

SB

146

Alaska State Legislature

Session:
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Senator Lesil McGuire
Chair, Senate State Committee

Fax

To: Leg Legal **From:** Shalon Szymanski, SSTA Committee Aide

Fax: 2029 **Pages:**

Phone: **Date:** May 1, 2007

Re: Final CS Request **CC:**

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

• **Comments:**

SB 146 DID MOVE OUT OF SENATE STATE AFFAIRS TODAY.

ALASKA STATE LEGISLATURE

Sen. Lesil McGuire, Chair
Sen. Gary Stevens, Vice-Chair
Sen. Lyda Green
Sen. Hollis French
Sen. Con Bunde



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SENATOR LESIL McGUIRE
CHAIR, STATE AFFAIRS

Memorandum

To: Leg. Legal
From: Shalon Szymanski, Committee Aide
Senate State Affairs Committee
Date: May 1, 2007
Re: Final CS Request

Please create a Final Committee Substitute (STA) for work order # **25-LS0811\A**, mirroring # **25-LS0811\A** but also including:

-1 attached amendment

SB 146 did move out of committee today and we would like to have it read across on the floor tomorrow.

Thank you!

AMENDMENT #1

OFFERED IN THE SENATE
STATE AFFAIRS COMMITTEE
TO: SB 146

Page 9, Line 27:

After:
“a copy of”

Delete:
“all or”

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Chair
Senate State Affairs
Administrative Regulation Review

Member
Senate Judiciary Committee
Senate Resources Committee

SENATOR LESIL MCGUIRE

Sponsor Statement for SB 146

"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.

SB 146 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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SECTIONAL ANALYSIS

SB 146

"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."

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).