

HB

146

Chair, Judiciary
Chair, Economic Development,
Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Services
1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701
Phone: (907) 452-1088
Fax: (907) 452-1146

Alaska State Legislature House of Representatives



While in Session
State Capitol, Room 118
Juneau, Alaska 99801-1182
(907) 465- 3004
Fax: (907) 465-2070
Toll Free: (877) 465-3004

Representative Jay Ramras
District 10

SPONSOR STATEMENT

HB 146 – AN ACT RELATING TO TRANSFER RESTRICTIONS ON TRUST INTERESTS
(26-LS0633\A)
1/19/10

HB146 aims to update and clarify Alaska trust laws making Alaska a better place for investors and families to invest in the competitive arena of trust management. This bill provides the following amendments to Alaska's current law:

- Clarifies the burden of proof which a creditor must meet to establish that a transfer in trust was done with the intent to defraud a creditor.
- Clarifies that a spendthrift provision will apply to a trust if distributions are made under the exercise of discretion by a trustee who is not the settlor, whether or not the exercise of the discretion is governed by a standard.
- Provides that the spendthrift provision in a trust will apply even though the trustee may distribute income or principal to the settlor or to pay income taxes.
- Clarifies that a beneficiary's interest in a trust, whether or not vested, is not considered a factor or economic circumstance in the division of property subject to division of property subject to divorce.

Representative_Jay_Ramras@legis.state.ak.us

ALASKA STATE LEGISLATURE HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman

(907) 465-3004

Fax: (907) 465-2070

Representative_Jay_Ramras@legis.state.ak.us

1292 Sadler Way, Suite 324

Fairbanks, AK 99701



Committee Members:
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Carl Gatto
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801

Sectional HB 146

“An Act relating to transfer restrictions on trust interests.”

Sections 1 and 2 of the bill amend Alaska’s statute by adopting the following provisions which have been adopted in other twelve other states:

- A creditor must establish by clear and convincing evidence that a transfer was made with intent to defraud a creditor. (This standard has been adopted by nine of the other twelve states);
- Distributions can be made under the discretion of a trustee pursuant to a standard, as well as with absolute discretion;
- The settlor may be reimbursed for income taxes attributable to the trust;
- The settlor can retain the power to replace a trustee/advisor with a non-related, non-subordinate party.

Section 3 of the bill clarifies existing Alaska law to provide that in the event of a divorce or dissolution of the marriage of a beneficiary of the trust, the beneficiary’s interest, even though not vested, may not be considered a factor or economic circumstance in the division of property.

1/19/10

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 146
 (H) Publish Date: 1/27/10

Identifier (file name): HB146-LAW-CIV-1-25-10
 Title: An Act relating to transfer restrictions on trust interests
 Sponsor: REPRESENTATIVE(s) RAMRAS
 Requester: REPRESENTATIVE(s) RAMRAS

Dept. Affected: Law
 RDU: Civil
 Component: Com. And Fair Business
 Component Number: 2717

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
		FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES							
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	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 Interagency Receipts							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*
 This bill proposes amendments to statutes relating to transfer restrictions on trust interests including provisions to receive a distribution of trust's income or principal. Enactment of the bill is not anticipated to fiscally impact the Department of Law.

Prepared by: Eileen Donahue, Division Operations Manager
 Division: Administrative Services
 Approved by: Daniel S. Sullivan, Attorney General
Department of Law

Phone 465-5427
 Date/Time 1/25/10 12:00 AM
 Date 1/25/2010

DANA L. OLSON
HE-35 box 5438
WRILLA, AK 99654
Jan 25, 2010

Notice, Disclaimer
and enforcement

House Bill 146 (Restrictions
on trusts)

I disclaim this Bill. (or amendments
without a law school, scholarly thought process
is diminished. Fix the law school, or I will.
Too often no thought in 90 days is given.
90 days is illegal, exercise on legislature.

If people restrict the legislature, then I restrict
you. (Notice of constitutional challenge).
(The right to scholarly debate) is not subjective.

To give fish, animals, wildlife, birds exclusive
collective trusts AND deny employment trusts
is rational, only if law is not involved.
Creditors already have legal definition in law dictionary.
Creators desire; rules, not intent.
The terms of trusts cannot be layed out
by reason.

Fraudulent transfer does not exist. Do we want
government overseeing; everything? Indian commodities
is federal law. Nixes in transfer book. (State known).
Child support order is only in a present tense
because the civil rule is a presumption.
It voidable. AND IF IT ISN'T, WHY NOT?
AND JUDGE ERIC SMITH CAN'T CHANGE IT, SAYING MULTIPLE JOBS
IAS code mentions, face a challenge just because
from Sunshine Act. it makes the
state liable.
(not consenting
to enjoined
workers compensation).

D. L. OLSON

25 JAN 2010

Notice, Disclaimer
AND enforcement
House Bill 146 cont.

Business trusts is too broad a subject.
1st Amendment challenge.

If limited partnerships with an agency
is valid, then I counter challenge
divisionism within agency by the governor or
Administration to over-ride statutory law of
partnership, limited partnerships.

The creator of a trust defines protectors
not the legislature.

I ~~had~~ ^{had} the right to alienate collective trust
of Walmart, and I did it already.
It was for medical and career purposes. (public welfare)
Alienation is valid exercise of law. State
~~State~~ Beneficiaries are not of creation, nor
is the state a beneficiary

There is no circumstance favoring displaced
older women, not federal or state and sex
based on religion is alleged. (Anglo-Saxon)
Veterans did recognize role of women. (brainwashing)
Mental capacity of Parkinson Disease
was environmentally caused, how can a state
deter to feds, who have no marriage standards,
of brain disease.
An adversarial system of leaving children
into pieces was not in my childrens best
interest. I alienated the claim. (After
children grown). Its my right, not yours.

