SB

344

('OUSE COMMITTEE REPOF

(7)
Date Referred to Committee: March 29, 2004 FURTHER REFERRALS:

Date of Committee Action: April 16, 2004

The JUDICIARY Committee considered: SB 344

SENATE BILL NO. 344 TRUSTS/ESTATES/PROPERTY TRANSFERS
"An Act relating to the Uniform Probate Code and trusts, including pleadings, orders, nonprobate assets, estates of decedents, minors, protected persons, incapacitated persons, guardians, conservators, trustees, foreign trusts, principal and income, and transfer restrictions; relating to corporate voting trusts; and providing for an effective date."

Recommends it be replaced with [ ] HCS *or* [X] CS *for* SB 344 (JUD)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR______ [X] Same Title [ ] New Title

[ ] attach amendments
[ ] add new referral to ____________Committee
[ ] Letter of Intent___________Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LEG
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero
LAW	2			✓
CED	1			✓

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
[signature]	Holm	✓			
[signature]	Gara			✓	
[signature]	Gruenberg	✓			
[signature]	Ogg	✓			
Chair: [signature]	McGuire	✓			
Chair:					

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Helm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg

State Capitol, Room 120
Juneau, AK 99801-1182
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House Judiciary Committee

Memorandum

To: Terri Bannister, Leg. Legal

From: Vanessa Tondini, Committee Aide
House Judiciary Committee

Date: April 17, 2004

Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 23-LS1694\H, SB 344, incorporating the attached amendment. The bill was passed out of committee yesterday.

If you have any questions, please call me at 4990. Thank you!

HCS CSSB 344 (JUD) version "H"
Amendment #1 - PASSED

Page 5, Line 14
After "within"
Delete "12"
Insert "24"

23-LS1694\H
Bannister
4/16/04

HOUSE CS FOR CS FOR SENATE BILL NO. 344( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR SEEKINS

A BILL

FOR AN ACT ENTITLED

"An Act relating to the Uniform Probate Code and trusts, including pleadings, orders, nonprobate assets, estates of decedents, minors, protected persons, incapacitated persons, guardians, conservators, trustees, foreign trusts, principal and income, and transfer restrictions; relating to corporate voting trusts; and providing for an effective date."

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

* **Section 1.** AS 10.06.425(a) is amended to read:

(a) Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares [, FOR A PERIOD NOT TO EXCEED 10 YEARS,] by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a copy of the agreement with the corporation at its registered office, and by transferring their shares to the trustee or trustees for the purpose of the agreement. The trustee or trustees shall keep a record of the holders of voting trust certificates evidencing a beneficial interest in the voting trust, giving the names and addresses of all the holders and the number and class of the shares for which the voting trust certificates are issued, and shall deposit a copy of the record with the corporation at its registered office. The copies of the voting trust agreement and the record deposited with the corporation are subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation under AS 10.06.430, and the copies of the agreement and the record are subject to examination by a holder of record of voting trust certificates, either in person or by agent or attorney, at a reasonable time for a proper purpose. This subsection does not invalidate an irrevocable proxy complying with AS 10.06.418(e).

* **Sec. 2.** AS 13.06.120 is amended to read:

Sec. 13.06.120. Pleadings; when parties bound by orders; notice. In **<u>any</u>** [FORMAL] proceedings involving trusts**<u>, nonprobate assets,</u>** or estates of decedents, minors, protected persons, or incapacitated persons **<u>brought under AS 13.06 - AS 13.36 or AS 13.38</u>**, **<u>including any</u>** [AND IN] judicially supervised settlements **<u>and any nonjudicial proceedings and settlements</u>**, the following apply:

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

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

(A) orders binding the sole holder or all co-holders of a power of revocation or a [PRESENTLY EXERCISABLE] general **<u>or nongeneral</u>** power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests (as objects, takers in default, or otherwise) are subject to the power;

