

SB

165

<TARGET><BILL>SB 165</BILL><SUBJECT>SB
165</SUBJECT><COMM>SJUD27</COMM></TARGET>

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595



Committee Members:
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Joe Paskvan
Senator John Coghill

Senate Judiciary Committee

Sponsor Statement

SB165 Uniform Probate Code; Trusts, Wills; Disposition of Human Remains

Alaska first modernized its trust and estate legislation in 1997. Since then, the trust and estate planning community continuously makes recommendations to the legislature for updates and improvements to Alaska's trust and estate laws to ensure that Alaska can continue to provide the best possible planning solutions. Alaska's trust and estate laws have significant impact on our economy, bringing literally millions of dollars to the state and creating jobs within the trust, banking, insurance and legal fields.

Senate Bill 165 provides for amendments to statute in the following areas:

- Extends protection for retirement plan assets to the beneficiaries of retirement plans (often the surviving spouse).
- Provides means of representation for minors and incapacitated persons in dealing with settlements of accounts or settlement agreements.
- Amends the 2003 Alaska Principal and Income Act to conform with current IRS regulations.
- Provides rules concerning who may control the disposition of decedents' remains.
- Makes conforming amendments to Alaska's laws regarding insurable interests to align with changes to the Uniform Trust Code.
- Provides that IRA interests can be voluntarily transferred to a family member or trust.
- Makes amendments to Alaska's community property provisions to update and clarify the ownership of community property.
- Allows a beneficiary to extend the time funds will be held in a Uniform Transfer to Minors Account.

Passage of SB 165 will ensure that Alaska remains the premier state in which to establish trusts and estates. I urge your support for this important legislation.

Alaska State Legislature

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Senator Dennis Egan
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SECTIONAL ANALYSIS FOR SENATE BILL 165

Sec. 1. Asset Protection for Inherited Retirement Plans. Alaska Statute 09.38.017(a) protects an individual's interest in a retirement plan from the claims of the individual's creditors. The amendment extends this protection to claims of a beneficiary's creditors (e.g., creditors of an individual's spouse). Arizona, Florida, and Texas have enacted similar provisions.

Sec. 2. This is a conforming amendment for Sec. 28.

Sec. 3. These are definitional changes implementing Sec. 1.

Sec. 4. through Sec. 5. Representation for Settlement Agreements. Alaska Statute 13.06.120 provides that minors, incapacitated persons, and similar persons may be represented by another person who has the same interests in the matter. This type of representation is important in order to simplify and make more efficient proceedings that involve persons who are not legally competent to represent themselves. The existing statute clearly applies to judicial proceedings. However, often it is important to have representation of minors and incapacitated persons with respect to the settlement of accounts of trustees of trusts and with respect to settlement agreements. These amendments clarify that the statute not only applies to court proceedings but also to non-judicial settlement proceedings.

Sec. 6 through Sec. 22. Amendments to 2003 Alaska Principal and Income Act. This modern act allows a person creating a new trust, or a trustee of an existing trust, to adopt a "unitrust" approach for determining the income of the trust which may be required to be distributed annually. A unitrust distributes a certain percentage of its assets annually to the current beneficiary. The use of this percentage unitrust approach allows the trustee to invest in order to maximize total return for both income and remainder beneficiaries.

Since 2003, the Internal Revenue Service has issued final regulations with respect to unitrusts. The Alaska Principal and Income Act amendments contained in this bill are designed to update Alaska's provisions to take advantage of these new regulations.

In summary, the most important changes contained in the bill expressly allow a trustee to choose a unitrust rate of three to five percent rather than be limited to the four percent amount presently in the law. The changes provide an explicit definition of income for a trust drafted as a unitrust. Language is added to provide the ordering of distributions among types of income and principal. A smoothing period of up to five years is allowed for determining the assets to be used when applying the unitrust percentage. Also, the new provisions clarify how the unitrust rules will apply to retirement benefits. These new changes will facilitate the use of unitrusts under Alaska law and maximize flexibility to take advantage of federal income tax planning.

Sec. 23 through 25. Amendments to Alaska Uniform Transfers to Minors Act. The Alaska Uniform Transfers to Minors Act allows donors, personal representatives, trustees, and obligors, to transfer assets to an account for the benefit of a minor. A custodian is named who may make distributions for the benefit of the minor. Under the existing statutes, the minor is entitled to the property when the minor reaches age 18 years or 21 years, depending on the type of transfer. The statute allows this age of distribution to be extended in certain circumstances to age 25 years.

A number of situations have arisen both in Alaska and in other states where it is undesirable for assets to be distributed later than the ages 18, 21, or 25 years, due to problems the minor may have, including substance abuse problems, immaturity, and the inability to manage assets. Often, the minor himself or herself is willing to have the assets remain in a custodial setting, managed by a competent person who will make distributions for the benefit of the minor. The amendments in this bill would allow for the extension to an age greater than that presently specified in the statute, as long as the minor consents to the extension during the six-month period when the minor attains the age when otherwise the assets would be distributed under the statute.

Sec. 26. Decedents Remains. Alaska does not presently have adequate statutory authority with respect to who may control the disposition of a decedent's remains. This has resulted in arguments and disputes among relatives and friends. Businesses involved in this area need protection concerning who is the person entitled to give them directions. This new act resolves the present uncertainty of the law. It provides authority for a person to provide directions and a form for a disposition document. If a person has not provided directions, then a priority list is provided of the persons who may control the disposition of the decedent's remains. Businesses who follow these directions or priority list are protected from liability.

Sec. 27. Insurable Interests. For many years, individuals have relied on life Insurance in helping to meet their financial, business, and estate planning needs. Often, their needs are best served by having one or more life insurance contracts held in an irrevocable trust, partnership, or limited liability company. In particular, irrevocable life insurance trusts have been widely used throughout the United States to own life insurance policies.

However, a relatively recent federal court case (*Chawla, ex rel Giesinger v. Transamerica Occidental Life Ins. Co.*, 2005 WL 405405 (E.D. Va. 2005)) had the effect of pointing out that while state insurance statutes typically require purchasers of insurance contracts to have an "insurable interest" in the life or body of the insured, the statutory provisions describing who may have an insurable interest did not specifically include trusts and business entities which are commonly used to purchase and own such policies. This case raised sufficient uncertainty about the status of life insurance trusts that in July, 2010, the Uniform Law Commission approved amendments to the Uniform Trust Code to clarify the situation.

Alaska has previously adopted substantial portions of the Uniform Trust Code. The proposed amendment to AS 21.42.020 is based in large part on the recommended amendments to the Uniform Trust Code, and also clarifies that persons with insurable interests may form business entities for the purposes of purchasing, holding, and administering life insurance contracts. Other states, for example Delaware, have already amended their statutes for these reasons, or are considering such amendments.

Sec. 28. Transfers of IRA Interests. Lifetime estate planning often occurs by a participant making gifts, sales or other transfers of property during lifetime to family members or trusts for their benefit. For many individuals, one of their most valuable assets is their individual retirement account (IRA). Alaska law (AS 09.38.017) protects IRAs from claims of creditors. This protection

could be construed to even prohibit voluntary transfers of the participant's interest in an IRA, which would prevent lifetime transfers of IRAs for estate planning and other purposes. Although it is important to maintain that creditor protection for IRAs, it would be beneficial to permit voluntary transfers of IRAs. Therefore, this section clarifies that the participant of an IRA may voluntarily transfer his or her IRA during lifetime.

Sec. 29 through Sec. 33. Community Property. In 1998, Alaska enacted an optional community property system. Several amendments have been made to Alaska's act, and this bill proposes further amendments designed to improve the act. Specifically, the amendments accomplish the following:

- a. Add references to a community property trust in appropriate provisions.
- b. Eliminate language stating a confusing statute of limitations and incorporates by reference a new statute of limitations.
- c. Provide clarification that property which spouses agree is community property is owned as community property regardless of the form of title to the property. If title to community property is in a form that provides for survivorship ownership between the spouses then the survivorship ownership is presumed to have been made with the consent of both spouses. If one spouse designates a beneficiary for an interest in property, the designation is only effective for that spouse's one half interest unless the other spouse consents in writing. Various family designations are presumed to have been made with the consent of the other spouse. The testimony of one spouse is sufficient to rebut a presumption.
- d. Enact remedies for improper transfers and limitation periods within which those remedies must be pursued.

Sec. 34. Repealed sections.

Sec. 35. Indirect rule change.

Sec. 36. Applicability

Sec. 37. Requirement for two-thirds majority vote of each house.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

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

MEMORANDUM

February 18, 2012

SUBJECT: CSSB 165(JUD) applicability amendment
(Work Order No. 27-LS0819\E.1)

TO: Senator Hollis French
Attn: Cindy Smith

FROM: *TB*
Terry Bannister
Legislative Counsel

This memo accompanies the applicability amendment described above.

Applicability. Applying the changes to AS 13.46 to transfers under the Alaska Uniform Transfers to Minors Act that pre-date the effective date of these changes may raise a constitutional impairment of contracts issue if the changes operate as a substantial impairment of any contractual relationships involved in the transfers.

If I may be of further assistance, please advise.

TLB:plm
12-107.plm

Enclosure

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STATE OF ALASKA

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FAX (907) 465-2029
Mail Stop 3101


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

MEMORANDUM

February 17, 2012

SUBJECT: CSSB 165(JUD) draft (Work Order No. 27-LS0819E)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy Smith

FROM:  Terry Bannister
Legislative Counsel

This memo accompanies the bill described above.

1. Correction. In bill sec. 39(b), the reference in the D.1 amendment to "AS 13.36.215(5)" has been corrected to read "AS 13.36.215(b)."
2. Single subject issue. As you are aware, it is my opinion that, by combining all of the subjects in the bill, the bill is not confined to one subject, which violates the constitutional requirement that a bill be confined to one subject.¹ This issue is present in SB 165 without the amendments added by the Senate Judiciary Committee, and the addition of the trust property appointment provisions do not change this.

The Alaska Supreme Court standard is that an "act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject."²

Historically, the Alaska Supreme Court has interpreted Alaska's single subject rule to permit very broad subject matter in one bill without violating the single subject requirement. For example, the Court has held that bills relating to such broad themes as "development of water resources,"³ "taxation,"⁴ "land,"⁵ "intoxicating liquor,"⁶ and

¹ Art. 2, sec. 13, Alaska State Constitution.

² State v. First Nat'l Bank of Anchorage, 660 P.2d 406 (Alaska 1982).

³ Gellert v. State, 522 P.2d 1120 (Alaska 1974).

⁴ North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534, 545 (Alaska 1978).

⁵ State v. First Nat'l Bank of Anchorage, 660 P.2d 406 (Alaska 1982).

Senator Hollis French

February 17, 2012

Page 2

"criminal law"⁷ are acceptable.⁸ However, there was a strong dissent in one case against allowing broad subject matter in a single bill.⁹ And in 2010, for the first time, the Alaska Supreme Court invalidated a piece of proposed legislation for failure to satisfy the single subject requirement.¹⁰ Please be aware that failure to comply with this requirement could jeopardize this bill if it were ever challenged.

3. Applicability (bill section 39). Applying the changes in AS 09.38.017 to retirement plans that pre-date the effective date of these changes and applying the changes and new provisions contained in AS 13.36.157 - 13.36.159 and AS 13.36.215(5) to trusts that pre-date the effective date of these changes may raise constitutional impairment of contracts issues if the changes or provisions affect provisions that are considered essential parts of the retirement plans or trusts.

If I may be of further assistance, please advise.

TLB:plm

12-099.plm

Enclosure

⁶ Van Brunt v. State, 646 P.2d 872 (Alaska App. 1982).

⁷ Galbraith v. State, 693 P.2d 880 (Alaska App. 1985).

⁸ Evans v. State, 56 P.3d 1046, 1070 (Alaska 2002).

⁹ Yute Air Alaska, Inc. v. McAlpine, 698 P.2d 1173 (Alaska 1985). In his dissent, at page 1182, Justice Moore stated: "This court has mistakenly continued to give the rule such an extremely liberal interpretation that the rule has become a farce."

¹⁰ Croft v. Parnell, 236 P.3d 369 (Alaska 2010).

AMENDMENT

OFFERED IN THE SENATE

TO: SB 165

1 Page 15, following line 10:

2 Insert a new subsection to read:

3 "(j) A custodian is not required to give a written notice of the minor's right to
4 compel immediate distribution under (h) of this section, and the minor may not
5 compel distribution of custodial property under (i) of this section, if

6 (1) the transferor or another person pays the tax liability resulting from
7 the delay of distribution;

8 (2) the transferor or another person indemnifies and holds both the
9 minor and the custodial property harmless from claims resulting from the delay of
10 distribution; and

11 (3) the custodian gives the minor written notice of

12 (A) the change to distribution resulting from the operation of
13 this subsection;

14 (B) the payment of the tax liability; and

15 (C) the indemnification of the minor and the custodial
16 property."

Amendment
language
from
Rep.
Gruenberg

SB165 Conceptual Amendment drafted by Turnkey

p 15 l 16 add a new subsection to read:

" (j) The ^{custodian} ~~trustor~~ need not give written notice of the minor's right to compel immediate distribution ~~and under~~ (h) of this section and the minor shall have no right to compel distribution of custodial property under (g) of this section if ~~the custodian gives the~~ ^{the trustee or another person pays the entire} ~~trustor or another person pays the entire~~ ~~notice of~~ tax liability resulting from these changes ^{and indemnifies and holds both the minor and the trust harmless thereon,} ~~and~~ and gives the minor written notice of the changes and the person's payment of the tax liability and the person's indemnification of the trust and the minor. "

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version SB165
 Fiscal Note Number _____
 () Publish Date _____

Identifier (file name) SB165-DCED-INS-01-31-12 Dept. Affected DCCED
 Title PRINCIP. & INC/PROBATE/UTMA/RETIREMT/ETC. Appropriation Insurance Operations
 Allocation Insurance Operations
 Sponsor Senate Judiciary
 Requester Senate Judiciary OMB Component Number 354

Expenditures/Revenues (Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates					
			FY13	FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES								
Personal Services	0.0		0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0		0.0	0.0	0.0	0.0	0.0	0.0
Services	0.0		0.0	0.0	0.0	0.0	0.0	0.0
Commodities	0.0		0.0	0.0	0.0	0.0	0.0	0.0
Capital Outlay								
Grants, Benefits								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)						
1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS								
Full-time								
Part-time								
Temporary								

CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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Estimated **SUPPLEMENTAL (FY12) operating costs** 0.0 (separate supplemental appropriation required;
 (discuss reasons and fund source(s) in analysis section)

Estimated **CAPITAL (FY13) costs** 0.0 (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Initial Version

Prepared by Linda Hall, Director
 Division Insurance
 Approved by JoEllen Hanrahan, Director Administrative Services
Commerce, Community, and Economic Development

Phone 907-465-2515
 Date/Time 1/31/12 4:54 PM
 Date 1/31/2012

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. SB165

Analysis

SB 165 makes changes to the Uniform Probate Code, Uniform Trust Code, and creates a Disposition of Human Remains Act.

Section 27 (AS.21.42.020) provides that a trustee or a trust may procure an insurance contract on the life or body of an individual and the proceeds may be payable to the trustee if the trustee or trust owns the insurance contract, a settler of the trust has an insurable interest in the individual insured, and the proceeds of the contract are primarily for the benefit of a trust beneficiary.

There is no fiscal impact to the Division of Insurance as a result of this legislation.

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version SB 165
Fiscal Note Number _____
() Publish Date _____

Identifier (file name) SB165-DOR-TRS-01-31-12 Dept. Affected Revenue
Title PRINCIP. & INC/PROBATE/UTMA/RETIREMT/ETC. Appropriation Taxation and Treasury
Allocation Treasury
Sponsor _____ (S) JUD
Requester _____ (S) JUD OMB Component Number 121

Expenditures/Revenues (Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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Estimated SUPPLEMENTAL (FY12) operating costs _____ (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs _____ (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Initial note.

Prepared by Alicia Egan, Legislative Liaison
Division Commissioners Office
Approved by Jerry Burnett, Director Administrative Services
Department of Revenue

Phone 907-465-6829
Date/Time 1/31/12 6:25 AM
Date 1/31/2012

FISCAL NOTE

**STATE OF ALASKA
2012 LEGISLATIVE SESSION**

BILL NO. SB 165

Analysis

As written, the bill has no effect on the programs or investments managed by the Department of Revenue .

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595



Committee Members:
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Senator Lesil McGuire
Senator Joe Paskvan
Senator John Coghill

Senate Judiciary Committee

Changes to SB 165 Principal and Income/Probate/Retirement, etc. In Version "D"

In Section 1, language was changed to more clearly delineate the kinds of retirement accounts covered by the provisions of the section.

In Section 28, a definition of an individual retirement account is provided for the purposes of the section, which governs voluntary transfers of accounts.

CS FOR SENATE BILL NO. 165(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to property exemptions for retirement plans, individual retirement
2 accounts, and Roth IRAs; relating to pleadings, orders, liability, and notices under the
3 Uniform Probate Code; relating to the appointment of trust property; relating to the
4 Alaska Principal and Income Act; relating to the Alaska Uniform Transfers to Minors
5 Act; relating to the disposition of human remains; relating to insurable interests for life
6 insurance policies; relating to transfers of individual retirement plans; relating to the
7 community property of married persons; and amending Rule 301(a), Alaska Rules of
8 Evidence."

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

10 * **Section 1.** AS 09.38.017(a) is amended to read:

11 (a) In addition to the exemption under AS 09.38.015(b), the following are
12 exempt from a claim of an individual's or beneficiary's creditor:

- 1 (1) the interest of the individual or beneficiary in a retirement plan;
 2 [AND]
 3 (2) the money or other assets payable to the individual from a
 4 retirement plan;

5 **(3) the interest of a beneficiary in**

6 **(A) a retirement plan if the beneficiary acquired the**
 7 **interest as a result of the death of an individual; the beneficiary's interest**
 8 **is exempt to the same extent that the individual's interest was exempt**
 9 **immediately before the individual died;**

10 **(B) an individual retirement account that has been**
 11 **transferred by the individual to the beneficiary during the individual's**
 12 **lifetime; the beneficiary's interest is exempt to the same extent that the**
 13 **individual's interest was exempt immediately before the transfer to the**
 14 **beneficiary;**

15 **(4) the money or other assets payable to a beneficiary from**

16 **(A) a retirement plan if the beneficiary acquired the money**
 17 **or other assets as a result of the death of an individual who would have**
 18 **had, during the individual's life, an exemption in the money or other**
 19 **assets;**

20 **(B) an individual retirement account if the beneficiary**
 21 **acquired the money or other assets as a result of the transfer of the money**
 22 **or other assets by an individual who would have had, at the time of the**
 23 **transfer, an exemption in the money or other assets.**

24 * **Sec. 2.** AS 09.38.017(d) is amended to read:

25 (d) A retirement plan exempt from claims under (a) of this section is
 26 conclusively presumed to be a spendthrift trust under this section, **except for**
 27 **transfers or assignments under AS 34.40.113.**

28 * **Sec. 3.** AS 09.38.017(e) is amended to read:

29 (e) In this section,

30 (1) "alternate payee" has the meaning given in 26 U.S.C. 414(p)(8);

31 (2) **"beneficiary" includes a person, trust, or trustee who has,**

1 before or after the death of an individual, a direct or indirect beneficial interest
 2 in a retirement plan; in this paragraph, "beneficial interest" includes an interest
 3 that is acquired

4 (A) as a designated beneficiary, survivor, co-annuitant,
 5 heir, or legatee; or

6 (B) if excludible from gross income under 26 U.S.C.
 7 (Internal Revenue Code), as a

8 (i) rollover under 26 U.S.C. 408 or 26 U.S.C. 408A;

9 (ii) a distribution from one retirement plan to
 10 another retirement plan; or

11 (iii) a distribution that is similar to (i) or (ii) of this
 12 subparagraph;

13 (3) "individual" means [AN INDIVIDUAL WHO IS] a participant in,
 14 an owner [A BENEFICIARY] of, or an alternate payee of a retirement plan;

15 (4) "individual retirement account" means an individual
 16 retirement account established under 26 U.S.C. 408 or a Roth IRA established
 17 under 26 U.S.C. 408A;

18 (5) [(3)] "retirement plan" means

19 (A) a retirement plan that is qualified under 26 U.S.C. 401(a),
 20 26 U.S.C. 403(a), 26 U.S.C. 403(b), [26 U.S.C. 408, 26 U.S.C. 408A, OR] 26
 21 U.S.C. 409, 26 U.S.C. 414(d), 26 U.S.C. 414(e), or 26 U.S.C. 457 (Internal
 22 Revenue Code);

23 (B) an individual retirement account; and

24 (C) the teachers' retirement system under AS 14.25, the
 25 judicial retirement system under AS 22.25, the public employees'
 26 retirement system under AS 39.25, and the elected public officers'
 27 retirement system under former AS 39.37.

28 * **Sec. 4.** AS 13.06.120 is amended to read:

29 **Sec. 13.06.120. Pleadings; when parties bound by orders; notice.** In any
 30 proceedings involving trusts, nonprobate assets, or estates of decedents, minors,
 31 protected persons, or incapacitated persons brought under AS 13.06 - AS 13.36 or

1 AS 13.38, [INCLUDING ANY JUDICIALLY SUPERVISED SETTLEMENTS AND
2 ANY NONJUDICIAL PROCEEDINGS AND SETTLEMENTS,] the following
3 apply:

4 (1) interests to be affected shall be described in pleadings that give
5 reasonable information to owners by name or class, by reference to the instrument
6 creating the interests, or in other appropriate manner;

7 (2) persons are bound by orders binding others in the following cases:

8 (A) orders binding the sole holder or all co-holders of a power
9 of revocation or a general or nongeneral power of appointment, including one
10 in the form of a power of amendment, bind other persons to the extent their
11 interests, as objects, takers in default, or otherwise, are subject to the power;

12 (B) to the extent there is no conflict of interest between them or
13 among persons represented, orders binding a conservator bind the person
14 whose estate the conservator controls; orders binding a guardian bind the ward
15 if no conservator of the estate has been appointed; orders binding a trustee bind
16 beneficiaries of the trust in proceedings to probate a will establishing or adding
17 to a trust, to review the acts or accounts of a prior fiduciary, and in proceedings
18 involving creditors or other third parties; orders binding a personal
19 representative bind persons interested in the undistributed assets of a
20 decedent's estate in actions or proceedings by or against the estate; and orders
21 binding an agent having authority to act with respect to the particular questions
22 or dispute bind the principal; if there is no conflict of interest and no
23 conservator or guardian has been appointed, a parent may represent the minor
24 child;

25 (C) an unborn person, a minor, an incapacitated person, or a
26 person whose identity or location is unknown or not reasonably ascertainable
27 who is not otherwise represented is bound by an order to the extent the interest
28 is adequately represented by another party having a substantially identical
29 interest in the proceeding;

30 (D) with regard to interests given upon the happening of a
31 certain event to persons who comprise a certain class, orders binding the living

1 persons who would constitute the class, if the event had happened immediately
2 before the commencement of the proceeding, bind all members of the class;

3 (E) with regard to an interest given to a living person when the
4 same interest or a share of the interest is to pass to the surviving spouse or to
5 persons who are or might be the distributees, devisees, heirs, or issue of the
6 living person upon the happening of a future event, orders binding the living
7 person bind the surviving spouse, distributees, devisees, heirs, or issue of the
8 living person;

9 (F) with regard to interests given to a person or a class of
10 persons, or to both, upon the happening of a future event, if the same interest
11 or a share of the interest is to pass to another person or class of persons, or to
12 both, upon the happening of an additional future event, orders binding the
13 living person or class of persons who would take the interest upon the
14 happening of the first event bind the persons and classes of persons who might
15 take on the happening of the additional future event;

16 (G) if a person is designated by a trust instrument to represent
17 and bind a born or unborn beneficiary of the trust and receive a notice,
18 information, accounting, or report for the beneficiary, then the beneficiary is
19 bound by an order binding the designated person; in this subparagraph,

20 (i) the settlor may make the designation in the trust
21 instrument, in a separate document, or by a trust protector authorized in
22 the trust instrument to make the designation;

23 (ii) except as otherwise provided in this subparagraph, a
24 person designated under (i) of this subparagraph may not represent and
25 bind a beneficiary while the designated person is serving as trustee;

26 (iii) except as otherwise provided in this subparagraph,
27 a person designated under (i) of this subparagraph may not represent
28 and bind another beneficiary if the designated person also is a
29 beneficiary, unless the designated person was named by the settlor, is
30 the beneficiary's spouse, or is a grandparent or descendant of a
31 grandparent of the beneficiary or the beneficiary's spouse; in this sub-

1 subparagraph, "spouse" means the individual to whom the beneficiary
2 is married and with whom the beneficiary is living, and a physical
3 separation primarily for education, business, health, and similar reasons
4 does not prevent the individual from being considered to be living with
5 the beneficiary;

6 (3) a person representing another person under (2)(A) - (F) of this
7 section and a person designated under (2)(G)(i) of this section are not liable to the
8 beneficiary whose interests are represented, or to a person claiming through that
9 beneficiary, for an action or omission to act made in good faith;

10 (4) notice is required as follows:

11 (A) notice as prescribed by AS 13.06.110 shall be given to
12 every interested person or to one person who can bind an interested person as
13 described in (2)(A), (B), or (D) - (G) of this section; notice may be given both
14 to a person and to another person who may bind the person;

15 (B) notice is given to unborn persons, a minor, an incapacitated
16 person, or a person whose identity or location is unknown or not reasonably
17 ascertainable, and persons who are not represented under (2)(A), (B), or (D) -
18 (G) of this section, by giving notice to all known persons whose interests in the
19 proceedings are substantially identical to those of the unborn persons, the
20 minor, the incapacitated person, or the person whose identity or location is
21 unknown or not reasonably ascertainable;

22 (5) at any point in a proceeding, a court may appoint a guardian ad
23 litem to represent the interest of an unborn person, a minor, an incapacitated person, or
24 a person whose identity or address is unknown or not reasonably ascertainable, if the
25 court determines that representation of the interest otherwise would be inadequate; if
26 not precluded by conflict of interests, a guardian ad litem may be appointed to
27 represent several persons or interests; the court shall set out its reasons for appointing
28 a guardian ad litem as a part of the record of the proceeding.

29 * **Sec. 5.** AS 13.06.120 is amended by adding a new subsection to read:

30 (b) In this section,

31 (1) "order" means a judicial order, nonjudicial order, the result of the

1 settlement of an account of a fiduciary under a procedure authorized by AS 13.06 -
2 13.36 or AS 13.38, and a settlement agreement resulting from a proceeding;

3 (2) "proceeding" means a judicial proceeding, nonjudicial proceeding,
4 the settlement of an account of a fiduciary under a procedure authorized by AS 13.06 -
5 13.36 or AS 13.38, and a settlement negotiation, even if the settlement negotiation
6 does not involve a judicial or nonjudicial third party who decides or facilitates a
7 settlement.

8 * **Sec. 6.** AS 13.36.157 is repealed and reenacted to read:

9 **Sec. 13.36.157. Exercise of power of appointment.** (a) An authorized trustee
10 with unlimited discretion to invade trust principal may appoint part or all of that
11 principal to a trustee of an appointed trust for, and only for the benefit of, a current
12 beneficiary of the invaded trust to the exclusion of other current beneficiaries. A
13 permissible appointee of a power of appointment held by a beneficiary of the
14 appointed trust is not considered a beneficiary of the appointed trust. The successor
15 and remainder beneficiaries of the appointed trust may be one or more of the successor
16 and remainder beneficiaries of the invaded trust to the exclusion of other successor
17 and remainder beneficiaries.

