

**SB**

**298**



# ALASKA STATE SENATE

Session:  
State Capitol  
Juneau, Alaska 99801-1182  
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Interim:  
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Fairbanks, Alaska 99701  
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Senator\_Ralph\_Seekins@legis.state.ak.us

**Senator Ralph Seekins**  
District D

## Senate Bill 298 Sponsor Statement

**“An Act relating to loans from trust property; relating to a trustee’s power to appoint the principal of a trust to another trust; relating to challenges to, claims against, and liabilities of trustees, beneficiaries, and creditors of trusts and of trusts and estates; relating to individual retirement accounts and plans; relating to certain trusts in divorce and dissolutions of marriage situations.”**

Senate Bill 298 revises Titles 13 and 34 pertaining to the administration of trust assets. Updates incorporated into Title 13 include the addition of clarifying language relating to: (1) the various powers conferred upon the trustee; (2) trustee reporting requirements, and; (3) claims made against trust assets.

Updates integrated into Title 34 include language pertaining to: (1) the exemption from transfer provisions for certain IRA trust assets; (2) technical corrections made to AS 34.40.110(b), and; (3) the handling of trust assets in cases of divorce or dissolution.

Since 1997, the Alaska State Legislature has consistently worked to update and improve laws regarding the use and administration of trusts. As a result, Alaska is considered one of the premier trust jurisdictions in the country.

But, it is a very competitive environment. In fact, at least seven other states – Delaware, Missouri, Nevada, Oklahoma, Rhode Island, South Dakota and Utah – have enacted legislation similar to our own.

The updates proposed in this Bill are in keeping with revisions made to Alaska’s Trust Laws in 1997 and 2003. They are intended to preserve Alaska’s leading position within the universe of trust products and services offered nationwide.

Our laws encourage Alaskan’s to keep their trust assets here in the state. Moreover, capital is *attracted* to Alaska from all over the country creating greater job and investment opportunities for residents of our state.

Senate Bill 298 clarifies prior trust legislation, makes the administration of trusts in Alaska more efficient and cost effective, and will keep Alaska as the jurisdiction of choice for trust administration.

# LEGAL SERVICES

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

(907) 465-3867 or 465-2450  
FAX: (907) 465-2029  
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State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 30, 2006

**SUBJECT:** Sectional summary of HCS CSSB 298( ) relating to trusts and estates (Work Order No. 24-LS1113\X)

**TO:** Senator Ralph Seekins  
Attn: Brian

**FROM:**  Theresa 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.** Amends AS 13.36.109(21) to change that loans from trust property may be made to eligible beneficiaries and eligible third-party entities.

**Section 2.** Amends AS 13.36.157(a) to change the conditions under which a trustee may appoint the principal of a trust in favor of a trustee of another trust.

**Section 3.** Amends AS 13.36.157 to add two subsections. AS 13.36.157(d) provides that the governing instrument of a trust that receives principal from another trust may provide that the trust assets of the trust that receives the principal are to be held for the beneficiaries of the invaded trust on the same terms as the invaded trust. AS 13.36.157(e) defines terms for AS 13.36.157.

**Section 4.** Adds a new section to the probate chapter to coordinate a new provision that is added in bill sec. 11 (sec 13.36.368(b)(3)). States that a trustee may take under sec. 13.36.368(b)(3) the action a personal representative may take under certain statutes in the probate chapter.

**Section 5.** Amends AS 13.36.100(a) to expand the application of the subsection to more than just final reports.

**Section 6.** Amends AS 13.36.100(b) to change, for the purpose of barring claims against trustees, the notice period, the notification requirements, and the claim deadline.

**Section 7.** Amends AS 13.36.100(c) to change the claim commencement period to six months after receipt of a report.

**Section 8.** Amends AS 13.36.100 to add a new subsection. Indicates what type of notice in a report is considered adequate to notify a beneficiary that there is a time limitation for filing a claim against the trustee.

**Section 9.** Amends AS 13.36.310(a). Adds that, except as provided in the new cross-reference, the assets of certain qualifying trusts are not subject to the claim of a creditor of the settlor or a creditor of a beneficiary on the grounds that the trust or a transfer to a trust avoids or defeats certain interests.

