholly or partly excuse a trustee who
30 has acted honestly and reasonably from liability for violations of AS 13.36.105 -
31 13.36.295.

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Sec. 13.36.210. Liability for violations. If a trustee violates a provision of AS 13.36.105 - 13.36.295, the trustee may be removed as trustee and denied compensation in whole or in part, and a beneficiary, co-trustee, or successor trustee may treat the violation as a breach of trust.

Sec. 13.36.290. Definitions. In AS 13.36.105 - 13.36.295, unless the context or subject matter otherwise requires,

Sec. 13.36.280 deleted.

(1) "affiliate" means a person directly or indirectly controlling or controlled by another person or a person under direct or indirect common control with another person, including a person with whom a trustee has an express or implied agreement regarding the purchase of trust investments by each from the other, directly or indirectly, except a broker or stock exchange;

(2) "relative" means a spouse, ancestor, descendant, brother, or sister;

(3) "trust" means an express trust only;

(4) "trustee" includes a trustee that is a corporation or a natural person and a successor or substitute trustee.

Sec. 13.36.295. Short title. AS 13.36.105 - 13.36.295 may be cited as the Alaska Trusts Act.

* **Sec. 13.** AS 13.36.310 is amended to read:

Sec. 13.36.310. Challenges to trusts. Except as provided in AS 34.40.110, a trust that is covered by AS 13.36.035(c) or that is otherwise governed by the laws of this state, or a property transfer to a trust that is covered by AS 13.36.035(c) or that is otherwise governed by the laws of this state, is not void, voidable, liable to be set aside, defective in any fashion, or questionable as to the settlor's capacity, on the grounds that the trust or transfer avoids or defeats a right, claim, or interest conferred by law on a person by reason of a personal or business relationship with the settlor or by way of a marital or similar right. [IN THIS SECTION, "SETTLOR" MEANS A PERSON WHO TRANSFERS PROPERTY IN TRUST; "SETTLOR" INCLUDES A PERSON WHO FURNISHES THE PROPERTY TRANSFERRED TO A TRUST EVEN IF THE TRUST IS CREATED BY ANOTHER PERSON.]

* **Sec. 14.** AS 13.36.310 is amended by adding new subsections to read:

(b) If a trust or a property transfer to a trust is voided or set aside under (a)

1 of this section, then the trust or property transfer shall be voided or set aside only to
 2 the extent necessary to satisfy the settlor's debt to the creditor or other person at whose
 3 instance the trust or property transfer is voided or set aside and the costs and attorney
 4 fees allowed under the rules of court.

5 (c) If a trust or a property transfer to a trust is voided or set aside under (a)
 6 of this section, and if the court is satisfied that the trustee has not acted in bad faith
 7 in accepting or administering the property that is the subject of the trust,

8 (1) the trustee has a first and paramount lien against the property that
 9 is the subject of the trust in an amount equal to the entire cost, including attorney fees,
 10 properly incurred by the trustee in a defense of the action or proceedings to void or
 11 set aside the trust or the property transfer;

12 (2) the trust or property transfer that is voided or set aside is subject
 13 to the proper fees, costs, preexisting rights, claims, and interest of the trustee and any
 14 predecessor trustee that have not acted in bad faith; and

15 (3) the beneficiary, including the settlor, may retain a distribution made
 16 by exercising a trust power or discretion vested in the trustee of the trust, if the power
 17 or discretion was properly exercised before the commencement of the action or
 18 proceeding to void or set aside the trust or property transfer.

(a) deleted

19 * **Sec. 15.** AS 13.36 is amended by adding new sections to read:

20 **Sec. 13.36.320. Nonqualified persons serving as trustees.** (a) If at least one
 21 qualified person serves as trustee of a trust whose state jurisdiction provision is valid,
 22 effective, and conclusive under AS 13.36.035(c), then the following persons also may
 23 serve as trustees even though they are not qualified persons:

24 (1) individuals who do not reside in Alaska;

25 (2) trust companies that have their principal place of business outside
 26 of Alaska and that are not organized under AS 06.25; and

27 (3) banks that have their principal place of business outside of Alaska
 28 or that are not organized under AS 06.05.

29 (b) Notwithstanding other provisions of law to the contrary, a trustee who is
 30 not a qualified person is not considered to be engaging in business in this state solely
 31 by reason of serving as trustee of a trust whose state jurisdiction provision is valid,

1 effective, and conclusive under AS 13.36.035(c).

2 **Sec. 13.36.330. Penalty clause.** A provision in an inter vivos or testamentary
3 trust purporting to penalize a beneficiary by charging the beneficiary's interest in the
4 trust, or to penalize the beneficiary in another manner, for instituting a proceeding to
5 challenge the acts of the trustee or other fiduciary of a trust, or for instituting other
6 proceedings relating to the trust, is enforceable even if probable cause exists for
7 instituting the proceedings.

8 * **Sec. 16.** AS 13.36.390 is amended by adding a new paragraph to read:

9 (3) "settlor" means a person who transfers property in trust and includes
10 a person who furnishes the property transferred to a trust even if the trust is created
11 by another person.

12 * **Sec. 17.** AS 13.38.060 is repealed and reenacted to read:

13 **Sec. 13.38.060. Bonds, obligations, and other property; premium and**
14 **discount.** (a) A bond or other obligation for the payment of money is principal at its
15 inventory value except as provided in (b) of this section. The trustee may not make
16 a provision for amortization of a premium or for accumulation for discount.

17 (b) Except to the extent otherwise provided in the governing instrument, an
18 increase in the value of the following above inventory value is distributable as income:

19 (1, a zero coupon bond;

20 (2) an annuity contract before annuitization;

21 (3) a life insurance contract before the death of the insured;

22 (4) an interest in a common trust fund; in this paragraph, "common
23 trust fund" has the meaning given in 26 U.S.C. 584 (Internal Revenue Code);

24 (5) an interest in a limited liability company, limited liability
25 partnership, or a limited partnership; and

26 (6) another obligation for the payment of money if the money is
27 payable at a future time under a fixed, variable, or discretionary schedule of
28 appreciation and if the payment exceeds the price at which the obligation was issued.

29 (c) The increase in value of the obligations described in (b) of this section is
30 distributable to the beneficiary who was the income beneficiary at the time of the
31 increase. The increase is distributable from the first cash available from the principal

1 or, if cash is not available from the principal, when cash is first available from the
2 principal due to a sale, a redemption, or another disposition. When an unrealized
3 increase is distributed as income from principal, the principal shall be reimbursed when
4 the increase is realized.