(B) to the extent there is no conflict of interest between them or among persons represented, orders binding a conservator bind the person whose estate the conservator controls; orders binding a guardian bind the ward if no conservator of the estate has been appointed; orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties; [AND] orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate; **and orders binding an agent having authority to act with respect to the particular questions or dispute bind the principal;** if there is no conflict of interest and no conservator or guardian has been appointed, a parent may represent the minor child;

(C) an unborn [OR UNASCERTAINED] person**, a minor, an incapacitated person, or a person whose identity or location is unknown or not reasonably ascertainable** who is not otherwise represented is bound by an order to the extent the interest is adequately represented by another party having a substantially identical interest in the proceeding;

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

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

(F) with regard to interests given to a person or a class of persons, or to both, upon the happening of a future event, if the same interest or a share of the interest is to pass to another person or class of persons, or to both, upon the happening of an additional future event, orders binding the living person or class of persons who would take the interest upon the happening of the first event bind the persons and classes

of persons who might take on the happening of the additional future event;

(3) notice is required as follows:

(A) notice as prescribed by AS 13.06.110 shall be given to every interested person or to one **person** who can bind an interested person as described in **(2)(A), (B), or (D) - (F)** [(2)(A) OR (B)] of this section; notice may be given both to a person and to another **person** who may bind the person;

(B) notice is given to unborn [OR UNASCERTAINED] persons, **a minor, an incapacitated person, or a person whose identity or location is unknown or not reasonably ascertainable, and persons** who are not represented under (2)(A) or (B) of this section, by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn [OR UNASCERTAINED] persons**, the minor, the incapacitated person, or the person whose identity or location is unknown or not reasonably ascertainable**;

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

* **Sec. 3.** AS 13.36.043(a) is amended to read:

(a) The situs of a foreign trust is moved to this state when the trust satisfies **the conditions listed in AS 13.36.035(c)(1) - (4)** [AS 13.36.035(c)] and a qualified person serving as trustee registers the trust under AS 13.36.010.

* **Sec. 4.** AS 13.36.100 is repealed and reenacted to read:

Sec. 13.36.100. Limitations on proceedings against trustees. (a) Unless resolved or barred under (b) or (c) of this section, and notwithstanding the lack of adequate disclosure, all claims against a trustee who has issued a final report received by the beneficiary and who has informed the beneficiary of the location and availability of records for examination by the beneficiary are barred unless a proceeding to assert the claims is commenced within three years after the beneficiary's receipt of the final report.

(b) If a trustee petitions a court for an order approving a report that adequately discloses the existence of a potential claim, serves the report on all beneficiaries to be bound by the report, and gives the beneficiaries at least 90 days' notice of the court proceeding, all potential claims of the beneficiaries against the trustee are barred unless the claims are served on the trustee and filed with the court within 60 days after the beneficiaries receive the report.

(c) If a trustee serves a report on a beneficiary that adequately discloses the existence of a potential claim against the trustee, the trustee informs the beneficiary that a proceeding to assert any claim against the trustee must be commenced by the beneficiary within 12 months after receipt of the report if it is an interim report or within six months after receipt of the report if it is a final report, and the beneficiary fails to assert a claim against the trustee, all claims of the beneficiary are barred.

(d) A beneficiary is considered to have received a report if, being an adult, the report is received by the beneficiary personally, or, if the beneficiary is a person who may be represented and bound by another person under AS 13.06.120, the report is received by the person who may represent the person under AS 13.06.120.

(e) A report adequately discloses the existence of a potential claim against a trustee if it provides sufficient information for the beneficiary to know of the potential claim or to be expected to reasonably inquire into the existence of a claim with respect to the matter.

(f) This section does not apply to claims brought by a beneficiary against a trustee for fraud committed by the trustee.

(g) In this section,

(1) "final report" is a report that informs the beneficiary that the trust administration is to be ended;

(2) "report" means a final report or an interim report for a certain period, and includes an accounting.

