

SB

344

# ALASKA STATE SENATE

Session:  
State Capitol  
Juneau, Alaska 99801-1182  
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Senator\_Ralph\_Seekins@legis.state.ak.us

**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.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

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Juneau, Alaska 99801-1182  
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## MEMORANDUM

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:** *ab*  
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.

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

**Section 2.** 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.

**Section 3.** 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.

**Section 4.** 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 that 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 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.

## 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  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1  
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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2  
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 Cor RDU CIVIL  
trusts, including pleadings, 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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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