5 (d) In this section, the increase in value of an obligation described in (b) of
6 this section is not available for distribution unless the trustee receives cash on account
7 of the obligation.

8 (e) Notwithstanding a provision in this section to the contrary, a distribution
9 from a partnership or limited liability company attributable to the cash flow or income
10 derived from operations regularly carried on by the partnership or limited liability
11 company is income, except to the extent otherwise provided in the governing
12 instrument.

13 * Sec. 18. AS 13.41.005 is amended to read:

14 Sec. 13.41.005. Application. Except as provided by AS 13.06.068, this
15 [THIS] chapter applies to the disposition at death of the following property acquired
16 by a married person:

17 (1) all personal property, wherever situated,

18 (A) that was acquired as or became, and remained, community
19 property under the laws of another jurisdiction; or

20 (B) all or the proportionate part of which was acquired with the
21 rents, issues, or income of, or the proceeds from, or in exchange for, that
22 community property; or

23 (C) traceable to that community property;

24 (2) all or the proportionate part of any real property situated in this
25 state that was acquired with the rents, issues, or income of, the proceeds from, or in
26 exchange for, property acquired as or that [WHICH] became, and remained,
27 community property under the laws of another jurisdiction, or property traceable to that
28 community property.

29 * Sec. 19. AS 13.41.010 is amended to read:

30 Sec. 13.41.010. Rebuttable presumptions. Subject to AS 13.06.068, in [IN]
31 determining whether this chapter applies to specific property, the following rebuttable

1 presumptions apply:

2 (1) property acquired during marriage by a spouse of that marriage
3 while domiciled in a jurisdiction under whose laws property could then be acquired as
4 community property is presumed to have been acquired as or to have become, and
5 remained, property to which this chapter applies; and

6 (2) real property situated in this state and personal property wherever
7 situated acquired by a married person while domiciled in a jurisdiction under whose
8 laws property could not then be acquired as community property, title to which was
9 taken in a form that created rights of survivorship, are [IS] presumed not to be
10 property to which this chapter applies.

11 * Sec. 20. AS 34.40.110(d) is amended to read:

12 (d) A cause of action or claim for relief [PERSON MAY NOT BRING AN
13 ACTION] with respect to a fraudulent transfer [CLAIM ALLOWED] under (b)(1)
14 of this section, or under other law, is extinguished unless the action is brought as
15 to a person who [IF THE PERSON]

16 (1) is a creditor when the trust is created, [UNLESS THE ACTION IS
17 BROUGHT] within the later of

18 (A) four years after the transfer is made; or

19 (B) one year after the transfer is or reasonably could have been
20 discovered by the person; or

21 (2) becomes a creditor subsequent to the transfer into trust, [UNLESS
22 THE ACTION IS BROUGHT] within four years after the transfer is made.

23 * Sec. 21. AS 34.40.110 is amended by adding a new subsection to read:

24 (f) If a trust contains a transfer restriction allowed under (a) of this section, the
25 transfer restriction prevents a creditor existing when the trust is created, a person who
26 subsequently becomes a creditor, or another person from asserting any cause of action
27 or claim for relief against a trustee of the trust or against others involved in the
28 preparation or funding of the trust for conspiracy to commit fraudulent conveyance,
29 aiding and abetting a fraudulent conveyance, or participation in the trust transaction.
30 The creditor and other person prevented from asserting a cause of action or claim for
31 relief is limited to recourse against the trust assets and the settlor to the extent allowed

1 under AS 34.40.010.

AS 13.12.506 deleted

2 * Sec. 22. AS 13.36.035(e) and 13.36.095(a) are repealed.

3 * Sec. 23. COURT RULES. (a) AS 13.36.175(c), enacted by sec. 12 of this Act, changes
4 Rule 24, Alaska Rules of Civil Procedure, by allowing a beneficiary, or the attorney general
5 and certain corporations under certain circumstances, to intervene in an action on a contract
6 against a trustee without satisfying the criteria in the court rule.

7 (b) AS 13.36.185(d), enacted by sec. 12 of this Act, changes Rule 24, Alaska Rules
8 of Civil Procedure, by allowing a beneficiary to intervene in a tort action against a trust
9 without satisfying the criteria in the court rule.

10 * Sec. 24. AS 13.06.068, enacted by sec. 1 of this Act, does not apply to a will except for
11 the will of a person dying on or after the effective date of this Act.

12 * Sec. 25. AS 13.36.043, enacted by sec. 9 of this Act, AS 13.36.105 - 13.36.295, enacted
13 by sec. 12 of this Act, AS 13.36.310, amended by secs. 13 and 14 of this Act, AS 13.36.320
14 and 13.36.330, enacted by sec. 15 of this Act, and AS 13.36.390(3), enacted by sec. 16 of this
15 Act, apply only to

16 (1) testamentary trusts created by wills, or codicils, of persons dying on or
17 after the effective date of this Act regardless of when the trusts and codicils are executed;

18 (2) nontestamentary trusts created on or after the effective date of this Act; and

19 (3) testamentary or nontestamentary trusts that are registered or reregistered
20 after the effective date of this Act if the registrations state that the trusts will be governed by
21 this Act.

22 * Sec. 26. AS 13.38.060, as amended by sec. 17 of this Act, does not apply to a trust
23 unless the trust is created on or after the effective date of this Act.

24 * Sec. 27. AS 13.36.175(c) and 13.36.185(d), enacted by sec. 12 of this Act, take effect
25 only if sec. 23 of this Act receives the two-thirds majority vote of each house required by art.
26 IV, sec. 15, Constitution of the State of Alaska.

Alaska State Legislature

House of Representatives

COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE
MILITARY & VETERANS AFFAIRS
COMMUNITY & REGIONAL AFFAIRS
OIL & GAS



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Sponsor Statement

CSHB 196

“The Omnibus Estate and Trust Improvement Act”

This bill makes a number of important improvements to Alaska's estate and trust laws. The purpose of this legislation is to make Alaska more attractive to Alaskans and to persons outside of Alaska who want to settle new trusts in Alaska or move their existing trusts to Alaska. This bill is intended to keep Alaska in the forefront of the domestic and international trust industry. The references to specific sections of the bill corresponds with the sections that appear in the current version "F" of House Bill 196.