* **Sec. 5.** AS 13.38.500 is amended to read:

Sec. 13.38.500. Determination and distribution of net income. After a decedent dies in the case of an estate, or after an income interest in a trust ends, a fiduciary

(1) of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under (5) of this section and the provisions applicable to trustees in AS 13.38.550 - 13.38.860; the fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property;

(2) shall distribute to a beneficiary or trust that receives a pecuniary amount a share of net income equal to the beneficiary's or trust's fractional interest in undistributed principal assets as determined under **AS 13.38.510(a), (b)(1), (b)(3), and (c) - (e)** [AS 13.38.510]; the share accrues from the date of death of a decedent, in the case of an estate, or the date of death of a settlor or specified event, in the case of a revocable or irrevocable trust;

(3) shall determine the remaining net income of a decedent's estate or a terminating income interest under the provisions applicable to trustees in AS 13.38.550 - 13.38.860 and by

(A) including in net income all income from property used to discharge liabilities; and

(B) paying from principal the debts, the funeral expenses, the costs of disposition of remains, the family allowance under AS 13.12.404, fees of personal representatives and their attorneys and accountants, and the taxes, related interest, and penalties described in AS 13.38.810(a)(7) that are apportioned to the estate or terminating income interest by the governing instrument or applicable law;

(4) shall distribute the net income remaining after distributions required by (2) of this section in the manner described in AS 13.38.510 to all other beneficiaries;

(5) may not reduce principal or income receipts from property described in (1) of this section because of a payment described in **AS 13.38.800 or**

13.38.810 [AS 13.38.710 OR 13.38.720] to the extent that the governing instrument or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party; the net income and principal receipts from the property are determined by

(A) including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event; and

(B) making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

* **Sec. 6.** AS 13.38.730(a) is amended to read:

(a) If a federal estate or gift tax marital deduction is allowed for all or part of a trust whose income is required to be paid to the settlor's or testator's spouse and whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under AS 13.38.210 and that the trustee distributes to the spouse from principal under the governing instrument are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or exercise the power conferred by AS 13.38.210(a). The trustee may decide which action or combination of actions to take. **The income interest for a marital deduction trust described in this subsection shall be paid at least annually.**

* **Sec. 7.** AS 13.38.730 is amended by adding a new subsection to read:

(c) Unless otherwise provided by the trust instrument, a power or authority granted to a trustee, except for the authority to refrain from electing qualified terminal interest property treatment under 26 U.S.C. 2056 or 2523 (Internal Revenue Code), does not prevent a qualifying trust from being eligible for the marital deduction. All powers granted to a trustee shall be construed consistently with this subsection. In this subsection, "qualifying trust" means a trust

(1) that is designated in the trust instrument as a trust eligible for the federal estate or gift tax marital deduction; or

(2) if it can be inferred from the trust instrument that the grantor intended the trust to be eligible for the federal estate or gift tax marital deduction.

* **Sec. 8.** AS 34.40.110(a) is amended to read:

(a) A person who in writing transfers property in trust may provide that the interest of a beneficiary of the trust, including a beneficiary who is the settlor of the trust, may not be either voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee. Payment or delivery of the interest to the beneficiary does not include a beneficiary's use or occupancy of real property or tangible personal property owned by the trust if the use or occupancy is in accordance with the trustee's discretionary authority under the trust instrument. **A provision in a trust instrument that provides the restrictions described in this subsection is considered to be a restriction that is a restriction on the transfer of the transferor's beneficial interest in the trust and that is enforceable under applicable nonbankruptcy law within the meaning of 11 U.S.C. 541(c)(2) (Bankruptcy Code), as that paragraph reads on the effective date of this bill section or as it may be amended in the future.** In this subsection,

(1) "property" includes real property, personal property, and interests in real or personal property;

(2) "transfer" means any form of transfer, including deed, conveyance, or assignment.

