

SB

163

Alaska State Legislature

Chairman,
Judiciary Committee
Administrative Regulations
Revenue Committee

Vice Chairman,
Resources Committee



State Capitol
Juneau, Alaska 99801-1182
(907) 465-3873
Fax: (907) 465-3922

50 Front Street
Suite 203
Ketchikan, Alaska 99901
(907) 225-8088
Fax: (907) 225-0713

Senator Robin L. Taylor

SPONSOR STATEMENT

SB 163

SB 163 makes two statutory changes; 1) defines a current beneficiary as a person who receives a mandatory distribution of income or principal from a trust. Current law does not define "current beneficiary". Some trusts name dozens of discretionary beneficiaries; and 2) provides the settlor (the creator of a trust) flexibility and privacy during their life to limit the notification to beneficiaries if they felt it was appropriate. This legislation would clarify that the trustee only has to notify a beneficiary who is entitled to a mandatory distribution of income or principal from the trust.

SB 163 allows a settlor in writing to exempt a trustee of the notification requirement only to a beneficiary who was not entitled to a mandatory distribution of income or principal from the trust on an annual or more frequent basis. If a beneficiary is entitled to a distribution or does receive a distribution, then the trustee would still be required to provide notice and accountings. The exemption period may not exceed the shorter of the settlor's lifetime or a judicial determination of the settlor's incapacity.

This change will allow settlors the flexibility and privacy of not being required to inform their young children that they are a beneficiary of trust. Many settlors have expressed concern that they may not want the beneficiaries to know they have a future interest in a trust. For example, the settlor is afraid that knowledge of the trust by the beneficiary might prevent them from conducting a productive lifestyle. In addition this allows Alaska to provide the same flexibility as other states that are competing with Alaska for trust business.

Again it should be noted that this restriction only applies to beneficiaries who are not entitled to a mandatory distribution and can only last for the settlor's lifetime or when the settlor has become judicially incompetent. If the creator of the trust (settlor) sets forth the waiver of notification in writing, the trustee will not notify the beneficiary until the time set forth by the trustor above. This amendment is a default statute so if the settlor does not provide the written waiver, the current standard of notice to all current beneficiaries still applies.

District A:

Hyder • Ketchikan • Kupreanof • Meyers Chuck • Petersburg • Saxman • Sitka • Wrangell

CS FOR SENATE BILL NO. 163(RLS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE

Offered: 3/16/00

Referred: Today's Calendar

Sponsor(s): SENATE JUDICIARY COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to trusts, to a trustee's duties to notify and inform beneficiaries,
2 and to the revocation, modification, termination, reformation, construction, and
3 trustees of trusts."

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

5 * Section 1. AS 13.36.080 is amended by adding new subsections to read:

6 (b) The settlor of a trust may exempt a trustee from the duties under (a) of this
7 section to provide notification or information regarding the trust to a beneficiary who
8 is not entitled to a mandatory distribution of income or principal from the trust on an
9 annual or more frequent basis. The settlor may provide the exemption by provision
10 in the instrument creating the trust if the trust is created by a writing [by oral statement
11 to the trustee at the time of the creation of the trust if the trust is created orally] by an
12 amendment of the trust if the settlor reserved the power to amend the trust, or by a
13 written document after the trust is created. The exemption may not exceed in duration
14 the shorter of the settlor's lifetime or a judicial determination of the settlor's incapacity.

amend #1

1 (c) If a settlor provides for an exemption under (b) of this section and a
2 beneficiary with a future interest

3 (1) who is not a beneficiary entitled to a mandatory distribution of
4 income or principal from the trust on an annual or more frequent basis receives a
5 distribution, the trustee shall provide notification or information limited to the
6 accounting period during which the distribution was made;

7 (2) becomes a beneficiary entitled to a mandatory distribution of
8 income or principal from the trust on an annual or more frequent basis, the trustee
9 shall provide notification and information as required under AS 13.16 and (a) of this
10 section.

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

12 **Sec. 13.36.335. Presumption of revocability.** (a) Unless a trust is expressly
13 made irrevocable, a trust executed on or after the effective date of this Act is revocable
14 by the settlor.

15 (b) Notwithstanding AS 13.36.035 - 13.36.050, this section applies only if the

16 (1) settlor is domiciled in this state when the trust is created;

17 (2) trust instrument is executed in this state; or

18 (3) trust provides that the law of this state governs the trust.

19 **Sec. 13.36.340. Modification and revocation of revocable trusts.** (a) A
20 trust that is revocable by the settlor may be modified or revoked in whole or in part
21 by

22 (1) substantial compliance with a method of modification or revocation
23 provided in the trust instrument; or

24 (2) a writing, other than a will, signed by the settlor and delivered to
25 the trustee during the lifetime of the settlor, except that, if the trust instrument
26 expressly makes the method of revocation provided in the trust instrument the
27 exclusive method of revocation, the trust may not be revoked under this paragraph.