Sections 1-8, 18 and 19 of the bill change Alaska law to permit a person who is domiciled outside of Alaska to select Alaska as the jurisdiction for the probate of her estate. This provision should bring significant business to our state.

Sections 9 clarifies that a trust created in another state or country can be moved to Alaska even though the trust was settled before the Alaska Trust Act was passed last year and states how to move the trust to Alaska. This provision should encourage people to move their trusts from offshore jurisdictions and from other states to Alaska.

Section 10 modifies a trustee's standard of care from that of a prudent man to that of a prudent person.

Section 11 modifies AS 13.36.095(b) to provide that the pre-existing general rule, that a trustee is personally liable for obligations arising from ownership or control of property of the trust or for torts committed in the course of administration of a trust only if personally at fault, is subject to new sections AS 13.36.105 - 13.36.295.

Section 12 sets out the new Alaska Trusts Act which, in large part, is derived from the Uniform Trusts Act. Each section from AS 13.36.105 through 13.36.295 will be addressed independently.

AS 13.36.105 states that the powers of a trustee are attached to the office and are not personal.

AS 13.36.107 sets forth the general powers of a trustee.

AS 13.36.109 sets forth a list of specific powers of trustees. These are standard powers that would modify the powers in every trust. It is a good idea to have a statutory list of powers because some trusts do not include a thorough list of powers and in the case of an oral trust, no powers are listed at all.

AS 13.36.110 provides that only the trustee who exercises a power will be held liable for its actions and that the other trustees who did not participate in the exercise of the power would not be held liable. This provision will encourage trustees in Alaska to work with other trustees of the same trust. For example, the Alaska trustee's powers could be limited to purely administrative matters and the trustee with investment powers could be from another state or country. AS 13.36.110 would limit the Alaska administrative trustee from claims by beneficiaries caused by the imprudent investment of trust assets caused by the non-Alaska investment trustee.

AS 13.36.120 provides that a trustee is liable for loss for failure to use reasonable care in deciding how to vote stock held in trust.

AS 13.36.125 provides that when a bank account is opened to pay dividends, interest, interest coupons, salaries, wages, pensions, or other employee benefits, the depositor is considered a trustee of the account for the creditor.

AS 13.36.130 provides that if a beneficiary of an account under AS 13.36.125 does not present its claim to the bank within one year after the claim is due, the depositor may revoke the trust as to the beneficiary.

AS 13.36.135 sets out the a procedure for allowing a trustee to hold title to trust assets in the name of a nominee. This is a common business practice of corporate trustees.

AS 13.36.140 provides that a corporate trustee may not loan trust funds to itself or an affiliate to a director, an officer, or an employee of itself or an affiliate. In addition, a non-corporate trustee may not lend funds to itself, a relative, an employer, an employee, or a partner or other business associate.

AS 13.36.145 sets out a procedure to allow a corporate trustee to deposit trust funds with itself rather than with another financial institution.

AS 13.36.150 prohibits a trustee from buying or selling property from or to itself or an affiliate, a director, officer, or an employee of the trustee or an affiliate or a relative, an employer, or partner or other business associate.

AS 13.36.155 permits a trustee in certain instances to buy and sell assets between two trusts of which it is trustee. The purpose of this provision is to permit the trustee to save brokerage commissions for the two trusts.

AS 13.36.157 is not from the Uniform Trusts Act. It gives a trustee who has the power to invade corpus of a trust for the benefit of a beneficiary to appoint the corpus of the trust to another trust for the benefit of the beneficiary. This provision will allow trustees to transfer assets from trusts that will terminate in the near future to perpetual trusts. This provision should bring significant trust business to Alaska.

AS 13.36.160 prohibits a trustee from buying its own stock.

AS 13.36.165 reverses the old "first in, first out" rule that applies when a trustee wrongfully steals money from a common fund with assets from two or more trusts or when a trustee wrongfully mingles its own assets in a common fund with assets from two or more trusts. The "first in, first out" rule provides that the trustee is deemed to have stolen first the money that was first transferred to the common fund. AS 13.36.165 is thought to set forth a more fair rule. It provides that the trustee is deemed to have stolen the money in proportion that each trust has contributed to the common fund.

AS 13.36.170 provides that when an interest in real property is conveyed by deed to a person in a trust that is unenforceable because of the statute of frauds and the trustee refuses to carry out the terms of the trust, the trustee has to convey the interest in real property back to the settlor.

AS 13.36.175 provides that when a trustee enters a contract that is within the trustee's powers with a third-party and the third-party enforces the contract in court, the third-party may collect its judgment against the trust. This section also sets out a procedure to allow a beneficiary of the trust to intervene in the litigation and to contest the third-party's right to enforce the contract against the trust.

AS 13.36.175 removes an old distinction between the remedies of a contract creditor against a trustee at law versus at equity. In the middle ages in England there were courts of law and courts of equity. In courts of law trustees in their capacity as trustee were not recognized as legal persons and could not be sued in their capacity as trustee. In courts of equity trustees could be sued in their capacity as trustee. Therefore, when a contract creditor filed a suit at law, it was filed against the trustee in its private capacity. Later the trustee would seek reimbursement from the trust.

AS 13.36.180 provides that a trustee who has incurred personal liability for a tort committed in the administration of the trust is entitled to exoneration from the trust if the tort was a common incident of the kind of business the trust was engaged or if the tort was not a common incident, if the trustee was not personally at fault.

A simple example may illustrate the application of AS 13.36.180. If we assume that a person, who operates a delivery service as a sole proprietor, dies and appoints a trustee who decides to continue the business on a temporary basis until it can be sold. While making a delivery an employee of the business is negligent and injures a third party. The third party sues the trustee, not the trust. Since the employee was negligent, the trustee will be liable under the doctrine of respondeat superior, even though the trustee was not personally at fault. AS 13.36.180 would allow the trustee to be reimbursed by the trust in this instance because the delivery was a "common incident" in the operation of the decedent's business.

AS 13.36.185 is similar in purpose to AS 13.36.175 and 13.16.180. AS 13.36.185 provides that a trustee can be sued for tort committed during the course of trust administration and collection can be made from the trust property if (1) the tort was a common incident of the trust's business, (2) although the tort was not a common incident, the trustee was not personally at fault, or (3) the tort increased the value of the trust assets.

AS 13.36.190 provides that a trustee is personally liable for its torts subject to the rights of exoneration or reimbursement under AS 13.36.180.

