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HOUSE JUDICIARY COMMITTEE

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Rep. Lindsey Holmes
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MEMORANDUM

Date: January 17, 2008

To: Senator Hollis French
Chairman Senate Judiciary Committee

From: Representative Jay Ramras
Chairman House Judiciary Committee

Re: HB197

Please consider this memorandum as a request to hear HB197 before the Senate Judiciary Committee. Attached are the following documents:

- Sponsor Statement
- CSHB196(JUD) 25-LS0447\E.A
- HB197 am 25-LS0444\E
- Sectional
- Fiscal Notes
 - Commerce 0
 - Law 0
- Bill History
- Letters of Support
- Back-up materials
- Relevant Statutes

ALASKA STATE LEGISLATURE HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman

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1292 Sadler Way, Suite 324
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Committee Members:
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg

State Capitol, Juneau, Alaska 99801

May 4, 2007

Senator Hollis French, Chair
Senate Judiciary Committee

RE: HB 197. An Act relating to the issuance of shares of professional corporations to a trust, to trusts, to trustees, to the removal of a trustee, to the compensation of a trustee and a person employed by a trustee, to a trustee's accepting or rejecting a trusteeship, to co-trustees, to a vacancy in a trusteeship, to the resignation of a trustee, to delivery of trust property by former trustees, to the reimbursement of trustee expenses, to the certification of a trust, to the suitability of a trustee, to the place of administration of a trust, to a trustee's power to appoint property to another trust, to a change of the percentage of trust property to be considered principal, to the determination of the value of a trust, and to a settlor's intent when transferring property in trust; amending Rules 54 and 82, Alaska Rules of Civil Procedure; and providing for an effective date."

Dear Senator French,

Please accept this memo as a request for HB197 to be heard in the Senate Judiciary Committee. Attached is the bill and pertinent information for your review.

Please contact Jane Pierson at 4990 with any questions.

Thank you for your time and consideration.

Sincerely,

Representative Jay Ramras

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Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

Sponsor Statement HB 197

“An Act relating to trusts, to the issuance of shares of professional corporations to a trustee, to a trustee’s power to appoint property to another trust, to a trustee’s selection of the percentage of trust property to be considered principal, to the determination of the value of a trust, and to a settlor’s intent when transferring property in trust.”

It is important that Alaska’s trust statutes be updated so that Alaska’s investment laws stay competitive with other states. This bill proposes amendments to statutes relating to trusts registered in the state and governing the actions of trustees and co-trustees, which will accomplish this end.

HB197 bill provides for the following:

1. That shares in a professional corporation may be held by the trustees of the professional’s revocable trust.
2. Expands the coverage of AS 13.36.157, which allows the trustee of a trust to transfer trust assets to a similar trust. This expansion will only occur if the trust has an Alaskan trustee and the trust has its primary administration in Alaska.
3. Allows the Alaska trustee of a charitable trust to change the percentage of the value of the trust that will be considered income whenever the trustee determines that the new percentage is necessary and prudent.

4. Clarifies that a settlor's express intention to protect trust assets from beneficiary's potential future creditors is not evidence of an intent to defraud.

5. States needed provisions relating to trustees: compensation, accepting or declining trusteeship, co-trustees, vacancy, resignation, removal, delivery of property by former trustee, reimbursement of expenses, and certification of trust.

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Representative Max Gruenberg
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State Capitol, Room 120
Juneau, Alaska 99801-1182

Sectional HB197

Section 1. Amends AS 10.45.050 to expand who can be issued shares of capital stock in a professional corporation.

Section 2. Amends AS 13.36.020 - Effects of failure to register to include removal of the trustee under new section AS 13.36.076

Section 3. Amends AS 13.36.035(a) regarding exclusive jurisdiction of the court to include trusts where the trustee has been appointed or removed under new section AS 13.36.076.

Section 4. Amends AS 13.36.035(d) to include appointment and removal of a trustee under new section AS 13.36.076 under laws of the state

Section 5. Adds a new subsection (b) to AS 13.36.055 to deal with compensation of the trustee or his agent and the burden of proof being on the person who seeks review of that compensation, if the compensation is made within the terms of the trust or is reasonable.