* **Sec. 9.** AS 34.40.110(b) is amended to read:

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

(1) the settlor's transfer of property in trust was made with the intent to defraud that creditor**, and a cause of action or claim for relief with respect to the fraudulent transfer complies with the requirements of (d) of this section**;

(2) the trust provides that the settlor may revoke or terminate all or part of the trust without the consent of a person who has a substantial beneficial interest in the trust and the interest would be adversely affected by the exercise of the power held by the settlor to revoke or terminate all or part of the trust; in this paragraph, "revoke or terminate" does not include a power to veto a distribution from the trust, a testamentary nongeneral power of appointment or similar power, or the right to receive a distribution of income, principal, or both in the discretion of a person, including a trustee, other than the settlor, or a right to receive a distribution of income or principal under (3)(A) or (B) of this subsection;

(3) the trust requires that all or a part of the trust's income or principal, or both, must be distributed to the settlor; however, this paragraph does not apply to a settlor's right to receive **the following types of distributions, which remain subject to the restriction provided by (a) of this section until the distributions occur:**

(A) income or principal from a charitable remainder annuity trust or charitable remainder unitrust; in this subparagraph, "charitable remainder annuity trust" and "charitable remainder unitrust" have the meanings given in 26 U.S.C. 664 (Internal Revenue Code) as that section reads on the effective date of this bill section and as it may be amended;

(B) a percentage of the value of the trust each year as determined from time to time under the trust instrument, but not exceeding the amount that may be defined as income under AS 13.38 or under 26 U.S.C. 643(b) (Internal Revenue Code) as that subsection reads on the effective date of this bill section and as it may be amended;

(C) the transferor's potential or actual use of real property held under a qualified personal residence trust within the meaning of 26 U.S.C. 2702(c) (Internal Revenue Code) as that subsection reads on the effective date of this bill section or as it may be amended in the future; or

(D) income or principal from a grantor retained annuity trust or grantor retained unitrust that is allowed under 26 U.S.C. 2702 (Internal Revenue Code) as that section reads on the effective date of this bill section or as it may be amended in the future; or

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

*** Sec. 10.** AS 34.40.110(e) is amended to read:

(e) If a trust contains a transfer restriction allowed under (a) of this section, the transfer restriction prevents a creditor existing when the trust is created, a person who subsequently becomes a creditor, or another person from asserting any cause of action or claim for relief against a trustee of the trust or against others involved in the preparation or funding of the trust for conspiracy to commit fraudulent conveyance, aiding and abetting a fraudulent conveyance, or participation in the trust transaction. **Preparation or funding of the trust includes the preparation and funding of a limited partnership or a limited liability company if interests in the limited partnership or limited liability company are subsequently transferred to the trust.** The creditor and other person prevented from asserting a cause of action or claim for relief are limited to recourse against the trust assets and the settlor to the extent allowed under AS 34.40.010.

*** Sec. 11.** AS 34.40.110 is amended by adding a new subsection to read:

(*l*) Notwithstanding another provision of the law of this state, an action, including an action to enforce a judgment entered by a court or other body having adjudicative authority, may not be brought at law or in equity for an attachment or other provisional remedy against property of a trust subject to this section or to avoid a transfer of property to a trust that is the subject of this section unless the action is brought under (b)(1) of this section and within the limitations period of (d) of this section. A court of this state has exclusive jurisdiction over an action brought under a cause of action or claim for relief that is based on a transfer of property to a trust that is the subject of this section.

*** Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICATION OF SECTIONS. (a) AS 13.06.120, as amended by sec. 2 of this Act, applies to a proceeding begun on or after the effective date of sec. 2 of this Act.

(b) AS 13.36.100, as enacted by sec. 4 of this Act, applies to a report, final account, or statement received by a beneficiary on or after the effective date of sec. 4 of this Act.

(c) The amendments to AS 34.40.110 made by secs. 8 - 11 of this Act apply to a trust created before, on, or after the effective date of this Act.

* **Sec. 13.** Sections 2, 4, and 5 of this Act, take effect immediately under AS 01.10.070(c).

