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# ALASKA STATE LEGISLATURE

Session  
State Capitol Building, Room 125  
Juneau, Alaska 99801-1182  
Phone (907) 465-2995  
Fax (907) 465-6592

Interim  
716 West Fourth Avenue, Suite 430  
Anchorage, Alaska 99501  
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Senate Special Committee on Energy  
Senate Committee on World Trade,  
Technology and Innovations

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Senate Resources Committee

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**SENATOR LESIL MCGUIRE**

DATE: January 26, 2010

TO: Senator Linda Menard, Chair Senate State Affairs Committee

FR: Senator Lesil McGuire

RE: Request to Schedule SB 63: Transfer Restrictions on Trusts



Dear Senator Menard,

Please schedule SB 63: Transfer Restrictions on Trusts for a hearing in the Senate State Affairs Committee at your earliest convenience. A bill packet will be forthcoming.

Esther Cha in my office will be the staff contact for this bill. Her number is 465-5159. Please call if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Lesil McGuire".  
Senator Lesil McGuire

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## SENATOR LESIL MCGUIRE

### SPONSOR STATEMENT SENATE BILL NO. 63

#### 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.

Sections 1 and 2 of the bill upgrade 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.

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.

26-LS0317E  
Bannister  
2/13/09

**CS FOR SENATE BILL NO. 63( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-SIXTH LEGISLATURE - FIRST SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): SENATOR MCGUIRE**

**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.

28 \* Sec. 3. AS 34.40.110(l) is amended to read:

29                   (l) If a trust has a transfer restriction allowed under (a) of this section, in the  
30                   event of the divorce or dissolution of the marriage of a beneficiary of the trust, the  
31                   beneficiary's interest in the trust, whether or not vested, is not considered a factor or

1        economic circumstance in the division of property subject to division under  
2        AS 25.24.160 or 25.24.230 or a part of a property division under AS 25.24.160 or  
3        25.24.230. Unless otherwise agreed to in writing by the parties to the marriage, this  
4        subsection does not apply to a settlor's interest in a self-settled trust with respect to  
5        assets transferred to the trust

6                    (1) after the settlor's marriage; or

7                    (2) within 30 days before the settlor's marriage unless the settlor gives  
8        written notice to the other party to the marriage of the transfer.

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**SENATOR LESIL MCGUIRE**

## **SECTIONAL ANALYSIS SENATE BILL NO. 63**

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).

Adds two exceptions to (b)(3), the paragraph allows a creditor to satisfy a claim out of the restricted trust interest if the trust requires its income or principal to be distributed to the settlor. The first new exception to (b)(3) allows a settlor to receive certain discretionary distributions made by a trustee who is not the settlor. The first new exception to (b)(3) allows a settlor to receive certain discretionary distributions made by a trustee who is not a settlor. The second new exception to (b)(3) 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.

**Section 3.** Amends AS 34.40.110(l). Clarifies that, if a trust has a transfer restriction, the beneficiary's trust interest is not subject to division at divorce or dissolution whether or not the trust interest is vested. Clarifies that the trust interest is not considered a factor or economic circumstance in the division of property at divorce or dissolution.

# FISCAL NOTE

STATE OF ALASKA  
2010 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: SB 63  
( ) Publish Date: \_\_\_\_\_

Identifier (file name): SB063-LAW-CIV-1-29-10  
Title: An Act relating to transfer restrictions on trust interests  
Dept. Affected: Law  
RDU: Civil  
Component: Com. And Fair Business  
Sponsor: Senator McGuire  
Requester: State Affairs  
Component Number: 2717

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

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

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
<b>OPERATING EXPENDITURES</b>								
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>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
-----------------------------	--	--	--	--	--	--	--	--

<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 Interagency Receipts								
<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>	<b>0.0</b>

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 Phone 465-5427  
Division: Administrative Services Date/Time: 1/29/10 12:00 AM  
Approved by: Daniel S. Sullivan, Attorney General Date: 1/29/2010  
Department of Law

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## SENATOR LESIL MCGUIRE

### Summary of Changes Between SB 63\A and CS for SB 63\E


This document is an identification of the changes between W.O. 26-LS0317\A and W.O. 26-LS0317\E.