Section 6. AS 13.36 is amended by adding new sections

Sec. 13.36.071. Accepting or rejecting trusteeship. Determines when a person designated as a trustee may accept or reject the position and the actions they may take prior to accepting or rejecting the trusteeship

Sec. 13.36.072 Co-trustees. Defines co-trustees, their roles, and how their duties should be carried out.

Sec. 13.36.073 Vacancy in trusteeship; appointment of successor. Defines a vacancy in a trusteeship and how a successor to a vacancy shall be appointed.

Sec. 13.36.074. Resignation of trustee. Defines how a trustee may resign.

Section 7. AS 13.36 is amended by adding new sections

Sec. 13.36.076. Removal of trustee. States under what conditions a trustee may be removed from office and how a successor trustee shall be appointed.

Sec. 13.36.077. Delivery of property by former trustee. Defines how trust property shall be protected and provides for expeditious delivery of trust property by a trustee who has resigned or removed.

Sec. 13.36.078. Reimbursement of expenses. Defines how a trustee is to be reimbursed for incurred or advanced expenses paid for the benefit of the trust.

Sec. 13.36.079. Certification of trust; penalty Creates a "certification of trust" document, sets forth what must be included in the document, for what purposes it may be used, and the civil penalties that may be imposed for demanding the entire trust instrument in addition to certification of trust.

Section 8. AS 13.36.090 is amended to include a removal of a trustee under new section AS 13.36.076. Also removes language that gives weight to adult beneficiaries determining suitability of the trustee and place of administration.

Section 9. AS 13.36.157(b) is amended to further define a trustee's power to appoint to another trust under the laws of the State of Alaska.

Section 10. AS 13.36.198. Liability for violations is amended to include new section AS 13.36.076 - Removal of a trustee.

Section 11. AS 13.36.390 is amended by adding a definition for "qualified beneficiary"

Section 12. AS 13.38.460(a) amends the selection of percentage after charitable trust election so that the trustee may elect to change the percentage whenever the trustee determines that the new percentage is necessary and prudent.

Section 13. AS 13.38.480 - Value determination. This will amend this section to clarify how the average value of a trust will be determined if the trust has been in existence for less than three years.

Section 14. AS 34.40.110 Restricting transfers of trust interests. Sub-section (b) is amended to include that a settlor's expressed intention to protect trust assets from a beneficiary's potential future creditors is not evidence of an intent to defraud.

Section 15. Repeals 13.36.360(d) that defines "qualified beneficiary", which is now defined under AS 13.36.390.

Section 16. Deals with indirect court rule changes to Alaska Rules of Civil Procedures 54 (Costs) and 82 (Attorney's fees).

Section 17. Applicability section.

Section 18. Conditional Effect. AS 13.36.079(i), enacted by sec.7 of this Act, takes effect only if sec. 16 of this Act receives a two-thirds majority vote by each house.

Section 19. Immediate effective date under AS 01.10.070(c).



Ron Kutas
 President and
 Chief Executive Officer

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 Anchorage, AK 99503
 907-644-1223
 fax 907-661-7004
 ron@akbank.com

April 23, 2007

Representative Jay Ramras
 Chairman, House Judiciary Committee

Ref: HB 195 and HB 197

Dear Representative Ramras:

During the past eleven years, our local community bank (owned by 30 Alaskans) has benefited from Trust legislation that has made our State an advantageous location for placing assets. For this reason, I am particularly interested when new legislation is proposed that improves our State's benefit in providing Trust services. House Bill (HB) 195 and House Bill (HB) 197 are two such pieces of legislation. Clarifying the ability for a Professional to operate as a Limited Liability Company and improving the tax advantages by deleting subsection (d) of AS 10.50.150 are quality elements in HB 195. Allowing a Trust formed outside the State to transfer assets between trusts when the trusts are administered in Alaska (Section 9 of HB 197) is an addition that will improve our marketability to those considering moving assets into Alaska.

I appreciate your support for passing both bills.

Sincerely

A handwritten signature in black ink, appearing to read 'Ron Kutas', with a long horizontal flourish extending to the right.