ALASKA STATE SENATE

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Senator_Ralph_Seekins@legis.state.ak.us

Senator Ralph Seekins
District D

MEMORANDUM

Date: March 18, 2004

To: Office of Representative McGuire

From: Senator Ralph Seekins

Re: Request for Hearing of SB 344

Go for R.S.
(pending referral)

Attached please find Senate Bill 344 along with a concomitant sponsor statement and other related information.

Senate Bill 344 revises current statutes related to the manner in which trust and estate services are rendered in the state of Alaska.

I respectfully request a hearing before your committee on this Bill at your earliest convenience. Thank you.

ALASKA STATE SENATE

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Senator Ralph Seekins
District D

Senate Bill 344 Sponsor Statement

"An Act relating to the Uniform Probate Code and trusts, including pleadings, orders, nonprobate assets, estates of decedents, minors, protected persons, incapacitated persons, guardians, conservators, trustees, foreign trusts, principal and income, and transfer restrictions; relating to corporate voting trusts."

A vital characteristic of any highly developed economy is the ease with which financial resources flow from one market to another. In fact, the magnet-like attraction between money and the market that offers the most advantageous terms at a particular moment in time is, perhaps, best demonstrated within the financial services industry itself.

Over the years, the Alaskan banking industry has attracted funds to our state as a result of a particular niche we have successfully developed in an obscure corner of the industry known as trust and estate services. Much of this success can be attributed to the prescience demonstrated by the Alaska State Legislature.

Since 1997 this body has passed numerous bills effectively making Alaska a premier jurisdiction for this financial specialty. Just last year Senate Bill 87 adopted a more recent version of the Uniform Principal & Income Act. And House Bill 212 updated other portions of Alaska's trust laws. Both were signed into law last summer.

While Senate Bill 344 may not be as far reaching, it accomplishes much the same purpose. It does this by making a host of small technical revisions to current statutes. It updates provisions relating to virtual representation. It clarifies when a trustee can be relieved of liability. And it adds provisions which other jurisdictions have already adopted.

Keeping our trust statutes current has had a direct positive impact on our state's economy. Over the years, these periodic revisions have helped to bring hundreds of millions of dollars of trust assets into the state and added tens of millions of dollars to local bank deposits. Furthermore, it has increased business activity for attorneys, accountants, life insurance agents and brokerage firms. This, in turn, creates jobs.

Necessity, ingenuity and routine advances in technology collaborate on a daily basis to reinvent the world of financial products and services. To date, Alaska has successfully staked out a place in this world through our contemporary set of trust and estate laws. Senate Bill 344 seeks to preserve our position in what amounts to a highly fluid marketplace unrestricted by geographical boundaries. It seems reasonable to keep that money flowing this direction.

2/29/04

LEGAL SERVICES

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<u>MEMORANDUM</u> February 26, 2004

SUBJECT: Sectional summary of SB 344 relating to the Uniform Probate Code and to trusts (Work Order No. 23-LS1694\A)

TO: Senator Ralph Seekins
Attn: Brian

FROM: Theresa L. Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

<u>Section 1.</u> Deletes the ten-year limit on the duration of a voting trust under the state's for-profit corporations code.

<u>Section 2.</u> Amends the Uniform Probate Code section that establishes rules on pleadings, on when a person is bound by an order, on notice, and on representation. Adds to the general coverage of the section proceedings that involve non-probate assets and non-judicial proceedings and settlements. Adds language stating that the coverage of the section applies to proceedings brought under the Uniform Probate Code and the chapter on the principal and income of trusts.

Changes the description of powers of appointments to general or non-general powers of appointment. States that orders binding an agent having authority to act with respect to the particular question or dispute bind the principal. Expands the category covering unborn or unascertained persons to unborn persons, minors, incapacitated persons, and persons with unknown or not reasonably ascertainable identities or locations. Adds three situations where orders binding certain persons bind others as well.

Makes some related changes to the notice provisions of the section and the guardian ad litem appointment authority provisions.