18 (b) An authorized trustee exercising the power under (a) of this section may
19 grant a discretionary power of appointment, including a presently exercisable power of
20 appointment, in the appointed trust to one or more of the current beneficiaries of the
21 invaded trust, to the extent that the beneficiary who is granted the power to appoint is
22 authorized to receive the principal outright under the terms of the invaded trust. A
23 permissible appointee is not limited to the beneficiaries of the invaded trust.

24 (c) Under (a) and (b) of this section, if the beneficiaries of the invaded trust
25 are described by a class, the beneficiaries of the appointed trust may include present or
26 future members of that class.

27 (d) An authorized trustee with the power to invade trust principal but without
28 unlimited discretion may appoint part or all of the principal of the trust to a trustee of
29 an appointed trust if the current beneficiaries of the appointed trust are the same as the
30 current beneficiaries of the invaded trust and the successor and remainder beneficiaries
31 of the appointed trust are the same as the successor and remainder beneficiaries of the

1 invaded trust. The shares of the current beneficiaries of the appointed trust must be the
 2 same as the shares of the current beneficiaries of the invaded trust, and the shares of
 3 the successor and remainder beneficiaries of the appointed trust must be the same as
 4 the shares of the successor and remainder beneficiaries of the invaded trust.

5 (e) If the authorized trustee exercises the power under (d) of this section, the
 6 appointed trust must include the same standard authorizing the trustee to distribute the
 7 income or invade the principal of the appointed trust as the standard in the invaded
 8 trust. However, the standard authorizing the trustee to distribute the income or invade
 9 the principal of the appointed trust may be changed if the trustee appoints to an
 10 appointed trust that is a special needs trust, a pooled trust, or a third-party trust.

11 (f) If an authorized trustee exercises the power under (d) and (e) of this section
 12 to extend the duration of the appointed trust beyond the duration of the invaded trust
 13 for any period after the invaded trust would have otherwise terminated under the
 14 provisions of the invaded trust, the appointed trust, in addition to the language
 15 required to be included in the appointed trust under (e) of this section, may also
 16 provide an additional trustee with unlimited discretion to invade the principal of the
 17 appointed trust during the extended duration. The trustee with unlimited discretion
 18 continues to be subject to the restrictions in (d) - (h) of this section.

19 (g) Under (d) - (f) of this section, if the beneficiaries of the invaded trust are
 20 described by a class, the beneficiaries of the appointed trust include present or future
 21 members of that class.

22 (h) If the authorized trustee exercises the power under (d) - (g) of this section
 23 and if the invaded trust grants a power of appointment to a beneficiary of the trust, the
 24 appointed trust must grant this power of appointment in the appointed trust, and the
 25 class of permissible appointees shall be the same as in the invaded trust.

26 * **Sec. 7.** AS 13.36 is amended by adding new sections to read:

27 **Sec. 13.36.158. Additional provisions relating to exercise of a power of**
 28 **appointment.** (a) An exercise of the power to invade trust principal under
 29 AS 13.36.157 is the exercise of a special power of appointment.

30 (b) The appointed trust to which an authorized trustee appoints the assets of
 31 the invaded trust under AS 13.36.157 may have a duration that is longer than the

1 duration set out in the invaded trust.

2 (c) If an authorized trustee has unlimited discretion to invade the principal of a
3 trust and if the same trustee or another trustee has a power, not dependent on unlimited
4 discretion, to invade principal under the trust instrument, the authorized trustee having
5 unlimited discretion may exercise the power of appointment under AS 13.36.157(a) -
6 (c).

7 (d) An authorized trustee may exercise the power to appoint in favor of an
8 appointed trust under AS 13.36.157 whether or not there is a current need to invade
9 principal under the terms of the invaded trust.

10 (e) An authorized trustee exercising the power under AS 13.36.157 -
11 13.36.159 has a fiduciary duty to exercise the power in the best interests of one or
12 more proper objects of the exercise of the power and as a prudent person would
13 exercise the power under the prevailing circumstances. The authorized trustee may not
14 exercise the power under AS 13.36.157 - 13.36.159 if there is substantial evidence of a
15 contrary intent of the settlor and it cannot be established that the settlor would be
16 likely to have changed this intention under the circumstances existing at the time the
17 trustee exercises the power. The provisions of the invaded trust may not be viewed
18 alone as substantial evidence of a contrary intent of the settlor unless the invaded trust
19 expressly prohibits the exercise of the power in the manner intended by the authorized
20 trustee.

21 (f) The provisions of AS 13.36.157 - 13.36.159 may not be construed to
22 abridge the right of a trustee to appoint property further in trust under the terms of the
23 governing instrument of a trust, another provision of law, or common law, or as
24 directed by a court having jurisdiction over the trust.

25 (g) Nothing in AS 13.36.157 - 13.36.159 creates or implies a duty to exercise
26 a power to invade principal. An inference of impropriety may not be made, and
27 liability is not incurred, as a result of an authorized trustee not exercising the power
28 conferred under AS 13.36.157.

29 (h) A power authorized by AS 13.36.157 may be exercised, subject to the
30 provisions of AS 13.36.159(a), unless expressly prohibited by the terms of the
31 governing instrument. A general prohibition against amending or revoking the invaded

1 trust and a provision that constitutes a spendthrift clause do not preclude the exercise
2 of a power under AS 13.36.157.

3 (i) An authorized trustee may not exercise a power authorized by
4 AS 13.36.157 to

5 (1) reduce, limit, or modify a beneficiary's current right to a mandatory
6 distribution of income or principal, a mandatory annuity or unitrust interest, a right to
7 withdraw a percentage of the value of the trust, or a right to withdraw a specified
8 dollar amount, if the mandatory right has come into effect with respect to the
9 beneficiary, but the mandatory right may be reduced, limited, or modified during any
10 extended duration of the trust; however, notwithstanding the other provisions in this
11 paragraph, but subject to the other limitations in AS 13.36.157 - 13.36.159, an
12 authorized trustee may exercise a power authorized by AS 13.36.157 to appoint to an
13 appointed trust that is a special needs trust, a pooled trust, or a third-party trust;

14 (2) decrease or indemnify against a trustee's liability or exonerate a
15 trustee from liability for failure to exercise reasonable care, diligence, and prudence
16 unless the court having jurisdiction over the trust specifies otherwise;

17 (3) eliminate a provision granting another person the right to remove
18 or replace the authorized trustee exercising the power under AS 13.36.157 unless a
19 court having jurisdiction over the trust specifies otherwise;

20 (4) fix as binding and conclusive the value of an asset for purposes of
21 distribution, allocation, or otherwise; or

22 (5) jeopardize

23 (A) the deduction or exclusion originally claimed with respect
24 to a contribution to the invaded trust that qualified for the annual exclusion
25 under 26 U.S.C. 2503(b), the marital deduction under 26 U.S.C. 2056(a) or 26
26 U.S.C. 2523(a), or the charitable deduction under 26 U.S.C. 170(a), 26 U.S.C.
27 642(c), 26 U.S.C. 2055(a), or 26 U.S.C. 2522(a) (Internal Revenue Code);

28 (B) the qualification of a transfer as a direct skip under 26
29 U.S.C. 2642(c) (Internal Revenue Code);

30 (C) the election to treat a corporation as a subchapter S
31 corporation under 26 U.S.C. 1362 (Internal Revenue Code); or

1 (D) another specific tax benefit for which a contribution
2 originally qualified for income, gift, estate, or generation-skipping transfer tax
3 purposes under 26 U.S.C. (Internal Revenue Code).

4 (j) Before exercising the power under AS 13.36.157, an authorized trustee
5 shall consider the tax implications of the exercise of the power.

6 (k) An authorized trustee may not exercise a power described in AS 13.36.157
7 - 13.36.159 in violation of the limitations on validity in AS 34.27.051 or 34.27.100, or
8 the restrictions on exercising certain powers in AS 13.36.153 by trustees who are not
9 independent. A violation voids the entire exercise of the power unless the exercise is
10 modified to correct the violation.

11 (l) Unless a court having jurisdiction over the trust directs otherwise, an
12 authorized trustee may not exercise a power authorized by AS 13.36.157 to change the
13 provisions regarding the determination of the compensation of a trustee. The
14 commissions or other compensation payable to the trustees of the invaded trust may
15 continue to be paid to the trustees of the appointed trust during the term of the
16 appointed trust and shall be determined in the same manner as for the invaded trust.

17 (m) A trustee may not receive a payment, a commission, or other
18 compensation for appointing property from the invaded trust to an appointed trust
19 under AS 13.36.157. However, a trustee may be compensated at an hourly rate for the
20 time spent considering and implementing the exercise of a power to appoint.

21 (n) Unless the invaded trust expressly provides otherwise, the provisions in
22 AS 13.36.157 - 13.36.159 apply to

23 (1) a trust, whether testamentary or inter vivos, governed by the laws
24 of this state, including a trust whose governing law has been changed to the laws of
25 this state; and

26 (2) a trust that has a trustee who is an individual domiciled in this state,
27 or a trustee that is an entity having an office in this state, if a majority of the trustees
28 select this state as the location for the primary administration of the trust and the
29 selection is made by an instrument in writing that is signed and acknowledged by a
30 majority of the trustees; the instrument exercising this selection shall be kept with the
31 records of the invaded trust.

1 (o) A power to pay principal that includes words such as "best interests,"
2 "welfare," "comfort," or "happiness" is not considered a limitation or modification of
3 the right to distribute principal.

4 (p) In this section, "internal revenue code" means the Internal Revenue Code
5 of the United States (26 U.S.C.) as it exists on the effective date of this Act and as it is
6 amended from time to time.

7 **Sec. 13.36.159. Implementation of power of appointment.** (a) Unless the
8 authorized trustee provides otherwise, the appointment of

9 (1) all of the assets comprising the principal of the invaded trust to an
10 appointed trust includes subsequently discovered assets of the invaded trust and
11 undistributed principal of the invaded trust acquired after the appointment to the
12 appointed trust;

13 (2) a part but not all of the assets comprising the principal of the
14 invaded trust to an appointed trust may not include subsequently discovered assets
15 belonging to the invaded trust or principal paid to or acquired by the invaded trust
16 after the appointment to the appointed trust; those subsequently discovered assets
17 remain the assets of the invaded trust.

18 (b) The exercise of the power to appoint to an appointed trust under
19 AS 13.36.157 shall be evidenced by an instrument in writing that is signed, dated, and
20 acknowledged by the authorized trustee. The exercise of the power is effective 30 days
21 after the date of service of the instrument as specified in (d) of this section, unless the
22 persons entitled to notice consent in writing to a sooner effective date.

23 (c) An authorized trustee may exercise the power authorized by AS 13.36.157
24 without the consent of the settlor or a person interested in the invaded trust and
25 without court approval. However, an authorized trustee may seek court approval for
26 the exercise. When seeking court approval, notice shall be sent to all qualified
27 beneficiaries.

28 (d) A copy of the invaded trust, the appointed trust, and the instrument
29 exercising the power shall be delivered to

30 (1) the settlor, if living, of the invaded trust;

31 (2) a person having the right, under the terms of the invaded trust, to

1 remove or replace the authorized trustee exercising the power under AS 13.36.157;
2 and

3 (3) a qualified beneficiary or a person who may represent and bind the
4 qualified beneficiary under AS 13.06.120.

5 (e) Notice under (d) of this section to a qualified beneficiary is not required if
6 the settlor has exempted the authorized trustee from providing notification or
7 information to beneficiaries under AS 13.36.080(b). Notice under (d) of this section
8 shall be provided under AS 13.06.110.

9 (f) The instrument exercising the power must state whether the appointment is
10 of all or part of the assets comprising the principal of the invaded trust and, if a part,
11 the approximate percentage of the value of the principal of the invaded trust that is the
12 subject of the appointment.

13 (g) A person entitled to notice under (d) of this section may object to the
14 trustee's exercise of the power under AS 13.36.157 - 13.36.159 by serving a written
15 notice of objection on the trustee before the effective date of the exercise of the power.
16 The failure to object does not constitute consent.

17 (h) The receipt of a copy of the instrument exercising the power does not,
18 before the expiration of the limitation period in AS 13.36.100 with respect to a report
19 disclosing the exercise, affect the right of a qualified beneficiary to object to the
20 exercise of the power under AS 13.36.157 and to request the court to modify or to
21 reverse the exercise.

22 (i) A copy of the instrument exercising the power shall be kept with the
23 records of the invaded trust.

24 * **Sec. 8.** AS 13.36.215 is amended by adding a new subsection to read:

25 (b) In AS 13.36.157 - 13.36.159,

26 (1) "appointed trust" means an irrevocable trust that receives principal
27 from an invaded trust under AS 13.36.157, including a new trust created by the settlor
28 of the invaded trust or by the trustees, acting in that capacity, of the invaded trust;

29 (2) "authorized trustee" means, with regard to an invaded trust, a
30 trustee with the authority to pay trust principal to or for a current beneficiary; in this
31 paragraph, "trustee" does not include a settlor or a beneficiary to whom income or

1 principal must be paid, currently or in the future, or who is or will become eligible to
 2 receive a distribution of income or principal in the discretion of the trustee other than
 3 by the exercise of a power of appointment held in a nonfiduciary capacity;

4 (3) "current beneficiary" means a person or, with regard to a class of
 5 persons, a person who is or will become a member of the class, to whom a trustee may
 6 distribute principal when exercising a power under AS 13.36.157;

7 (4) "invade" means pay directly to the beneficiary of a trust or apply to
 8 the benefit of a beneficiary;

9 (5) "invaded trust" means an irrevocable inter vivos or testamentary
 10 trust the principal of which is appointed under AS 13.36.157;

11 (6) "pooled trust" means a trust described in 42 U.S.C. 1396p(d)(4)(C)
 12 that meets the requirements for a pooled trust under the regulations of this state
 13 relating to the Medicaid treatment of trusts;

14 (7) "principal" means the assets of a trust, including accrued and
 15 accumulated income, but excluding income that is currently required to be distributed;

16 (8) "special needs trust" means a trust under 42 U.S.C. 1396p(d)(4)(A)
 17 that meets the requirements for a special needs trust under the regulations of this state
 18 relating to the Medicaid treatment of trusts;

19 (9) "third-party trust" means a trust that is

20 (A) established by a third party with the assets of the third party
 21 to provide for supplemental needs for a person eligible when the trust is
 22 created or at a future time for needs-based public assistance; and

23 (B) exempt from the provisions of the regulations of this state
 24 relating to the Medicaid treatment of trusts;

25 (10) "unlimited discretion" means the unlimited right to distribute
 26 principal that is not modified in any manner.

27 * **Sec. 9.** AS 13.38.200(b) is amended to read:

28 (b) In exercising a discretionary power of administration regarding a matter
 29 within the scope of this chapter, whether granted by the governing instrument or this
 30 chapter, including AS 13.38.210 and 13.38.300 - 13.38.490 [13.38.300 - 13.38.410], a
 31 fiduciary shall administer a trust or estate impartially based on what is fair and

1 reasonable to all of the beneficiaries, except to the extent that the governing
2 instrument clearly manifests an intention that the fiduciary shall or may favor one or
3 more of the beneficiaries. A determination in accordance with this chapter is presumed
4 to be fair and reasonable to all of the beneficiaries.

5 * **Sec. 10.** AS 13.38.210(c) is amended to read:

6 (c) A trustee may not make an adjustment under this section if

7 (1) the adjustment would diminish the income interest in a trust that
8 requires all of the income to be paid at least annually to a spouse and for which a
9 federal estate tax or gift tax marital deduction would be allowed, in whole or in part, if
10 the trustee did not have the power to make the adjustment; the prohibition in this
11 paragraph does not apply to a trust after the trustee determines that the marital
12 deduction has not been claimed or has not been allowed;

13 (2) the adjustment would reduce the actuarial value of the income
14 interest in a trust to which a person transfers property with the intent to qualify for a
15 federal gift tax exclusion;

16 (3) the adjustment would change the amount payable to a beneficiary
17 as a fixed annuity or a fixed fraction of the value of the trust assets;

18 (4) the adjustment is from any amount that is permanently set aside for
19 charitable purposes under the governing instrument and for which a federal estate or
20 gift tax charitable deduction has been taken, unless both income and principal are
21 permanently set aside for charitable purposes under the governing instrument;

22 (5) possessing or exercising the power to make an adjustment would
23 cause an individual to be treated as the owner of all or part of the trust for federal
24 income tax purposes, and the individual would not be treated as the owner if the
25 trustee did not possess the power to make an adjustment;

26 (6) possessing or exercising the power to make an adjustment would
27 cause all or part of the trust assets to be subject to federal estate or gift tax with respect
28 to an individual, and the assets would not be subject to federal estate or gift tax with
29 respect to the individual if the trustee did not possess the power to make an
30 adjustment;

31 (7) the trustee is a beneficiary of the trust; or

1 (8) the trust has been converted to a unitrust under AS 13.38.300 -
 2 13.38.435 [AS 13.38.300 - 13.38.410].

3 * **Sec. 11.** AS 13.38.300 is amended to read:

4 **Sec. 13.38.300. Power to convert to unitrust.** Unless expressly prohibited by
 5 the governing instrument, a trustee may release the power to adjust under
 6 AS 13.38.210 and may convert a trust into a unitrust as described in AS 13.38.300 -
 7 13.38.435 [AS 13.38.300 - 13.38.410] if

8 (1) the trustee determines that the conversion will enable the trustee to
 9 better carry out the intent of the settlor or testator and the purposes of the trust;

10 (2) the trustee gives written notice of the trustee's intention to release
 11 the power to adjust, of the trustee's intention to convert the trust into a unitrust, of the
 12 unitrust percentage selected, of the smoothing period selected, and of how the
 13 unitrust will operate, including what initial decisions the trustee intends to [WILL]
 14 make under AS 13.38.340 [THIS SECTION], to all the sui juris beneficiaries who

15 (A) are currently eligible to receive income from the trust;

16 (B) would be eligible, if a power of appointment were not
 17 exercised, to receive income from the trust if the interest of all of the
 18 beneficiaries eligible to receive income under (A) of this paragraph were to
 19 terminate immediately before the giving of the notice; and

20 (C) would, if a power of appointment were not exercised,
 21 receive a distribution of principal if the trust were to terminate immediately
 22 before the giving of the notice;

23 (3) there are at least one sui juris beneficiary under (2)(A) of this
 24 section and at least one sui juris beneficiary under (2)(B) or (C) of this section; and

25 (4) a sui juris beneficiary does not object to the conversion to a unitrust
 26 in a writing delivered to the trustee within 60 days after the mailing of the notice under
 27 (2) of this section.

28 * **Sec. 12.** AS 13.38.310(a) is amended to read:

29 (a) A trustee may petition the court to approve the conversion to a unitrust if

30 (1) a beneficiary timely objects to the conversion to a unitrust; [OR]

31 (2) there is not a sui juris beneficiary who is eligible under

AS 13.38.300(2): or

(3) the trustee is a beneficiary [AS 13.38.300(2)(A), AND THERE IS NOT A SUI JURIS BENEFICIARY WHO IS ELIGIBLE UNDER AS 13.38.300(2)(B) OR (C)].

* **Sec. 13.** AS 13.38.330(b) is amended to read:

(b) After a trust has been converted to a unitrust, "income" in the governing instrument means an annual distribution equal to **the amount produced by the application of a fixed unitrust percentage established under (d) of this section to** [FOUR PERCENT OF] the net fair market value, as determined annually, of the trust's assets, whether the assets would be considered income or principal under other provisions of this chapter, **averaged over the lesser of**

(1) the preceding years in the smoothing period selected by the trustee; or

(2) the period during which the trust has been in existence.

* **Sec. 14.** AS 13.38.330 is amended by adding a new subsection to read:

(d) The unitrust percentage to be used in determining the unitrust amount must be a reasonable current return from the unitrust of at least three percent and not more than five percent, taking into account the intentions of the trustor of the unitrust as expressed in the governing instrument, the needs of the beneficiaries, general economic conditions, projected current earnings for the unitrust, projected appreciation for the unitrust, and the effect of projected inflation on the unitrust.

* **Sec. 15.** AS 13.38.340 is amended to read:

Sec. 13.38.340. Trustee's discretionary powers regarding unitrust. The trustee may, in the trustee's discretion, from time to time, determine

- (1) the effective date of a conversion to a unitrust;
- (2) the provisions for prorating a unitrust distribution for a short year in which a beneficiary's right to payments commences or ceases;
- (3) the frequency of unitrust distributions during the year;
- (4) the effect of other payments from or contributions to the trust on the trust's valuation;
- (5) whether to value the trust's assets annually or more frequently;

- 1 (6) **whether to use a smoothing period of three, four, or five years;**
 2 (7) what valuation dates to use;
 3 (8) [(7)] how frequently to value nonliquid assets and whether to
 4 estimate their value;
 5 (9) [(8)] whether to omit trust property occupied or possessed by a
 6 beneficiary from the calculations; and
 7 (10) [(9)] other matters necessary for the proper functioning of the
 8 unitrust.

9 * **Sec. 16.** AS 13.38.350(b) is amended to read:

10 (b) Unless otherwise provided by the governing instrument, a unitrust
 11 distribution shall be considered to have been paid from net income as net income
 12 would be determined if the trust were not a unitrust. To the extent net income is
 13 insufficient, the unitrust distribution shall be considered to have been paid from
 14 **ordinary income that is allocable under federal income tax rules to net income as**
 15 **determined for a unitrust. To the extent that the ordinary income is insufficient,**
 16 **the unitrust distribution is considered to have been paid from** net realized short-
 17 term capital gains. To the extent **net income, ordinary income,** and net realized short-
 18 term capital gains are insufficient, the unitrust distribution shall be considered to have
 19 been paid from net realized long-term capital gains. To the extent **net income,**
 20 **ordinary income,** and net realized short-term and long-term capital gains are
 21 insufficient, the unitrust distribution shall be paid from the principal of the trust.

22 * **Sec. 17.** AS 13.38.360 is amended to read:

23 **Sec. 13.38.360. Court orders regarding unitrust.** The trustee or, if the trustee
 24 declines to petition the court, a beneficiary may petition the court to

25 [(1) SELECT A PAYOUT PERCENTAGE DIFFERENT THAN
 26 FOUR PERCENT;

27 (2)] provide for a distribution of net income, as would be determined if
 28 the **unitrust** [TRUST] were not a unitrust, in excess of the unitrust distribution if the
 29 distribution is necessary to preserve a tax benefit [;

30 (3) AVERAGE THE VALUATION OF THE TRUST'S NET ASSETS
 31 OVER A PERIOD OTHER THAN THREE YEARS].

1 * **Sec. 18.** AS 13.38.390(b) is amended to read:

2 (b) If AS 13.38.380(a)(3), (4), or (6) applies to all the trustees, the trustees
3 may petition the court to direct a conversion. **In the alternative, the trustees may**
4 **appoint an independent person who shall be granted the authority, while acting**
5 **in a fiduciary capacity, to make decisions in place of the trustees relating to a**
6 **conversion, reconversion, and the exercise of discretionary powers under**
7 **AS 13.38.340.**

8 * **Sec. 19.** AS 13.38.400 is amended to read:

9 **Sec. 13.38.400. Reconversion from a unitrust.** A trustee may reconvert a
10 trust that has been converted into a unitrust under AS 13.38.300 by following the same
11 procedures provided in **AS 13.38.300 - 13.38.435** [AS 13.38.300 - 13.38.410] for
12 converting a trust into a unitrust. If a unitrust is reconverted under this section, the
13 trustee's power to adjust under AS 13.38.210 applies to the trustee after the
14 reconversion.

15 * **Sec. 20.** AS 13.38 is amended by adding new sections to article 2 to read:

16 **Sec. 13.38.420. Additional unitrust provisions.** (a) The unitrust amount may
17 be determined by reference to the net fair market value of the unitrust's assets in one or
18 more years.

19 (b) Distribution of a unitrust amount is considered a distribution of all of the
20 income of a unitrust and is considered to be an income interest.

21 (c) Distribution of a unitrust amount is considered to be a reasonable
22 apportionment of the total return of a unitrust.

23 (d) A unitrust that provides for a distribution based on a unitrust percentage in
24 excess of five percent of the net fair market value of the unitrust assets a year is
25 considered to have paid out all of the income of the unitrust and to have paid out
26 principal of the unitrust to the extent that the distribution exceeds five percent a year.

27 (e) The governing instrument of a unitrust may grant discretion to the trustee
28 to adopt a consistent practice of treating capital gains as part of the unitrust amount to
29 the extent that the unitrust amount exceeds the income determined as if the trust were
30 not a unitrust, or the governing instrument may specify the ordering of classes of
31 income.

1 (f) Unless the terms of the unitrust specifically provide otherwise, a unitrust
2 amount is considered to have been made from the following sources, which are listed
3 in order of priority:

- 4 (1) net income determined as if the trust were not a unitrust;
- 5 (2) ordinary income not allocable to net income;
- 6 (3) net realized short-term capital gains;
- 7 (4) net realized long-term capital gains; and
- 8 (5) the principal of the trust estate.

9 (g) The unitrust governing instrument may provide that the trustee may
10 exclude assets used by the unitrust beneficiary, such as a residence property or
11 tangible personal property, from the net fair market value of the unitrust assets for the
12 purposes of computing the unitrust amount. These assets may be considered
13 equivalent to income or to the unitrust amount.

14 **Sec. 13.38.430. Power to treat gains as part of distribution of principal.**

15 Unless prohibited by the unitrust's governing instrument or specifically addressed by
16 AS 13.38.350 or 13.38.420, the trustee of a unitrust may treat gains from the sale of
17 capital assets of the unitrust to be part of a distribution of principal to a beneficiary,
18 and, if the trustee treats these gains as part of a distribution of principal to a
19 beneficiary, the trustee shall treat these gains consistently on the unitrust's books,
20 records, and tax returns as part of a distribution to a beneficiary.

21 **Sec. 13.38.435. Definitions.** In AS 13.38.300 - 13.38.435,

- 22 (1) "smoothing period" means the period of years over which the fair
23 market value of the assets of a unitrust are averaged;
- 24 (2) "unitrust amount" means the amount that is distributed from a
25 unitrust to a beneficiary;
- 26 (3) "unitrust percentage" means the unitrust percentage established
27 under AS 13.38.330(d).

28 * **Sec. 21.** AS 13.38.690(a) is repealed and reenacted to read:

29 (a) A trustee shall allocate

- 30 (1) to income that portion of a payment that equals the greater of the
31 following:

1 (A) the portion that the payor characterizes as interest, a
2 dividend, a remittance in place of interest, or a remittance in place of a
3 dividend; or

4 (B) the portion that is characterized as imputed interest for
5 federal income purposes;

6 (2) to principal that portion of a payment that remains after the
7 allocation is made under (1) of this subsection.

8 * **Sec. 22.** AS 13.38.690(b) is amended to read:

9 (b) If **no** [A] part of a payment under a contract calling for equal installments
10 over a fixed period of time is [NOT] allocable to income under the provisions of (a) of
11 this section, the difference between the trust's acquisition value of the contract and the
12 total expected return **is** [SHALL BE] considered to be interest. The trustee shall
13 allocate to income the portion of each payment equivalent to interest on the then
14 unpaid principal balance at the rate specified in the contract or at a rate necessary to
15 amortize the difference between the expected return and the acquisition value, where
16 that rate is readily ascertainable by the trustee.