**Section 1** is amended on to reflect that subsection G has been deleted in CS for SB 63 E (page 2, lines 7 and 8).

Section F and its subsections in SB 63A were deleted in the CS for SB 63E. In version A, subsections (b)(3)(E) and (F) were designed to allow a trustee who was governed by a standard (specific directions) to make distributions and the trust assets would still be protected by subsection (a). In version A, two specific statutory standards were described in (F)(i) and (ii).

The change was made because it was concluded by participants in the trust field that this language was too restrictive as there may be standards that are not covered in statute. Therefore, it was recommended that the language be more general and only refer to distributions "governed by a standard" thus combining (b)(3)(E) and (F) in version A were combined into (b)(3)(E) in version E.

Section G of SB 63A is now Section F of SB 63E.




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;

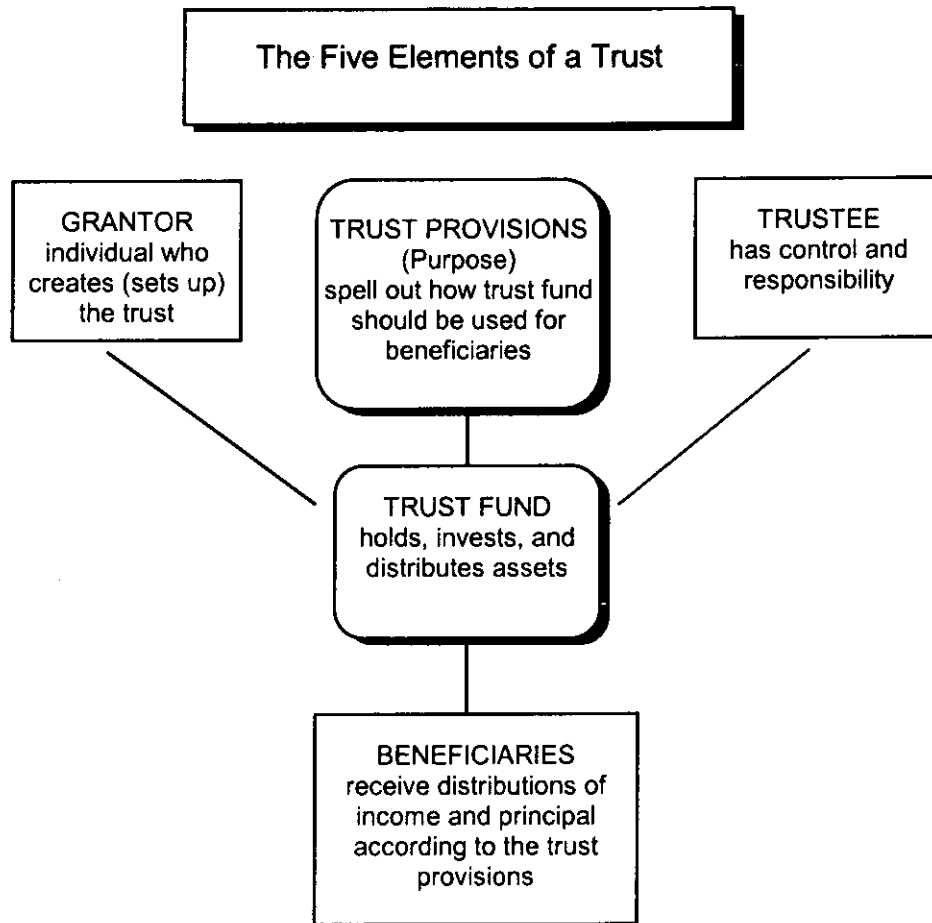
- Protecting interest of minors
- Preserve assets for the family
- Accomplish the desires of the family
- Improve quality of life by allowing use of trust assets by beneficiaries
- Provide asset protection
- Reduce and in some cases eliminate gift, estate and income taxes



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?