<u>Section 3.</u> Makes more specific a cross-reference that establishes part of the criteria for determining when the situs of a trust is considered to be moved to this state.

<u>Section 4.</u> Changes the event that triggers a six-month time period within which a claim may be brought against a trustee for breach of trust; the event must provide adequate

disclosure of the claim and the time allowed to begin the proceeding. Requires that all claims against a trustee who has issued a certain final account or statement, even if there is not adequate disclosure, be brought within three years after the beneficiary's receipt of the final account or statement. With regard to receipt of a report, final account, or statement, includes references to the representation and binding effect of other persons under AS 13.06.120.

Section 5. Adds a provision that indicates when a report is considered to adequately disclose to a beneficiary a potential claim for a breach of trust by a trustee.

Section 6. Changes the rules to be used from AS 13.38.510 to determine the share to be distributed to certain beneficiaries or trusts. Makes a reference correction to AS 13.38.800 or 13.38.810.

Section 7. Requires that the income interest for a marital deduction trust described in the section be paid at least annually.

Section 8. States that a trust provision that provides the transfer restrictions described in this subsection is to be considered a restriction on the transfer of the transferor's beneficial trust interest and enforceable under applicable non-bankruptcy law.

Section 9. Makes changes to two of the categories under which certain creditors may satisfy claims out of a beneficiary's interest in a trust when there is a transfer restriction.

Section 10. Explains that within the subsection the preparation or funding of a trust is considered to include the preparation and funding of a limited partnership or a limited liability company if interests in the entities are transferred to the trust.

Section 11. States than an action for attachment or other provisional remedy against property of a trust subject to this section, or an action to avoid a property transfer to a trust that is the subject of this section, may not be brought unless it meets certain criteria identified in the subsection. Gives this state's superior court exclusive jurisdiction over a a cause of action or a claim for relief that is based on a property transfer to a trust that is the subject of this section.

Section 12. Provides guidance on which proceedings, and which reports, final accounts, and statements received by a beneficiary, will be affected by two of the sections in this Act.

Section 13. Provides that three of the bill sections take effect immediately.

If I may be of further assistance, please advise.

TLB:med
04-239.med

Sectional Analysis of Proposed Trust & Estate Law Amendments

AS 13.38.500(2) is a technical amendment.
AS 13.38.500(5) is a technical amendment.
AS 13.38.730 clarifies that a trust will qualify for the federal estate or gift tax marital deduction.

AS 13.06.120 makes amendments to Alaska's current virtual representation statutes. The amendments are to modernize Alaska's statutes by incorporating provisions Washington State, New York state have adopted and provisions of the Uniform Trust Code.

AS 13.36.100 is amended to limit when a beneficiary may assert a claim against a trustee. The current limitation is inadequate in that it does not limit when a beneficiary may assert a claim against a trustee which may be evident from a yearly or other account or report provided by the trustee. This could lead to costly and lengthy litigation. The proposed amendment will limit the time in which a beneficiary may assert a claim for breach of trust so long as the beneficiary receives a report from the trustee that adequately discloses the existence of a potential claim for breach of trust and informs the beneficiary of the time allowed for commencing a proceeding.

This change is necessary because under current statute a trustee can only be relieved of liability by a final account or at the termination of a relationship. Since Alaska has perpetual trusts there may never be a final accounting.

AS 13.36.035(c) This change is to clarify what needs to be done to transfer a trust to Alaska.

AS 34.40.110(a) this provision clarifies that the spendthrift provisions provided by AS 34.40.110 are intended to come under the exceptions for spendthrift trusts contained in the bankrupts code (11U.S.C. §541(c)). Similar provisions exist in Delaware and Utah.

AS 34.40.110 these changes add spendthrift protection for two commonly used types of Estate planning approaches, residence trusts and GRATs. Additional language has been added to the introductory language of paragraph (3) to make it clear that a beneficiary's interest in such distributions is protected until the distributions occur. Similar statutes exist in the Delaware.