17 * **Sec. 23.** AS 13.38.690(c) is amended to read:

18 (c) If **no** [THERE IS NOT A] portion of a payment from a separate fund held
19 exclusively for the benefit of the trust [THAT] is allocable to income under (a) or (b)
20 of this section, but the internal net income of the fund determined as if the fund were a
21 separate trust subject to AS 13.38.200 - 13.38.410, 13.38.500 - 13.38.690, or
22 13.38.710 - 13.38.860 [AS 13.38.500 - 13.38.860] is readily ascertainable by the
23 trustee, the **internal net income of the fund is considered to be the income earned**
24 **by the fund, and the** portion of the payment equal to the then undistributed net
25 income of the fund realized since the trust acquired its interest in the fund is
26 considered to be a distribution of **that internal net income of the fund** and shall be
27 allocated to the trust income account. The balance of the payment described in this
28 subsection shall be allocated to principal. **The power to adjust under AS 13.38.210,**
29 **the power to convert to a unitrust under AS 13.38.300, and the provisions of**
30 **AS 13.38.420 apply to retirement benefits covered by this subsection that are**
31 **payable to a trust. These powers and provisions may be exercised by the payee**

1 trustee or in the governing instrument for the retirement benefits separately and
 2 independently from the exercise by the payee trustee or in the governing
 3 instrument of these powers and provisions for the trust, as if the retirement
 4 benefits and the trust were separate trusts subject to this chapter.

5 * **Sec. 24.** AS 13.38.690(d) is amended to read:

6 (d) A trustee shall allocate 10 percent of the part of the payment that is
 7 required to be made during the accounting period to income and the balance to
 8 principal if there is **no** [NOT A] part of the payment that is allocable to income under
 9 (a) - (c) of this section and all or part of the payment is required to be made. The
 10 trustee shall allocate the entire payment to principal if **no** [A] part of a payment is
 11 [NOT] required to be made or the payment received is the entire amount to which the
 12 trustee is entitled. In this subsection, a payment is not "required to be made" to the
 13 extent that it is made because the trustee exercises a right of withdrawal.

14 * **Sec. 25.** AS 13.38.690(e) is amended to read:

15 (e) If, to obtain a federal estate or gift tax marital deduction for a trust, the
 16 trustee must allocate more of a payment to income than provided for by this section,
 17 the trustee shall allocate **to income** the additional amount necessary to obtain the
 18 marital deduction [TO INCOME].

19 * **Sec. 26.** AS 13.46.190 is amended to read:

20 **Sec. 13.46.190. Termination of custodianship.** The custodian shall transfer in
 21 an appropriate manner the custodial property to the minor or to the minor's estate upon
 22 the earlier of the

23 (1) minor's attainment of 21 years of age with respect to property
 24 transferred under AS 13.46.030 or 13.46.040 unless the time of transfer of the
 25 custodial property to the minor is changed under AS 13.46.195 **or 13.46.197**;

26 (2) minor's attainment of 18 years of age with respect to property
 27 transferred under AS 13.46.050 or 13.46.060, **unless the time of transfer of the**
 28 **custodial property to the minor is changed under AS 13.46.197**;

29 (3) time specified in the transfer under AS 13.46.080 if the time of
 30 transfer of the custodial property to the minor is changed under AS 13.46.195 **or**
 31 **13.46.197**; or

1 (4) minor's death.

2 * **Sec. 27.** AS 13.46 is amended by adding a new section to read:

3 **Sec. 13.46.197. Extension of custodial term by custodian.** (a) A custodian
4 may extend the custodial term under this section to an age older than the age that is
5 specified by this chapter or a transferring document made under AS 13.46.080, subject
6 to the right of the minor to compel immediate distribution under (c) of this section.

7 (b) To extend the custodial term under (a) of this section, the custodian shall
8 give the minor written notice of the custodian's intent to extend the custodial term. The
9 notice must specify the duration of the extension by indicating the new custodial term
10 and must inform the minor of the minor's right to compel immediate distribution under
11 (c) of this section. The custodian shall give the notice during the later of the following
12 periods:

13 (1) the six-month period that precedes the last day of the custodial
14 term; or

15 (2) the six-month period that begins on the minor's 18th birthday.

16 (c) Rather than permit the extension of the custodial term, the minor may
17 compel immediate distribution of all or part of the custodial property by giving written
18 notice to the custodian

19 (1) during the six-month period that begins on the day that is the last
20 day of the current custodial term; or

21 (2) within 90 days after receiving the custodian's notice under (b) of
22 this section.

23 (d) If a minor does not exercise the minor's right to compel distribution under
24 (c) of this section, the custodial term shall be extended as indicated in the custodian's
25 notice given under (b) of this section, and the minor may not compel the immediate
26 distribution of custodial property before the end of the custodial term, as extended.

27 (e) A custodian may extend the custodial term more than once under this
28 section.

29 (f) In this section, "custodial term" means the period of time provided in or
30 allowed by this chapter during which the custodian is directed to hold custodial
31 property until the property is transferred to the minor.

1 * **Sec. 28.** AS 13.46.990(11) is amended to read:

2 (11) "minor" means an individual who has not attained the age of 18
3 years, except that when used in reference to the beneficiary for whose benefit
4 custodial property is held or to be held, "minor" means an individual who has not
5 attained the age at which the custodian is required under AS 13.46.190, [AND]
6 13.46.195, and 13.46.197 to transfer the custodial property to the beneficiary;

7 * **Sec. 29.** AS 13 is amended by adding a new chapter to read:

8 **Chapter 75. Disposition of Human Remains.**

9 **Sec. 13.75.010. Directions by decedent.** (a) A person may provide directions
10 for the disposition of the person's remains by placing the directions in a disposition
11 document. The directions may include or be limited to designating an agent to control
12 the disposition of the person's remains.

13 (b) A disposition document must be signed by the person and acknowledged
14 before a notary public, and contain the form and contents required by AS 13.75.030. A
15 disposition document may be a separate document or it may be contained in another
16 document, including a will or prepaid funeral or burial contract. The disposition
17 document may be modified or revoked only by a subsequent disposition document that
18 complies with this subsection.

19 **Sec. 13.75.020. Persons authorized to control disposition.** (a) The following
20 persons, in the priority listed, may control disposition of a decedent's remains:

21 (1) a person designated in a disposition document as the disposition
22 agent for the decedent;

23 (2) a person serving, or nominated by the decedent in the decedent's
24 will to serve, as the personal representative of the decedent's estate, if the person is
25 acting according to the decedent's written instructions contained in the decedent's will;

26 (3) the individual who was the spouse of the decedent at the time of the
27 decedent's death;

28 (4) the sole surviving competent adult child of the decedent, or, if there
29 is more than one surviving competent adult child of the decedent, the majority of the
30 surviving competent adult children; fewer than one-half of the surviving competent
31 adult children may exercise the rights and duties of this section if these surviving adult

1 children use reasonable efforts to notify all other surviving competent adult children
2 that they are exercising these rights and duties and are not aware of any opposition by
3 one-half or more of all of the surviving competent adult children;

4 (5) the surviving competent parents of the decedent; if one of the
5 surviving competent parents is absent, the remaining competent parent may exercise
6 the rights and duties of this section after reasonable efforts have been unsuccessful in
7 locating the absent surviving competent parent; in this paragraph, "absent" means a
8 person who is unable to communicate decisions or participate in making decisions
9 regarding the disposition of a decedent's remains personally, telephonically, or through
10 electronic communication;

11 (6) the surviving competent adult person in the next degrees of
12 kindred, the two surviving competent adult persons of the same degree of kindred if
13 there are two, or, if there are more than two surviving competent adult persons of the
14 same degree of kindred, the majority of those persons; fewer than the majority of
15 surviving competent adult persons of the same degree of kindred may exercise the
16 rights and duties of this section if those persons use reasonable efforts to notify all
17 other surviving competent adult persons of the same degree of kindred that they are
18 exercising these rights and duties and are not aware of any opposition by one-half or
19 more of all surviving competent adult persons of the same degree of kindred;

20 (7) in the case of an indigent or another individual whose final
21 disposition is the responsibility of the state or a municipality, a public administrator,
22 medical examiner, coroner, or another public official charged with arranging the final
23 disposition of the decedent; or

24 (8) another person who is willing to assume legal and financial
25 responsibility.

26 (b) If a person takes control of the disposition under (a) of this section, the
27 person is liable for the reasonable costs of the disposition.

28 (c) In this section,

29 (1) "adult" means a person who is 18 years of age or older;

30 (2) "competent" means a person who does not suffer from disabilities
31 that prevent the person from managing the person's property or affairs.

Signature Indicating Acceptance of Appointment:

Date of Signature: _____

SUCCESSORS:

If my agent dies, becomes legally disabled, resigns, or refuses to act, I appoint the following persons (each to act alone and successively, in the order named) to serve as my agent to control the disposition of my remains as authorized by this document:

(1) First Successor

Name: _____

Address: _____

Telephone Number: _____

Signature of First Successor Indicating Acceptance of Appointment:

Date of Signature: _____

(2) Second Successor

Name: _____

Address: _____

Telephone Number: _____

Signature of Second Successor Indicating Acceptance of Appointment:

Date of Signature: _____

PART 2. DIRECTIONS FOR THE DISPOSITION OF MY REMAINS.

Stated below are my directions for the disposition of my remains:

If the disposition of my remains is by cremation, then (pick one):

() I do not wish to allow any of my survivors the option of

1 canceling my cremation and selecting alternative arrangements,
2 regardless of whether my survivors consider a change to be appropriate.

3 () I wish to allow only the survivors I have designated below to
4 have the option of canceling my cremation and selecting alternative
5 arrangements, if they consider that a change to be appropriate:

6 _____
7 _____
8 _____
9 _____

10 PART 3. GENERAL PROVISIONS AND SIGNATURE.

11 WHEN DIRECTIONS BECOME EFFECTIVE. The directions,
12 including any appointment of an agent, in this disposition document
13 become effective on my death.

14 REVOCATION OF PRIOR APPOINTMENTS. I revoke any
15 prior appointment of any person to control the disposition of my
16 remains.

17 SIGNATURE OF PERSON MAKING DISPOSITION DOCUMENT

18 Signature: _____

19 Date of signature: _____

20 (Notary acknowledgment of signature)

21 **Sec. 13.75.040. Agent's appointment.** The person appointed as an agent in a
22 disposition document may sign the disposition document at any time, but the agent's
23 authority to act is not effective until the agent signs the instrument.

24 **Sec. 13.75.050. Exercise of authority.** If a person fails to exercise the person's
25 authority to control disposition under AS 13.75.020 within 48 hours after receiving
26 notification of the decedent's death or within 48 hours after the decedent's death,
27 whichever is earlier, the person may not control the disposition of the decedent's
28 remains, and the right to control the disposition of the decedent's remains passes to the
29 person who is next listed in priority under AS 13.75.020. If the person to whom the
30 right to control the disposition passes under this section fails to exercise the person's
31 authority to control the disposition within 48 hours after being notified that the

1 authority to control the disposition has passed to the person, the authority to control
2 the disposition passes to the person who is next listed in priority under AS 13.75.020.

3 **Sec. 13.75.060. Certain persons prohibited from control.** If a person is
4 charged with a felonious killing in connection with a decedent's death and if the
5 funeral director or the cemetery knows about the charge, then the person may not
6 control disposition, and the right to control disposition passes to the person who is
7 next listed in priority under AS 13.75.020.

8 **Sec. 13.75.070. Prohibition of cremation; written instructions.** A person
9 may not authorize cremation for a decedent's remains if a decedent has left directions
10 in a disposition document that the decedent does not wish to be cremated.

11 **Sec. 13.75.080. Implementation of directions.** (a) The person authorized to
12 control the disposition shall carry out the directions of the decedent to the extent that
13 the decedent's estate or the person is financially able to carry out the directions.

14 (b) Notwithstanding any other provision in AS 13.06 - 13.36 (Uniform Probate
15 Code), if a person provides directions in a disposition document that is contained in a
16 will, the directions shall be carried out immediately without the necessity of probate. If
17 the will is not probated or is declared invalid for testamentary purposes, the directions
18 are valid to the extent to which they have been acted on in good faith.

19 **Sec. 13.75.090. Misrepresentation; liability.** If a person represents that the
20 person knows the identity of a decedent, and, with the intent to procure the disposition
21 of the decedent's remains, signs a statement, other than a death certificate, that
22 identifies the decedent, the person guarantees the identity of the decedent and is liable
23 for any damages that result, directly or indirectly, from that guarantee.

24 **Sec. 13.75.100. Liability.** (a) A disposition organization is not liable for
25 carrying out the directions of a decedent if the disposition organization carries out the
26 directions of a decedent or a person who establishes that the person is entitled to
27 control the disposition.

28 (b) This section may not be construed to reduce or eliminate the liability of a
29 disposition organization for its negligence or reckless acts.

30 **Sec. 13.75.110. Disputes.** (a) A person listed in AS 13.75.020 who is involved
31 in a dispute with one or more persons listed in AS 13.75.020 about which of the

1 persons has the authority to control disposition may bring an action in the superior
2 court to resolve the dispute.

3 (b) If there is a dispute with one or more persons listed in AS 13.75.020 about
4 which person has the authority to control disposition, a cemetery organization or
5 funeral establishment is not liable for refusing to accept, to inter, or otherwise to
6 dispose of the decedent's remains until the cemetery organization or funeral
7 establishment receives a court order or another suitable confirmation that the dispute
8 has been resolved.

9 **Sec. 13.75.120. Exemptions.** The disposition of the remains of a member of
10 the organized militia under AS 26.05.262, the disposition of the remains of a member
11 of the armed forces under AS 26.10.065(a), and the disposition of the remains of a
12 member of the United States Coast Guard under AS 26.10.065(b) are exempt from this
13 chapter.

14 **Sec. 13.75.190. Definitions.** In this chapter,

15 (1) "control" means the authority to control disposition;

16 (2) "directions" means

17 (A) instructions for the disposition of a person's remains;

18 (B) the appointment of an agent to handle the disposition of a
19 person's remains; or

20 (C) both (A) and (B) of this paragraph;

21 (3) "disposition" means disposition of a decedent's remains, including
22 cremation, but does not include an anatomical gift; in this paragraph, "anatomical gift"
23 has the meaning given in AS 13.52.390;

24 (4) "disposition document" means a disposition document authorized
25 by AS 13.75.010

26 (A) in which a person provides directions regarding the
27 disposition of the person's remains; and

28 (B) that complies with AS 13.75.030;

29 (5) "disposition organization" means

30 (A) a cemetery association formed under AS 10.30.010;

31 (B) a nonprofit cemetery corporation authorized by

1 AS 10.30.055;

2 (C) a person operating a crematory;

3 (D) a person operating a columbarium;

4 (E) a funeral home or other type of funeral establishment;

5 (F) a funeral director or an embalmer.

6 **Sec. 13.75.195. Short title.** This chapter may be cited as the Disposition of
7 Human Remains Act.

8 * **Sec. 30.** AS 21.42.020 is amended by adding new subsections to read:

9 (e) Notwithstanding (a) of this section, a trustee, acting in a fiduciary capacity,
10 may procure or cause to be procured an insurance contract that is on the life or body of
11 an individual and under which the proceeds of the insurance contract are payable to
12 the trustee, acting in a fiduciary capacity, if

13 (1) the trustee, acting in a fiduciary capacity, owns the insurance
14 contract or the trust itself owns the insurance contract;

15 (2) on the date the contract is made, a settlor of the trust is the
16 individual insured, has an insurable interest in the individual insured, or would have
17 had an insurable interest in the individual insured if the settlor were living at the time
18 the contract was made; in this paragraph, "settlor" means a person, including a person
19 for whom a fiduciary or agent is acting, who executes the trust instrument; and

20 (3) the proceeds of the contract are primarily for the benefit of a trust
21 beneficiary who has an insurable interest in the individual insured, except that, if the
22 determination of the trust beneficiary's insurable interest is based on (d)(1) of this
23 section, the trust beneficiary's relation by blood or law must be within the third degree.

24 (f) A person who has an insurable interest in the life or body of an individual
25 may form a business firm that is substantially or solely for the purpose of purchasing,
26 holding, or administering an insurance contract on the life or body of the individual. In
27 this subsection, "firm" has the meaning given in AS 21.97.900, but also includes a
28 business trust and a joint venture.

29 * **Sec. 31.** AS 34.40 is amended by adding a new section to read:

30 **Sec. 34.40.113. Transfers of individual retirement accounts.** (a)
31 Notwithstanding a provision in AS 09.38.017(d), AS 34.40.110, or another law to the

1 contrary, a person may voluntarily transfer or assign the person's interest in an
2 individual retirement account if the person

3 (1) is the owner of or a participant in the individual retirement account;

4 or

5 (2) acquired the interest as a result of the death of another individual.

6 (b) In this section, "individual retirement account" means an individual
7 retirement account established under 26 U.S.C. 408 or a Roth IRA established under
8 26 U.S.C. 408A.

9 * **Sec. 32.** AS 34.77.030(g) is amended to read:

10 (g) Whether or not the community property agreement provides that all
11 property acquired by either or both spouses during the marriage is community
12 property, and except to the extent otherwise expressly provided **by the spouses** in the
13 community property agreement **or by the settlors in a community property trust.**
14 property acquired by a spouse during marriage and after the determination date is
15 individual property if acquired

16 (1) by gift or a disposition at death made by a third person to the
17 spouse and not to both spouses;

18 (2) in exchange for or with the proceeds of other individual property of
19 the spouse;

20 (3) from appreciation or income of the spouse's individual property
21 except to the extent that the income or appreciation is classified as community
22 property under AS 34.77.130;

23 (4) by a decree, community property agreement, written consent, or
24 reclassification under AS 34.77.060(b) designating it as the individual property of the
25 spouse;

26 (5) as a recovery for damage to property under AS 34.77.140, except
27 as specifically provided otherwise in a decree, community property agreement,
28 **community property trust,** or written consent; [OR]

29 (6) as a recovery for personal injury, except for the amount of the
30 recovery attributable to expenses paid or otherwise satisfied from community
31 property; **or**

1 (7) as a transfer to a community property trust and declared by
 2 the trust to be the individual property of the spouse.

3 * **Sec. 33.** AS 34.77.050(b) is amended to read:

4 (b) A gift of community property to a third person that is not allowed under
 5 (a) of this section is subject to AS 34.77.140(e) - (h) [(d) OF THIS SECTION] unless
 6 both spouses act together in making the gift or the other spouse ratifies the gift.

7 * **Sec. 34.** AS 34.77.110 is amended by adding new subsections to read:

8 (f) Property that spouses agree in a community property agreement is
 9 community property or property that is transferred to a community property trust and
 10 expressly declared by the trust to be community property is owned as community
 11 property regardless of the form of title to the property, even if the title indicates that
 12 the property is owned unequally by the spouses or is only in the name of one spouse.

13 (g) If the title to community property is in a form that provides for ownership
 14 by survivorship between the spouses, then ownership by survivorship is presumed to
 15 have been made with the consent of both spouses.

16 (h) If a spouse with management and control of community property
 17 designates a beneficiary for the property on the death of one or both of the spouses,
 18 and if the community property is held in a form of title that permits a beneficiary
 19 designation, the beneficiary designation is effective only for the designating spouse's
 20 one-half interest in the community property unless the other spouse consents in
 21 writing to the designation. A designation of the following as the beneficiary is
 22 presumed to have been made with the consent of the other spouse:

23 (1) the other spouse or an ancestor or descendant of either spouse;

24 (2) a charity; or

25 (3) a trust, to the extent that the beneficiaries consist of persons or
 26 entities identified in (1) or (2) of this subsection.

27 (i) The testimony of one spouse is sufficient to rebut a presumption
 28 established under this section.

29 (j) A disposition of community property contrary to (e) - (h) of this section is
 30 voidable. An action in court to void the disposition must be commenced within the
 31 time specified by AS 34.77.140(e).

1 * **Sec. 35.** AS 34.77.140(d) is amended to read:

2 (d) Except as provided otherwise in (e) - (h) of this section
 3 [AS 34.77.050(d)], a spouse must begin an action against the other spouse under (a) of
 4 this section within three years after acquiring actual knowledge of the facts giving rise
 5 to the claim.

6 * **Sec. 36.** AS 34.77.140 is amended by adding new subsections to read:

7 (e) Except as provided by (f) - (h) of this section, if a gift of community
 8 property during marriage by a spouse does not comply with AS 34.77.050(a), the
 9 nondonor spouse may bring an action to recover the property or the amount of money
 10 by which the gift exceeded the limit under AS 34.77.050(a). The nondonor spouse
 11 may bring the action against the donor spouse, the gift recipient, or both. The
 12 nondonor spouse must commence the action within the earliest of the following times:

13 (1) one year after the nondonor spouse receives notice of the gift;

14 (2) one year after dissolution of the marriage; or

15 (3) on or before the deadline for filing a claim under AS 13.16.460
 16 after the death of the donor spouse.

17 (f) If a recovery under (e) of this section occurs during the marriage of the
 18 donor spouse and the nondonor spouse, the property or money that is recovered is
 19 considered community property. If the recovery occurs after the dissolution of the
 20 marriage of the donor and nondonor spouses or after the death of either the donor or
 21 the nondonor spouse, the recovery is limited to 50 percent of the property or money
 22 that would have been recovered if the recovery had occurred during the marriage.

23 (g) If a transfer of community property to a third person during marriage by a
 24 spouse acting without the other spouse becomes a completed gift on the death of the
 25 donor spouse, or if an arrangement involving community property during marriage by
 26 a spouse acting without the other spouse is intended to be and becomes a gift to a third
 27 person on the death of the donor spouse, the surviving spouse may bring an action in
 28 court against the gift recipient to recover one-half of the gift. To bring an action under
 29 this subsection, the surviving spouse must commence the action on or before the
 30 deadline for filing a claim under AS 13.16.460.

31 (h) If a spouse who would have been entitled to bring an action under (e) - (g)

1 of this section predeceases the donor spouse, the deceased spouse's successor in
2 interest may bring an action for recovery under (e) - (g) of this section, but the action
3 must be commenced within one year after the deceased spouse's death. Recovery in an
4 action under this subsection is the same as if the donor spouse had predeceased the
5 spouse entitled to the recovery, but the amount of the recovery is calculated as of the
6 date of the death of the spouse entitled to the recovery.

7 * **Sec. 37.** AS 13.38.330(c); AS 34.77.050(d), and 34.77.110(d) are repealed.

8 * **Sec. 38.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 INDIRECT COURT RULE CHANGE. AS 34.77.110(i), enacted by sec. 34 of this
11 Act, has the effect of amending Rule 301(a), Alaska Rules of Evidence, by specifying the
12 evidence that is sufficient to rebut a presumption under AS 34.77.110(i), enacted by sec. 34 of
13 this Act.

14 * **Sec. 39.** The uncodified law of the State of Alaska is amended by adding a new section to
15 read:

16 APPLICABILITY. (a) AS 09.38.017(a), as amended by sec. 1 of this Act,
17 AS 09.38.017(d), as amended by sec. 2 of this Act, and AS 09.38.017(e), as amended by sec.
18 3 of this Act, apply to a retirement plan that exists before, on, or after the effective date of this
19 Act. In this section, "retirement plan" has the meaning given in AS 09.38.017(e), as amended
20 by sec. 3 of this Act.

21 (b) AS 13.36.157, repealed and reenacted by sec. 6 of this Act, AS 13.36.158 and
22 13.36.159, enacted by sec. 7 of this Act, and AS 13.36.215(b), enacted by sec. 8 of this Act,
23 apply to a trust that exists before, on, or after the effective date of this Act.

24 (c) AS 13.46.190, as amended by sec. 26 of this Act, AS 13.46.197, enacted by sec.
25 27 of this Act, and AS 13.46.990(11), as amended by sec. 28 of this Act, apply to a transfer
26 that is made before, on, or after the effective date of this Act. In this subsection, "transfer" has
27 the meaning given in AS 13.46.990.

28 (d) AS 34.40.113, added by sec. 31 of this Act, applies to an individual retirement
29 account that exists before, on, or after the effective date of this Act. In this section, "individual
30 retirement account" means an individual retirement account established under 26 U.S.C. 408
31 or a Roth IRA established under 26 U.S.C. 408A.

1 * **Sec. 40.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 CONDITIONAL EFFECT. AS 34.77.110(i), enacted by sec. 34 of this Act, takes
4 effect only if sec. 38 of this Act receives the two-thirds majority vote of each house required
5 by art. IV, sec. 15, Constitution of the State of Alaska.

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR FRENCH

TO: CSSB 165(JUD), Draft Version "E"

1 Page 35, following line 23:

2 Insert a new subsection to read:

3 "(c) AS 13.46.190, as amended by sec. 26 of this Act, AS 13.46.197, enacted by sec.
4 27 of this Act, and AS 13.46.990(11), as amended by sec. 28 of this Act, apply to a transfer
5 that is made before, on, or after the effective date of this Act. In this subsection, "transfer" has
6 the meaning given in AS 13.46.990."

7

8 Reletter the following subsection accordingly.

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595



Committee Members:
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Joe Paskvan
Senator John Coghill

Senate Judiciary Committee

MEMORANDUM

SB 165 Changes in Version "E"

- Amendment D.3 adds sections 6 through 8 on pages 7-14 to clarify provisions dealing with modification of existing trusts.
- Amendment D.2 revises language regarding custodial accounts for minors in sections 26 through 28, pages 22-24.
- Amendment D.1 inserts the definition for "settlor" at section 30(e)2, page 31, at lines 18-19.

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595



Committee Members:
Senator Bill Wielechowski
Senator Dennis Egan
Senator Lesil McGuire
Senator John Coghill

Senate Judiciary Committee

SECTIONAL ANALYSIS FOR SENATE BILL 165

Sec. 1. Asset Protection for Inherited Retirement Plans. Alaska Statute 09.38.017(a) protects an individual's interest in a retirement plan from the claims of the individual's creditors. The amendment extends this protection to claims of a beneficiary's creditors (e.g., creditors of an individual's spouse). Arizona, Florida, and Texas have enacted similar provisions.

Sec. 2. This is a conforming amendment for Sec. 28.

Sec. 3. These are definitional changes implementing Sec. 1.

Sec. 4. through Sec. 5. Representation for Settlement Agreements. Alaska Statute 13.06.120 provides that minors, incapacitated persons, and similar persons may be represented by another person who has the same interests in the matter. This type of representation is important in order to simplify and make more efficient proceedings that involve persons who are not legally competent to represent themselves. The existing statute clearly applies to judicial proceedings. However, often it is important to have representation of minors and incapacitated persons with respect to the settlement of accounts of trustees of trusts and with respect to settlement agreements. These amendments clarify that the statute not only applies to court proceedings but also to non-judicial settlement proceedings.

Section 6 through 8. Existing Alaska Statute 13.36.157 provides a trustee with a method to modify an existing trust, commonly referred to as "decanting". Alaska enacted its "decanting" statute in 1998. Alaska copied New York's statute. At the present time, the following states have enacted decanting statutes: Alaska, Arizona, Delaware, Florida, Indiana, Missouri, Nevada, New Hampshire, New York, North Carolina, Ohio, South Dakota, and Tennessee. In addition, decanting statutes are pending before Illinois, Michigan, and Virginia.

New York recently did a thorough revision of its decanting statute and enacted this new revised statute in 2011. The proposed amendment to Alaska's decanting statute closely tracks the changes made by New York with modifications necessary to accommodate Alaska's procedural provisions.

The purposes of a decanting statute are to allow a trustee to modify a trust in order to correct errors and to adjust to changed circumstances and laws. The revised draft distinguishes between trustees who have unlimited discretion and those without unlimited discretion. A trustee without unlimited discretion must maintain the same beneficiaries in the new trust and apply the same standard for distributions. The trustee cannot be a settlor or beneficiary of the trust, and has a fiduciary duty to exercise the power of appointment in the best interests of one or more proper objects of the exercise of the power and as a prudent person would exercise the power under prevailing circumstances. A trustee must exercise the power in writing and must give written notice to the settlor, any person having the right to remove or replace the trustee, and any qualified

beneficiary. A beneficiary may object to the exercise if it is an abuse of discretion, or fails to comply with the trustee's duties stated above. Restrictions exist to protect mandatory distribution rights, tax benefits, and to prohibit the trustee from exercising the power to either increase the trustee's compensation or decrease the trustee's liability.