AS 13.36.195 confirms that the settlor of a trust may limit a trustee's liability or increase the liability of the trustee from that provided in AS 13.36.105 - 13.36.295 by making an appropriate provision in the trust instrument. Many settlors want to limit the trustee's liability in return for lower trustee's fees.

AS 13.36.200 confirms that the beneficiary of a trust may limit a trustee's liability from that provided in AS 13.36.105 - 13.36.295 by a written instrument.

AS 13.36.205 allows a court for good cause and on notice to beneficiaries relieve a trustee from any or all duties and restricts otherwise placed on a trust by AS 13.36.105 - 13.36.295.

AS 13.36.210 provides that if a trustee violates a provision of AS 13.36.105 - 13.36.295, the trustee may be removed as trustee and be denied compensation and that the successor trustee or beneficiary may treat the violation as a breach of trust.

AS 13.36.290 defines some of the key terms that appear in AS 13.36.105 - 13.36.295.

AS 13.36.295 states that AS 13.36.105 - 13.36.295 may be cited as the Alaska Trusts Act.

Sections 13 and 14 protect an Alaska trustee who in good faith defends an Alaska trust from the claims of a creditor who seeks to set the trust aside. If the trustee acts in good faith, then the

trustee gets a first lien on all trust assets for payment of its fees, costs and attorneys' fees. Delaware has adopted a similar provision to protect its trustees.

Section 15 contains two new provisions. AS 13.36.320 clarifies that a non-Alaska trustee may serve as co-trustee with an Alaska trustee of an Alaska trust and shall not be deemed to have conducted business in Alaska merely by serving as co-trustee. This provision should encourage Alaska corporate trustees to form relationships with corporate trustees from outside of Alaska. If the corporate trustees from outside of Alaska are considered to be doing business in Alaska merely because they are co-trustee, then this will encourage those corporate trustees to qualify as trustees in Alaska and compete with the existing trust companies in Alaska.

The other provision in Section 15, AS 13.36.330, allows a settlor of a trust to penalize a beneficiary of a trust for initiating litigation against the trust even if probable cause exists for initiating the litigation. Many settlors want to include a penalty provision in their trusts because they do not want the trust to end up in litigation. One way to avoid litigation is to insert a penalty provision and to name one or more persons as trust protector. The trust protector has the power to remove the trustee without cause and without any litigation. The purpose of the trust protector is to resolve disputes with uncooperative or unresponsive trustee by firing them. If a beneficiary has a complaint about a trustee, then she can report the complaint to the trust protector. If the trust protector feels that the complaint has merit, the trust protector can fire the trustee without bringing the matter before the courts. However, assuming the trust protector determines that the complaint is without merit, if the beneficiary sues the trustee, the beneficiary is penalized rather than penalizing all beneficiaries of the trust.

Section 16 adds a definition for "settlor."

Section 17 clarifies the accounting of bond premiums and discounts.

Sections 18 and 19 contain amendments to AS 13.41.005 and 13.41.010 that are necessitated by the new provisions in Section 1 of the bill.

Section 20 amends AS 34.40.110(d) to be consistent with the Uniform Fraudulent Transfers Act.

Section 21 adds a new subsection to AS 34.40.110 that precludes an action by creditors of the grantor of the trust against those who assist in the creation of the trust.

Sections 22 through 27 are self-explanatory.

National Bank of Alaska



March 25, 1998

Corporate Headquarters
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Phone (907) 522-8896

Joe Ryan, Representative
Alaska State House of Representatives

VIA Fax (907) 465-4588

Dear Representative Ryan:

My name is David L. Dobbs and I am a trust officer with National Bank of Alaska who has over 35 years of direct trust experience in three states, including Alaska.

I was provided with a copy of the memo from Brian Porter to you dated March 23, 1998, indicating his concerns about IIB 196 ("E" version).

I reviewed the Memo in detail and can assure you that all the concerns voiced have long been well resolved in an appropriate manner and should not be a point of contention or need resolution.

There is a great volume of legislation, regulations and the common law of trusts that fully answers the questions raised. One controlling set of regulations is commonly referred to as Reg. 9 and is that section of the regulations of the Comptroller of the Currency that controls and regulates the activities of national bank trust departments.

I respectfully suggest that the concerns raised in Mr. Porter's are not valid and should not impede the passage of the proposed legislation.

If I may be of assistance, I am available during office hours at (907) 265-2959.

Respectfully submitted

A handwritten signature in black ink, appearing to read "David L. Dobbs".

David L. Dobbs
Vice President &
Trust Officer

Sponsor Statement for HB 196

This Sponsor Statement provides a Summary the Trust and Probate Improvement bill. In broad scope, this bill would make three changes to Alaska law.

Validity and Probate of Wills

First, it would provide specific rules as to how the validity and effect of a person's Will would be determined. These rules are derived primarily from New York law which has used them effectively for over 25 years. Among other things, these rules would permit a person who resides outside of Alaska to direct for his or her Will to be admitted to probate in Alaska. This, for example, will allow a person who does not reside in Alaska to be able to create trusts under the new Alaska Trust Act on death by Will. This should result in business for Alaska banks and trust companies and Alaska professionals in the tax, financial and legal industries.

Uniform Trusts Act

This bill would also adopt the Uniform Trusts Acts which has been adopted in several other states. This Uniform Act provides certain definitive rules about certain trustee responsibilities and obligations. Some modifications to the language of the Uniform Act are made by the bill. These modifications are intended, among other things, to clarify that a trustee is responsible only for those powers which the trustee is authorized to exercise.

Allocation of Receipts to Trusts

The bill also would make changes to the rules relating to the allocation of receipts between income and principal of trusts. Similar provisions have been enacted in other states, including Delaware and South Dakota. Among other consequences, it will allow certain charitable remainder trusts to operate more efficiently under Alaska law than under the law of certain other states. A similar provision adopted under Delaware law has caused three of the country's largest trust institutions, the Chase Manhattan Bank, J.P. Morgan Trust Company and Wilmington Trust Company, to offer "commercial" forms of charitable remainder trusts under the law of the state of Delaware. This change will permit Alaskans to be able to create similar trusts under the law of Alaska and will permit institutions in Alaska having trust powers to offer products similar to those offered by Chase, J.P. Morgan and Wilmington Trust.