**Section 10.** Amends AS 13.36.310(b) to change a cross-reference in the section.

**Section 11.** Adds a new section that addresses claims against revocable trusts.

**Section 12.** Amends AS 34.40.110(b) to establish two exemptions (for eligible individual retirement account trusts) from the paragraphs that provide exceptions to the transfer restriction provision.

**Section 13.** Amends "eligible individual retirement account trust" for the previous bill section.

**Section 14.** Adds AS 34.40.110(m), a new subsection that provides that if a trust has a transfer restriction, the beneficiary's interest in the trust is not considered property subject to division (or part of a property division) in the event of the divorce or dissolution of the beneficiary's marriage. Limits the application of the section.

**Section 15.** Repeals the definition of "final report."

**Section 16.** States that AS 13.36.157(a), (d), and (e) apply to a trust that is created by a will or another instrument before, on, or after the effective date of these subsections.

**Section 17.** Gives two sections of the bill an immediate effective date.

If I may be of further assistance, please advise.

TLB:ljw  
06-170.ljw

2/13/04

# PERSONAL FINANCE

## New IRA Protects Against Lawsuits, Bankruptcy

Two Delaware Trust Firms Offer Retirement Products Shielded by State's Statutes

By RACHEL EDNA SILVERMAN

**A** NEW TYPE of individual retirement account aims to address an increasing concern among doctors, business executives and other professionals: how to protect your IRA if you're sued or have to file for bankruptcy.

Unlike 401(k)s and other employer-sponsored retirement plans, IRAs generally aren't protected from creditors under federal law. Instead, IRA protection is covered by state laws, which vary. In recent years, a few states, such as Delaware, have also changed their trust laws to offer additional protections that may affect IRAs.

Two Wilmington, Del., trust companies, NatCity Trust Co., a unit of National City Corp. in Cleveland, and Capital Trust Co., now offer souped-up IRAs that are structured to take advantage of the state's generous asset protection and trust laws. These IRAs operate like typical custodial IRAs, where the money is held in a bank or investment firm, but they offer the protection of a trust, which can have special provisions to stave off creditors.

These "Delaware IRAs" are targeted at wealthy professionals who have big retirement accounts and are worried about professional liability. NatCity Trust's president, Jeffrey Getty, says the number of accounts has grown 66% since the start of the year, with the average account size at more than \$1 million. But how effective these IRAs are in keeping creditors at bay is still an open question.

### Asset Protectors

The Delaware IRAs are some of the latest offerings of the booming asset-protection industry. The growth of the industry is being driven by increasing concern among doctors, business executives and other professionals concerned about lawsuits and creditors. Financial-services companies and specialized asset-protection lawyers have been rolling out sophisticated trust, partnerships and other ve-



### Limited Protection

Keeping individual retirement accounts from creditors is a growing concern, especially among doctors and other professionals worried about lawsuits and bankruptcy. IRA protection varies depending on where you live.

- Unlike employer-sponsored 401(k)s and pensions, IRAs generally aren't protected from creditors under federal law.
- IRA protection depends on state law, which varies. Most states, such as Delaware, have statutes that broadly protect IRAs from creditors, while others, such as Minnesota, have more limited exemptions.
- Delaware also allows IRAs to have "spendthrift" provisions, which are another measure that might keep creditors at bay.

hicles to keep up with the demand for asset protection.

IRAs, however, are a thorny problem in asset-protection planning. Although retirement accounts make up a substantial portion of many people's wealth—there was more than \$3 trillion in IRA assets at the end of last year—the question is whether creditors can pierce IRAs is still an unsettled area of the law.

"It's a complicated area," says Ralph Minto Jr., a Pittsburgh asset-protection lawyer, who has had two physician clients, all Pennsylvania residents, set up Delaware IRAs in the past year because of creditor fears.

The legal landscape for IRA creditor protection is expected to shift further next month when the U.S. Supreme Court weighs in on the issue. The case, *Rousey v. Jacoway*, involves whether funds in IRAs are subject to creditors under Chapter 7 bankruptcy proceedings.