Implementation of irrevocable trusts is best accomplished if the law provides reasonable flexibility to adjust to changed circumstances and to correct errors. The reason why so many states have enacted decanting statutes is because of the need for this flexibility. Amendment to Alaska's decanting statute to include these revised provisions will benefit the residents of the state of Alaska, many of whom use lifetime or testamentary trusts to implement their estate planning purposes.

Sec. 6-9 through Sec. 2225. Amendments to 2003 Alaska Principal and Income Act. This modern act allows a person creating a new trust, or a trustee of an existing trust, to adopt a "unitrust" approach for determining the income of the trust which may be required to be distributed annually. A unitrust distributes a certain percentage of its assets annually to the current beneficiary. The use of this percentage unitrust approach allows the trustee to invest in order to maximize total return for both income and remainder beneficiaries.

Since 2003, the Internal Revenue Service has issued final regulations with respect to unitrusts. The Alaska Principal and Income Act amendments contained in this bill are designed to update Alaska's provisions to take advantage of these new regulations.

In summary, the most important changes contained in the bill expressly allow a trustee to choose a unitrust rate of three to five percent rather than be limited to the four percent amount presently in the law. The changes provide an explicit definition of income for a trust drafted as a unitrust. Language is added to provide the ordering of distributions among types of income and principal. A smoothing period of up to five years is allowed for determining the assets to be used when applying the unitrust percentage. Also, the new provisions clarify how the unitrust rules will apply to retirement benefits. These new changes will facilitate the use of unitrusts under Alaska law and maximize flexibility to take advantage of federal income tax planning.

Sec. 23-26 through 2528. Amendments to Alaska Uniform Transfers to Minors Act. The Alaska Uniform Transfers to Minors Act allows donors, personal representatives, trustees, and obligors, to transfer assets to an account for the benefit of a minor. A custodian is named who may make distributions for the benefit of the minor. Under the existing statutes, the minor is entitled to the property when the minor reaches age 18 years or 21 years, depending on the type of transfer. The statute allows this age of distribution to be extended in certain circumstances to age 25 years.

A number of situations have arisen both in Alaska and in other states where it is undesirable for assets to be distributed later than the ages 18, 21, or 25 years, due to problems the minor may have, including substance abuse problems, immaturity, and the inability to manage assets. Often, the minor himself or herself is willing to have the assets remain in a custodial setting, managed by a competent person who will make distributions for the benefit of the minor. The amendments in this bill would allow for the extension to an age greater than that presently specified in the statute, as long as the minor consents to the extension during the six-month period when the minor attains the age when otherwise the assets would be distributed under the statute.

Sec. 2629. Decedents Remains. Alaska does not presently have adequate statutory authority with respect to who may control the disposition of a decedent's remains. This has resulted in arguments and disputes among relatives and friends. Businesses involved in this area need protection concerning who is the person entitled to give them directions. This new act resolves the present uncertainty of the law. It provides authority for a person to provide directions and a form

for a disposition document. If a person has not provided directions, then a priority list is provided of the persons who may control the disposition of the decedent's remains. Businesses who follow these directions or priority list are protected from liability.

| **Sec. 2730. Insurable Interests.** For many years, individuals have relied on life Insurance in helping to meet their financial, business, and estate planning needs. Often, their needs are best served by having one or more life insurance contracts held in an irrevocable trust, partnership, or limited liability company. In particular, irrevocable life insurance trusts have been widely used throughout the United States to own life insurance policies.

However, a relatively recent federal court case (*Chawla, ex rel Giesinger v. Transamerica Occidental Life Ins. Co.*, 2005 WL 405405 (E.D. Va. 2005)) had the effect of pointing out that while state insurance statutes typically require purchasers of insurance contracts to have an "insurable interest" in the life or body of the insured, the statutory provisions describing who may have an insurable interest did not specifically include trusts and business entities which are commonly used to purchase and own such policies. This case raised sufficient uncertainty about the status of life insurance trusts that in July, 2010, the Uniform Law Commission approved amendments to the Uniform Trust Code to clarify the situation.

Alaska has previously adopted substantial portions of the Uniform Trust Code. The proposed amendment to AS 21.42.020 is based in large part on the recommended amendments to the Uniform Trust Code, and also clarifies that persons with insurable interests may form business entities for the purposes of purchasing, holding, and administering life insurance contracts. Other states, for example Delaware, have already amended their statutes for these reasons, or are considering such amendments.

| **Sec. 2831. Transfers of IRA Interests.** Lifetime estate planning often occurs by a participant making gifts, sales or other transfers of property during lifetime to family members or trusts for their benefit. For many individuals, one of their most valuable assets is their individual retirement account (IRA). Alaska law (AS 09.38.017) protects IRAs from claims of creditors. This protection could be construed to even prohibit voluntary transfers of the participant's interest in an IRA, which would prevent lifetime transfers of IRAs for estate planning and other purposes. Although it is important to maintain that creditor protection for IRAs, it would be beneficial to permit voluntary transfers of IRAs. Therefore, this section clarifies that the participant of an IRA may voluntarily transfer his or her IRA during lifetime.

| **Sec. 29-32 through Sec. 3336. Community Property.** In 1998, Alaska enacted an optional community property system. Several amendments have been made to Alaska's act, and this bill proposes further amendments designed to improve the act. Specifically, the amendments accomplish the following:

- a. Add references to a community property trust in appropriate provisions.
- b. Eliminate language stating a confusing statute of limitations and incorporates by reference a new statute of limitations.
- c. Provide clarification that property which spouses agree is community property is owned as community property regardless of the form of title to the property. If title to community property is in a form that provides for survivorship ownership between the spouses then the survivorship ownership is presumed to have been made with the consent of both spouses. If one spouse designates a beneficiary for an interest in property, the designation is only effective for that spouse's one half interest unless the other spouse consents in writing. Various family designations are presumed to have been made with the consent of the other spouse. The

testimony of one spouse is sufficient to rebut a presumption.

- d. Enact remedies for improper transfers and limitation periods within which those remedies must be pursued.

| ~~Sec. 3437~~. Repealed sections.

| ~~Sec. 3538~~. Indirect rule change.

| ~~Sec. 3639~~. Applicability

| ~~Sec. 3740~~. Requirement for two-thirds majority vote of each house.

27-LS0819AE
Bannister
2/15/12

CS FOR SENATE BILL NO. 165(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to property exemptions for retirement plans, individual retirement
2 accounts, and Roth IRAs; relating to pleadings, orders, liability, and notices under the
3 Uniform Probate Code; relating to the appointment of trust property; relating to the
4 Alaska Principal and Income Act; relating to the Alaska Uniform Transfers to Minors
5 Act; relating to the disposition of human remains; relating to insurable interests for life
6 insurance policies; relating to transfers of individual retirement plans; relating to the
7 community property of married persons; and amending Rule 301(a), Alaska Rules of
8 Evidence."

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

10 * **Section 1.** AS 09.38.017(a) is amended to read:

11 (a) In addition to the exemption under AS 09.38.015(b), the following are
12 exempt from a claim of an individual's or beneficiary's creditor:

- 1 (1) the interest of the individual or beneficiary in a retirement plan;
2 [AND]
3 (2) the money or other assets payable to the individual from a
4 retirement plan;

5 **(3) the interest of a beneficiary in**

6 **(A) a retirement plan if the beneficiary acquired the**
7 **interest as a result of the death of an individual; the beneficiary's interest**
8 **is exempt to the same extent that the individual's interest was exempt**
9 **immediately before the individual died;**

10 **(B) an individual retirement account that has been**
11 **transferred by the individual to the beneficiary during the individual's**
12 **lifetime; the beneficiary's interest is exempt to the same extent that the**
13 **individual's interest was exempt immediately before the transfer to the**
14 **beneficiary;**

15 **(4) the money or other assets payable to a beneficiary from**

16 **(A) a retirement plan if the beneficiary acquired the money**
17 **or other assets as a result of the death of an individual who would have**
18 **had, during the individual's life, an exemption in the money or other**
19 **assets;**

20 **(B) an individual retirement account if the beneficiary**
21 **acquired the money or other assets as a result of the transfer of the money**
22 **or other assets by an individual who would have had, at the time of the**
23 **transfer, an exemption in the money or other assets.**

24 * **Sec. 2.** AS 09.38.017(d) is amended to read:

25 (d) A retirement plan exempt from claims under (a) of this section is
26 conclusively presumed to be a spendthrift trust under this section, **except for**
27 **transfers or assignments under AS 34.40.113.**

28 * **Sec. 3.** AS 09.38.017(e) is amended to read:

29 (e) In this section,

- 30 (1) "alternate payee" has the meaning given in 26 U.S.C. 414(p)(8);
31 (2) **"beneficiary" includes a person, trust, or trustee who has,**

1 before or after the death of an individual, a direct or indirect beneficial interest
2 in a retirement plan; in this paragraph, "beneficial interest" includes an interest
3 that is acquired

4 (A) as a designated beneficiary, survivor, co-annuitant,
5 heir, or legatee; or

6 (B) if excludible from gross income under 26 U.S.C.
7 (Internal Revenue Code), as a

8 (i) rollover under 26 U.S.C. 408 or 26 U.S.C. 408A;

9 (ii) a distribution from one retirement plan to
10 another retirement plan; or

11 (iii) a distribution that is similar to (i) or (ii) of this
12 subparagraph;

13 (3) "individual" means [AN INDIVIDUAL WHO IS] a participant in,
14 an owner [A BENEFICIARY] of, or an alternate payee of a retirement plan;

15 (4) "individual retirement account" means an individual
16 retirement account established under 26 U.S.C. 408 or a Roth IRA established
17 under 26 U.S.C. 408A;

18 (5) [(3)] "retirement plan" means

19 (A) a retirement plan that is qualified under 26 U.S.C. 401(a),
20 26 U.S.C. 403(a), 26 U.S.C. 403(b), [26 U.S.C. 408, 26 U.S.C. 408A, OR] 26
21 U.S.C. 409, 26 U.S.C. 414(d), 26 U.S.C. 414(e), or 26 U.S.C. 457 (Internal
22 Revenue Code);

23 (B) an individual retirement account; and

24 (C) the teachers' retirement system under AS 14.25, the
25 judicial retirement system under AS 22.25, the public employees'
26 retirement system under AS 39.25, and the elected public officers'
27 retirement system under former AS 39.37.

28 * **Sec. 4.** AS 13.06.120 is amended to read:

29 **Sec. 13.06.120. Pleadings; when parties bound by orders; notice.** In any
30 proceedings involving trusts, nonprobate assets, or estates of decedents, minors,
31 protected persons, or incapacitated persons brought under AS 13.06 - AS 13.36 or

1 AS 13.38, [INCLUDING ANY JUDICIALLY SUPERVISED SETTLEMENTS AND
2 ANY NONJUDICIAL PROCEEDINGS AND SETTLEMENTS,] the following
3 apply:

4 (1) interests to be affected shall be described in pleadings that give
5 reasonable information to owners by name or class, by reference to the instrument
6 creating the interests, or in other appropriate manner;

7 (2) persons are bound by orders binding others in the following cases:

8 (A) orders binding the sole holder or all co-holders of a power
9 of revocation or a general or nongeneral power of appointment, including one
10 in the form of a power of amendment, bind other persons to the extent their
11 interests, as objects, takers in default, or otherwise, are subject to the power;

12 (B) to the extent there is no conflict of interest between them or
13 among persons represented, orders binding a conservator bind the person
14 whose estate the conservator controls; orders binding a guardian bind the ward
15 if no conservator of the estate has been appointed; orders binding a trustee bind
16 beneficiaries of the trust in proceedings to probate a will establishing or adding
17 to a trust, to review the acts or accounts of a prior fiduciary, and in proceedings
18 involving creditors or other third parties; orders binding a personal
19 representative bind persons interested in the undistributed assets of a
20 decedent's estate in actions or proceedings by or against the estate; and orders
21 binding an agent having authority to act with respect to the particular questions
22 or dispute bind the principal; if there is no conflict of interest and no
23 conservator or guardian has been appointed, a parent may represent the minor
24 child;

25 (C) an unborn person, a minor, an incapacitated person, or a
26 person whose identity or location is unknown or not reasonably ascertainable
27 who is not otherwise represented is bound by an order to the extent the interest
28 is adequately represented by another party having a substantially identical
29 interest in the proceeding;

30 (D) with regard to interests given upon the happening of a
31 certain event to persons who comprise a certain class, orders binding the living

1 persons who would constitute the class, if the event had happened immediately
2 before the commencement of the proceeding, bind all members of the class;

3 (E) with regard to an interest given to a living person when the
4 same interest or a share of the interest is to pass to the surviving spouse or to
5 persons who are or might be the distributees, devisees, heirs, or issue of the
6 living person upon the happening of a future event, orders binding the living
7 person bind the surviving spouse, distributees, devisees, heirs, or issue of the
8 living person;

9 (F) with regard to interests given to a person or a class of
10 persons, or to both, upon the happening of a future event, if the same interest
11 or a share of the interest is to pass to another person or class of persons, or to
12 both, upon the happening of an additional future event, orders binding the
13 living person or class of persons who would take the interest upon the
14 happening of the first event bind the persons and classes of persons who might
15 take on the happening of the additional future event;

16 (G) if a person is designated by a trust instrument to represent
17 and bind a born or unborn beneficiary of the trust and receive a notice,
18 information, accounting, or report for the beneficiary, then the beneficiary is
19 bound by an order binding the designated person; in this subparagraph,

20 (i) the settlor may make the designation in the trust
21 instrument, in a separate document, or by a trust protector authorized in
22 the trust instrument to make the designation;

23 (ii) except as otherwise provided in this subparagraph, a
24 person designated under (i) of this subparagraph may not represent and
25 bind a beneficiary while the designated person is serving as trustee;

26 (iii) except as otherwise provided in this subparagraph,
27 a person designated under (i) of this subparagraph may not represent
28 and bind another beneficiary if the designated person also is a
29 beneficiary, unless the designated person was named by the settlor, is
30 the beneficiary's spouse, or is a grandparent or descendant of a
31 grandparent of the beneficiary or the beneficiary's spouse; in this sub-

1 subparagraph, "spouse" means the individual to whom the beneficiary
2 is married and with whom the beneficiary is living, and a physical
3 separation primarily for education, business, health, and similar reasons
4 does not prevent the individual from being considered to be living with
5 the beneficiary;

6 (3) a person representing another person under (2)(A) - (F) of this
7 section and a person designated under (2)(G)(i) of this section are not liable to the
8 beneficiary whose interests are represented, or to a person claiming through that
9 beneficiary, for an action or omission to act made in good faith;

10 (4) notice is required as follows:

11 (A) notice as prescribed by AS 13.06.110 shall be given to
12 every interested person or to one person who can bind an interested person as
13 described in (2)(A), (B), or (D) - (G) of this section; notice may be given both
14 to a person and to another person who may bind the person;

15 (B) notice is given to unborn persons, a minor, an incapacitated
16 person, or a person whose identity or location is unknown or not reasonably
17 ascertainable, and persons who are not represented under (2)(A), (B), or (D) -
18 (G) of this section, by giving notice to all known persons whose interests in the
19 proceedings are substantially identical to those of the unborn persons, the
20 minor, the incapacitated person, or the person whose identity or location is
21 unknown or not reasonably ascertainable;

22 (5) at any point in a proceeding, a court may appoint a guardian ad
23 litem to represent the interest of an unborn person, a minor, an incapacitated person, or
24 a person whose identity or address is unknown or not reasonably ascertainable, if the
25 court determines that representation of the interest otherwise would be inadequate; if
26 not precluded by conflict of interests, a guardian ad litem may be appointed to
27 represent several persons or interests; the court shall set out its reasons for appointing
28 a guardian ad litem as a part of the record of the proceeding.

29 * **Sec. 5.** AS 13.06.120 is amended by adding a new subsection to read:

30 (b) In this section,

31 (1) "order" means a judicial order, nonjudicial order, the result of the

1 settlement of an account of a fiduciary under a procedure authorized by AS 13.06 -
2 13.36 or AS 13.38, and a settlement agreement resulting from a proceeding;

3 (2) "proceeding" means a judicial proceeding, nonjudicial proceeding,
4 the settlement of an account of a fiduciary under a procedure authorized by AS 13.06 -
5 13.36 or AS 13.38, and a settlement negotiation, even if the settlement negotiation
6 does not involve a judicial or nonjudicial third party who decides or facilitates a
7 settlement.

8 * **Sec. 6.** AS 13.36.157 is repealed and reenacted to read:

9 **Sec. 13.36.157. Exercise of power of appointment.** (a) An authorized trustee
10 with unlimited discretion to invade trust principal may appoint part or all of that
11 principal to a trustee of an appointed trust for, and only for the benefit of, a current
12 beneficiary of the invaded trust to the exclusion of other current beneficiaries. A
13 permissible appointee of a power of appointment held by a beneficiary of the
14 appointed trust is not considered a beneficiary of the appointed trust. The successor
15 and remainder beneficiaries of the appointed trust may be one or more of the successor
16 and remainder beneficiaries of the invaded trust to the exclusion of other successor
17 and remainder beneficiaries.

18 (b) An authorized trustee exercising the power under (a) of this section may
19 grant a discretionary power of appointment, including a presently exercisable power of
20 appointment, in the appointed trust to one or more of the current beneficiaries of the
21 invaded trust, to the extent that the beneficiary who is granted the power to appoint is
22 authorized to receive the principal outright under the terms of the invaded trust. A
23 permissible appointee is not limited to the beneficiaries of the invaded trust.

24 (c) Under (a) and (b) of this section, if the beneficiaries of the invaded trust
25 are described by a class, the beneficiaries of the appointed trust may include present or
26 future members of that class.

27 (d) An authorized trustee with the power to invade trust principal but without
28 unlimited discretion may appoint part or all of the principal of the trust to a trustee of
29 an appointed trust if the current beneficiaries of the appointed trust are the same as the
30 current beneficiaries of the invaded trust and the successor and remainder beneficiaries
31 of the appointed trust are the same as the successor and remainder beneficiaries of the

1 invaded trust. The shares of the current beneficiaries of the appointed trust must be the
2 same as the shares of the current beneficiaries of the invaded trust, and the shares of
3 the successor and remainder beneficiaries of the appointed trust must be the same as
4 the shares of the successor and remainder beneficiaries of the invaded trust.

5 (e) If the authorized trustee exercises the power under (d) of this section, the
6 appointed trust must include the same standard authorizing the trustee to distribute the
7 income or invade the principal of the appointed trust as the standard in the invaded
8 trust. However, the standard authorizing the trustee to distribute the income or invade
9 the principal of the appointed trust may be changed if the trustee appoints to an
10 appointed trust that is a special needs trust, a pooled trust, or a third-party trust.

11 (f) If an authorized trustee exercises the power under (d) and (e) of this section
12 to extend the duration of the appointed trust beyond the duration of the invaded trust
13 for any period after the invaded trust would have otherwise terminated under the
14 provisions of the invaded trust, the appointed trust, in addition to the language
15 required to be included in the appointed trust under (e) of this section, may also
16 provide an additional trustee with unlimited discretion to invade the principal of the
17 appointed trust during the extended duration. The trustee with unlimited discretion
18 continues to be subject to the restrictions in (d) - (h) of this section.

19 (g) Under (d) - (f) of this section, if the beneficiaries of the invaded trust are
20 described by a class, the beneficiaries of the appointed trust include present or future
21 members of that class.

22 (h) If the authorized trustee exercises the power under (d) - (g) of this section
23 and if the invaded trust grants a power of appointment to a beneficiary of the trust, the
24 appointed trust must grant this power of appointment in the appointed trust, and the
25 class of permissible appointees shall be the same as in the invaded trust.

26 * **Sec. 7.** AS 13.36 is amended by adding new sections to read:

27 **Sec. 13.36.158. Additional provisions relating to exercise of a power of**
28 **appointment.** (a) An exercise of the power to invade trust principal under
29 AS 13.36.157 is the exercise of a special power of appointment.

30 (b) The appointed trust to which an authorized trustee appoints the assets of
31 the invaded trust under AS 13.36.157 may have a duration that is longer than the

1 duration set out in the invaded trust.

2 (c) If an authorized trustee has unlimited discretion to invade the principal of a
3 trust and if the same trustee or another trustee has a power, not dependent on unlimited
4 discretion, to invade principal under the trust instrument, the authorized trustee having
5 unlimited discretion may exercise the power of appointment under AS 13.36.157(a) -
6 (c).

7 (d) An authorized trustee may exercise the power to appoint in favor of an
8 appointed trust under AS 13.36.157 whether or not there is a current need to invade
9 principal under the terms of the invaded trust.

10 (e) An authorized trustee exercising the power under AS 13.36.157 -
11 13.36.159 has a fiduciary duty to exercise the power in the best interests of one or
12 more proper objects of the exercise of the power and as a prudent person would
13 exercise the power under the prevailing circumstances. The authorized trustee may not
14 exercise the power under AS 13.36.157 - 13.36.159 if there is substantial evidence of a
15 contrary intent of the settlor and it cannot be established that the settlor would be
16 likely to have changed this intention under the circumstances existing at the time the
17 trustee exercises the power. The provisions of the invaded trust may not be viewed
18 alone as substantial evidence of a contrary intent of the settlor unless the invaded trust
19 expressly prohibits the exercise of the power in the manner intended by the authorized
20 trustee.

21 (f) The provisions of AS 13.36.157 - 13.36.159 may not be construed to
22 abridge the right of a trustee to appoint property further in trust under the terms of the
23 governing instrument of a trust, another provision of law, or common law, or as
24 directed by a court having jurisdiction over the trust.

25 (g) Nothing in AS 13.36.157 - 13.36.159 creates or implies a duty to exercise
26 a power to invade principal. An inference of impropriety may not be made, and
27 liability is not incurred, as a result of an authorized trustee not exercising the power
28 conferred under AS 13.36.157.

29 (h) A power authorized by AS 13.36.157 may be exercised, subject to the
30 provisions of AS 13.36.159(a), unless expressly prohibited by the terms of the
31 governing instrument. A general prohibition against amending or revoking the invaded

1 trust and a provision that constitutes a spendthrift clause do not preclude the exercise
2 of a power under AS 13.36.157.

3 (i) An authorized trustee may not exercise a power authorized by
4 AS 13.36.157 to

5 (1) reduce, limit, or modify a beneficiary's current right to a mandatory
6 distribution of income or principal, a mandatory annuity or unitrust interest, a right to
7 withdraw a percentage of the value of the trust, or a right to withdraw a specified
8 dollar amount, if the mandatory right has come into effect with respect to the
9 beneficiary, but the mandatory right may be reduced, limited, or modified during any
10 extended duration of the trust; however, notwithstanding the other provisions in this
11 paragraph, but subject to the other limitations in AS 13.36.157 - 13.36.159, an
12 authorized trustee may exercise a power authorized by AS 13.36.157 to appoint to an
13 appointed trust that is a special needs trust, a pooled trust, or a third-party trust;

14 (2) decrease or indemnify against a trustee's liability or exonerate a
15 trustee from liability for failure to exercise reasonable care, diligence, and prudence
16 unless the court having jurisdiction over the trust specifies otherwise;

17 (3) eliminate a provision granting another person the right to remove
18 or replace the authorized trustee exercising the power under AS 13.36.157 unless a
19 court having jurisdiction over the trust specifies otherwise;

20 (4) fix as binding and conclusive the value of an asset for purposes of
21 distribution, allocation, or otherwise; or

22 (5) jeopardize

23 (A) the deduction or exclusion originally claimed with respect
24 to a contribution to the invaded trust that qualified for the annual exclusion
25 under 26 U.S.C. 2503(b), the marital deduction under 26 U.S.C. 2056(a) or 26
26 U.S.C. 2523(a), or the charitable deduction under 26 U.S.C. 170(a), 26 U.S.C.
27 642(c), 26 U.S.C. 2055(a), or 26 U.S.C. 2522(a) (Internal Revenue Code);

28 (B) the qualification of a transfer as a direct skip under 26
29 U.S.C. 2642(c) (Internal Revenue Code);

30 (C) the election to treat a corporation as a subchapter S
31 corporation under 26 U.S.C. 1362 (Internal Revenue Code); or

1 (D) another specific tax benefit for which a contribution
2 originally qualified for income, gift, estate, or generation-skipping transfer tax
3 purposes under 26 U.S.C. (Internal Revenue Code).

4 (j) Before exercising the power under AS 13.36.157, an authorized trustee
5 shall consider the tax implications of the exercise of the power.

6 (k) An authorized trustee may not exercise a power described in AS 13.36.157
7 - 13.36.159 in violation of the limitations on validity in AS 34.27.051 or 34.27.100, or
8 the restrictions on exercising certain powers in AS 13.36.153 by trustees who are not
9 independent. A violation voids the entire exercise of the power unless the exercise is
10 modified to correct the violation.

11 (l) Unless a court having jurisdiction over the trust directs otherwise, an
12 authorized trustee may not exercise a power authorized by AS 13.36.157 to change the
13 provisions regarding the determination of the compensation of a trustee. The
14 commissions or other compensation payable to the trustees of the invaded trust may
15 continue to be paid to the trustees of the appointed trust during the term of the
16 appointed trust and shall be determined in the same manner as for the invaded trust.

17 (m) A trustee may not receive a payment, a commission, or other
18 compensation for appointing property from the invaded trust to an appointed trust
19 under AS 13.36.157. However, a trustee may be compensated at an hourly rate for the
20 time spent considering and implementing the exercise of a power to appoint.

21 (n) Unless the invaded trust expressly provides otherwise, the provisions in
22 AS 13.36.157 - 13.36.159 apply to

23 (1) a trust, whether testamentary or inter vivos, governed by the laws
24 of this state, including a trust whose governing law has been changed to the laws of
25 this state; and

26 (2) a trust that has a trustee who is an individual domiciled in this state,
27 or a trustee that is an entity having an office in this state, if a majority of the trustees
28 select this state as the location for the primary administration of the trust and the
29 selection is made by an instrument in writing that is signed and acknowledged by a
30 majority of the trustees; the instrument exercising this selection shall be kept with the
31 records of the invaded trust.

1 (o) A power to pay principal that includes words such as "best interests,"
2 "welfare," "comfort," or "happiness" is not considered a limitation or modification of
3 the right to distribute principal.

4 (p) In this section, "internal revenue code" means the Internal Revenue Code
5 of the United States (26 U.S.C.) as it exists on the effective date of this Act and as it is
6 amended from time to time;

7 **Sec. 13.36.159. Implementation of power of appointment.** (a) Unless the
8 authorized trustee provides otherwise, the appointment of

9 (1) all of the assets comprising the principal of the invaded trust to an
10 appointed trust includes subsequently discovered assets of the invaded trust and
11 undistributed principal of the invaded trust acquired after the appointment to the
12 appointed trust;

13 (2) a part but not all of the assets comprising the principal of the
14 invaded trust to an appointed trust may not include subsequently discovered assets
15 belonging to the invaded trust or principal paid to or acquired by the invaded trust
16 after the appointment to the appointed trust; those subsequently discovered assets
17 remain the assets of the invaded trust.

18 (b) The exercise of the power to appoint to an appointed trust under
19 AS 13.36.157 shall be evidenced by an instrument in writing that is signed, dated, and
20 acknowledged by the authorized trustee. The exercise of the power is effective 30 days
21 after the date of service of the instrument as specified in (d) of this section, unless the
22 persons entitled to notice consent in writing to a sooner effective date.

23 (c) An authorized trustee may exercise the power authorized by AS 13.36.157
24 without the consent of the settlor or a person interested in the invaded trust and
25 without court approval. However, an authorized trustee may seek court approval for
26 the exercise. When seeking court approval, notice shall be sent to all qualified
27 beneficiaries.