28 (b) Unless otherwise provided in the trust instrument, if a trust that is
29 revocable by the settlor is created by or funded by more than one settlor,

30 (1) the trust may be modified or revoked as provided in AS 34.77.100

1 to the extent the trust consists of community property under AS 34.77 (Alaska
2 Community Property Act);

3 (2) each settlor may modify or revoke the trust as to the portion of the
4 trust property contributed by that settlor that is not community property under
5 AS 34.77.

6 (c) A revocable trust may not be modified or revoked by an attorney-in-fact
7 under a power of attorney unless the modification or revocation is expressly permitted
8 by the trust instrument.

9 **Sec. 13.36.345. Modification or termination of irrevocable trusts because**
10 **of unanticipated circumstances.** (a) On petition by a trustee, settlor, or beneficiary,
11 a court may modify the administrative or dispositive terms of an irrevocable trust or
12 terminate an irrevocable trust if, because of circumstances not anticipated by the
13 settlor, modification or termination would substantially further the settlor's purposes
14 in creating the trust.

15 (b) Upon termination of a trust under this section, the trust property shall be
16 distributed in accordance with the settlor's probable intention.

17 **Sec. 13.36.350. Reformation to correct mistakes in irrevocable trusts.** (a)
18 On petition by a trustee, settlor, or beneficiary, a court may reform the terms of an
19 irrevocable trust, even if the trust instrument is not ambiguous, to conform to the
20 settlor's intention if the failure to conform was due to a mistake of fact or law,
21 whether in expression in the trust or inducement to create the trust, and if the settlor's
22 intent can be established by clear and convincing evidence.

23 (b) A court may consider evidence, including direct evidence contradicting the
24 plain meaning of the text, when determining the settlor's intent or for any other
25 purpose under this section.

26 **Sec. 13.36.355. Construction of trust to achieve settlor's tax objectives.** (a)
27 The terms of a trust shall be construed to achieve the settlor's tax objectives.

28 (b) On petition by a trustee, settlor, or beneficiary, a court may modify the
29 terms of an irrevocable trust to achieve the settlor's tax objectives in a manner that
30 does not violate the settlor's probable intent. The court may order that the
31 modification operate retroactively.

Sec. 13.36.360. Modification or termination of irrevocable trust by consent.

1 **Sec. 13.36.360. Modification or termination of irrevocable trust by consent.**
2 (a) Except as otherwise provided by this section, on petition by a trustee, settlor, or
3 beneficiary, a court may modify or terminate an irrevocable trust if all of the
4 beneficiaries consent and if continuation of the trust on the existing terms of the trust
5 is not necessary to further a material purpose of the trust. However, the court, in its
6 discretion, may determine that the reason for modifying or terminating the trust under
7 the circumstances outweighs the interest in accomplishing the material purposes of the
8 trust. The inclusion of a restriction on the voluntary or involuntary transfer of trust
9 interests under AS 34.40.110 may constitute a material purpose of the trust under this
10 subsection, but is not presumed to constitute a material purpose of the trust under this
11 subsection.

12 (b) Unless otherwise provided in the trust instrument, an irrevocable trust may
13 not be modified or terminated under this section while a settlor is also a discretionary
14 beneficiary of the trust.

15 (c) If a beneficiary other than a qualified beneficiary does not consent to a
16 modification or termination of an irrevocable trust that is proposed by the trustee,
17 settlor, or other beneficiaries, a court may approve the proposed modification or
18 termination if the court determines

19 (1) if all the beneficiaries had consented, the trust could have been
20 modified or terminated under this section; and

21 (2) the rights of a beneficiary who does not consent will be adequately
22 protected or not significantly impaired.

23 (d) In (c) of this section, "qualified beneficiary" means a beneficiary who

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

26 (2) would be entitled to receive a distribution of trust income or
27 principal if the event causing the trust's termination occurs.

28 **Sec. 13.36.365. Uneconomical irrevocable trust.** (a) Notwithstanding the
29 other provisions of AS 13.36.335 - 13.36.365, if the value of the property of an
30 irrevocable trust is less than \$50,000, the trustee may terminate the trust unless the
31 trust instrument provides otherwise.

1 (b) Notwithstanding the other provisions of AS 13.36.335 - 13.36.365 and the
2 terms of the trust, on petition to the superior court by a trustee, settlor, or beneficiary,
3 the court may modify or terminate an irrevocable noncharitable trust, or remove the
4 trustee and appoint a different trustee, if the court determines that the value of the trust
5 property is insufficient to justify the cost of administration.

6 (c) Upon termination of a trust under this section, the trustee shall distribute
7 the trust property in accordance with the settlor's probable intent.