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April 22, 1998

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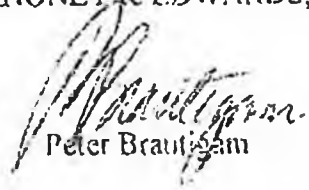
Dear Representative Green:

I am an attorney who practices almost exclusively in the area of estate and tax planning. I am the past chairman of both the Tax Law Section and Probate and Estate Planning Section of the Alaska Bar Association. I believe HB 196 would be very beneficial for all Alaskans and I would appreciate your full support of HB 196.

Sincerely,

HARTIG, RHODES, NORMAN,
 MAHONEY & EDWARDS, P.C.

By:


 Peter Brautigam

PBB:jh
 P-XCHGUMHTC196LTR

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April 20, 1998

**TRANSMITTED BY FAX:
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Representative Joe Green
Representative Con Bunde
Representative Jeannette James
Representative Brian Porter
Representative Norman Rokeberg
Representative Ethan Berkowitz
Capitol Building
Juneau, Alaska 99801

Re: House Bill 196

Dear Gentlemen and Madam:

Recently it has come to my attention that during my testimony on March 6 before the House Judiciary Committee that some misconceptions may have arisen concerning House Bill 196, entitled "An Act Relating to Wills, Intestacy, Non-Probate Transfers, and Trusts"; and amending Rule 24, Alaska Rules of Civil Procedure.

During that testimony Mr. Croft asked a question about portions of the acting coming from Uniform Laws and whether or not portions were consistent with the intent with the uniform drafters. Mr. Croft suggested that if that were true, Mr. Croft would trust the uniform drafters actions. That inquiry regarding the particular portion of the Act which came from the Uniform Act might have been an inquiry to assure him that the language incorporated in House Bill 196 did in fact conform to the uniform drafters intent. My explanation may have been unclear. It was not my intent to suggest that House Bill 196 is in anyway a Uniform Act. Quite the contrary, while portions are very similar, House Bill 196 is intended to supplement the Alaska Trust Law enacted last year which is focused upon making Alaska one of the premier jurisdictions for trusts, estate planning and similar activities involved in that portion of the financial industry. There is included in Section 12 of House Bill 196 language which came from the South Dakota enactment of the Uniform Trust Act. Those provisions are partially intended to provide a reference for "incorporation by reference" purposes of various fiduciary powers that may be used for the convenience of drafters of wills and trusts in the State of Alaska. An attorney could cite to the specific sections of the statutes and include them by reference in a document rather than adding to the volume of the document by individually laying out each of those powers.

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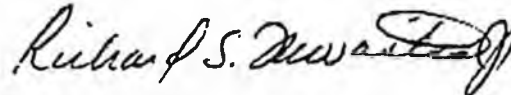
In addition, on page 12 of the work draft "F" lines 12 through 16, an inclusion was made of a provision that was apparently done specifically for a particular institution in South Dakota. This provision is not necessary and should be deleted.

House Bill 196 is intended to facilitate the administration of trusts and estates in Alaska with Alaska fiduciaries. Because this will involve trustees from other jurisdictions and parties from other jurisdictions it is intended to permit by statute a more definitive breakdown of a liability between fiduciaries.

As a further note concerning my testimony in March, it became apparent that I would undoubtedly spend more than four hours working on this bill during the month of March as a result I registered myself as a lobbyist for the Alaska Trust Company.

If there are any questions or further clarifications that you might desire, please feel free to contact me. I anticipate being available for further hearings or meetings concerning this legislation.

Sincerely,



Richard S. Thwaites, Jr.

RST/mh

cc: Representative Joe Ryan, Bill Sponsor

Available in Law Libraries throughout the state.

UNIFORM TRUSTS ACT

An Act concerning trusts and trustees and to make uniform the law with reference thereto.

1937 ACT

Section

1. Definitions.
2. Bank Account to Pay Special Debts.
3. Loan of Trust Funds.
4. Corporate Trustee Depositing Trust Funds with Self.
5. Trustee Buying from or Selling to Self.
6. Trustee Selling from One Trust to Another Trust.
7. Corporate Trustee Buying its Own Stock.
8. Voting Stock.
9. Holding Stock in Name of Nominee.
10. Powers Attached to Office.
11. Powers Exercisable by Majority.
12. Contracts of Trustee.
13. Exoneration or Reimbursement for Torts.
14. Tort Liability of Trust Estates.
15. Withdrawals from Blended Trust Funds.
16. Unenforceable Oral Trust Created by Deed.
17. Power of Settlor.
18. Power of Beneficiary.
19. Power of the Court.
20. Remedies for Violations of Act.
21. Uniformity of Interpretation.
22. Short Title.
23. Severability.
24. Repeal.
25. Time of Taking Effect.

As it enacted . . .

§ 1. (Definitions)

As used in this Act, unless the context or subject-matter otherwise requires:

1. "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a business trust, an unincorporated organization, or two or more persons having a joint or common interest.
2. "Trustee" includes trustees, a corporate as well as a natural person and a successor or substitute trustee.
3. "Relative" means a spouse, ancestor, descendant, brother or sister.
4. "Affiliate" means any person directly or indirectly controlling or controlled by another person, or any person under direct or indirect

TRUSTS ACT

control with another person. It includes any person with whom a trustee has an express or implied agreement regarding the purchase of trust investments by each from the other, directly or indirectly, except a broker or stock exchange.

5. "Trust" means an express trust only.

Action in Adopting Jurisdiction

Verbatim from Official Text: *New Mexico. In subsec. (3), edit "And executor, administrator, guardian, conservator, trustee or trustee of an inheritance or testamentary trust;" at the end thereof.*

Literary References

Trusts 4-7.
C.J.E. Trusts 53 & 20

Notes of Decisions

Construction of trust 6
Charitable as trustee 7
Readings 8
Retrospective effect 1
Trusts
Generally 2
Constructive trusts 3
Blended trusts 4
Noncharitable trusts 5

trustee's death, was not given trustee before trustee's death, beneficiaries did not become a part of trust estate. *Dalgreen v. First National Bank of Nevada*, 1978, 100 P.2d 678, 94 Nev. 287.

Where testamentary trust specified beneficiaries who were in labor trust corpus of trust terminated, trust did not fail to specify principal beneficiaries so as to result in such termination of corpus to beneficiaries at trust termination being characterized as an invalid substitution. *Guerrero v. Martinez*, 134 App. 1973, 273 So.2d 617.