AS 34.40.110(e) Subsection (e) was intended to protect professionals who assist in the planning and formation of self-settled discretionary spendthrift trusts. Subsequent experience with the formation of these trusts indicates that frequently assets are first placed into a limited partnership or limited liability company and then interests in such companies are transferred to the trust. The purpose of the additional language is to protect professionals with respect to the formation of these entities as well as the formation of the trusts.

AS 34.40.110(b)(1) this provision is similar to provisions which have been added to the Delaware and Rhode Island statutes. This provision clarifies that if a cause of action or claim is asserted that a transfer to a trust is a fraudulent transfer, then the claim must be made under and processed pursuant to Alaska law.

AS 10.06.425 Voting trusts are often used in closely held family situations for control of the business for a period of time. Often, it is desired that such voting trusts last longer than the existing ten-year limitation. The existing statute places a ten-year limitation on the duration of voting trusts but does not place any time duration on voting agreements. This is inconsistent.

DETAILED SECTIONAL ANALYSIS OF

PROPOSED TRUST AND ESTATE LAW AMENDMENTS

Technical Amendments to Recently Enacted Uniform Principal and Income Act. Senate Bill 87, passed in 2003, enacted a version of the Uniform Principal and Income Act. Two drafting technical errors exist in the enacted version. They are as follows:

Alaska Statute 13.38.500(2)
Subsection .500(2) provides that a beneficiary or trust that receives a pecuniary amount shall also receive a proportionate share of the net income. This subsection refers to subsection .510 for various rules used in that section for determining such net income. However, one of the provisions in subsection .510 is inconsistent with this reference and should therefore be excluded.

Alaska Statute 13.38.500(5), in the second and third lines, references are made to AS 13.38.710 or 13.38.720. These references are incorrect. The references should be to AS 13.38.800 or 13.38.810.

Alaska Statute 13.38.730,
Existing subsection .730 is a statutory savings clause to ensure that trusts designed to qualify for the federal estate or gift tax marital deduction do so qualify. The payment of income at least annually is one of the qualifications required for the federal estate or gift tax marital deduction.

Virtual Representation Amendment.
Explanation. The proposed amendment to AS 13.06.120 expands both the types of proceedings in which notice to one person who may represent another person may bind another person and the circumstances under which substitute notice may be given. Expanding the scope of the proceedings to include non-judicial settlements and informal proceedings under this chapter will streamline the process for resolving issues relating to trusts and estates and minimize the costs associated with formal court proceedings. The proposed amendments incorporate the doctrine of "virtual representation" in which representation by one person having a substantially identical interest with respect to a particular issue may bind another person. Representation is not permitted, however, if there is a conflict of interest. See Uniform Trust Act § 304.

Limitations on Proceedings against Trustees
As 13.36.100 expands the reach of the limitations period for claims of breach of trust against a trustee. Under current law, a claim against a trustee for breach of trust is barred as to any beneficiary who receives a final account that terminates the trust relationship if a proceeding to assert the claim is not commenced within six months after receipt of the final account. Trusts now may continue in perpetuity under Alaska law; therefore there may never be a final account.

The current limitation is inadequate in that it does not limit when a beneficiary may assert a claim against a trustee which may be evident from a yearly or other account or report provided by the trustee. This could lead to costly and lengthy litigation. The proposed amendment will limit the time in which a beneficiary may assert a claim for breach of trust so long as the beneficiary receives a report from the trustee that adequately discloses the existence of a potential claim for breach of trust and informs the beneficiary of the time allowed for commencing a proceeding.

Change of Trust Situs to Alaska.

At present, reference to only AS 13.36.035(c) is ambiguous and creates the possible argument that the original trust instrument must state that the laws of the State of Alaska govern the validity, construction, and administration of the trust before the trust could be moved to Alaska. This is not the intent of AS 13.36.043. Rather, if the requirements of AS 13.36.035(c)(1)-(4) are met then the trust can be moved to the State of Alaska. At that time, if the trust instrument allows or is modified then a governing law provision may be added which states that Alaska's laws will apply to the trust.