28 (d) A copy of the invaded trust, the appointed trust, and the instrument
29 exercising the power shall be delivered to

30 (1) the settlor, if living, of the invaded trust;

31 (2) a person having the right, under the terms of the invaded trust, to

1 remove or replace the authorized trustee exercising the power under AS 13.36.157;
2 and

3 (3) a qualified beneficiary or a person who may represent and bind the
4 qualified beneficiary under AS 13.06.120.

5 (e) Notice under (d) of this section to a qualified beneficiary is not required if
6 the settlor has exempted the authorized trustee from providing notification or
7 information to beneficiaries under AS 13.36.080(b). Notice under (d) of this section
8 shall be provided under AS 13.06.110.

9 (f) The instrument exercising the power must state whether the appointment is
10 of all or part of the assets comprising the principal of the invaded trust and, if a part,
11 the approximate percentage of the value of the principal of the invaded trust that is the
12 subject of the appointment.

13 (g) A person entitled to notice under (d) of this section may object to the
14 trustee's exercise of the power under AS 13.36.157 - 13.36.159 by serving a written
15 notice of objection on the trustee before the effective date of the exercise of the power.
16 The failure to object does not constitute consent.

17 (h) The receipt of a copy of the instrument exercising the power does not,
18 before the expiration of the limitation period in AS 13.36.100 with respect to a report
19 disclosing the exercise, affect the right of a qualified beneficiary to object to the
20 exercise of the power under AS 13.36.157 and to request the court to modify or to
21 reverse the exercise.

22 (i) A copy of the instrument exercising the power shall be kept with the
23 records of the invaded trust.

24 * **Sec. 8.** AS 13.36.215 is amended by adding a new subsection to read:

25 (b) In AS 13.36.157 - 13.36.159,

26 (1) "appointed trust" means an irrevocable trust that receives principal
27 from an invaded trust under AS 13.36.157, including a new trust created by the settlor
28 of the invaded trust or by the trustees, acting in that capacity, of the invaded trust;

29 (2) "authorized trustee" means, with regard to an invaded trust, a
30 trustee with the authority to pay trust principal to or for a current beneficiary; in this
31 paragraph, "trustee" does not include a settlor or a beneficiary to whom income or

1 principal must be paid, currently or in the future, or who is or will become eligible to
2 receive a distribution of income or principal in the discretion of the trustee other than
3 by the exercise of a power of appointment held in a nonfiduciary capacity;

4 (3) "current beneficiary" means a person or, with regard to a class of
5 persons, a person who is or will become a member of the class, to whom a trustee may
6 distribute principal when exercising a power under AS 13.36.157;

7 (4) "invade" means pay directly to the beneficiary of a trust or apply to
8 the benefit of a beneficiary;

9 (5) "invaded trust" means an irrevocable inter vivos or testamentary
10 trust the principal of which is appointed under AS 13.36.157;

11 (6) "pooled trust" means a trust described in 42 U.S.C. 1396p(d)(4)(C)
12 that meets the requirements for a pooled trust under the regulations of this state
13 relating to the Medicaid treatment of trusts;

14 (7) "principal" means the assets of a trust, including accrued and
15 accumulated income, but excluding income that is currently required to be distributed;

16 (8) "special needs trust" means a trust under 42 U.S.C. 1396p(d)(4)(A)
17 that meets the requirements for a special needs trust under the regulations of this state
18 relating to the Medicaid treatment of trusts;

19 (9) "third-party trust" means a trust that is

20 (A) established by a third party with the assets of the third party
21 to provide for supplemental needs for a person eligible when the trust is
22 created or at a future time for needs-based public assistance; and

23 (B) exempt from the provisions of the regulations of this state
24 relating to the Medicaid treatment of trusts;

25 (10) "unlimited discretion" means the unlimited right to distribute
26 principal that is not modified in any manner.

27 * **Sec. 9.** AS 13.38.200(b) is amended to read:

28 (b) In exercising a discretionary power of administration regarding a matter
29 within the scope of this chapter, whether granted by the governing instrument or this
30 chapter, including AS 13.38.210 and 13.38.300 - 13.38.490 [13.38.300 - 13.38.410], a
31 fiduciary shall administer a trust or estate impartially based on what is fair and

1 reasonable to all of the beneficiaries, except to the extent that the governing
2 instrument clearly manifests an intention that the fiduciary shall or may favor one or
3 more of the beneficiaries. A determination in accordance with this chapter is presumed
4 to be fair and reasonable to all of the beneficiaries.

5 * **Sec. 10.** AS 13.38.210(c) is amended to read:

6 (c) A trustee may not make an adjustment under this section if

7 (1) the adjustment would diminish the income interest in a trust that
8 requires all of the income to be paid at least annually to a spouse and for which a
9 federal estate tax or gift tax marital deduction would be allowed, in whole or in part, if
10 the trustee did not have the power to make the adjustment; the prohibition in this
11 paragraph does not apply to a trust after the trustee determines that the marital
12 deduction has not been claimed or has not been allowed;

13 (2) the adjustment would reduce the actuarial value of the income
14 interest in a trust to which a person transfers property with the intent to qualify for a
15 federal gift tax exclusion;

16 (3) the adjustment would change the amount payable to a beneficiary
17 as a fixed annuity or a fixed fraction of the value of the trust assets;

18 (4) the adjustment is from any amount that is permanently set aside for
19 charitable purposes under the governing instrument and for which a federal estate or
20 gift tax charitable deduction has been taken, unless both income and principal are
21 permanently set aside for charitable purposes under the governing instrument;

22 (5) possessing or exercising the power to make an adjustment would
23 cause an individual to be treated as the owner of all or part of the trust for federal
24 income tax purposes, and the individual would not be treated as the owner if the
25 trustee did not possess the power to make an adjustment;

26 (6) possessing or exercising the power to make an adjustment would
27 cause all or part of the trust assets to be subject to federal estate or gift tax with respect
28 to an individual, and the assets would not be subject to federal estate or gift tax with
29 respect to the individual if the trustee did not possess the power to make an
30 adjustment;

31 (7) the trustee is a beneficiary of the trust; or

1 (8) the trust has been converted to a unitrust under AS 13.38.300 -
2 13.38.435 [AS 13.38.300 - 13.38.410].

3 * **Sec. 11.** AS 13.38.300 is amended to read:

4 **Sec. 13.38.300. Power to convert to unitrust.** Unless expressly prohibited by
5 the governing instrument, a trustee may release the power to adjust under
6 AS 13.38.210 and may convert a trust into a unitrust as described in AS 13.38.300 -
7 13.38.435 [AS 13.38.300 - 13.38.410] if

8 (1) the trustee determines that the conversion will enable the trustee to
9 better carry out the intent of the settlor or testator and the purposes of the trust;

10 (2) the trustee gives written notice of the trustee's intention to release
11 the power to adjust, of the trustee's intention to convert the trust into a unitrust, **of the**
12 **unitrust percentage selected, of the smoothing period selected,** and of how the
13 unitrust will operate, including what initial decisions the trustee **intends to** [WILL]
14 make under AS 13.38.340 [THIS SECTION], to all the sui juris beneficiaries who

15 (A) are currently eligible to receive income from the trust;

16 (B) would be eligible, if a power of appointment were not
17 exercised, to receive income from the trust if the interest of all of the
18 beneficiaries eligible to receive income under (A) of this paragraph were to
19 terminate immediately before the giving of the notice; and

20 (C) would, if a power of appointment were not exercised,
21 receive a distribution of principal if the trust were to terminate immediately
22 before the giving of the notice;

23 (3) there are at least one sui juris beneficiary under (2)(A) of this
24 section and at least one sui juris beneficiary under (2)(B) or (C) of this section; and

25 (4) a sui juris beneficiary does not object to the conversion to a unitrust
26 in a writing delivered to the trustee within 60 days after the mailing of the notice under
27 (2) of this section.

28 * **Sec. 12.** AS 13.38.310(a) is amended to read:

29 (a) A trustee may petition the court to approve the conversion to a unitrust if

30 (1) a beneficiary timely objects to the conversion to a unitrust; [OR]

31 (2) there is not a sui juris beneficiary who is eligible under

1 **AS 13.38.300(2): or**

2 **(3) the trustee is a beneficiary** [AS 13.38.300(2)(A), AND THERE
3 IS NOT A SUI JURIS BENEFICIARY WHO IS ELIGIBLE UNDER
4 AS 13.38.300(2)(B) OR (C)].

5 * **Sec. 13.** AS 13.38.330(b) is amended to read:

6 (b) After a trust has been converted to a unitrust, "income" in the governing
7 instrument means an annual distribution equal to **the amount produced by the**
8 **application of a fixed unitrust percentage established under (d) of this section to**
9 [FOUR PERCENT OF] the net fair market value, as determined annually, of the trust's
10 assets, whether the assets would be considered income or principal under other
11 provisions of this chapter, **averaged over the lesser of**

12 **(1) the preceding years in the smoothing period selected by the**
13 **trustee; or**

14 **(2) the period during which the trust has been in existence.**

15 * **Sec. 14.** AS 13.38.330 is amended by adding a new subsection to read:

16 (d) The unitrust percentage to be used in determining the unitrust amount must
17 be a reasonable current return from the unitrust of at least three percent and not more
18 than five percent, taking into account the intentions of the trustor of the unitrust as
19 expressed in the governing instrument, the needs of the beneficiaries, general
20 economic conditions, projected current earnings for the unitrust, projected
21 appreciation for the unitrust, and the effect of projected inflation on the unitrust.

22 * **Sec. 15.** AS 13.38.340 is amended to read:

23 **Sec. 13.38.340. Trustee's discretionary powers regarding unitrust.** The
24 trustee may, in the trustee's discretion, from time to time, determine

25 (1) the effective date of a conversion to a unitrust;

26 (2) the provisions for prorating a unitrust distribution for a short year
27 in which a beneficiary's right to payments commences or ceases;

28 (3) the frequency of unitrust distributions during the year;

29 (4) the effect of other payments from or contributions to the trust on
30 the trust's valuation;

31 (5) whether to value the trust's assets annually or more frequently;

- 1 (6) **whether to use a smoothing period of three, four, or five years;**
2 (7) what valuation dates to use;
3 (8) [(7)] how frequently to value nonliquid assets and whether to
4 estimate their value;
5 (9) [(8)] whether to omit trust property occupied or possessed by a
6 beneficiary from the calculations; and
7 (10) [(9)] other matters necessary for the proper functioning of the
8 unitrust.

9 * **Sec. 16.** AS 13.38.350(b) is amended to read:

10 (b) Unless otherwise provided by the governing instrument, a unitrust
11 distribution shall be considered to have been paid from net income as net income
12 would be determined if the trust were not a unitrust. To the extent net income is
13 insufficient, the unitrust distribution shall be considered to have been paid from
14 **ordinary income that is allocable under federal income tax rules to net income as**
15 **determined for a unitrust. To the extent that the ordinary income is insufficient,**
16 **the unitrust distribution is considered to have been paid from** net realized short-
17 term capital gains. To the extent **net** income, **ordinary income**, and net realized short-
18 term capital gains are insufficient, the unitrust distribution shall be considered to have
19 been paid from net realized long-term capital gains. To the extent **net** income,
20 **ordinary income**, and net realized short-term and long-term capital gains are
21 insufficient, the unitrust distribution shall be paid from the principal of the trust.

22 * **Sec. 17.** AS 13.38.360 is amended to read:

23 **Sec. 13.38.360. Court orders regarding unitrust.** The trustee or, if the trustee
24 declines to petition the court, a beneficiary may petition the court to

25 [(1) SELECT A PAYOUT PERCENTAGE DIFFERENT THAN
26 FOUR PERCENT;

27 (2)] provide for a distribution of net income, as would be determined if
28 the **unitrust** [TRUST] were not a unitrust, in excess of the unitrust distribution if the
29 distribution is necessary to preserve a tax benefit [;

30 (3) AVERAGE THE VALUATION OF THE TRUST'S NET ASSETS
31 OVER A PERIOD OTHER THAN THREE YEARS].

1 * **Sec. 18.** AS 13.38.390(b) is amended to read:

2 (b) If AS 13.38.380(a)(3), (4), or (6) applies to all the trustees, the trustees
3 may petition the court to direct a conversion. **In the alternative, the trustees may**
4 **appoint an independent person who shall be granted the authority, while acting**
5 **in a fiduciary capacity, to make decisions in place of the trustees relating to a**
6 **conversion, reconversion, and the exercise of discretionary powers under**
7 **AS 13.38.340.**

8 * **Sec. 19.** AS 13.38.400 is amended to read:

9 **Sec. 13.38.400. Reconversion from a unitrust.** A trustee may reconvert a
10 trust that has been converted into a unitrust under AS 13.38.300 by following the same
11 procedures provided in **AS 13.38.300 - 13.38.435** [AS 13.38.300 - 13.38.410] for
12 converting a trust into a unitrust. If a unitrust is reconverted under this section, the
13 trustee's power to adjust under AS 13.38.210 applies to the trustee after the
14 reconversion.

15 * **Sec. 20.** AS 13.38 is amended by adding new sections to article 2 to read:

16 **Sec. 13.38.420. Additional unitrust provisions.** (a) The unitrust amount may
17 be determined by reference to the net fair market value of the unitrust's assets in one or
18 more years.

19 (b) Distribution of a unitrust amount is considered a distribution of all of the
20 income of a unitrust and is considered to be an income interest.

21 (c) Distribution of a unitrust amount is considered to be a reasonable
22 apportionment of the total return of a unitrust.

23 (d) A unitrust that provides for a distribution based on a unitrust percentage in
24 excess of five percent of the net fair market value of the unitrust assets a year is
25 considered to have paid out all of the income of the unitrust and to have paid out
26 principal of the unitrust to the extent that the distribution exceeds five percent a year.

27 (e) The governing instrument of a unitrust may grant discretion to the trustee
28 to adopt a consistent practice of treating capital gains as part of the unitrust amount to
29 the extent that the unitrust amount exceeds the income determined as if the trust were
30 not a unitrust, or the governing instrument may specify the ordering of classes of
31 income.

1 (f) Unless the terms of the unitrust specifically provide otherwise, a unitrust
2 amount is considered to have been made from the following sources, which are listed
3 in order of priority:

- 4 (1) net income determined as if the trust were not a unitrust;
- 5 (2) ordinary income not allocable to net income;
- 6 (3) net realized short-term capital gains;
- 7 (4) net realized long-term capital gains; and
- 8 (5) the principal of the trust estate.

9 (g) The unitrust governing instrument may provide that the trustee may
10 exclude assets used by the unitrust beneficiary, such as a residence property or
11 tangible personal property, from the net fair market value of the unitrust assets for the
12 purposes of computing the unitrust amount. These assets may be considered
13 equivalent to income or to the unitrust amount.

14 **Sec. 13.38.430. Power to treat gains as part of distribution of principal.**

15 Unless prohibited by the unitrust's governing instrument or specifically addressed by
16 AS 13.38.350 or 13.38.420, the trustee of a unitrust may treat gains from the sale of
17 capital assets of the unitrust to be part of a distribution of principal to a beneficiary,
18 and, if the trustee treats these gains as part of a distribution of principal to a
19 beneficiary, the trustee shall treat these gains consistently on the unitrust's books,
20 records, and tax returns as part of a distribution to a beneficiary.

21 **Sec. 13.38.435. Definitions.** In AS 13.38.300 - 13.38.435,

22 (1) "smoothing period" means the period of years over which the fair
23 market value of the assets of a unitrust are averaged;

24 (2) "unitrust amount" means the amount that is distributed from a
25 unitrust to a beneficiary;

26 (3) "unitrust percentage" means the unitrust percentage established
27 under AS 13.38.330(d).

28 * **Sec. 21.** AS 13.38.690(a) is repealed and reenacted to read:

29 (a) A trustee shall allocate

30 (1) to income that portion of a payment that equals the greater of the
31 following:

1 (A) the portion that the payor characterizes as interest, a
2 dividend, a remittance in place of interest, or a remittance in place of a
3 dividend; or

4 (B) the portion that is characterized as imputed interest for
5 federal income purposes;

6 (2) to principal that portion of a payment that remains after the
7 allocation is made under (1) of this subsection.

8 * **Sec. 22.** AS 13.38.690(b) is amended to read:

9 (b) If **no** [A] part of a payment under a contract calling for equal installments
10 over a fixed period of time is [NOT] allocable to income under the provisions of (a) of
11 this section, the difference between the trust's acquisition value of the contract and the
12 total expected return **is** [SHALL BE] considered to be interest. The trustee shall
13 allocate to income the portion of each payment equivalent to interest on the then
14 unpaid principal balance at the rate specified in the contract or at a rate necessary to
15 amortize the difference between the expected return and the acquisition value, where
16 that rate is readily ascertainable by the trustee.

17 * **Sec. 23.** AS 13.38.690(c) is amended to read:

18 (c) If **no** [THERE IS NOT A] portion of a payment from a separate fund held
19 exclusively for the benefit of the trust [THAT] is allocable to income under (a) or (b)
20 of this section, but the internal net income of the fund determined as if the fund were a
21 separate trust subject to AS 13.38.200 - 13.38.410, 13.38.500 - 13.38.690, or
22 13.38.710 - 13.38.860 [AS 13.38.500 - 13.38.860] is readily ascertainable by the
23 trustee, the **internal net income of the fund is considered to be the income earned**
24 **by the fund, and the** portion of the payment equal to the then undistributed net
25 income of the fund realized since the trust acquired its interest in the fund is
26 considered to be a distribution of **that internal net income of the fund** and shall be
27 allocated to the trust income account. The balance of the payment described in this
28 subsection shall be allocated to principal. **The power to adjust under AS 13.38.210,**
29 **the power to convert to a unitrust under AS 13.38.300, and the provisions of**
30 **AS 13.38.420 apply to retirement benefits covered by this subsection that are**
31 **payable to a trust. These powers and provisions may be exercised by the payee**

1 trustee or in the governing instrument for the retirement benefits separately and
2 independently from the exercise by the payee trustee or in the governing
3 instrument of these powers and provisions for the trust, as if the retirement
4 benefits and the trust were separate trusts subject to this chapter.

5 * **Sec. 24.** AS 13.38.690(d) is amended to read:

6 (d) A trustee shall allocate 10 percent of the part of the payment that is
7 required to be made during the accounting period to income and the balance to
8 principal if there is **no** [NOT A] part of the payment that is allocable to income under
9 (a) - (c) of this section and all or part of the payment is required to be made. The
10 trustee shall allocate the entire payment to principal if **no** [A] part of a payment is
11 [NOT] required to be made or the payment received is the entire amount to which the
12 trustee is entitled. In this subsection, a payment is not "required to be made" to the
13 extent that it is made because the trustee exercises a right of withdrawal.

14 * **Sec. 25.** AS 13.38.690(e) is amended to read:

15 (e) If, to obtain a federal estate or gift tax marital deduction for a trust, the
16 trustee must allocate more of a payment to income than provided for by this section,
17 the trustee shall allocate **to income** the additional amount necessary to obtain the
18 marital deduction [TO INCOME].

19 * **Sec. 26.** AS 13.46.190 is amended to read:

20 **Sec. 13.46.190. Termination of custodianship.** The custodian shall transfer in
21 an appropriate manner the custodial property to the minor or to the minor's estate upon
22 the earlier of the

23 (1) minor's attainment of 21 years of age with respect to property
24 transferred under AS 13.46.030 or 13.46.040 unless the time of transfer of the
25 custodial property to the minor is changed under AS 13.46.195 **or 13.46.197;**

26 (2) minor's attainment of 18 years of age with respect to property
27 transferred under AS 13.46.050 or 13.46.060, **unless the time of transfer of the**
28 **custodial property to the minor is changed under AS 13.46.197;**

29 (3) time specified in the transfer under AS 13.46.080 if the time of
30 transfer of the custodial property to the minor is changed under AS 13.46.195 **or**
31 **13.46.197;** or

1 (4) minor's death.

2 * **Sec. 27.** AS 13.46 is amended by adding a new section to read:

3 **Sec. 13.46.197. Extension of custodial term by custodian.** (a) A custodian
4 may extend the custodial term under this section to an age older than the age that is
5 specified by this chapter or a transferring document made under AS 13.46.080, subject
6 to the right of the minor to compel immediate distribution under (c) of this section.

7 (b) To extend the custodial term under (a) of this section, the custodian shall
8 give the minor written notice of the custodian's intent to extend the custodial term. The
9 notice must specify the duration of the extension by indicating the new custodial term
10 and must inform the minor of the minor's right to compel immediate distribution under
11 (c) of this section. The custodian shall give the notice during the later of the following
12 periods:

13 (1) the six-month period that precedes the last day of the custodial
14 term; or

15 (2) the six-month period that begins on the minor's 18th birthday.

16 (c) Rather than permit the extension of the custodial term, the minor may
17 compel immediate distribution of all or part of the custodial property by giving written
18 notice to the custodian

19 (1) during the six-month period that begins on the day that is the last
20 day of the current custodial term; or

21 (2) within 90 days after receiving the custodian's notice under (b) of
22 this section.

23 (d) If a minor does not exercise the minor's right to compel distribution under
24 (c) of this section, the custodial term shall be extended as indicated in the custodian's
25 notice given under (b) of this section, and the minor may not compel the immediate
26 distribution of custodial property before the end of the custodial term, as extended.

27 (e) A custodian may extend the custodial term more than once under this
28 section.

29 (f) In this section, "custodial term" means the period of time provided in or
30 allowed by this chapter during which the custodian is directed to hold custodial
31 property until the property is transferred to the minor.

1 * **Sec. 28.** AS 13.46.990(11) is amended to read:

2 (11) "minor" means an individual who has not attained the age of 18
3 years, except that when used in reference to the beneficiary for whose benefit
4 custodial property is held or to be held, "minor" means an individual who has not
5 attained the age at which the custodian is required under AS 13.46.190, [AND]
6 13.46.195, and 13.46.197 to transfer the custodial property to the beneficiary;

7 * **Sec. 29.** AS 13 is amended by adding a new chapter to read:

8 **Chapter 75. Disposition of Human Remains.**

9 **Sec. 13.75.010. Directions by decedent.** (a) A person may provide directions
10 for the disposition of the person's remains by placing the directions in a disposition
11 document. The directions may include or be limited to designating an agent to control
12 the disposition of the person's remains.

13 (b) A disposition document must be signed by the person and acknowledged
14 before a notary public, and contain the form and contents required by AS 13.75.030. A
15 disposition document may be a separate document or it may be contained in another
16 document, including a will or prepaid funeral or burial contract. The disposition
17 document may be modified or revoked only by a subsequent disposition document that
18 complies with this subsection.

19 **Sec. 13.75.020. Persons authorized to control disposition.** (a) The following
20 persons, in the priority listed, may control disposition of a decedent's remains:

21 (1) a person designated in a disposition document as the disposition
22 agent for the decedent;

23 (2) a person serving, or nominated by the decedent in the decedent's
24 will to serve, as the personal representative of the decedent's estate, if the person is
25 acting according to the decedent's written instructions contained in the decedent's will;

26 (3) the individual who was the spouse of the decedent at the time of the
27 decedent's death;

28 (4) the sole surviving competent adult child of the decedent, or, if there
29 is more than one surviving competent adult child of the decedent, the majority of the
30 surviving competent adult children; fewer than one-half of the surviving competent
31 adult children may exercise the rights and duties of this section if these surviving adult

1 children use reasonable efforts to notify all other surviving competent adult children
2 that they are exercising these rights and duties and are not aware of any opposition by
3 one-half or more of all of the surviving competent adult children;

4 (5) the surviving competent parents of the decedent; if one of the
5 surviving competent parents is absent, the remaining competent parent may exercise
6 the rights and duties of this section after reasonable efforts have been unsuccessful in
7 locating the absent surviving competent parent; in this paragraph, "absent" means a
8 person who is unable to communicate decisions or participate in making decisions
9 regarding the disposition of a decedent's remains personally, telephonically, or through
10 electronic communication;

11 (6) the surviving competent adult person in the next degrees of
12 kindred, the two surviving competent adult persons of the same degree of kindred if
13 there are two, or, if there are more than two surviving competent adult persons of the
14 same degree of kindred, the majority of those persons; fewer than the majority of
15 surviving competent adult persons of the same degree of kindred may exercise the
16 rights and duties of this section if those persons use reasonable efforts to notify all
17 other surviving competent adult persons of the same degree of kindred that they are
18 exercising these rights and duties and are not aware of any opposition by one-half or
19 more of all surviving competent adult persons of the same degree of kindred;

20 (7) in the case of an indigent or another individual whose final
21 disposition is the responsibility of the state or a municipality, a public administrator,
22 medical examiner, coroner, or another public official charged with arranging the final
23 disposition of the decedent; or

24 (8) another person who is willing to assume legal and financial
25 responsibility.

26 (b) If a person takes control of the disposition under (a) of this section, the
27 person is liable for the reasonable costs of the disposition.

28 (c) In this section,

29 (1) "adult" means a person who is 18 years of age or older;

30 (2) "competent" means a person who does not suffer from disabilities
31 that prevent the person from managing the person's property or affairs.

Signature Indicating Acceptance of Appointment:

Date of Signature: _____

SUCCESSORS:

If my agent dies, becomes legally disabled, resigns, or refuses to act, I appoint the following persons (each to act alone and successively, in the order named) to serve as my agent to control the disposition of my remains as authorized by this document:

(1) First Successor

Name: _____

Address: _____

Telephone Number: _____

Signature of First Successor Indicating Acceptance of Appointment:

Date of Signature: _____

(2) Second Successor

Name: _____

Address: _____

Telephone Number: _____

Signature of Second Successor Indicating Acceptance of Appointment:

Date of Signature: _____

PART 2. DIRECTIONS FOR THE DISPOSITION OF MY REMAINS.

Stated below are my directions for the disposition of my remains:

If the disposition of my remains is by cremation, then (pick one):

() I do not wish to allow any of my survivors the option of

canceling my cremation and selecting alternative arrangements, regardless of whether my survivors consider a change to be appropriate.

() I wish to allow only the survivors I have designated below to have the option of canceling my cremation and selecting alternative arrangements, if they consider that a change to be appropriate:

PART 3. GENERAL PROVISIONS AND SIGNATURE.

WHEN DIRECTIONS BECOME EFFECTIVE. The directions, including any appointment of an agent, in this disposition document become effective on my death.

REVOCATION OF PRIOR APPOINTMENTS. I revoke any prior appointment of any person to control the disposition of my remains.

SIGNATURE OF PERSON MAKING DISPOSITION DOCUMENT

Signature: _____

Date of signature: _____

(Notary acknowledgment of signature)

Sec. 13.75.040. Agent's appointment. The person appointed as an agent in a disposition document may sign the disposition document at any time, but the agent's authority to act is not effective until the agent signs the instrument.

Sec. 13.75.050. Exercise of authority. If a person fails to exercise the person's authority to control disposition under AS 13.75.020 within 48 hours after receiving notification of the decedent's death or within 48 hours after the decedent's death, whichever is earlier, the person may not control the disposition of the decedent's remains, and the right to control the disposition of the decedent's remains passes to the person who is next listed in priority under AS 13.75.020. If the person to whom the right to control the disposition passes under this section fails to exercise the person's authority to control the disposition within 48 hours after being notified that the

1 authority to control the disposition has passed to the person, the authority to control
2 the disposition passes to the person who is next listed in priority under AS 13.75.020.

3 **Sec. 13.75.060. Certain persons prohibited from control.** If a person is
4 charged with a felonious killing in connection with a decedent's death and if the
5 funeral director or the cemetery knows about the charge, then the person may not
6 control disposition, and the right to control disposition passes to the person who is
7 next listed in priority under AS 13.75.020.

