

SB

369

ALASKA STATE LEGISLATURE

Sen. Robin Taylor, Chair
Sen. Dave Donley, Vice-Chair
Sen. John Cowdery
Sen. Gene Therriault
Sen. Johnny Ellis



State Capitol
Juneau, AK 99801-1182
(907) 465-3717
Fax: 465-3922

Senate Judiciary Committee

SPONSOR STATEMENT

SB 369

"An Act relating to trusts, including trust protectors, trustee advisors, and transfers of trust interests, and to creditors' claims against property subject to a power of appointment; and providing for an effective date."

Alaska has been in the lead in the development of trust law. Other states have not only enacted similar legislation but have improved on it. This bill fine tunes Alaska's existing trust legislation.

HB 316 provides statutory authority to provisions commonly found in trust instruments. For instance, Section 1 of the bill specifically provides for the position of a trust advisor and trust protector and clarifies the manner in which these positions relate to the administration of a trust. Delaware has similar legislation. Many trust instruments allow a trustee to make trust assets available for the use of a beneficiary. Section 2 allows trust assets, consisting of real property and tangible personal property, to be used by a beneficiary without the use being considered a distribution which could, in turn, be subjected to the claims of a beneficiary's creditors

Other sections contained in the bill codify a number of matters which have always been accepted by Alaska trust practitioners as being the common law of this state, but for which there has been no statutory counterpart. Section 4 provides that trust assets can not be attached by a beneficiary's creditor until such time that trust assets are actually distributed to a beneficiary, nor can there be a continuing order against the Trustee with respect to future distributions that a Trustee would choose to make. Section 6 adds a new subsection (i) to AS 34.40.110 which clarifies that the statute affording spendthrift protection for beneficial interests applies not only to trusts in which a settlor may have a retained interest, but also to the very common third party settled trust where a beneficiary might be serving as sole trustee.

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Sections 5 and 6 make amendments to AS 34.40.110, which will assist a future court in the interpretation of this statute, something an Alaska court has yet to do. Section 5 clarifies that a fraudulent conveyance action may only be brought against a settlor of a trust and then only as to a specific transfer of assets which are determined to be

fraudulent as to that creditor. Section 6 also clarifies the definition of a pre-existing creditor who can avail themselves of the time period found in AS 34.40.110(d)(1) for bringing a fraudulent conveyance action against the settlor of a self-settled trust. Subsection (h) as found in Section 6, provides a transfer restriction will be valid with respect to a beneficial interest retained by a settlor, even though the settlor serves as a co-trustee, provided the settlor doesn't have control over the manner in which distributions may be made to the settlor. Subsection (k) invalidates any unwritten agreement or understanding between a settlor who is a beneficiary and a trustee which gives the settlor rights greater than those which are permitted to be expressed in the trust instrument.

Last, there are several provisions contained in this bill which have their counterpart in the laws of other states. Section 3 provides the circumstances in which a transfer restriction will continue to be valid even though a settlor retains a unitrust or annuity interest in the trust. These provisions presently exist in Delaware. Section 7 of the bill clarifies when property subject to a power of appointment can be subjected to the claims of a donee's creditors and codifies the common law as it is now found and enunciated in the Restatement 2nd of Property. This section has its genesis in a comparable Rhode Island statute. All the provisions found in this bill are necessary additions if Alaska expects our trust industry to remain competitive with other states.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 369
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act relating to trusts, including trust BRU Civil Division
protectors, trustee advisors, and transfers of trust interests, . . ." Component Commercial
 Sponsor Senate Judiciary Committee
 Requester Senate Judiciary Committee Component No. 2211

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SB 369 provides for the appointment of a trust protector and a trust advisor. The bill also prevents creditors of beneficiaries from attaching assets transferred into a trust unless certain conditions are met by all parties, and establishes a statute of limitations regarding when creditors must bring an action for a fraudulent transfer claim.

Passage of this legislation will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson Phone (907) 465-5370
 Division Attorney General's Office Date/Time 4/30/02 4:20 PM
 Approved by: Kathryn Daughhete for Bruce M. Botelho, Attorney General Date 4/30/2002
 Agency Department of Law

SECTIONAL ANALYSIS SB 369

Section 1. Establishes two new sections relating to trust.

AS 13.36.370. Provides for the appointment of a trust protector. Requires that the trust protector be a disinterested third party. Gives the trust protector the powers, delegations, and functions conferred on the protector by the trust instrument, and identifies some of these powers. Sets a limit on the modifications the trust protector is allowed to make. Subject to the trust's terms, provides that a trust protector is not liable or accountable as a trustee or fiduciary when acting as a trust protector.

AS 13.36.375. Provides for the appointment of an advisor to the trustee with regard to matters relating to a trust's property. Provides that even if an advisor is appointed, the property and management of the trust and the exercise of powers and discretionary acts remain vested in the trustee. States that the trustee is not required to follow the advisor's advice. States that an advisor is not liable as, or considered to be, a trustee when acting as an advisor.

Section 2. Makes various substantive and stylistic changes to the subsection that allows for the establishment of a restriction on the transfer of a beneficiary's trust interests. States that a "beneficiary" can include a beneficiary who is the settlor of the trust. Excludes certain activities from being considered as "payment or delivery" of a trust interest for purposes of applying the subsection.

Section 3. Makes various substantive and stylistic changes to the subsection that applies the transfer restriction against the claims of creditors and other persons. Limits the application of one exception.

Section 4. Makes various substantive and stylistic changes to the subsection that addresses the satisfaction of claims of creditors and other persons under (b) of the section. Provides that an attachment or other order may not be made against a trustee with respect to a beneficiary's interest or against property subject to a transfer restriction, except to the extent that the restriction is not allowed under (b) of the section.

Section 5. Makes various substantive and stylistic changes to the subsection that identifies which creditors may bring a cause of action or claim for relief for a fraudulent transfer under (b)(1) of the section, or under other law, and within what time frame the action or claim must be brought.

Section 6. Adds new subsections to AS 34.40.110

Subsection (g) limits creditor claims and actions under AS 34.40.110(d)(1) to claims that meet certain burden of proof and timing requirements and to actions that meet certain timing and subject matter requirements.

Subsection (h) applies the transfer restrictions to settlers who are also beneficiaries even if the settlor serves as a co-trustee or an advisor, as long as the settlor does not have trustee power over discretionary distributions.

Subsection (i) applies the transfer restrictions to a beneficiary who is not the settlor, even if serving as a sole trustee, a co-trustee, or an advisor to the trustee.

Subsection (k) prohibits a settlor with a beneficial interest subject to a transfer restriction from benefiting from, directing a distribution of, or using trust property except as stated in the trust. Voids an agreement or understanding between the settlor and the trustee that grants greater rights or authority than stated in the trust.

Section 7. States that the property that a donee of a power of appointment is authorized to appoint is not subject to the claims of the creditors of the donee unless certain conditions are met.

Section 8. Applies this Act to trusts created before, on, or after the effective date of the particular section of the Act that is involved.

Section 9. Provides that AS 34.40.110(b), as amended by the Act, takes effect immediately.