Intention Regarding Spendthrift Restriction. AS 34.40.110(a)(3)

This new provision clarifies the Legislature's intent that the spendthrift provisions provided by AS 34.40.110 are intended to come under the exception for spendthrift trusts contained in § 541(c)(2). Similar provisions exist in the Delaware and Utah statutes.

Protection for Interests in Qualified Personal Residence Trusts, Grantor Retained Annuity Trusts, and Grantor Retained Unitrusts.

AS 34.40.110(b)(3)

These changes add spendthrift protection for two commonly used types of estate planning approaches, residence trusts and GRATs. Additional language has been added to the introductory language of paragraph (3) to make it clear that a beneficiary's interest in such distributions is protected until the distributions occur. Similar protections for residence trusts exist in the Delaware statute.

Protection for Persons Assisting With Creation of Trusts

AS 34.40.110(e)

Subsection (e) was intended to protect professionals who assist in the planning and formation of self-settled discretionary spendthrift trusts. Subsequent experience with the formation of these trusts indicates that frequently assets are first placed into a limited partnership or limited liability company and then interests in such companies are transferred to the trust. The purpose of the additional language is to protect professionals with respect to the formation of these entities as well as the formation of the trusts.

Procedure for Asserting Fraudulent Transfer Claim.

AS 34.40.110(b)(1),

This provision is similar to provisions which have been added to the Delaware and Rhode Island statutes. This provision clarifies that if a cause of action or claim is asserted that a transfer to a trust is a fraudulent transfer, then the claim must be made under and processed pursuant to Alaska law.

Elimination of Duration Restriction for Voting Trusts. AS 10.06.425

Voting trusts are often used in closely held family situations for control of the business for a period of time. Often, it is desired that such voting trusts last longer than the existing ten-year limitation. The existing statute places a ten-year limitation on the duration of voting trusts but does not place any time duration on voting agreements. This is inconsistent.

FISCAL NOTE

STATE OF ALASKA		Fiscal Note Number:	1
2004 LEGISLATIVE SESSION		Bill Version:	SB 344
		(S) Publish Date:	3/12/04
Revision Date/Time (Note if correction):		Dept Affected:	DCED
Title	Trusts/Estates/Property	RDU	Banking, Securities & Corp (115)
		Component	Banking, Securities & Corp
Sponsor	Senator Seekins		
Requester	Senate Labor & Commerce	Component No.	1233

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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						
CHANGE IN REVENUES ( )						

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 (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal: [ ]

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This legislation applies to the Uniform Probate Code. It codifies new federal tax provisions and applies informal probate proceedings to all parties. This legislation has no impact on the operations of the division.

Prepared by:	Mark Davis, Director	Phone	(907) 465-2521
Division	Banking, Securities & Corporations	Date/Time	3/4/04 4:19 PM
Approved by:	Edgar Blatchford, Commissioner	Date	3/4/2004
Agency	Department of Community & Economic Development		

(Revised 9/2003 OMB)

FISCAL NOTE

STATE OF ALASKA		Fiscal Note Number:	2
2004 LEGISLATIVE SESSION		Bill Version:	SB 344
		(S) Publish Date:	3/12/04
Revision Date/Time (Note if correction):		Dept. Affected:	LAW
Title	"An Act relating to the Uniform Probate Co(	RDU	CIVIL
trusts, including pleasings, order, nonprobate assets, estates..."		Component	Commercial & Fair Business
Sponsor	Senator Seekins		
Requester	Senate Labor & Commerce	Component No.	

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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						
CHANGE IN REVENUES ( )						

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 (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal: [ ]

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

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

Prepared by:	Robert Meiners, Administrative Services Manager	Phone	465-3673
Division	Administrative Services	Date/Time	3/8/04 11:33 AM
Approved by:	Robert Meiners for Gregg D. Renkes, Attorney General	Date	3/8/2004
Agency	Department of Law		

(Revised 12/2003 OMB)