8 **Sec. 13.75.070. Prohibition of cremation; written instructions.** A person
9 may not authorize cremation for a decedent's remains if a decedent has left directions
10 in a disposition document that the decedent does not wish to be cremated.

11 **Sec. 13.75.080. Implementation of directions.** (a) The person authorized to
12 control the disposition shall carry out the directions of the decedent to the extent that
13 the decedent's estate or the person is financially able to carry out the directions.

14 (b) Notwithstanding any other provision in AS 13.06 - 13.36 (Uniform Probate
15 Code), if a person provides directions in a disposition document that is contained in a
16 will, the directions shall be carried out immediately without the necessity of probate. If
17 the will is not probated or is declared invalid for testamentary purposes, the directions
18 are valid to the extent to which they have been acted on in good faith.

19 **Sec. 13.75.090. Misrepresentation; liability.** If a person represents that the
20 person knows the identity of a decedent, and, with the intent to procure the disposition
21 of the decedent's remains, signs a statement, other than a death certificate, that
22 identifies the decedent, the person guarantees the identity of the decedent and is liable
23 for any damages that result, directly or indirectly, from that guarantee.

24 **Sec. 13.75.100. Liability.** (a) A disposition organization is not liable for
25 carrying out the directions of a decedent if the disposition organization carries out the
26 directions of a decedent or a person who establishes that the person is entitled to
27 control the disposition.

28 (b) This section may not be construed to reduce or eliminate the liability of a
29 disposition organization for its negligence or reckless acts.

30 **Sec. 13.75.110. Disputes.** (a) A person listed in AS 13.75.020 who is involved
31 in a dispute with one or more persons listed in AS 13.75.020 about which of the

1 persons has the authority to control disposition may bring an action in the superior
2 court to resolve the dispute.

3 (b) If there is a dispute with one or more persons listed in AS 13.75.020 about
4 which person has the authority to control disposition, a cemetery organization or
5 funeral establishment is not liable for refusing to accept, to inter, or otherwise to
6 dispose of the decedent's remains until the cemetery organization or funeral
7 establishment receives a court order or another suitable confirmation that the dispute
8 has been resolved.

9 **Sec. 13.75.120. Exemptions.** The disposition of the remains of a member of
10 the organized militia under AS 26.05.262, the disposition of the remains of a member
11 of the armed forces under AS 26.10.065(a), and the disposition of the remains of a
12 member of the United States Coast Guard under AS 26.10.065(b) are exempt from this
13 chapter.

14 **Sec. 13.75.190. Definitions.** In this chapter,

15 (1) "control" means the authority to control disposition;

16 (2) "directions" means

17 (A) instructions for the disposition of a person's remains;

18 (B) the appointment of an agent to handle the disposition of a
19 person's remains; or

20 (C) both (A) and (B) of this paragraph;

21 (3) "disposition" means disposition of a decedent's remains, including
22 cremation, but does not include an anatomical gift; in this paragraph, "anatomical gift"
23 has the meaning given in AS 13.52.390;

24 (4) "disposition document" means a disposition document authorized
25 by AS 13.75.010

26 (A) in which a person provides directions regarding the
27 disposition of the person's remains; and

28 (B) that complies with AS 13.75.030;

29 (5) "disposition organization" means

30 (A) a cemetery association formed under AS 10.30.010;

31 (B) a nonprofit cemetery corporation authorized by

1 AS 10.30.055;

2 (C) a person operating a crematory;

3 (D) a person operating a columbarium;

4 (E) a funeral home or other type of funeral establishment;

5 (F) a funeral director or an embalmer.

6 **Sec. 13.75.195. Short title.** This chapter may be cited as the Disposition of
7 Human Remains Act.

8 * **Sec. 30.** AS 21.42.020 is amended by adding new subsections to read:

9 (e) Notwithstanding (a) of this section, a trustee, acting in a fiduciary capacity,
10 may procure or cause to be procured an insurance contract that is on the life or body of
11 an individual and under which the proceeds of the insurance contract are payable to
12 the trustee, acting in a fiduciary capacity, if

13 (1) the trustee, acting in a fiduciary capacity, owns the insurance
14 contract or the trust itself owns the insurance contract;

15 (2) on the date the contract is made, a settlor of the trust is the
16 individual insured, has an insurable interest in the individual insured, or would have
17 had an insurable interest in the individual insured if the settlor were living at the time
18 the contract was made; in this paragraph, "settlor" means a person, including a person
19 for whom a fiduciary or agent is acting, who executes the trust instrument; and

20 (3) the proceeds of the contract are primarily for the benefit of a trust
21 beneficiary who has an insurable interest in the individual insured, except that, if the
22 determination of the trust beneficiary's insurable interest is based on (d)(1) of this
23 section, the trust beneficiary's relation by blood or law must be within the third degree.

24 (f) A person who has an insurable interest in the life or body of an individual
25 may form a business firm that is substantially or solely for the purpose of purchasing,
26 holding, or administering an insurance contract on the life or body of the individual. In
27 this subsection, "firm" has the meaning given in AS 21.97.900, but also includes a
28 business trust and a joint venture.

29 * **Sec. 31.** AS 34.40 is amended by adding a new section to read:

30 **Sec. 34.40.113. Transfers of individual retirement accounts.** (a)
31 Notwithstanding a provision in AS 09.38.017(d), AS 34.40.110, or another law to the

1 contrary, a person may voluntarily transfer or assign the person's interest in an
2 individual retirement account if the person

3 (1) is the owner of or a participant in the individual retirement account;
4 or

5 (2) acquired the interest as a result of the death of another individual.

6 (b) In this section, "individual retirement account" means an individual
7 retirement account established under 26 U.S.C. 408 or a Roth IRA established under
8 26 U.S.C. 408A.

9 * **Sec. 32.** AS 34.77.030(g) is amended to read:

10 (g) Whether or not the community property agreement provides that all
11 property acquired by either or both spouses during the marriage is community
12 property, and except to the extent otherwise expressly provided **by the spouses** in the
13 community property agreement **or by the settlors in a community property trust**,
14 property acquired by a spouse during marriage and after the determination date is
15 individual property if acquired

16 (1) by gift or a disposition at death made by a third person to the
17 spouse and not to both spouses;

18 (2) in exchange for or with the proceeds of other individual property of
19 the spouse;

20 (3) from appreciation or income of the spouse's individual property
21 except to the extent that the income or appreciation is classified as community
22 property under AS 34.77.130;

23 (4) by a decree, community property agreement, written consent, or
24 reclassification under AS 34.77.060(b) designating it as the individual property of the
25 spouse;

26 (5) as a recovery for damage to property under AS 34.77.140, except
27 as specifically provided otherwise in a decree, community property agreement,
28 **community property trust**, or written consent; [OR]

29 (6) as a recovery for personal injury, except for the amount of the
30 recovery attributable to expenses paid or otherwise satisfied from community
31 property; **or**

1 **(7) as a transfer to a community property trust and declared by**
2 **the trust to be the individual property of the spouse.**

3 * **Sec. 33.** AS 34.77.050(b) is amended to read:

4 (b) A gift of community property to a third person that is not allowed under
5 (a) of this section is subject to **AS 34.77.140(e) - (h)** [(d) OF THIS SECTION] unless
6 both spouses act together in making the gift or the other spouse ratifies the gift.

7 * **Sec. 34.** AS 34.77.110 is amended by adding new subsections to read:

8 (f) Property that spouses agree in a community property agreement is
9 community property or property that is transferred to a community property trust and
10 expressly declared by the trust to be community property is owned as community
11 property regardless of the form of title to the property, even if the title indicates that
12 the property is owned unequally by the spouses or is only in the name of one spouse.

13 (g) If the title to community property is in a form that provides for ownership
14 by survivorship between the spouses, then ownership by survivorship is presumed to
15 have been made with the consent of both spouses.

16 (h) If a spouse with management and control of community property
17 designates a beneficiary for the property on the death of one or both of the spouses,
18 and if the community property is held in a form of title that permits a beneficiary
19 designation, the beneficiary designation is effective only for the designating spouse's
20 one-half interest in the community property unless the other spouse consents in
21 writing to the designation. A designation of the following as the beneficiary is
22 presumed to have been made with the consent of the other spouse:

23 (1) the other spouse or an ancestor or descendant of either spouse;

24 (2) a charity; or

25 (3) a trust, to the extent that the beneficiaries consist of persons or
26 entities identified in (1) or (2) of this subsection.

27 (i) The testimony of one spouse is sufficient to rebut a presumption
28 established under this section.

29 (j) A disposition of community property contrary to (e) - (h) of this section is
30 voidable. An action in court to void the disposition must be commenced within the
31 time specified by AS 34.77.140(e).

1 * **Sec. 35.** AS 34.77.140(d) is amended to read:

2 (d) Except as provided otherwise in (e) - (h) of this section
3 [AS 34.77.050(d)], a spouse must begin an action against the other spouse under (a) of
4 this section within three years after acquiring actual knowledge of the facts giving rise
5 to the claim.

6 * **Sec. 36.** AS 34.77.140 is amended by adding new subsections to read:

7 (e) Except as provided by (f) - (h) of this section, if a gift of community
8 property during marriage by a spouse does not comply with AS 34.77.050(a), the
9 nondonor spouse may bring an action to recover the property or the amount of money
10 by which the gift exceeded the limit under AS 34.77.050(a). The nondonor spouse
11 may bring the action against the donor spouse, the gift recipient, or both. The
12 nondonor spouse must commence the action within the earliest of the following times:

13 (1) one year after the nondonor spouse receives notice of the gift;
14 (2) one year after dissolution of the marriage; or
15 (3) on or before the deadline for filing a claim under AS 13.16.460
16 after the death of the donor spouse.

17 (f) If a recovery under (e) of this section occurs during the marriage of the
18 donor spouse and the nondonor spouse, the property or money that is recovered is
19 considered community property. If the recovery occurs after the dissolution of the
20 marriage of the donor and nondonor spouses or after the death of either the donor or
21 the nondonor spouse, the recovery is limited to 50 percent of the property or money
22 that would have been recovered if the recovery had occurred during the marriage.

23 (g) If a transfer of community property to a third person during marriage by a
24 spouse acting without the other spouse becomes a completed gift on the death of the
25 donor spouse, or if an arrangement involving community property during marriage by
26 a spouse acting without the other spouse is intended to be and becomes a gift to a third
27 person on the death of the donor spouse, the surviving spouse may bring an action in
28 court against the gift recipient to recover one-half of the gift. To bring an action under
29 this subsection, the surviving spouse must commence the action on or before the
30 deadline for filing a claim under AS 13.16.460.

31 (h) If a spouse who would have been entitled to bring an action under (e) - (g)

1 of this section predeceases the donor spouse, the deceased spouse's successor in
2 interest may bring an action for recovery under (e) - (g) of this section, but the action
3 must be commenced within one year after the deceased spouse's death. Recovery in an
4 action under this subsection is the same as if the donor spouse had predeceased the
5 spouse entitled to the recovery, but the amount of the recovery is calculated as of the
6 date of the death of the spouse entitled to the recovery.

7 * **Sec. 37.** AS 13.38.330(c); AS 34.77.050(d), and 34.77.110(d) are repealed.

8 * **Sec. 38.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 **INDIRECT COURT RULE CHANGE.** AS 34.77.110(i), enacted by sec. 34 of this
11 Act, has the effect of amending Rule 301(a), Alaska Rules of Evidence, by specifying the
12 evidence that is sufficient to rebut a presumption under AS 34.77.110(i), enacted by sec. 34 of
13 this Act.

14 * **Sec. 39.** The uncodified law of the State of Alaska is amended by adding a new section to
15 read:

16 **APPLICABILITY.** (a) AS 09.38.017(a), as amended by sec. 1 of this Act,
17 AS 09.38.017(d), as amended by sec. 2 of this Act, and AS 09.38.017(e), as amended by sec.
18 3 of this Act, apply to a retirement plan that exists before, on, or after the effective date of this
19 Act. In this section, "retirement plan" has the meaning given in AS 09.38.017(e), as amended
20 by sec. 3 of this Act.

21 (b) AS 13.36.157, repealed and reenacted by sec. 6 of this Act, AS 13.36.158 and
22 13.36.159, enacted by sec. 7 of this Act, and AS 13.36.215(b), enacted by sec. 8 of this Act,
23 apply to a trust that exists before, on, or after the effective date of this Act.

24 (c) AS 34.40.113, added by sec. 31 of this Act, applies to an individual retirement
25 account that exists before, on, or after the effective date of this Act. In this section, "individual
26 retirement account" means an individual retirement account established under 26 U.S.C. 408
27 or a Roth IRA established under 26 U.S.C. 408A.

28 * **Sec. 40.** The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 **CONDITIONAL EFFECT.** AS 34.77.110(i), enacted by sec. 34 of this Act, takes
31 effect only if sec. 38 of this Act receives the two-thirds majority vote of each house required

1 by art. IV, sec. 15, Constitution of the State of Alaska.

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR FRENCH

TO: CSSB 165(), Draft Version "D"

- 1 Page 23, lines 10 - 11:
- 2 Delete "has the meaning given in AS 13.36.390"
- 3 Insert "means a person, including a person for whom a fiduciary or agent is acting,
- 4 who executes the trust instrument"

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR FRENCH

TO: CSSB 165(), Draft Version "D"

1 Page 14, line 29, through page 15, line 29:

2 Delete all material.

3 Insert new bill sections to read:

4 **** Sec. 23.** AS 13.46.190 is amended to read:

5 **Sec. 13.46.190. Termination of custodianship.** The custodian shall transfer in
6 an appropriate manner the custodial property to the minor or to the minor's estate upon
7 the earlier of the

8 (1) minor's attainment of 21 years of age with respect to property
9 transferred under AS 13.46.030 or 13.46.040 unless the time of transfer of the
10 custodial property to the minor is changed under AS 13.46.195 or 13.46.197;

11 (2) minor's attainment of 18 years of age with respect to property
12 transferred under AS 13.46.050 or 13.46.060, unless the time of transfer of the
13 custodial property to the minor is changed under AS 13.46.197;

14 (3) time specified in the transfer under AS 13.46.080 if the time of
15 transfer of the custodial property to the minor is changed under AS 13.46.195 or
16 13.46.197; or

17 (4) minor's death.

18 *** Sec. 24.** AS 13.46 is amended by adding a new section to read:

19 **Sec. 13.46.197. Extension of custodial term by custodian.** (a) A custodian
20 may extend the custodial term under this section to an age older than the age that is
21 specified by this chapter or a transferring document made under AS 13.46.080, subject
22 to the right of the minor to compel immediate distribution under (c) of this section.

23 (b) To extend the custodial term under (a) of this section, the custodian shall

1 give the minor written notice of the custodian's intent to extend the custodial term. The
 2 notice must specify the duration of the extension by indicating the new custodial term
 3 and must inform the minor of the minor's right to compel immediate distribution under
 4 (c) of this section. The custodian shall give the notice during the later of the following
 5 periods:

6 (1) the six-month period that precedes the last day of the custodial term; or

7 (2) the six-month period that begins on the minor's 18th birthday.

8 (c) Rather than permit the extension of the custodial term, the minor may compel
 9 immediate distribution of all or part of the custodial property by giving written notice to the
 10 custodian

11 (1) during the six-month period that begins on the day that is the last day of
 12 the current custodial term; or

13 (2) within 90 days after receiving the custodian's notice under (b) of this
 14 section.

15 (d) If a minor does not exercise the minor's right to compel distribution under (c) of
 16 this section, the custodial term shall be extended as indicated in the custodian's notice given
 17 under (b) of this section, and the minor may not compel the immediate distribution of
 18 custodial property before the end of the custodial term, as extended.

19 (e) A custodian may extend the custodial term more than once under this section.

20 (f) In this section, "custodial term" means the period of time provided in or allowed
 21 by this chapter during which the custodian is directed to hold custodial property until the
 22 property is transferred to the minor.

23 * **Sec. 25.** AS 13.46.990(11) is amended to read:

24 (11) "minor" means an individual who has not attained the age of 18
 25 years, except that when used in reference to the beneficiary for whose benefit
 26 custodial property is held or to be held, "minor" means an individual who has not
 27 attained the age at which the custodian is required under AS 13.46.190, [AND]
 28 13.46.195, and 13.46.197 to transfer the custodial property to the beneficiary;"

29
 30 Page 26, line 30:

31 Delete "AS 13.46.495(g);"

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR FRENCH

TO: CSSB 165(), Draft Version "D"

1 Page 1, line 3, following "Code;":

2 Insert "**relating to the appointment of trust property;**"

3

4 Page 7, following line 5:

5 Insert new bill sections to read:

6 **"* Sec. 6.** AS 13.36.157 is repealed and reenacted to read:

7 **Sec. 13.36.157. Exercise of power of appointment.** (a) An authorized trustee
8 with unlimited discretion to invade trust principal may appoint part or all of that
9 principal to a trustee of an appointed trust for, and only for the benefit of, a current
10 beneficiary of the invaded trust to the exclusion of other current beneficiaries. A
11 permissible appointee of a power of appointment held by a beneficiary of the
12 appointed trust is not considered a beneficiary of the appointed trust. The successor
13 and remainder beneficiaries of the appointed trust may be one or more of the successor
14 and remainder beneficiaries of the invaded trust to the exclusion of other successor
15 and remainder beneficiaries.

16 (b) An authorized trustee exercising the power under (a) of this section may
17 grant a discretionary power of appointment, including a presently exercisable power of
18 appointment, in the appointed trust to one or more of the current beneficiaries of the
19 invaded trust, to the extent that the beneficiary who is granted the power to appoint is
20 authorized to receive the principal outright under the terms of the invaded trust. A
21 permissible appointee is not limited to the beneficiaries of the invaded trust.

22 (c) Under (a) and (b) of this section, if the beneficiaries of the invaded trust
23 are described by a class, the beneficiaries of the appointed trust may include present or

1 future members of that class.

2 (d) An authorized trustee with the power to invade trust principal but without
3 unlimited discretion may appoint part or all of the principal of the trust to a trustee of
4 an appointed trust if the current beneficiaries of the appointed trust are the same as the
5 current beneficiaries of the invaded trust and the successor and remainder beneficiaries
6 of the appointed trust are the same as the successor and remainder beneficiaries of the
7 invaded trust. The shares of the current beneficiaries of the appointed trust must be the
8 same as the shares of the current beneficiaries of the invaded trust, and the shares of
9 the successor and remainder beneficiaries of the appointed trust must be the same as
10 the shares of the successor and remainder beneficiaries of the invaded trust.

11 (e) If the authorized trustee exercises the power under (d) of this section, the
12 appointed trust must include the same standard authorizing the trustee to distribute the
13 income or invade the principal of the appointed trust as the standard in the invaded
14 trust. However, the standard authorizing the trustee to distribute the income or invade
15 the principal of the appointed trust may be changed if the trustee appoints to an
16 appointed trust that is a special needs trust, a pooled trust, or a third-party trust.

17 (f) If an authorized trustee exercises the power under (d) and (e) of this section
18 to extend the duration of the appointed trust beyond the duration of the invaded trust
19 for any period after the invaded trust would have otherwise terminated under the
20 provisions of the invaded trust, the appointed trust, in addition to the language
21 required to be included in the appointed trust under (e) of this section, may also
22 provide an additional trustee with unlimited discretion to invade the principal of the
23 appointed trust during the extended duration. The trustee with unlimited discretion
24 continues to be subject to the restrictions in (d) - (h) of this section.

25 (g) Under (d) - (f) of this section, if the beneficiaries of the invaded trust are
26 described by a class, the beneficiaries of the appointed trust include present or future
27 members of that class.

28 (h) If the authorized trustee exercises the power under (d) - (g) of this section
29 and if the invaded trust grants a power of appointment to a beneficiary of the trust, the
30 appointed trust must grant this power of appointment in the appointed trust, and the
31 class of permissible appointees shall be the same as in the invaded trust.

1 * **Sec. 7.** AS 13.36 is amended by adding new sections to read:

2 **Sec. 13.36.158. Additional provisions relating to exercise of a power of**
3 **appointment.** (a) An exercise of the power to invade trust principal under
4 AS 13.36.157 is the exercise of a special power of appointment.

5 (b) The appointed trust to which an authorized trustee appoints the assets of
6 the invaded trust under AS 13.36.157 may have a duration that is longer than the
7 duration set out in the invaded trust.

8 (c) If an authorized trustee has unlimited discretion to invade the principal of a
9 trust and if the same trustee or another trustee has a power, not dependent on unlimited
10 discretion, to invade principal under the trust instrument, the authorized trustee having
11 unlimited discretion may exercise the power of appointment under AS 13.36.157(a) -
12 (c).

13 (d) An authorized trustee may exercise the power to appoint in favor of an
14 appointed trust under AS 13.36.157 whether or not there is a current need to invade
15 principal under the terms of the invaded trust.

16 (e) An authorized trustee exercising the power under AS 13.36.157 -
17 13.36.159 has a fiduciary duty to exercise the power in the best interests of one or
18 more proper objects of the exercise of the power and as a prudent person would
19 exercise the power under the prevailing circumstances. The authorized trustee may not
20 exercise the power under AS 13.36.157 - 13.36.159 if there is substantial evidence of a
21 contrary intent of the settlor and it cannot be established that the settlor would be
22 likely to have changed this intention under the circumstances existing at the time the
23 trustee exercises the power. The provisions of the invaded trust may not be viewed
24 alone as substantial evidence of a contrary intent of the settlor unless the invaded trust
25 expressly prohibits the exercise of the power in the manner intended by the authorized
26 trustee.

27 (f) The provisions of AS 13.36.157 - 13.36.159 may not be construed to
28 abridge the right of a trustee to appoint property further in trust under the terms of the
29 governing instrument of a trust, another provision of law, or common law, or as
30 directed by a court having jurisdiction over the trust.

31 (g) Nothing in AS 13.36.157 - 13.36.159 creates or implies a duty to exercise

1 a power to invade principal. An inference of impropriety may not be made, and
2 liability is not incurred, as a result of an authorized trustee not exercising the power
3 conferred under AS 13.36.157.

4 (h) A power authorized by AS 13.36.157 may be exercised, subject to the
5 provisions of AS 13.36.159(a), unless expressly prohibited by the terms of the
6 governing instrument. A general prohibition against amending or revoking the invaded
7 trust and a provision that constitutes a spendthrift clause do not preclude the exercise
8 of a power under AS 13.36.157.

9 (i) An authorized trustee may not exercise a power authorized by
10 AS 13.36.157 to

11 (1) reduce, limit, or modify a beneficiary's current right to a mandatory
12 distribution of income or principal, a mandatory annuity or unitrust interest, a right to
13 withdraw a percentage of the value of the trust, or a right to withdraw a specified
14 dollar amount, if the mandatory right has come into effect with respect to the
15 beneficiary, but the mandatory right may be reduced, limited, or modified during any
16 extended duration of the trust; however, notwithstanding the other provisions in this
17 paragraph, but subject to the other limitations in AS 13.36.157 - 13.36.159, an
18 authorized trustee may exercise a power authorized by AS 13.36.157 to appoint to an
19 appointed trust that is a special needs trust, a pooled trust, or a third-party trust;

20 (2) decrease or indemnify against a trustee's liability or exonerate a
21 trustee from liability for failure to exercise reasonable care, diligence, and prudence
22 unless the court having jurisdiction over the trust specifies otherwise;

23 (3) eliminate a provision granting another person the right to remove
24 or replace the authorized trustee exercising the power under AS 13.36.157 unless a
25 court having jurisdiction over the trust specifies otherwise;

26 (4) fix as binding and conclusive the value of an asset for purposes of
27 distribution, allocation, or otherwise; or

28 (5) jeopardize

29 (A) the deduction or exclusion originally claimed with respect
30 to a contribution to the invaded trust that qualified for the annual exclusion
31 under 26 U.S.C. 2503(b), the marital deduction under 26 U.S.C. 2056(a) or 26

1 U.S.C. 2523(a), or the charitable deduction under 26 U.S.C. 170(a), 26 U.S.C.
2 642(c), 26 U.S.C. 2055(a), or 26 U.S.C. 2522(a) (Internal Revenue Code);

3 (B) the qualification of a transfer as a direct skip under 26
4 U.S.C. 2642(c) (Internal Revenue Code);

5 (C) the election to treat a corporation as a subchapter S
6 corporation under 26 U.S.C. 1362 (Internal Revenue Code); or

7 (D) another specific tax benefit for which a contribution
8 originally qualified for income, gift, estate, or generation-skipping transfer tax
9 purposes under 26 U.S.C. (Internal Revenue Code).

10 (j) Before exercising the power under AS 13.36.157, an authorized trustee
11 shall consider the tax implications of the exercise of the power.

12 (k) An authorized trustee may not exercise a power described in AS 13.36.157
13 - 13.36.159 in violation of the limitations on validity in AS 34.27.051 or 34.27.100, or
14 the restrictions on exercising certain powers in AS 13.36.153 by trustees who are not
15 independent. A violation voids the entire exercise of the power unless the exercise is
16 modified to correct the violation.

17 (l) Unless a court having jurisdiction over the trust directs otherwise, an
18 authorized trustee may not exercise a power authorized by AS 13.36.157 to change the
19 provisions regarding the determination of the compensation of a trustee. The
20 commissions or other compensation payable to the trustees of the invaded trust may
21 continue to be paid to the trustees of the appointed trust during the term of the
22 appointed trust and shall be determined in the same manner as for the invaded trust.

23 (m) A trustee may not receive a payment, a commission, or other
24 compensation for appointing property from the invaded trust to an appointed trust
25 under AS 13.36.157. However, a trustee may be compensated at an hourly rate for the
26 time spent considering and implementing the exercise of a power to appoint.

27 (n) Unless the invaded trust expressly provides otherwise, the provisions in
28 AS 13.36.157 - 13.36.159 apply to

29 (1) a trust, whether testamentary or inter vivos, governed by the laws
30 of this state, including a trust whose governing law has been changed to the laws of
31 this state; and

1 (2) a trust that has a trustee who is an individual domiciled in this state,
2 or a trustee that is an entity having an office in this state, if a majority of the trustees
3 select this state as the location for the primary administration of the trust and the
4 selection is made by an instrument in writing that is signed and acknowledged by a
5 majority of the trustees; the instrument exercising this selection shall be kept with the
6 records of the invaded trust.

7 (o) A power to pay principal that includes words such as "best interests,"
8 "welfare," "comfort," or "happiness" is not considered a limitation or modification of
9 the right to distribute principal.

10 (p) In this section, "internal revenue code" means the Internal Revenue Code of
11 the United States (26 U.S.C.) as it exists on the effective date of this Act and as it is
12 amended from time to time;

13 **Sec. 13.36.159. Implementation of power of appointment.** (a) Unless the
14 authorized trustee provides otherwise, the appointment of

15 (1) all of the assets comprising the principal of the invaded trust to an
16 appointed trust includes subsequently discovered assets of the invaded trust and
17 undistributed principal of the invaded trust acquired after the appointment to the
18 appointed trust;

19 (2) a part but not all of the assets comprising the principal of the
20 invaded trust to an appointed trust may not include subsequently discovered assets
21 belonging to the invaded trust or principal paid to or acquired by the invaded trust
22 after the appointment to the appointed trust; those subsequently discovered assets
23 remain the assets of the invaded trust.

24 (b) The exercise of the power to appoint to an appointed trust under
25 AS 13.36.157 shall be evidenced by an instrument in writing that is signed, dated, and
26 acknowledged by the authorized trustee. The exercise of the power is effective 30 days
27 after the date of service of the instrument as specified in (d) of this section, unless the
28 persons entitled to notice consent in writing to a sooner effective date.

