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ALASKA STATE LEGISLATURE

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Senate Special Committee on Energy
Senate Committee on World Trade,
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Senate Judiciary Committee

SENATOR LESIL MCGUIRE

SECTIONAL ANALYSIS CS for SENATE BILL NO. 63(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE—SECOND SESSION

Section 1. Amends AS 34.40.110(b), the subsection that makes exceptions to the transfer trust restrictions allowed under the section.

The (b)(1) exception, requires that a creditor establish the criteria for the exception by clear and convincing evidence.

The (b)(2) exception also makes a conforming amendment to reflect the addition of materials under (b)(3).

The context of subsection (b)(3) is that if a person has a transfer restriction established in subsection (a) it would prevent a creditor from reaching assets in a trust even if the trust requires that all/part of the trust assets must be distributed to the settlor so long as conditions established in subsections (A) through (F) are met. New Subsection (E) allows a settlor to receive certain discretionary distributions made by a trustee who is not the settlor. The second new exception (F) relates to the receipt of certain income or principal to pay income tax due on the trust.

Section 2. Amends AS 34.40.110(h). Provides that a transfer restriction on a beneficiary's trust interest is enforceable even if the settlor has certain listed powers relating to the appointment, removal, and replacement of a trustee, trust protector, or an advisor.

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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 23, 2010

SUBJECT: Sectional summary of CSSB 63(), a bill relating to transfer restrictions on trust interests (Work Order No. 26-LS0317P)

TO: Senator Lesil McGuire
Attn: Esther Cha

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 the subsection that establishes four situations when a creditor can satisfy a claim out of a beneficiary's interest in a trust when the trust contains a transfer restriction. In the first situation, this bill requires that the creditor establish the intent to defraud by clear and convincing evidence. In the second situation, which is based on the settlor's (the creator of the trust) right to revoke or terminate the trust, deletes a current exclusion from the meaning of "revoke or terminate" because the exclusion does not fit within the concept of revocation or termination.

Section 2. Adds a new provision to the section that allows a person who creates a trust (settlor) to restrict the transfer of a beneficiary's interest before payment to the beneficiary. States that the transfer restriction is allowed even if the settlor has any of the three listed rights: (1) to appoint a trustee, a trust protector, or an advisor for the trust; (2) to remove a trustee or trust protector and appoint certain replacements; or (3) remove an advisor and appoint a replacement.

Section 3. Adds a new provision to the section that allows a person who creates a trust (settlor) to prohibit the transfer of a beneficiary's interest before payment to the beneficiary (the beneficiary can be the settlor). States that the transfer restriction operates even if two situations exist: (1) the beneficiary has the right to receive a distribution made in a person's discretion; or (2) the settlor, under specific conditions, potentially will receive or actually receives income or principal to pay income taxes due on the income of the trust.

If I may be of further assistance, please advise.

TLB:ljw
10-208.ljw

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SPONSOR STATEMENT CS for SENATE BILL NO. 63(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA TWENTY-SIXTH LEGISLATURE—SECOND SESSION

This bill amends and improves Alaska's trust provisions which permit a settlor to form an irrevocable trust, be a discretionary beneficiary of the trust and, if the trust has a spendthrift clause, protect the trust assets from the settlor's creditors. Alaska was the first state to enact this type of trust law. Since enactment in 1997, numerous other states have enacted similar statutes. At present, twelve states allow this type of trust.

This bill improves Alaska's trust provisions so that Alaska's statute remains competitive with those of other states. As a result, both residents, and nonresidents of Alaska who choose to form this type of trust in Alaska, will benefit from these improved provisions.

The bill upgrades Alaska's statute by adopting the following provisions which have been adopted in other states:

- A creditor must establish by clear and convincing evidence that a transfer was made with an 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.

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SENATOR LESIL MCGUIRE

What is a Trust?

A Trust is a legal arrangement (basically a contract) where one person (called a trustee) holds property for the benefit of other persons (called beneficiaries). There are many different types of trusts.

The personal trust is the most common form of trust, created for non-business reasons for the benefit and protection of individuals. The trustee in a personal trust acts in accordance with the law and the instructions set forth in the governing instrument by the person who created the trust (called Grantor or Settlor). The primary responsibilities of the trustee are to manage and protect the assets in the trust for the best interest of the beneficiaries. The management and protection responsibilities include proper investment of assets, collection of income, maintenance of accurate books and records, filing of tax returns and other reports, and the payment of income and trust property to the beneficiaries in accordance with the terms of the trust.