Dana L Olson

Alaska State Legislature House Judiciary Committee

Representative Jay Ramras
Chairman
(907) 465-3004
Fax: (907) 465-2070
Representative_Ramras@legis.state.ak.us



Committee Members
Representative Nancy Dahlstrom
Vice Chairman
Representative Bob Lynn
Representative Carl Gatto
Representative Bob Herron
Representative Max Gruenberg
Representative Lindsey Holmes

1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701

State Capitol, Room 120
Juneau, Alaska 99801-1182

To: Leg. Legal

Fax #: (907) 465-2029

Number of pages including cover: 1

From: Jane W. Pierson, Aide
House Judiciary Committee

Date: February 3, 2010

Re: Amendment to HB146

Please make the following amendment to HB146. Remove Sec. 3, Page 3- 4, L.28 – 8 and go final.

Thank you

Representative_Jay_Ramras@legis.state.ak.us

CS FOR HOUSE BILL NO. 146(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVE RAMRAS

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to transfer restrictions on trust interests."**

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

3 *** Section 1.** AS 34.40.110(b) is amended to read:

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

8 (1) the creditor establishes by clear and convincing evidence that
9 the settlor's transfer of property in trust was made with the intent to defraud that
10 creditor, and a cause of action or claim for relief with respect to the fraudulent transfer
11 complies with the requirements of (d) of this section; however, a settlor's expressed
12 intention to protect trust assets from a beneficiary's potential future creditors is not
13 evidence of an intent to defraud;

14 (2) the trust, except for an eligible individual retirement account trust,
15 provides that the settlor may revoke or terminate all or part of the trust without the

1 consent of a person who has a substantial beneficial interest in the trust and the interest
 2 would be adversely affected by the exercise of the power held by the settlor to revoke
 3 or terminate all or part of the trust; in this paragraph, "revoke or terminate" does not
 4 include a power to veto a distribution from the trust, a testamentary nongeneral power
 5 of appointment or similar power, or the right to receive a distribution of income,
 6 principal, or both in the discretion of a person, including a trustee, other than the
 7 settlor, or a right to receive a distribution of income or principal under (3)(A), (B),
 8 (C), (D), (E), or (F) [(3)(A), (B), (C), OR (D)] of this subsection;

9 (3) the trust, except for an eligible individual retirement account trust,
 10 requires that all or a part of the trust's income or principal, or both, must be distributed
 11 to the settlor; however, this paragraph does not apply to a settlor's right to receive the
 12 following types of distributions, which remain subject to the restriction provided by
 13 (a) of this section until the distributions occur:

14 (A) income or principal from a charitable remainder annuity
 15 trust or charitable remainder unitrust; in this subparagraph, "charitable
 16 remainder annuity trust" and "charitable remainder unitrust" have the meanings
 17 given in 26 U.S.C. 664 (Internal Revenue Code) as that section reads on
 18 October 8, 2003, and as it may be amended;

19 (B) a percentage of the value of the trust each year as
 20 determined from time to time under the trust instrument, but not exceeding the
 21 amount that may be defined as income under AS 13.38 or under 26 U.S.C.
 22 643(b) (Internal Revenue Code) as that subsection reads on October 8, 2003,
 23 and as it may be amended;

24 (C) the transferor's potential or actual use of real property held
 25 under a qualified personal residence trust within the meaning of 26 U.S.C.
 26 2702(c) (Internal Revenue Code) as that subsection reads on September 15,
 27 2004, or as it may be amended in the future; [OR]

28 (D) income or principal from a grantor retained annuity trust or
 29 grantor retained unitrust that is allowed under 26 U.S.C. 2702 (Internal
 30 Revenue Code) as that section reads on September 15, 2004, or as it may be
 31 amended in the future;

1 (E) distributions that are made under the exercise of
 2 discretion by a trustee who is not the settlor, whether or not the exercise of
 3 the discretion is governed by a standard; or

4 (F) the transferor's potential or actual receipt of income or
 5 principal to pay, in whole or in part, income taxes due on income of the
 6 trust if the potential or actual receipt of income or principal is made
 7 under a provision in the trust instrument that expressly provides for the
 8 payment of the taxes and if the potential or actual receipt of income or
 9 principal would be the result of a trustee's acting in the trustee's
 10 discretion or under a mandatory direction in the trust instrument;
 11 distributions to pay income taxes made under a discretionary or
 12 mandatory provision included in a governing instrument referred to in
 13 this subparagraph may be made by direct payment to the taxing
 14 authorities; or

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

17 * Sec. 2. AS 34.40.110(h) is repealed and reenacted to read:

18 (h) A transfer restriction is allowed under (a) of this section and is enforceable
 19 under (b) of this section even if the settlor has the authority under the terms of the trust
 20 instrument to

21 (1) appoint a trustee, a trust protector under AS 13.36.370, or an
 22 advisor under AS 13.36.375;

23 (2) remove a trustee or trust protector and appoint a replacement
 24 trustee or trust protector who is not a related or subordinate party; in this paragraph,
 25 "related or subordinate party" has the meaning given in 26 U.S.C. 672(c) (Internal
 26 Revenue Code); or

27 (3) remove an advisor and appoint a replacement advisor.