1. Retrospective effect:
Texas Trust Act which was enacted in 1943 had no application to transactions which occurred in 1936 and which allegedly involved a parcel trust. *Garza v. Garza De Ortiz*, Tex. Civ. App. 1954, 287 S.W.2d 804.

The 1943 trust act did not operate retroactively so as to bar past evidence of trust arising before its passage, notwithstanding that trust was held testamentary. *Blair v. Saylor*, 1945, 160 S.W.2d 477, 164 Tex. 184.

2. Trusts—Generally
Testamentary trust providing that the executor of trust, both income and principal, be administered by trustees for the "care and trustment of needy crippled children of (Missouri) County, Oklahoma," to be selected by trustees, as finally established that clause to be beneficial thereby. *Wiley v. Wiley Trust*, D.C.Md. 1946, 261 F.Supp. 977.

Where title to trustee's condominium, which under terms of trust agreement was to be distributed to named beneficiary upon

No particular language is required to create a trust and it suffices if the instrument as a whole reflects intent to establish a trust relationship. *St. Charles Land Trust, Acheson v. St. Charles*, 1948, 217 So.2d 265, 263 La. 233.

3. Constructive trusts
Constructive trust is a somewhat device by which holder of legal title to property is held to be a trustee of that property for the benefit of another who in good conscience is entitled to it. *Carson v. Lockers*, 1962, 163 P.2d 813, 98 Nev. 502.

Constructive trust will arise and affect property acquisitions under circumstances where confidential relationship exists between parties, retention of legal title to a holder thereof against another would be inequitable, and the retention of such a trust is essential to the effectuation of justice. *Id.*

Where oral agreement provided that in

HOUSE JUDICIARY STANDING COMMITTEE

March 6, 1998

1:07 p.m.

16-Jud
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HB 196 - WILLS, TRUSTS, & OTHER TRANSFERS

Number 460

CHAIRMAN GREEN announced the committee would hear HB 196, "An Act relating to wills, intestacy, nonprobate transfers, and trusts; and amending Rule 24, Alaska Rules of Civil Procedure," sponsored by Representative Ryan.

Number 545

REPRESENTATIVE JOE RYAN came before the committee to explain the legislation. He noted there is a proposed committee substitute, Version B. He read the following statement into the record:

"The bill makes a number of important improvements to Alaska's estate and trust laws. Sections 1 to 8, 18 and 19 of the bill changes Alaska law to permit a person who is domiciled outside of Alaska to select Alaska as their jurisdiction for the probate of his or her estate. This provision should bring significant business to the state. In other jurisdictions they give the attorneys a percentage of the estate as fee. Alaska doesn't, you only get the time you spend and it will keep people from necessarily having to go to another state to probate the will. It can be probated here in Alaska.

"Sections 9 and 10 of the bill allow a person to limit the liability of a trustee in his or her trust when more than one trustee is serving. The person could provide only the trustee who exercises a power will be held liable for its actions and that the other trustees who did not participate in the exercise of the power would not be held liable for that (indisc.) other trustee. This provision will encourage trustees in Alaska to work with other trustees of the same trust.

"The Uniform Trust Act included in Section 11 which clarifies many issues involving the administration of trusts in Alaska.

"Section 12 protects an Alaska trustee who in good faith defends an Alaska trust from the claims of a creditor who seeks to set the trust aside. If the trustee acts in good faith, then the trustee gets a first lien on all trust assets for payment of its fees, costs and attorneys' fees. Delaware has adopted a similar provision to protect its trustees.

"Section 14 clarifies that a trust created in another state or country can be moved to Alaska even though the trust was settled before the Alaska Trust Act was passed last year.

"The Uniform Trustee's Powers Act is enacted in Section 16. Alaska does not have a statutory provision that sets out the powers of a trustee. These statutory powers would supplement the powers set

forth in a trust agreement.

"A number of miscellaneous provisions are included elsewhere in the bill. Section 15 allows a person to include a penalty clause in his or her trust. Section 17 clarifies the accounting of bond premiums and discounts. Section 20 amends AS 34.40.110(d) to be consistent with the Uniform Fraudulent Transfers Act. Section 21 precludes an action by creditors of the grantor of the trust against those who assist in the creation of the trust.

"The bill will improve our estate and trust laws and will make Alaska's laws more favorable to our residents. In addition, the bill will make our laws more attractive to people outside of Alaska who are considering Alaska for the administration of their estates and trusts."

REPRESENTATIVE RYAN noted that Richard Thwaites, a practicing attorney and the immediate past chairman of the state planning section of the Alaska Bar, would explain the technical aspects of the bill.

Number 716

RICHARD THWAITES, Attorney, came before the committee to answer questions.

REPRESENTATIVE ROKEBERG said he would like to know what the bill does.

MR. THWAITES said, "We are looking at Alaska, because of this new trust act, as a destination jurisdiction for this. Basically, what has happened in many of the national meetings everybody is now very attentive to Alaska as being the location to go for estate planning. This takes that one step further in that let's say that one of your relatives died in Kansas or some other jurisdiction because a defibrillator didn't work. There was no other relative down there and no reason for you, as the person who is doing the administration of the estate, to go down there. This bill provides that you can actually do that administration here in Alaska in your home or residence. And you just need to apply the Kansas law to the Kansas real estate or whatever that might be. And so it permits the jurisdiction of the court to extend to those types of probates. And even in our probate code, it is discretionary on the person to bring the action here. So in all of the other states it's likewise discretionary and they don't have to have a probate in that state if no assets are required. This also defers to that other jurisdiction which means if there is somebody down there who says, 'No, we want to have the probate there,' then you're going to have to defer to that jurisdiction. So if the Kansas court did come up and say they would have a priority, so this is only in a situation where no one is objecting. Typically, that would be the younger generation here wanting to do it there."

MR. THWAITES continued, "Further than that, it actually goes a little further and it allows perhaps someone setting up in an Alaska trust to also, as part of their state plan, suggest that Alaska would be the designated jurisdiction for the administration of their estate, say where there is a (indisc.) provision in their

will that whatever assets are still in their estate pours over to their Alaska trust. (Indisc.) omit that administration."