Jane Pierson

From: lhulbert [lhulbert@gci.net]
Sent: Monday, April 23, 2007 10:32 AM
To: Jane Pierson
Subject: HB's 195, 196, 197

Representative Ramras,

I would like to support House Bills 195, 196 and 197. I have been in the insurance industry for the last 16 years and have worked closely with legislature including the AK Trust Act, Com. Property Act and the Change to the State Premium Tax. I support these three House Bills as it will improve estate planning opportunities for alaskans and bring new business and revenue to the State.

Linda Hulbert
Agent
New York Life Insurance Company
110 Cushman St.
Fairbanks, AK 99701
907-452-4400
Registered Representative offering securities through NYLIFE Securities Inc. (member NASD/SIPC)

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New York Life Insurance Co., 51 Madison Ave, New York, NY 10010

AlaskaUSA Trust Company

February 8, 2008

Senator Hollis French
State Capitol, Room 417
Juneau, AK 99801-1182

Re: HB 196 and HB 197

Dear Senator French,

The purpose of this letter is to inform you that Alaska USA Trust Company fully supports the passage of HB 196 and HB 197. We encourage you to schedule these bills for a hearing in your committee at the earliest available date.

Alaska USA Trust Company offers trustee services both for Alaska residents and, increasingly, for non-residents. The increase in business from non-residents is directly due to Alaska's favorable trust laws. In order to maintain Alaska's standing as a favorable trust jurisdiction, it is essential that updates to our trust laws be made on a timely basis.

The provisions contained in HB 196 and HB 197 will help preserve the competitive advantage that Alaska currently has over most other states. Of particular importance to us in soliciting new business from non-residents are the proposed default provisions, covering situations where the trust document may be silent, as well as those provisions that make it easier for an existing trust to be moved to Alaska from another state.

Alaska USA Trust Company is anticipating that our trustee services for non-residents will be growing substantially in coming years. With these proposed changes, it is our belief that Alaska will remain one of the strongest trust jurisdictions in the country. Maintaining this competitive advantage will help to stimulate continued economic growth for Alaska's burgeoning trust industry, the monetary results of which will filter through the state's economy.

Please consider passing these bills through committee and supporting them when they reach the floor of the Senate.

Thank you.

Sincerely,



Glenn Cipriano
President
Alaska USA Trust Company

cc: Senator Charlie Huggins, Senator Johnny Ellis, Senator Gary Stevens, Senator Lesil McGuire

Cindy Smith

From: Sen. Hollis French
Sent: Thursday, February 14, 2008 5:09 PM
To: Stephen E. Greer
Cc: Cindy Smith
Subject: RE: Support for HB 197

Dear Mr. Greer,
Thanks for sending your letter. I'll make certain that it becomes part of the record.
Yours truly,
Hollis French

From: Stephen E. Greer [mailto:greer@ak.net]
Sent: Thursday, February 14, 2008 4:34 PM
To: Sen. Hollis French
Subject: Support for HB 197

My name is Stephen E. Greer and I am a sole practitioner whose area of practice is exclusively estate planning. I do not represent any of the trust companies and my typical client is the average working Alaska individual and couple. I am particularly sensitive to the needs and concerns of trust beneficiaries. I would like to express my support for HB 197. This bill, even before its introduction in the House, went through a rigorous discussion and drafting process in which the three (3) competing interests settlors, trustees and beneficiaries were addressed and resolved. This bill represents a compromise between those interests and an improvement over existing law. Even though I am not able to attend telephonically, if you have any questions I will be more than happy to answer any questions which a member might have.

Stephen E. Greer, Esq.
P.O. Box 242903
Anchorage, AK 99524
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1225 E. Int. Airport Rd. #100
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Cindy Smith

From: Andy Moderow
Sent: Monday, February 11, 2008 4:45 PM
To: Cindy Smith
Subject: Friday Call-in names

Dave Shaftel and Richard Thwaite will be calling in on Friday during Judiciary. They have the off-net number, and Paul Richards at 250-1660 is the contact.

Andy Moderow
Office of Senator Hollis French
andy_moderow@legis.state.ak.us
Anchorage 907.269.0153
www.akscnate.org
www.healthyalaskans.org

2/12/2008