IRAs aren't safe from creditors under the federal Employee Retirement Income Security Act which protects 401(k)s and pension plans. Many states, such as New York, Texas, Florida and Delaware, offer broad protections for IRAs. However, some states, such as California and Minnesota, provide more-limited protection—exempting, for instance, only what is reasonably necessary to support IRA owners and their dependents or limiting the exemption to a specific dollar amount.

Some lawyers and financial advisers are urging clients with creditor concerns to use the Delaware IRA, which might offer stronger protection. These IRAs operate like other retirement accounts, but the twists are in how they are structured. The IRAs are set up as trusts, rather than the typical custodial IRAs. The two vehicles are similar, but trusts are generally more complex and expensive structures to set up. Trusts also can offer greater legal protection against creditors, as well as

more estate-planning options. Individual retirement trusts are popular among the wealthy and are offered by numerous private banks and trust companies.

The Delaware IRAs stand out because they use special language called a spendthrift provision. This spendthrift provision is meant to limit the right of creditors to reach the funds inside the account. Delaware is one of only a few states that permit these spendthrift provisions in trusts, such as IRAs, where the individual setting up the trust is also the beneficiary. Just a handful of financial-services companies, including NatCity and Capital Trust, offer IRA trusts with the spendthrift provision.

The spendthrift clause "puts extra obstacles before creditors, so it's not an easy snatch and grab," says Marc Singer, who has developed many asset-protection plans for clients as a partner at Singer Xenos, a Coral Gables, Fla., wealth-management firm.

### The Cost

Fees for Delaware IRAs vary. NatCity charges roughly 1.1% of assets, which includes asset management and requires an account minimum of about \$750,000. (The fee is about half that for just an administrative trust.) Capital Trust, which sells its services through financial advisers, charges 0.3% on the first \$1 million, with a minimum fee of \$1,250. A typical Merrill Lynch custodial IRA is less expensive—0.25% of net assets, with a \$50 minimum annual fee.

But how well Delaware IRAs hold up as asset-protection vehicles is still unclear, since they haven't been tested in court yet. There is still a possibility that a court in another state could rule that the assets in a Delaware IRA are fair game to a creditor outside the state. That's because the U.S. Constitution mandates that each state should have "full faith and credit" in the legal judgments made in other states. So a plaintiff who wins a judgment in a California court might be able to grab funds in an IRA located in Delaware.

Moreover, a Delaware IRA, like all retirement accounts, is still vulnerable in divorce proceedings, since family-court judges have wide discretion in divvying up marital assets. "In divorce, all bets are off," Mr. Singer says.

And since IRAs are already well protected in many states, setting up a Delaware IRA might not be worth the extra hassles or expense of having an out-of-state trustee for many individuals.



March 3, 2006

Honorable Senator Ralph Seekins  
State Capitol, Room 125  
Juneau, AK 99801-1182

Dear Senator Seekins:

I am writing this letter in support of SB 298, which as I understand it will implement changes in Alaska trust law that will benefit the trust industry in Alaska. Northrim Bank supports the proposed legislation to the degree that it benefits the trust industry in particular and the general business climate in the state as that facilitates state commerce, adds to the diversity and strength of our economy, and helps to build a stronger customer base for our bank.

I appreciate your work on this legislation.

Yours truly,

Joe Schierhorn  
Executive Vice President  
Chief Financial Officer

cc: Dick Thwaites  
Chairman, Alaska Trust Company

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: SB 298  
 (S) Publish Date: 2/27/06

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
 Title Trusts; Challenges; Claims; Liabilities RDU Banking & Securities (536)  
 Component Banking & Securities  
 Sponsor Seekins  
 Requester Labor & Commerce Component No. 2808

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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 (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This legislation makes various changes to AS13.36 which covers the administration of trusts. Provisions in this legislation do not impact the operations of the division.

Prepared by: Mark Davis, Director  
 Division: Banking and Securities  
 Approved by: William C. Noll, Commissioner  
 Agency: Commerce, Community, and Economic Development

Phone 907.465.2521  
 Date/Time 2/22/06 5:07 PM  
 Date 2/22/2006