MR. THWAITES explained that California requires many hearings and a definitive process to go through the probate process. It also sets up statutory fees on a percentage basis of the estate. He said that as a result, many states have living trusts as the primary form of estate planning for the purpose of avoiding probate in those jurisdictions. He said Maine, Kentucky, Wisconsin, Alaska and Idaho are five states which do not have percentage fees. For that reason, it is often very convenient to go into the Alaska court where we have a nonintervention system. This means that no one ever has to attend a hearing or go to court, you merely hand the petition to the court. The court then authorizes a personal representative to act as long as the personal representative swears they will abide by all the probate rules. Mr. Thwaites said after distributions have occurred and after the minimum requirements have been met with the Department of Revenue, et cetera, there is a closing letter that they have to issue, when those things are done, the personal representative files a sworn statement closing the estate. That is called an informal administration of an estate which is fairly common to the 14 jurisdictions that have the uniform probate code. Mr. Thwaites said this, in essence, extends this option to all of the citizens of the United States which means that the lawyers, certified public accountants, trust officers, et cetera, might get additional business as a result of that. The state of Alaska would receive the additional fees for the filings, et cetera, that is also required.

MR. THWAITES pointed out that as a result of the Alaska Trust Act, one slight bonus has happened. In many of the state jurisdictions, the professors and so forth in those states are now recommending to their perspective lawyers that when considering the Alaska as jurisdiction for either trusts or estates, if they really want to make it solid they won't transfer some of their assets to Alaska, they will transfer a majority of their assets to Alaska. From a conservative standpoint, that means that you are solidly within both the situs meaning you've designated Alaska as a jurisdiction and the minority opinion which is substantial contact. There are two opinions on how to determine whether Alaska is the appropriate jurisdiction or not. By placing a majority of your assets that are in trust with the Alaska administrators and so forth, you have met both tests. Mr. Thwaites noted that the Oregon Bar, in a January letter to their members, has given a description about how to set these up. In their recommendation they suggest you ought to really have substantial contacts with Alaska, as well as declaring a situs of the jurisdiction. This is a further enhancement of that permitting, in the probate code a portion of the statute, designation of Alaska as the jurisdiction in the will as well as in the trust. It doesn't override the other.

Number 1095

CHAIRMAN GREEN said if you are going to transfer the assets of real property, that would be sold in the other state and be subject to any taxations. He referred money or jewelry and asked if there would be a taxation before they would be removed from that jurisdiction to Alaska jurisdiction.

Number 1131

MR. THWAITES explained that under the current common law of the United States, the tangible personal property passes in the state of which the person is domiciled. If someone in Oregon had tangible personal property, Oregon would impose a tax on that tangible personal property. However, if they had placed that property in an Alaska trust, the domicile of that property is then Alaska. Then the portion of the estate tax return concerning the tangible personal property, even though it's a Florida resident, would be paid to the Alaska Department of Revenue under the trust.

REPRESENTATIVE BERKOWITZ asked who is opposed to the bill and why.

Number 1225

MR. THWAITES responded that it would be the other jurisdictions that want to impose or protect their right to tax and levy against those assets. There is a certain right of the citizens of the United States, under the U.S. Constitution, to be able to freely transfer these things back and forth. He explained that Delaware's reaction to our last trust bill was that within 19 days after Alaska had passed legislation, they introduced and passed a similar statute. They even cited the Alaska statute as what they were trying to copy. He said, "They kind of messed it up because there were some other things that were placed in there that didn't make it work for tax reasons and they're attempting to straighten those out this years. But I think that Delaware and South Dakota are likewise trying to capitalize on being a destination situs, if you will, for those kinds of assets and it only affects the personality, it doesn't affect the real estate."

REPRESENTATIVE BERKOWITZ asked if there is any Alaskan opposition.

MR. THWAITES responded that he isn't aware of any.

Number 1259

CHAIRMAN GREEN asked if HB 196 is an addendum to the legislation passed last year. He asked if HB 196 covers intestation.

MR. THWAITES explained the legislation last year covered the trust law. There are many parts to HB 196. The main part of the bill, as far as probate goes, is the probate portion. Mr. Thwaites referred to the section regarding the trustees that Representation Ryan spoke about does affect the corporate fiduciaries or individual fiduciaries that might be involved. He said, "For example, if your bother-in-law and sister-in-law acted as a trustee along with an Alaska bank or someone else, they wouldn't be liable for the bank's actions and the bank wouldn't be liable for their actions. So it makes it more acceptable for those corporate fiduciaries to accept that work. Presently, in most jurisdictions the corporate fiduciaries -- if they're going to have some liability, they're concern about, 'If I have a little bit of the liability, I'm going to have all the liability.' And they're less than willing to go ahead and co-administer a fund and this will limit that exposure and encourage co-administration so that you

have a family member involved, perhaps with the corporate fiduciary and not having the liability pass back and forth one to the other."

Number 1330

REPRESENTATIVE CROFT said there are some portions of the bill that are uniform laws or come from uniform reforms. There are some that merely relate to transferability of trust properties. He said those seem to him to be acceptable because he tends to trust the uniform drafters. A transfer type of operation seems to him to be substantively neutral. It just allows them to bring the trust property to Alaska or it expedites the ways they can do that. Representative Croft stated he is more interested in the substantive changes. He said, "Aside from the ones that we've have adopted out of uniform laws and aside from things that simply relate to how someone would transfer their trust property up here, what are the major substantive changes to our trust law? And in particular, I'm concerned about the penalty clause in Section 15 -- an explanation of why that's good public policy."

MR. THWAITES said he would defer the question to Richard Hompesch who has spent a considerable amount of time working on the statute.

Number 1427

REPRESENTATIVE PORTER referred to Section 19 and said he doesn't understand the term "or otherwise." He read, "A cause of action or claim for relief with respect to a fraudulent transfer under (b)(1)," which describes a "fraudulent transfer" of this section "or otherwise is extinguished unless the action is brought."

MR. THWAITES explained he thinks it is meant to broaden this limitation to correspond to the statute that was adopted under our trust act. He noted there is also a 4-year, 1-year statute. This makes it consistent and it expands that definition to cover the broader terminologies. Mr. Thwaites said he believes Mr. Hompesch can speak to that. He said basically, it brings the existing statute in compliance with trust statute. Mr. Thwaites referred to the Uniform Trust Act that is referred to in the bill and said there was a comment by the Attorney General's Office last year about that because the uniform commissioners are talking about modifying the Uniform Act. He said, "What we have here was the existing Uniform Act that was in existence and is currently the law for the state of Alaska, not the new revised version that they haven't adopted. We also adopted the 1993 version of the Uniform Probate Code, and so there are many versions of that and there are lots of variations. And while ours is called the 'Uniform Probate Code,' we did not adopt all the provisions out of it, and there are provisions for variations there." Mr. Thwaites said that whenever we have a uniform act, he believes the connotation is that we are substantially similar and our concept is the same as the Uniform Act, but every state has a little variation, one way or the other, from those acts.