29 (c) An authorized trustee may exercise the power authorized by AS 13.36.157
30 without the consent of the settlor or a person interested in the invaded trust and
31 without court approval. However, an authorized trustee may seek court approval for

1 the exercise. When seeking court approval, notice shall be sent to all qualified
2 beneficiaries.

3 (d) A copy of the invaded trust, the appointed trust, and the instrument
4 exercising the power shall be delivered to

5 (1) the settlor, if living, of the invaded trust;

6 (2) a person having the right, under the terms of the invaded trust, to
7 remove or replace the authorized trustee exercising the power under AS 13.36.157;
8 and

9 (3) a qualified beneficiary or a person who may represent and bind the
10 qualified beneficiary under AS 13.06.120.

11 (e) Notice under (d) of this section to a qualified beneficiary is not required if
12 the settlor has exempted the authorized trustee from providing notification or
13 information to beneficiaries under AS 13.36.080(b). Notice under (d) of this section
14 shall be provided under AS 13.06.110.

15 (f) The instrument exercising the power must state whether the appointment is
16 of all or part of the assets comprising the principal of the invaded trust and, if a part,
17 the approximate percentage of the value of the principal of the invaded trust that is the
18 subject of the appointment.

19 (g) A person entitled to notice under (d) of this section may object to the
20 trustee's exercise of the power under AS 13.36.157 - 13.36.159 by serving a written
21 notice of objection on the trustee before the effective date of the exercise of the power.
22 The failure to object does not constitute consent.

23 (h) The receipt of a copy of the instrument exercising the power does not,
24 before the expiration of the limitation period in AS 13.36.100 with respect to a report
25 disclosing the exercise, affect the right of a qualified beneficiary to object to the
26 exercise of the power under AS 13.36.157 and to request the court to modify or to
27 reverse the exercise.

28 (i) A copy of the instrument exercising the power shall be kept with the
29 records of the invaded trust.

30 * **Sec. 8.** AS 13.36.215 is amended by adding a new subsection to read:

31 (b) In AS 13.36.157 - 13.36.159,

1 (1) "appointed trust" means an irrevocable trust that receives principal
2 from an invaded trust under AS 13.36.157, including a new trust created by the settlor
3 of the invaded trust or by the trustees, acting in that capacity, of the invaded trust;

4 (2) "authorized trustee" means, with regard to an invaded trust, a
5 trustee with the authority to pay trust principal to or for a current beneficiary; in this
6 paragraph, "trustee" does not include a settlor or a beneficiary to whom income or
7 principal must be paid, currently or in the future, or who is or will become eligible to
8 receive a distribution of income or principal in the discretion of the trustee other than
9 by the exercise of a power of appointment held in a nonfiduciary capacity;

10 (3) "current beneficiary" means a person or, with regard to a class of
11 persons, a person who is or will become a member of the class, to whom a trustee may
12 distribute principal when exercising a power under AS 13.36.157;

13 (4) "invade" means pay directly to the beneficiary of a trust or apply to
14 the benefit of a beneficiary;

15 (5) "invaded trust" means an irrevocable inter vivos or testamentary
16 trust the principal of which is appointed under AS 13.36.157;

17 (6) "pooled trust" means a trust described in 42 U.S.C. 1396p(d)(4)(C)
18 that meets the requirements for a pooled trust under the regulations of this state
19 relating to the Medicaid treatment of trusts;

20 (7) "principal" means the assets of a trust, including accrued and
21 accumulated income, but excluding income that is currently required to be distributed;

22 (8) "special needs trust" means a trust under 42 U.S.C. 1396p(d)(4)(A)
23 that meets the requirements for a special needs trust under the regulations of this state
24 relating to the Medicaid treatment of trusts;

25 (9) "third-party trust" means a trust that is

26 (A) established by a third party with the assets of the third party
27 to provide for supplemental needs for a person eligible when the trust is
28 created or at a future time for needs-based public assistance; and

29 (B) exempt from the provisions of the regulations of this state
30 relating to the Medicaid treatment of trusts;

31 (10) "unlimited discretion" means the unlimited right to distribute

1 principal that is not modified in any manner."

2

3 Renumber the following bill sections accordingly.

4

5 Page 27, line 3:

6 Delete "sec. 31"

7 Insert "sec. 34"

8

9 Page 27, line 5:

10 Delete "sec. 31"

11 Insert "sec. 34"

12

13 Page 27, following line 13:

14 Insert a new subsection to read:

15 "(b) AS 13.36.157, repealed and reenacted by sec. 6 of this Act, AS 13.36.158 and
16 13.36.159, enacted by sec. 7 of this Act, and AS 13.36.215(5), enacted by sec. 8 of this Act,
17 apply to a trust that exists before, on, or after the effective date of this Act."

18

19 Reletter the following subsection accordingly.

20

21 Page 27, line 14:

22 Delete "sec. 28"

23 Insert "sec. 31"

24

25 Page 27, line 20:

26 Delete "sec. 31"

27 Insert "sec. 34"

28

29 Page 27, line 21:

30 Delete "sec. 35"

31 Insert "sec. 38"

27-LS0819\D
Bannister
1/27/12

CS FOR SENATE BILL NO. 165()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE JUDICIARY COMMITTEE

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to property exemptions for retirement plans, individual retirement**
2 **accounts, and Roth IRAs; relating to pleadings, orders, liability, and notices under the**
3 **Uniform Probate Code; relating to the Alaska Principal and Income Act; relating to the**
4 **Alaska Uniform Transfers to Minors Act; relating to the disposition of human remains;**
5 **relating to insurable interests for life insurance policies; relating to transfers of**
6 **individual retirement plans; relating to the community property of married persons;**
7 **and amending Rule 301(a), Alaska Rules of Evidence."**

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

9 *** Section 1.** AS 09.38.017(a) is amended to read:

10 (a) In addition to the exemption under AS 09.38.015(b), the following are
11 exempt from a claim of an individual's or beneficiary's creditor:

12 (1) the interest of the individual or beneficiary in a retirement plan;

13 [AND]

1 (2) the money or other assets payable to the individual from a
2 retirement plan;

3 **(3) the interest of a beneficiary in**

4 **(A) a retirement plan if the beneficiary acquired the**
5 **interest as a result of the death of an individual; the beneficiary's interest**
6 **is exempt to the same extent that the individual's interest was exempt**
7 **immediately before the individual died;**

8 **(B) an individual retirement account that has been**
9 **transferred by the individual to the beneficiary during the individual's**
10 **lifetime; the beneficiary's interest is exempt to the same extent that the**
11 **individual's interest was exempt immediately before the transfer to the**
12 **beneficiary;**

13 **(4) the money or other assets payable to a beneficiary from**

14 **(A) a retirement plan if the beneficiary acquired the money**
15 **or other assets as a result of the death of an individual who would have**
16 **had, during the individual's life, an exemption in the money or other**
17 **assets;**

18 **(B) an individual retirement account if the beneficiary**
19 **acquired the money or other assets as a result of the transfer of the money**
20 **or other assets by an individual who would have had, at the time of the**
21 **transfer, an exemption in the money or other assets.**

22 * Sec. 2. AS 09.38.017(d) is amended to read:

23 (d) A retirement plan exempt from claims under (a) of this section is
24 conclusively presumed to be a spendthrift trust under this section, **except for**
25 **transfers or assignments under AS 34.40.113.**

26 * Sec. 3. AS 09.38.017(e) is amended to read:

27 (e) In this section,

28 (1) "alternate payee" has the meaning given in 26 U.S.C. 414(p)(8);

29 (2) **"beneficiary" includes a person, trust, or trustee who has,**
30 **before or after the death of an individual, a direct or indirect beneficial interest**
31 **in a retirement plan; in this paragraph, "beneficial interest" includes an interest**

1 **that is acquired**

2 **(A) as a designated beneficiary, survivor, co-annuitant,**
3 **heir, or legatee; or**

4 **(B) if excludible from gross income under 26 U.S.C.**
5 **(Internal Revenue Code), as a**

6 **(i) rollover under 26 U.S.C. 408 or 26 U.S.C. 408A;**

7 **(ii) a distribution from one retirement plan to**
8 **another retirement plan; or**

9 **(iii) a distribution that is similar to (i) or (ii) of this**
10 **subparagraph;**

11 **(3) "individual" means [AN INDIVIDUAL WHO IS] a participant in,**
12 **an owner [A BENEFICIARY] of, or an alternate payee of a retirement plan;**

13 **(4) "individual retirement account" means an individual**
14 **retirement account established under 26 U.S.C. 408 or a Roth IRA established**
15 **under 26 U.S.C. 408A;**

16 **(5) [(3)] "retirement plan" means**

17 **(A) a retirement plan that is qualified under 26 U.S.C. 401(a),**
18 **26 U.S.C. 403(a), 26 U.S.C. 403(b), [26 U.S.C. 408, 26 U.S.C. 408A, OR] 26**
19 **U.S.C. 409, 26 U.S.C. 414(d), 26 U.S.C. 414(e), or 26 U.S.C. 457 (Internal**
20 **Revenue Code);**

21 **(B) an individual retirement account; and**

22 **(C) the teachers' retirement system under AS 14.25, the**
23 **judicial retirement system under AS 22.25, the public employees'**
24 **retirement system under AS 39.25, and the elected public officers'**
25 **retirement system under former AS 39.37.**

26 * **Sec. 4.** AS 13.06.120 is amended to read:

27 **Sec. 13.06.120. Pleadings; when parties bound by orders; notice.** In any
28 proceedings involving trusts, nonprobate assets, or estates of decedents, minors,
29 protected persons, or incapacitated persons brought under AS 13.06 - AS 13.36 or
30 AS 13.38, [INCLUDING ANY JUDICIALLY SUPERVISED SETTLEMENTS AND
31 ANY NONJUDICIAL PROCEEDINGS AND SETTLEMENTS,] the following

1 apply:

2 (1) interests to be affected shall be described in pleadings that give
3 reasonable information to owners by name or class, by reference to the instrument
4 creating the interests, or in other appropriate manner;

5 (2) persons are bound by orders binding others in the following cases:

6 (A) orders binding the sole holder or all co-holders of a power
7 of revocation or a general or nongeneral power of appointment, including one
8 in the form of a power of amendment, bind other persons to the extent their
9 interests, as objects, takers in default, or otherwise, are subject to the power;

10 (B) to the extent there is no conflict of interest between them or
11 among persons represented, orders binding a conservator bind the person
12 whose estate the conservator controls; orders binding a guardian bind the ward
13 if no conservator of the estate has been appointed; orders binding a trustee bind
14 beneficiaries of the trust in proceedings to probate a will establishing or adding
15 to a trust, to review the acts or accounts of a prior fiduciary, and in proceedings
16 involving creditors or other third parties; orders binding a personal
17 representative bind persons interested in the undistributed assets of a
18 decedent's estate in actions or proceedings by or against the estate; and orders
19 binding an agent having authority to act with respect to the particular questions
20 or dispute bind the principal; if there is no conflict of interest and no
21 conservator or guardian has been appointed, a parent may represent the minor
22 child;

23 (C) an unborn person, a minor, an incapacitated person, or a
24 person whose identity or location is unknown or not reasonably ascertainable
25 who is not otherwise represented is bound by an order to the extent the interest
26 is adequately represented by another party having a substantially identical
27 interest in the proceeding;

28 (D) with regard to interests given upon the happening of a
29 certain event to persons who comprise a certain class, orders binding the living
30 persons who would constitute the class, if the event had happened immediately
31 before the commencement of the proceeding, bind all members of the class;

1 (E) with regard to an interest given to a living person when the
2 same interest or a share of the interest is to pass to the surviving spouse or to
3 persons who are or might be the distributees, devisees, heirs, or issue of the
4 living person upon the happening of a future event, orders binding the living
5 person bind the surviving spouse, distributees, devisees, heirs, or issue of the
6 living person;

7 (F) with regard to interests given to a person or a class of
8 persons, or to both, upon the happening of a future event, if the same interest
9 or a share of the interest is to pass to another person or class of persons, or to
10 both, upon the happening of an additional future event, orders binding the
11 living person or class of persons who would take the interest upon the
12 happening of the first event bind the persons and classes of persons who might
13 take on the happening of the additional future event;

14 (G) if a person is designated by a trust instrument to represent
15 and bind a born or unborn beneficiary of the trust and receive a notice,
16 information, accounting, or report for the beneficiary, then the beneficiary is
17 bound by an order binding the designated person; in this subparagraph,

18 (i) the settlor may make the designation in the trust
19 instrument, in a separate document, or by a trust protector authorized in
20 the trust instrument to make the designation;

21 (ii) except as otherwise provided in this subparagraph, a
22 person designated under (i) of this subparagraph may not represent and
23 bind a beneficiary while the designated person is serving as trustee;

24 (iii) except as otherwise provided in this subparagraph,
25 a person designated under (i) of this subparagraph may not represent
26 and bind another beneficiary if the designated person also is a
27 beneficiary, unless the designated person was named by the settlor, is
28 the beneficiary's spouse, or is a grandparent or descendant of a
29 grandparent of the beneficiary or the beneficiary's spouse; in this sub-
30 subparagraph, "spouse" means the individual to whom the beneficiary
31 is married and with whom the beneficiary is living, and a physical

1 separation primarily for education, business, health, and similar reasons
2 does not prevent the individual from being considered to be living with
3 the beneficiary;

4 (3) a person representing another person under (2)(A) - (F) of this
5 section and a person designated under (2)(G)(i) of this section are not liable to the
6 beneficiary whose interests are represented, or to a person claiming through that
7 beneficiary, for an action or omission to act made in good faith;

8 (4) notice is required as follows:

9 (A) notice as prescribed by AS 13.06.110 shall be given to
10 every interested person or to one person who can bind an interested person as
11 described in (2)(A), (B), or (D) - (G) of this section; notice may be given both
12 to a person and to another person who may bind the person;

13 (B) notice is given to unborn persons, a minor, an incapacitated
14 person, or a person whose identity or location is unknown or not reasonably
15 ascertainable, and persons who are not represented under (2)(A), (B), or (D) -
16 (G) of this section, by giving notice to all known persons whose interests in the
17 proceedings are substantially identical to those of the unborn persons, the
18 minor, the incapacitated person, or the person whose identity or location is
19 unknown or not reasonably ascertainable;

20 (5) at any point in a proceeding, a court may appoint a guardian ad
21 litem to represent the interest of an unborn person, a minor, an incapacitated person, or
22 a person whose identity or address is unknown or not reasonably ascertainable, if the
23 court determines that representation of the interest otherwise would be inadequate; if
24 not precluded by conflict of interests, a guardian ad litem may be appointed to
25 represent several persons or interests; the court shall set out its reasons for appointing
26 a guardian ad litem as a part of the record of the proceeding.

27 * **Sec. 5.** AS 13.06.120 is amended by adding a new subsection to read:

28 (b) In this section,

29 (1) "order" means a judicial order, nonjudicial order, the result of the
30 settlement of an account of a fiduciary under a procedure authorized by AS 13.06 -
31 13.36 or AS 13.38, and a settlement agreement resulting from a proceeding;

1 (2) "proceeding" means a judicial proceeding, nonjudicial proceeding,
2 the settlement of an account of a fiduciary under a procedure authorized by AS 13.06 -
3 13.36 or AS 13.38, and a settlement negotiation, even if the settlement negotiation
4 does not involve a judicial or nonjudicial third party who decides or facilitates a
5 settlement.

6 * **Sec. 6.** AS 13.38.200(b) is amended to read:

7 (b) In exercising a discretionary power of administration regarding a matter
8 within the scope of this chapter, whether granted by the governing instrument or this
9 chapter, including AS 13.38.210 and 13.38.300 - 13.38.490 [13.38.300 - 13.38.410], a
10 fiduciary shall administer a trust or estate impartially based on what is fair and
11 reasonable to all of the beneficiaries, except to the extent that the governing
12 instrument clearly manifests an intention that the fiduciary shall or may favor one or
13 more of the beneficiaries. A determination in accordance with this chapter is presumed
14 to be fair and reasonable to all of the beneficiaries.

15 * **Sec. 7.** AS 13.38.210(c) is amended to read:

16 (c) A trustee may not make an adjustment under this section if

17 (1) the adjustment would diminish the income interest in a trust that
18 requires all of the income to be paid at least annually to a spouse and for which a
19 federal estate tax or gift tax marital deduction would be allowed, in whole or in part, if
20 the trustee did not have the power to make the adjustment; the prohibition in this
21 paragraph does not apply to a trust after the trustee determines that the marital
22 deduction has not been claimed or has not been allowed;

23 (2) the adjustment would reduce the actuarial value of the income
24 interest in a trust to which a person transfers property with the intent to qualify for a
25 federal gift tax exclusion;

26 (3) the adjustment would change the amount payable to a beneficiary
27 as a fixed annuity or a fixed fraction of the value of the trust assets;

28 (4) the adjustment is from any amount that is permanently set aside for
29 charitable purposes under the governing instrument and for which a federal estate or
30 gift tax charitable deduction has been taken, unless both income and principal are
31 permanently set aside for charitable purposes under the governing instrument;

1 (5) possessing or exercising the power to make an adjustment would
2 cause an individual to be treated as the owner of all or part of the trust for federal
3 income tax purposes, and the individual would not be treated as the owner if the
4 trustee did not possess the power to make an adjustment;

5 (6) possessing or exercising the power to make an adjustment would
6 cause all or part of the trust assets to be subject to federal estate or gift tax with respect
7 to an individual, and the assets would not be subject to federal estate or gift tax with
8 respect to the individual if the trustee did not possess the power to make an
9 adjustment;

10 (7) the trustee is a beneficiary of the trust; or

11 (8) the trust has been converted to a unitrust under AS 13.38.300 -
12 13.38.435 [AS 13.38.300 - 13.38.410].

13 * **Sec. 8.** AS 13.38.300 is amended to read:

14 **Sec. 13.38.300. Power to convert to unitrust.** Unless expressly prohibited by
15 the governing instrument, a trustee may release the power to adjust under
16 AS 13.38.210 and may convert a trust into a unitrust as described in AS 13.38.300 -
17 13.38.435 [AS 13.38.300 - 13.38.410] if

18 (1) the trustee determines that the conversion will enable the trustee to
19 better carry out the intent of the settlor or testator and the purposes of the trust;

20 (2) the trustee gives written notice of the trustee's intention to release
21 the power to adjust, of the trustee's intention to convert the trust into a unitrust, **of the**
22 **unitrust percentage selected, of the smoothing period selected,** and of how the
23 unitrust will operate, including what initial decisions the trustee **intends to** [WILL]
24 make under AS 13.38.340 [THIS SECTION], to all the sui juris beneficiaries who

25 (A) are currently eligible to receive income from the trust;

26 (B) would be eligible, if a power of appointment were not
27 exercised, to receive income from the trust if the interest of all of the
28 beneficiaries eligible to receive income under (A) of this paragraph were to
29 terminate immediately before the giving of the notice; and

30 (C) would, if a power of appointment were not exercised,
31 receive a distribution of principal if the trust were to terminate immediately

1 before the giving of the notice;

2 (3) there are at least one sui juris beneficiary under (2)(A) of this
3 section and at least one sui juris beneficiary under (2)(B) or (C) of this section; and

4 (4) a sui juris beneficiary does not object to the conversion to a unitrust
5 in a writing delivered to the trustee within 60 days after the mailing of the notice under
6 (2) of this section.

7 * **Sec. 9.** AS 13.38.310(a) is amended to read:

8 (a) A trustee may petition the court to approve the conversion to a unitrust if

9 (1) a beneficiary timely objects to the conversion to a unitrust; [OR]

10 (2) there is not a sui juris beneficiary who is eligible under

11 AS 13.38.300(2); or

12 (3) the trustee is a beneficiary [AS 13.38.300(2)(A), AND THERE
13 IS NOT A SUI JURIS BENEFICIARY WHO IS ELIGIBLE UNDER
14 AS 13.38.300(2)(B) OR (C)].

15 * **Sec. 10.** AS 13.38.330(b) is amended to read:

16 (b) After a trust has been converted to a unitrust, "income" in the governing
17 instrument means an annual distribution equal to the amount produced by the
18 application of a fixed unitrust percentage established under (d) of this section to
19 [FOUR PERCENT OF] the net fair market value, as determined annually, of the trust's
20 assets, whether the assets would be considered income or principal under other
21 provisions of this chapter, averaged over the lesser of

22 (1) the preceding years in the smoothing period selected by the
23 trustee; or

24 (2) the period during which the trust has been in existence.

25 * **Sec. 11.** AS 13.38.330 is amended by adding a new subsection to read:

26 (d) The unitrust percentage to be used in determining the unitrust amount must
27 be a reasonable current return from the unitrust of at least three percent and not more
28 than five percent, taking into account the intentions of the trustor of the unitrust as
29 expressed in the governing instrument, the needs of the beneficiaries, general
30 economic conditions, projected current earnings for the unitrust, projected
31 appreciation for the unitrust, and the effect of projected inflation on the unitrust.

1 * **Sec. 12.** AS 13.38.340 is amended to read:

2 **Sec. 13.38.340. Trustee's discretionary powers regarding unitrust.** The
3 trustee may, in the trustee's discretion, from time to time, determine

4 (1) the effective date of a conversion to a unitrust;

5 (2) the provisions for prorating a unitrust distribution for a short year
6 in which a beneficiary's right to payments commences or ceases;

7 (3) the frequency of unitrust distributions during the year;

8 (4) the effect of other payments from or contributions to the trust on
9 the trust's valuation;

10 (5) whether to value the trust's assets annually or more frequently;

11 (6) whether to use a smoothing period of three, four, or five years;

12 (7) what valuation dates to use;

13 (8) [(7)] how frequently to value nonliquid assets and whether to
14 estimate their value;

15 (9) [(8)] whether to omit trust property occupied or possessed by a
16 beneficiary from the calculations; and

17 (10) [(9)] other matters necessary for the proper functioning of the
18 unitrust.

19 * **Sec. 13.** AS 13.38.350(b) is amended to read:

20 (b) Unless otherwise provided by the governing instrument, a unitrust
21 distribution shall be considered to have been paid from net income as net income
22 would be determined if the trust were not a unitrust. To the extent net income is
23 insufficient, the unitrust distribution shall be considered to have been paid from
24 ordinary income that is allocable under federal income tax rules to net income as
25 determined for a unitrust. To the extent that the ordinary income is insufficient,
26 the unitrust distribution is considered to have been paid from net realized short-
27 term capital gains. To the extent net income, ordinary income, and net realized short-
28 term capital gains are insufficient, the unitrust distribution shall be considered to have
29 been paid from net realized long-term capital gains. To the extent net income,
30 ordinary income, and net realized short-term and long-term capital gains are
31 insufficient, the unitrust distribution shall be paid from the principal of the trust.

1 * **Sec. 14.** AS 13.38.360 is amended to read:

2 **Sec. 13.38.360. Court orders regarding unitrust.** The trustee or, if the trustee
3 declines to petition the court, a beneficiary may petition the court to

4 [(1) SELECT A PAYOUT PERCENTAGE DIFFERENT THAN
5 FOUR PERCENT;

6 (2)] provide for a distribution of net income, as would be determined if
7 the unitrust [TRUST] were not a unitrust, in excess of the unitrust distribution if the
8 distribution is necessary to preserve a tax benefit [;

9 (3) AVERAGE THE VALUATION OF THE TRUST'S NET ASSETS
10 OVER A PERIOD OTHER THAN THREE YEARS].

11 * **Sec. 15.** AS 13.38.390(b) is amended to read:

12 (b) If AS 13.38.380(a)(3), (4), or (6) applies to all the trustees, the trustees
13 may petition the court to direct a conversion. In the alternative, the trustees may
14 appoint an independent person who shall be granted the authority, while acting
15 in a fiduciary capacity, to make decisions in place of the trustees relating to a
16 conversion, reconversion, and the exercise of discretionary powers under
17 AS 13.38.340.

18 * **Sec. 16.** AS 13.38.400 is amended to read:

19 **Sec. 13.38.400. Reconversion from a unitrust.** A trustee may reconvert a
20 trust that has been converted into a unitrust under AS 13.38.300 by following the same
21 procedures provided in AS 13.38.300 - 13.38.435 [AS 13.38.300 - 13.38.410] for
22 converting a trust into a unitrust. If a unitrust is reconverted under this section, the
23 trustee's power to adjust under AS 13.38.210 applies to the trustee after the
24 reconversion.

25 * **Sec. 17.** AS 13.38 is amended by adding new sections to article 2 to read:

26 **Sec. 13.38.420. Additional unitrust provisions.** (a) The unitrust amount may
27 be determined by reference to the net fair market value of the unitrust's assets in one or
28 more years.

29 (b) Distribution of a unitrust amount is considered a distribution of all of the
30 income of a unitrust and is considered to be an income interest.

31 (c) Distribution of a unitrust amount is considered to be a reasonable

1 apportionment of the total return of a unitrust.

2 (d) A unitrust that provides for a distribution based on a unitrust percentage in
3 excess of five percent of the net fair market value of the unitrust assets a year is
4 considered to have paid out all of the income of the unitrust and to have paid out
5 principal of the unitrust to the extent that the distribution exceeds five percent a year.

6 (e) The governing instrument of a unitrust may grant discretion to the trustee
7 to adopt a consistent practice of treating capital gains as part of the unitrust amount to
8 the extent that the unitrust amount exceeds the income determined as if the trust were
9 not a unitrust, or the governing instrument may specify the ordering of classes of
10 income.

11 (f) Unless the terms of the unitrust specifically provide otherwise, a unitrust
12 amount is considered to have been made from the following sources, which are listed
13 in order of priority:

- 14 (1) net income determined as if the trust were not a unitrust;
- 15 (2) ordinary income not allocable to net income;
- 16 (3) net realized short-term capital gains;
- 17 (4) net realized long-term capital gains; and
- 18 (5) the principal of the trust estate.

19 (g) The unitrust governing instrument may provide that the trustee may
20 exclude assets used by the unitrust beneficiary, such as a residence property or
21 tangible personal property, from the net fair market value of the unitrust assets for the
22 purposes of computing the unitrust amount. These assets may be considered
23 equivalent to income or to the unitrust amount.

24 **Sec. 13.38.430. Power to treat gains as part of distribution of principal.**
25 Unless prohibited by the unitrust's governing instrument or specifically addressed by
26 AS 13.38.350 or 13.38.420, the trustee of a unitrust may treat gains from the sale of
27 capital assets of the unitrust to be part of a distribution of principal to a beneficiary,
28 and, if the trustee treats these gains as part of a distribution of principal to a
29 beneficiary, the trustee shall treat these gains consistently on the unitrust's books,
30 records, and tax returns as part of a distribution to a beneficiary.

31 **Sec. 13.38.435. Definitions.** In AS 13.38.300 - 13.38.435,

1 (1) "smoothing period" means the period of years over which the fair
2 market value of the assets of a unitrust are averaged;

3 (2) "unitrust amount" means the amount that is distributed from a
4 unitrust to a beneficiary;

5 (3) "unitrust percentage" means the unitrust percentage established
6 under AS 13.38.330(d).

7 * **Sec. 18.** AS 13.38.690(a) is repealed and reenacted to read:

8 (a) A trustee shall allocate

9 (1) to income that portion of a payment that equals the greater of the
10 following:

11 (A) the portion that the payor characterizes as interest, a
12 dividend, a remittance in place of interest, or a remittance in place of a
13 dividend; or

14 (B) the portion that is characterized as imputed interest for
15 federal income purposes;

16 (2) to principal that portion of a payment that remains after the
17 allocation is made under (1) of this subsection.