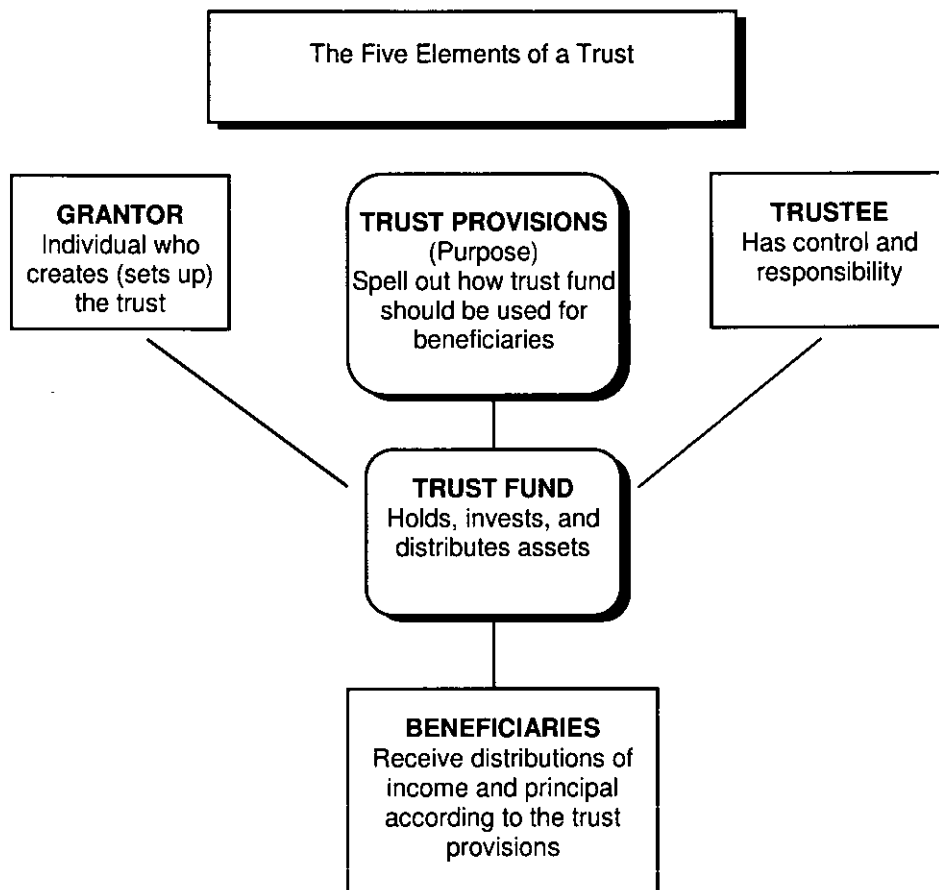
Trusts are used throughout the United States to accomplish many different objectives such as;

- Protecting interest of minors
- Preserve assets for the family
- Accomplish the desires of the family
- Improve quality of life by allowing use of trust assets by beneficiaries
- Provide asset protection
- Reduce and in some cases eliminate gift, estate and income taxes

A self-settled trust is a trust where the grantor is also a beneficiary with other family members. This allows the assets in the trust to appreciate in value and the trust assets will not be in the Grantors taxable estate for federal estate tax purposes. The IRS has recently issued a private letter ruling acknowledging that these trusts can accomplish this objective.

From the information we have received from Alaska estate planning attorneys over ten thousand Alaskans have taken advantage of Alaska's favorable trust laws, non-residents of Alaska have also used Alaska's trust laws to accomplish their family financial goals.

What is a Trust?



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Senate Judiciary Committee
Joint Armed Services Committee

Senator.Lesil.McGuire@legis.state.ak.us

SENATOR LESIL MCGUIRE

MEMORANDUM

DATE: March 17, 2010
TO: Senator Hollis French, Chair Senate Judiciary Committee
FR: Senator Lesil McGuire 
RE: Request to Schedule SB 63: Transfer Restrictions on Trusts

I respectfully request that SB 63: Transfer Restrictions on Trusts be scheduled for a hearing in the Senate Judiciary Committee at your earliest convenience.

Attached is a bill packet that contains the following:

1. Sponsor Statement
2. Current Version of the Bill: CS SB 63(STA) (26-LS0317S)
3. A Sectional Analysis
4. Identification of Changes
5. Original Version of the Bill: SB 63 (26-LS0317A)
6. Fiscal Notes:
 - a. Department of Law: Zero fiscal note 3/12/2010
7. Supporting Documents
 - a. A Trust Explained with Diagram

Esther Cha in my office will be the staff contact for this bill. Her number is 465-2995. Please call if you have any questions.