Number 1594

BOB MANLEY, Attorney, testified via teleconference from Anchorage. He noted he is primarily involved in estate planning. He urged the

committee to adopt the proposed committee substitute language as it is an improvement of the Alaska Trust Act. It basically generates greater (indisc.) action for people disposing of their property. The Alaska Trust Act that was passed last year has received a lot of national commentary. Mr. Manley referred to the Heckerly (ph) Institute in Florida and said one of the (indisc.) involved "North to The Future, The Alaska Trust," which establishes Alaska as a situs for money management. He said it is important to keep current and modify with the current trends.

MR. MANLEY referred to Representative Porter having a question about the Fraudulent Transfers Act and said, "What this provision regarding the 4-year and 1-year statute of limitations does is adopt exactly the language or almost exactly the language of the Uniform Fraudulent Transfers Act which is that the cause of action is extinguished after that 4-year or 1-year period run. And previously, we simply provided that the cause of action I believe expired or at least was no longer brought. So it was procedural rather than substance and the change, (1) the patterns that's closer to that - Uniform Fraudulent Transfer statute of limitation; and second, it makes it more likely that a court outside of Alaska will recognize the validity of our statute of limitations and that's Section 19."

MR. MANLEY continued, "The other thing that I want to point out and urge you to consider favorably is the new Section 20 which provides that if a fraudulent conveyance action is brought and it's acceptable -- in other words, if somebody was trying to cheat their creditor and they knew who their creditors were and they hid the money in the Alaska trust, the Alaska court and any other courts are going to approve invasion of that. However, if because of the expiration of the statute of limitations are otherwise the Alaska courts do not view it as a fraudulent conveyance. If it's, as Mr. Thwaites mentioned, one of those future - future (indisc.) creditors in the future. What this does is it prevents the creditor from going in the back door and instead of getting to the trust assets, suing the trustee for conspiracy to commit a fraudulent conveyance or the equivalent which might have a different statute of limitations. So simply this makes it better or safer for individuals and institutions (indisc.) trustees. I think if you follow the local bank stocks you'll see that NBA (National Bank of Alaska) has had a tremendous runoff in the last year, North Rim has been shooting up. We've got a new Alaska trust company. There are some new financial institutions also that looking at Alaska seriously for establishing bases of operation and this kind of improvement in the law makes it more likely that we can continue this good clean new industry of money management for Alaska. Thank you."

Number 1805

REPRESENTATIVE JAMES made a motion to adopt the proposed committee substitute for HB 196, Version B, Bannister, 3/4/98. There being no objection, the proposed committee substitute for HB 196 was before the committee.

Number 1817

JOHNNY GRAMES testified via teleconference from Anchorage. He said, "I am not here to talk about my own case. But as a parent, I'm -- that you're setting up Alaskans (indisc.) to get policed by predators operating under these laws that are set up by the judiciary branch of government and lobbied by these lying lawyers. And I don't know how else to warn the people what's happening. And Mr. Thwaites is a crook and he sold out my sons who are beneficiary to my mother's estate - our family estate which -- my father came here in 1915 and built up and now the lawyers and bankers are going to be able to steel the estate for the next 22 years. Now the reason you don't hear about this is because the court system is totally politicized and corrupted and I'm not able to appeal -- not able to file a due process appeal so I (indisc.) block from access to the court to petition the government for (indisc.) which is a constitutional right so that nobody knows about this. And you will not hear it with the Alaska Commission on Judicial Conduct with the probate master and the judges...."

CHAIRMAN GREEN interjected and asked Mr. Grames to conclude his testimony.

MR. GRAMES continued, "Also, Mr. Thwaites appointed a guardian ad litem over my son and I am the father and the trustee and he lives with me. And the court system went along with it. So a trustee has power over my son and we have no privacy and we are unable to protect him from the guardian and from court control and that's Mr. Thwaites that you're depending on."

Number 1954

RICHARD HOMPESCH, Attorney, testified via teleconference from Fairbanks. He said that Representative Croft asked about Section 15. Mr. Hompesch said, "The policy behind Section 15, which is the penalty provision, goes as follows: If I want to set up a trust, Section 15 clarifies that I can have a provision in the trust that says if any of my children who are beneficiaries of the trust sue the trustee, the trustee can deduct its attorneys fees from that child's share. And many times we have - estate planners have clients who have difficult children who are very prone to frivolous litigation. And as you know rule 82, which is our attorneys fee provision, rarely provides (indisc.) for a board of attorneys fees when litigation is filed that's frivolous. So this type of penalty provision would allow a person setting up a trust to charge their beneficiary, who filed the frivolous litigation, for the costs. Without such a provision, all the beneficiaries of the trust would have to share the legal fees for defending the frivolous litigation. And I figure it's good policy to allow such a clause under Alaska law because what the Community Property Act and other provisions of our new laws, this penalty provision is completely optional. If a person chooses to (indisc.) or include a penalty provision in their trust, they may. It's provided, it's allowed under Alaska law. Most people may choose not to. So as a matter of freedom of choice, I think it's a good policy for Alaska. Unless there are other questions, I'd like to thank you and urge you to pass House Bill 196."

REPRESENTATIVE CROFT said that he didn't see in Section 15 that the lawsuit had to be frivolous. It said, "even if probably cause

existed instituting the proceedings." He said these can valid but losing suits, not just frivolous suits.

MR. HOMPESCH stated, "Yes, the penalty provision merely says that if you want to provide a penalty provision, it could say that even if the beneficiary claim is meritcrrious that the penalty provision could still apply. Now I'm not here to say that such a penalty provision should be included. I think most of my clients would probably say -- you know they would prefer a penalty provision that would apply if the litigation was frivolous. But it's important to remember that most of the trusts that I think Mr. Thwaites, Mr. Manley, myself and other attorneys in Alaska are doing today have trust protector clauses. A trust protector clause allows someone - some trusted advisor in the family to remove the trustee without cause. So It would seem to me that this penalty provision would encourage the resolution of disputes through the trust protector and not through our court system."

CHAIRMAN GREEN thanked Mr. Hompesch for his testimony. He indicated the HB 196 would be held for further consideration.