## **SB 278 – Leave for Military Spouses**

### **List of Anticipated Changes in Committee Substitute (Senate State Affairs)**

*Largely based on other state statutes*

**Require 14 days advance notice to employer**— except in the case of medical emergencies. In the case of medical emergencies, “as soon as is practicable.” (This language mirrors that in the Federal Family Medical Leave Act).

From discussions with ASD Superintendent Comeau, at least 10 days notice would typically be needed, although in the case of medical emergencies they can provide leave without advance notice.

#### **Allow for electronic posting of notice**

This was also suggested by Superintendent Comeau.

#### **Allow employers to request documentation of spouse’s combat leave**

This was added at the suggestion of committee members.

#### **Private employers shall make it possible continue benefits at employee’s own expense**

Under the current version, the employer must pay for the continued benefits.

**Make the penalties the same as those for jury duty (AS 09.20.037)** as opposed to those under AS 23.10.110 (unpaid overtime).

**Make the bill apply to only employees who work 20 or more hours per week.**

**Make the bill apply only to employers with 20 or more employees for more than 20 calendar weeks of the year.**

This was added to protect seasonal businesses.

**Make the bill apply only to schools with 20 or more employees**, as opposed to school districts.

This is in response to concerns that rural schools with only one or two teachers would not be able to function with the sudden loss of a teacher. This change would have the desired effect according to conversations with district superintendents.

**Make the bill apply to domestic partners** (private employers will be exempted from this requirement).

**Clarify that the leave be taken only during leave from deployment**, not before deployment or after.

This change may not be made. According to the drafter, this is already covered in the bill.

**SB 190 – Biometric Information**

**List of Anticipated Changes in Committee Substitute (Senate State Affairs)**

Page 3, lines 3-5 amended to read as follows:

(3) "biometric information" means information that is based on ~~an individual's unique behavioral or physiological characteristics, including~~ fingerprints, hand geometry, voice recognition, facial recognition, iris scan, retinal scan, and DNA

Page 2, lines 11-12 amended to read as follows:

(6) For the collection of fingerprints as specifically referenced in state statute"

Page 1, Line 9: amended to read:

...obtained the informed, *willing*, and written consent

Page 2, line 32 and page 3 line one, amended to remove misdemeanor penalties for collection of all forms of biometric information except DNA. There will still be a private right of action for the collection of biometric information other than DNA.

**SENATE COMMITTEE REPORT**  
**First Committee of Referral**

DATE: 1/21/09

FURTHER: Judiciary  
 Finance

Date of 5-Day Notice: 1/28/10  
 (in accordance with Uniform Rule 23)

DATE TURNED  
 IN TO OFFICE: 3/11/10

State Affairs Committee considered SENATE BILL NO. 63

**SB 63 TRANSFER RESTRICTIONS ON TRUSTS**

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

and recommends:

- be replaced with  SCS or  CS SB 63 (STA)  
 adopt previous  SCS or  CS \_\_\_\_\_ (      )  
 attached amendment(s)  
 adopt \_\_\_\_\_ Letter of Intent  
 further referral to \_\_\_\_\_ Committee

<b>SENATE BILL:</b>	
<input checked="" type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<hr/>	
<b>HOUSE BILL:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____


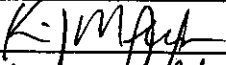
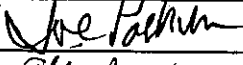
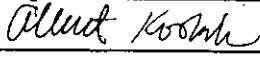
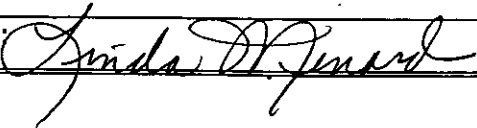
**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
LAW	01/29/10			X	1

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	French			✓	
	Meyer	✓			
	PASKUN			X	
	Kookesh			X	
CHAIR: 	MENARD	✓			