18 * **Sec. 19.** AS 13.38.690(b) is amended to read:

19 (b) If no [A] part of a payment under a contract calling for equal installments
20 over a fixed period of time is [NOT] allocable to income under the provisions of (a) of
21 this section, the difference between the trust's acquisition value of the contract and the
22 total expected return is [SHALL BE] considered to be interest. The trustee shall
23 allocate to income the portion of each payment equivalent to interest on the then
24 unpaid principal balance at the rate specified in the contract or at a rate necessary to
25 amortize the difference between the expected return and the acquisition value, where
26 that rate is readily ascertainable by the trustee.

27 * **Sec. 20.** AS 13.38.690(c) is amended to read:

28 (c) If no [THERE IS NOT A] portion of a payment from a separate fund held
29 exclusively for the benefit of the trust [THAT] is allocable to income under (a) or (b)
30 of this section, but the internal net income of the fund determined as if the fund were a
31 separate trust subject to AS 13.38.200 - 13.38.410, 13.38.500 - 13.38.690, or

1 **13.38.710 - 13.38.860** [AS 13.38.500 - 13.38.860] is readily ascertainable by the
2 trustee, the **internal net income of the fund is considered to be the income earned**
3 **by the fund, and the** portion of the payment equal to the then undistributed net
4 income of the fund realized since the trust acquired its interest in the fund is
5 considered to be a distribution of **that internal net** income **of the fund** and shall be
6 allocated to the trust income account. The balance of the payment described in this
7 subsection shall be allocated to principal. **The power to adjust under AS 13.38.210,**
8 **the power to convert to a unitrust under AS 13.38.300, and the provisions of**
9 **AS 13.38.420 apply to retirement benefits covered by this subsection that are**
10 **payable to a trust. These powers and provisions may be exercised by the payee**
11 **trustee or in the governing instrument for the retirement benefits separately and**
12 **independently from the exercise by the payee trustee or in the governing**
13 **instrument of these powers and provisions for the trust, as if the retirement**
14 **benefits and the trust were separate trusts subject to this chapter.**

15 * **Sec. 21.** AS 13.38.690(d) is amended to read:

16 (d) A trustee shall allocate 10 percent of the part of the payment that is
17 required to be made during the accounting period to income and the balance to
18 principal if there is **no** [NOT A] part of the payment that is allocable to income under
19 (a) - (c) of this section and all or part of the payment is required to be made. The
20 trustee shall allocate the entire payment to principal if **no** [A] part of a payment is
21 [NOT] required to be made or the payment received is the entire amount to which the
22 trustee is entitled. In this subsection, a payment is not "required to be made" to the
23 extent that it is made because the trustee exercises a right of withdrawal.

24 * **Sec. 22.** AS 13.38.690(e) is amended to read:

25 (e) If, to obtain a federal estate or gift tax marital deduction for a trust, the
26 trustee must allocate more of a payment to income than provided for by this section,
27 the trustee shall allocate **to income** the additional amount necessary to obtain the
28 marital deduction [TO INCOME].

29 * **Sec. 23.** AS 13.46.195(d) is amended to read:

30 (d) The time for transfer to the minor of custodial property transferred under
31 AS 13.46.040 may be changed under this section if the governing will or trust or

1 nomination provides in substance that the custodianship is to continue until the time
2 the minor attains a specified age. That time may not be earlier than the time the minor
3 attains 18 years of age [OR LATER THAN THE TIME THE MINOR ATTAINS 25
4 YEARS OF AGE], and, in that case, the governing will or trust or nomination shall
5 determine the time to be specified in the transfer under AS 13.46.080.

6 * **Sec. 24.** AS 13.46.195(e) is amended to read:

7 (e) The time for transfer to the minor of custodial property transferred under
8 AS 13.46.030 may be changed under this section if the transfer under AS 13.46.080
9 provides in substance that the custodianship is to continue until the time the minor
10 attains a specified age. That time may not be earlier than the time the minor attains 18
11 years of age [OR LATER THAN THE TIME THE MINOR ATTAINS 25 YEARS
12 OF AGE].

13 * **Sec. 25.** AS 13.46.195 is amended by adding new subsections to read:

14 (h) Notwithstanding (b) - (f) of this section, a custodian may extend the time
15 for transfer to the minor of custodial property to an age older than the age that is
16 specified in the transfer document or that is specified otherwise by this chapter. To
17 extend the time for transfer, the custodian shall give the minor written notice of the
18 minor's right to compel immediate distribution under (i) of this section. The custodian
19 shall give the notice during the later of the following periods:

20 (1) the six-month period that precedes the age for distribution specified
21 in the transfer document or specified otherwise by this chapter; or

22 (2) the six-month period that begins on the minor's 18th birthday.

23 (i) Notwithstanding (h) of this section, a minor may compel immediate
24 distribution of custodial property by giving written notice to the custodian. To compel
25 immediate distribution, the minor shall give the notice during the six-month period
26 that begins on the date that is the later of

27 (1) the age for distribution specified in the transfer document or
28 specified otherwise by this chapter; or

29 (2) the minor's 18th birthday.

30 * **Sec. 26.** AS 13 is amended by adding a new chapter to read:

31 **Chapter 75. Disposition of Human Remains.**

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Sec. 13.75.010. Directions by decedent. (a) A person may provide directions for the disposition of the person's remains by placing the directions in a disposition document. The directions may include or be limited to designating an agent to control the disposition of the person's remains.

(b) A disposition document must be signed by the person and acknowledged before a notary public, and contain the form and contents required by AS 13.75.030. A disposition document may be a separate document or it may be contained in another document, including a will or prepaid funeral or burial contract. The disposition document may be modified or revoked only by a subsequent disposition document that complies with this subsection.

Sec. 13.75.020. Persons authorized to control disposition. (a) The following persons, in the priority listed, may control disposition of a decedent's remains:

(1) a person designated in a disposition document as the disposition agent for the decedent;

(2) a person serving, or nominated by the decedent in the decedent's will to serve, as the personal representative of the decedent's estate, if the person is acting according to the decedent's written instructions contained in the decedent's will;

(3) the individual who was the spouse of the decedent at the time of the decedent's death;

(4) the sole surviving competent adult child of the decedent, or, if there is more than one surviving competent adult child of the decedent, the majority of the surviving competent adult children; fewer than one-half of the surviving competent adult children may exercise the rights and duties of this section if these surviving adult children use reasonable efforts to notify all other surviving competent adult children that they are exercising these rights and duties and are not aware of any opposition by one-half or more of all of the surviving competent adult children;

(5) the surviving competent parents of the decedent; if one of the surviving competent parents is absent, the remaining competent parent may exercise the rights and duties of this section after reasonable efforts have been unsuccessful in locating the absent surviving competent parent; in this paragraph, "absent" means a person who is unable to communicate decisions or participate in making decisions

1 regarding the disposition of a decedent's remains personally, telephonically, or through
2 electronic communication;

3 (6) the surviving competent adult person in the next degrees of
4 kindred, the two surviving competent adult persons of the same degree of kindred if
5 there are two, or, if there are more than two surviving competent adult persons of the
6 same degree of kindred, the majority of those persons; fewer than the majority of
7 surviving competent adult persons of the same degree of kindred may exercise the
8 rights and duties of this section if those persons use reasonable efforts to notify all
9 other surviving competent adult persons of the same degree of kindred that they are
10 exercising these rights and duties and are not aware of any opposition by one-half or
11 more of all surviving competent adult persons of the same degree of kindred;

12 (7) in the case of an indigent or another individual whose final
13 disposition is the responsibility of the state or a municipality, a public administrator,
14 medical examiner, coroner, or another public official charged with arranging the final
15 disposition of the decedent; or

16 (8) another person who is willing to assume legal and financial
17 responsibility.

18 (b) If a person takes control of the disposition under (a) of this section, the
19 person is liable for the reasonable costs of the disposition.

20 (c) In this section,

21 (1) "adult" means a person who is 18 years of age or older;

22 (2) "competent" means a person who does not suffer from disabilities
23 that prevent the person from managing the person's property or affairs.

24 **Sec. 13.75.030. Form of disposition document.** A disposition document must
25 be in substantially the following form:

26 DISPOSITION DOCUMENT

27 You can select Part 1, Part 2, or both, by completing the part(s)
28 you select, including providing any signatures indicated. Part 3 contains
29 general statements and a place for your signature. You must sign in
30 front of a notary.

31 PART 1. APPOINTMENT OF AGENT TO CONTROL

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DISPOSITION OF REMAINS. If you appoint an agent, you and your agent must complete this part as indicated, and the agent must sign this part.

I, _____, being of sound mind, wilfully and voluntarily make known my desire that, on my death, the disposition of my remains shall be controlled by _____ (name of agent first named below), and, with respect to that subject only, I appoint that person as my agent. All decisions made by my agent with respect to the disposition of my remains, including cremation, are binding.

ACCEPTANCE BY AGENT OF APPOINTMENT.

THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS APPOINTMENT, AGREES TO AND ASSUMES THE OBLIGATIONS PROVIDED IN THIS DOCUMENT. AN AGENT MAY SIGN AT ANY TIME, BUT AN AGENT'S AUTHORITY TO ACT IS NOT EFFECTIVE UNTIL THE AGENT SIGNS BELOW TO INDICATE THE ACCEPTANCE OF APPOINTMENT. ANY NUMBER OF AGENTS MAY SIGN, BUT ONLY THE SIGNATURE OF THE AGENT ACTING AT ANY TIME IS REQUIRED.

AGENT:

Name: _____

Address: _____

Telephone Number: _____

Signature Indicating Acceptance of Appointment:

Date of Signature: _____

SUCCESSORS:

If my agent dies, becomes legally disabled, resigns, or refuses to act, I appoint the following persons (each to act alone and successively, in the order named) to serve as my agent to control the disposition of my remains as authorized by this document:

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(1) First Successor

Name: _____

Address: _____

Telephone Number: _____

Signature of First Successor Indicating Acceptance of Appointment:

Date of Signature: _____

(2) Second Successor

Name: _____

Address: _____

Telephone Number: _____

Signature of Second Successor Indicating Acceptance of Appointment:

Date of Signature: _____

PART 2. DIRECTIONS FOR THE DISPOSITION OF MY REMAINS.

Stated below are my directions for the disposition of my remains:

If the disposition of my remains is by cremation, then (pick one):

() I do not wish to allow any of my survivors the option of canceling my cremation and selecting alternative arrangements, regardless of whether my survivors consider a change to be appropriate.

() I wish to allow only the survivors I have designated below to have the option of canceling my cremation and selecting alternative arrangements, if they consider that a change to be appropriate:

PART 3. GENERAL PROVISIONS AND SIGNATURE.

WHEN DIRECTIONS BECOME EFFECTIVE. The directions, including any appointment of an agent, in this disposition document become effective on my death.

REVOCATION OF PRIOR APPOINTMENTS. I revoke any prior appointment of any person to control the disposition of my remains.

SIGNATURE OF PERSON MAKING DISPOSITION DOCUMENT

Signature: _____

Date of signature: _____

(Notary acknowledgment of signature)

Sec. 13.75.040. Agent's appointment. The person appointed as an agent in a disposition document may sign the disposition document at any time, but the agent's authority to act is not effective until the agent signs the instrument.

Sec. 13.75.050. Exercise of authority. If a person fails to exercise the person's authority to control disposition under AS 13.75.020 within 48 hours after receiving notification of the decedent's death or within 48 hours after the decedent's death, whichever is earlier, the person may not control the disposition of the decedent's remains, and the right to control the disposition of the decedent's remains passes to the person who is next listed in priority under AS 13.75.020. If the person to whom the right to control the disposition passes under this section fails to exercise the person's authority to control the disposition within 48 hours after being notified that the authority to control the disposition has passed to the person, the authority to control the disposition passes to the person who is next listed in priority under AS 13.75.020.

Sec. 13.75.060. Certain persons prohibited from control. If a person is charged with a felonious killing in connection with a decedent's death and if the funeral director or the cemetery knows about the charge, then the person may not control disposition, and the right to control disposition passes to the person who is next listed in priority under AS 13.75.020.

Sec. 13.75.070. Prohibition of cremation; written instructions. A person

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may not authorize cremation for a decedent's remains if a decedent has left directions in a disposition document that the decedent does not wish to be cremated.

Sec. 13.75.080. Implementation of directions. (a) The person authorized to control the disposition shall carry out the directions of the decedent to the extent that the decedent's estate or the person is financially able to carry out the directions.

(b) Notwithstanding any other provision in AS 13.06 - 13.36 (Uniform Probate Code), if a person provides directions in a disposition document that is contained in a will, the directions shall be carried out immediately without the necessity of probate. If the will is not probated or is declared invalid for testamentary purposes, the directions are valid to the extent to which they have been acted on in good faith.

Sec. 13.75.090. Misrepresentation; liability. If a person represents that the person knows the identity of a decedent, and, with the intent to procure the disposition of the decedent's remains, signs a statement, other than a death certificate, that identifies the decedent, the person guarantees the identity of the decedent and is liable for any damages that result, directly or indirectly, from that guarantee.

Sec. 13.75.100. Liability. (a) A disposition organization is not liable for carrying out the directions of a decedent if the disposition organization carries out the directions of a decedent or a person who establishes that the person is entitled to control the disposition.

(b) This section may not be construed to reduce or eliminate the liability of a disposition organization for its negligence or reckless acts.

Sec. 13.75.110. Disputes. (a) A person listed in AS 13.75.020 who is involved in a dispute with one or more persons listed in AS 13.75.020 about which of the persons has the authority to control disposition may bring an action in the superior court to resolve the dispute.

(b) If there is a dispute with one or more persons listed in AS 13.75.020 about which person has the authority to control disposition, a cemetery organization or funeral establishment is not liable for refusing to accept, to inter, or otherwise to dispose of the decedent's remains until the cemetery organization or funeral establishment receives a court order or another suitable confirmation that the dispute has been resolved.

1 **Sec. 13.75.120. Exemptions.** The disposition of the remains of a member of
2 the organized militia under AS 26.05.262, the disposition of the remains of a member
3 of the armed forces under AS 26.10.065(a), and the disposition of the remains of a
4 member of the United States Coast Guard under AS 26.10.065(b) are exempt from this
5 chapter.

6 **Sec. 13.75.190. Definitions.** In this chapter,

7 (1) "control" means the authority to control disposition;

8 (2) "directions" means

9 (A) instructions for the disposition of a person's remains;

10 (B) the appointment of an agent to handle the disposition of a
11 person's remains; or

12 (C) both (A) and (B) of this paragraph;

13 (3) "disposition" means disposition of a decedent's remains, including
14 cremation, but does not include an anatomical gift; in this paragraph, "anatomical gift"
15 has the meaning given in AS 13.52.390;

16 (4) "disposition document" means a disposition document authorized
17 by AS 13.75.010

18 (A) in which a person provides directions regarding the
19 disposition of the person's remains; and

20 (B) that complies with AS 13.75.030;

21 (5) "disposition organization" means

22 (A) a cemetery association formed under AS 10.30.010;

23 (B) a nonprofit cemetery corporation authorized by
24 AS 10.30.055;

25 (C) a person operating a crematory;

26 (D) a person operating a columbarium;

27 (E) a funeral home or other type of funeral establishment;

28 (F) a funeral director or an embalmer.

29 **Sec. 13.75.195. Short title.** This chapter may be cited as the Disposition of
30 Human Remains Act.

31 * **Sec. 27.** AS 21.42.020 is amended by adding new subsections to read:

1 (e) Notwithstanding (a) of this section, a trustee, acting in a fiduciary capacity,
2 may procure or cause to be procured an insurance contract that is on the life or body of
3 an individual and under which the proceeds of the insurance contract are payable to
4 the trustee, acting in a fiduciary capacity, if

5 (1) the trustee, acting in a fiduciary capacity, owns the insurance
6 contract or the trust itself owns the insurance contract;

7 (2) on the date the contract is made, a settlor of the trust is the
8 individual insured, has an insurable interest in the individual insured, or would have
9 had an insurable interest in the individual insured if the settlor were living at the time
10 the contract was made; in this paragraph, "settlor" has the meaning given in
11 AS 13.36.390; and

12 (3) the proceeds of the contract are primarily for the benefit of a trust
13 beneficiary who has an insurable interest in the individual insured, except that, if the
14 determination of the trust beneficiary's insurable interest is based on (d)(1) of this
15 section, the trust beneficiary's relation by blood or law must be within the third degree.

16 (f) A person who has an insurable interest in the life or body of an individual
17 may form a business firm that is substantially or solely for the purpose of purchasing,
18 holding, or administering an insurance contract on the life or body of the individual. In
19 this subsection, "firm" has the meaning given in AS 21.97.900, but also includes a
20 business trust and a joint venture.

21 * **Sec. 28.** AS 34.40 is amended by adding a new section to read:

22 **Sec. 34.40.113. Transfers of individual retirement accounts.** (a)
23 Notwithstanding a provision in AS 09.38.017(d), AS 34.40.110, or another law to the
24 contrary, a person may voluntarily transfer or assign the person's interest in an
25 individual retirement account if the person

26 (1) is the owner of or a participant in the individual retirement account;

27 or

28 (2) acquired the interest as a result of the death of another individual.

29 (b) In this section, "individual retirement account" means an individual
30 retirement account established under 26 U.S.C. 408 or a Roth IRA established under
31 26 U.S.C. 408A.

1 * **Sec. 29.** AS 34.77.030(g) is amended to read:

2 (g) Whether or not the community property agreement provides that all
3 property acquired by either or both spouses during the marriage is community
4 property, and except to the extent otherwise expressly provided by the spouses in the
5 community property agreement or by the settlors in a community property trust,
6 property acquired by a spouse during marriage and after the determination date is
7 individual property if acquired

8 (1) by gift or a disposition at death made by a third person to the
9 spouse and not to both spouses;

10 (2) in exchange for or with the proceeds of other individual property of
11 the spouse;

12 (3) from appreciation or income of the spouse's individual property
13 except to the extent that the income or appreciation is classified as community
14 property under AS 34.77.130;

15 (4) by a decree, community property agreement, written consent, or
16 reclassification under AS 34.77.060(b) designating it as the individual property of the
17 spouse;

18 (5) as a recovery for damage to property under AS 34.77.140, except
19 as specifically provided otherwise in a decree, community property agreement,
20 community property trust, or written consent; [OR]

21 (6) as a recovery for personal injury, except for the amount of the
22 recovery attributable to expenses paid or otherwise satisfied from community
23 property; or

24 (7) as a transfer to a community property trust and declared by
25 the trust to be the individual property of the spouse.

26 * **Sec. 30.** AS 34.77.050(b) is amended to read:

27 (b) A gift of community property to a third person that is not allowed under
28 (a) of this section is subject to AS 34.77.140(e) - (h) [(d) OF THIS SECTION] unless
29 both spouses act together in making the gift or the other spouse ratifies the gift.

30 * **Sec. 31.** AS 34.77.110 is amended by adding new subsections to read:

31 (f) Property that spouses agree in a community property agreement is

1 community property or property that is transferred to a community property trust and
2 expressly declared by the trust to be community property is owned as community
3 property regardless of the form of title to the property, even if the title indicates that
4 the property is owned unequally by the spouses or is only in the name of one spouse.

5 (g) If the title to community property is in a form that provides for ownership
6 by survivorship between the spouses, then ownership by survivorship is presumed to
7 have been made with the consent of both spouses.

8 (h) If a spouse with management and control of community property
9 designates a beneficiary for the property on the death of one or both of the spouses,
10 and if the community property is held in a form of title that permits a beneficiary
11 designation, the beneficiary designation is effective only for the designating spouse's
12 one-half interest in the community property unless the other spouse consents in
13 writing to the designation. A designation of the following as the beneficiary is
14 presumed to have been made with the consent of the other spouse:

15 (1) the other spouse or an ancestor or descendant of either spouse;

16 (2) a charity; or

17 (3) a trust, to the extent that the beneficiaries consist of persons or
18 entities identified in (1) or (2) of this subsection.

19 (i) The testimony of one spouse is sufficient to rebut a presumption
20 established under this section.

21 (j) A disposition of community property contrary to (e) - (h) of this section is
22 voidable. An action in court to void the disposition must be commenced within the
23 time specified by AS 34.77.140(e).

24 * **Sec. 32.** AS 34.77.140(d) is amended to read:

25 (d) Except as provided otherwise in (e) - (h) of this section
26 [AS 34.77.050(d)], a spouse must begin an action against the other spouse under (a) of
27 this section within three years after acquiring actual knowledge of the facts giving rise
28 to the claim.

29 * **Sec. 33.** AS 34.77.140 is amended by adding new subsections to read:

30 (e) Except as provided by (f) - (h) of this section, if a gift of community
31 property during marriage by a spouse does not comply with AS 34.77.050(a), the

1 nondonor spouse may bring an action to recover the property or the amount of money
2 by which the gift exceeded the limit under AS 34.77.050(a). The nondonor spouse
3 may bring the action against the donor spouse, the gift recipient, or both. The
4 nondonor spouse must commence the action within the earliest of the following times:

- 5 (1) one year after the nondonor spouse receives notice of the gift;
- 6 (2) one year after dissolution of the marriage; or
- 7 (3) on or before the deadline for filing a claim under AS 13.16.460
8 after the death of the donor spouse.

9 (f) If a recovery under (e) of this section occurs during the marriage of the
10 donor spouse and the nondonor spouse, the property or money that is recovered is
11 considered community property. If the recovery occurs after the dissolution of the
12 marriage of the donor and nondonor spouses or after the death of either the donor or
13 the nondonor spouse, the recovery is limited to 50 percent of the property or money
14 that would have been recovered if the recovery had occurred during the marriage.

15 (g) If a transfer of community property to a third person during marriage by a
16 spouse acting without the other spouse becomes a completed gift on the death of the
17 donor spouse, or if an arrangement involving community property during marriage by
18 a spouse acting without the other spouse is intended to be and becomes a gift to a third
19 person on the death of the donor spouse, the surviving spouse may bring an action in
20 court against the gift recipient to recover one-half of the gift. To bring an action under
21 this subsection, the surviving spouse must commence the action on or before the
22 deadline for filing a claim under AS 13.16.460.

23 (h) If a spouse who would have been entitled to bring an action under (e) - (g)
24 of this section predeceases the donor spouse, the deceased spouse's successor in
25 interest may bring an action for recovery under (e) - (g) of this section, but the action
26 must be commenced within one year after the deceased spouse's death. Recovery in an
27 action under this subsection is the same as if the donor spouse had predeceased the
28 spouse entitled to the recovery, but the amount of the recovery is calculated as of the
29 date of the death of the spouse entitled to the recovery.

30 * **Sec. 34.** AS 13.38.330(c); AS 13.46.195(g); and AS 34.77.050(d) and 34.77.110(d) are
31 repealed.

1 * **Sec. 35.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 INDIRECT COURT RULE CHANGE. AS 34.77.110(i), enacted by sec. 31 of this
4 Act, has the effect of amending Rule 301(a), Alaska Rules of Evidence, by specifying the
5 evidence that is sufficient to rebut a presumption under AS 34.77.110(i), enacted by sec. 31 of
6 this Act.

7 * **Sec. 36.** The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 APPLICABILITY. (a) AS 09.38.017(a), as amended by sec. 1 of this Act,
10 AS 09.38.017(d), as amended by sec. 2 of this Act, and AS 09.38.017(e), as amended by sec.
11 3 of this Act, apply to a retirement plan that exists before, on, or after the effective date of this
12 Act. In this section, "retirement plan" has the meaning given in AS 09.38.017(e), as amended
13 by sec. 3 of this Act.

14 (b) AS 34.40.113, added by sec. 28 of this Act, applies to an individual retirement
15 account that exists before, on, or after the effective date of this Act. In this section, "individual
16 retirement account" means an individual retirement account established under 26 U.S.C. 408
17 or a Roth IRA established under 26 U.S.C. 408A.

18 * **Sec. 37.** The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 CONDITIONAL EFFECT. AS 34.77.110(i), enacted by sec. 31 of this Act, takes
21 effect only if sec. 35 of this Act receives the two-thirds majority vote of each house required
22 by art. IV, sec. 15, Constitution of the State of Alaska.

Brenda Nations
w/ the American
Council of Life
insurers would like
to talk to you about
SB 165 - princip. +
inc/probate

She has an amendment
she would like to
offer up.

512-394-0049

D.1

Cindy Smith

From: Brenda Nation <BrendaNation@acli.com>
Sent: Monday, January 30, 2012 12:32 PM
To: Cindy Smith
Subject: RE: AK SB 165 by Senate Judiciary Committee

Hi Cindy, this is good news!! Thanks so much for your help with this. I would like to listen to the hearing, but there is no need for me to testify. Can I call in to listen, or will the hearing be available via Internet?

Brenda

From: Cindy Smith [mailto:Cindy_Smith@legis.state.ak.us]
Sent: Monday, January 30, 2012 4:34 PM
To: Brenda Nation
Subject: RE: AK SB 165 by Senate Judiciary Committee

Brenda – I have run this by the attorneys who are working on the bill and they have no problem with your suggested amendment to the definition of settlor. So as it moves through committee we will make this change.

If you would still like to testify on this issue, the call in number is 1 (855) 463-5009 and you'd just let the moderator know you'd like to testify on SB 165. The meeting starts at 1:30 pm. Alaska time and this bill is the first item on the agenda.

Let me know if you do decide to call in – I have to send your name in to the conference operators so they know to plug you into the meeting!

Cindy Smith
Office of Senator Hollis French
(907) 465-3892
www.senate.org

From: Brenda Nation [mailto:BrendaNation@acli.com]
Sent: Friday, January 27, 2012 11:21 AM
To: Cindy Smith
Subject: AK SB 165 by Senate Judiciary Committee

Hi Cindy, thank you for speaking with me today. By way of introduction, I represent the American Council of Life Insurers (ACLI), a national trade association representing more than 300 legal reserve life insurers operating in the United States. Our members represent over 90% of the assets and premiums of the U.S. life insurance and annuity industry.

Our interest in SB 165 is with regard to Section 27 of the bill, relating to insurable interests for life insurance policies. We support the committee's proposed adoption of the language in this section, that for the most part, tracks the Insurable Interest Amendments to the Uniform Trust Code (UTC), which were adopted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in July, 2010 (attached). These amendments were drafted with much consideration by NCCUSL experts over their model recommendation for several years, and were given congratulatory recognition by ACLI when they were adopted.

ACLI actively participated in the NCCUSL effort from its beginning, voicing our concern in protecting against the problem of stranger-originated life insurance (STOLI) by inadvertently broadening the model insurable interest law with respect to trusts. The NCCUSL Drafting Committee's Reporter's Summary (attached) highlights this concern.

SB 165, Section 27, AS 21.42.020(e)(2) states that the term "settlor" has the meaning given in AS 13.36.390, which reads: "'settlor' means a person who transfers property in trust and includes a person who furnishes the property transferred to a trust even if the trust is created by another person." However, the NCCUSL insurable interest amendments define "settlor" more narrowly to mean "a person that executes a trust instrument. The term includes a person for which a fiduciary or agent is acting." An explanation for the change in the UTC definition of "settlor" is included in the comments attached to the NCCUSL Insurable Interest Amendments and reads in pertinent part:

With regard to language of the amendment, subsection (a) provides that the term "settlor" is limited to a person who executes the trust instrument. This is narrower than the UTC definition of "settlor," which, in addition to the person who executes the trust instrument, would include a person who merely contributes property to the trust. See UTC Section 103(15). As explained in the comment to Section 103(15), the broader definition serves a useful purpose in connection with the UTC generally; however, none of those situations relates to the issue of whose life should properly be the subject of a life insurance policy that is used to fund a trust. Moreover, to use the broader definition would needlessly complicate the issue of whose life should be the subject of insurance because it would be rare, if ever, that a life insurance policy used to fund a trust for estate planning purposes would be on the life of someone other than the settlor signing the trust or someone in whose life that settlor would have an insurable interest. Because there are situations in which a trust instrument will be executed by a fiduciary or agent for the creator of the trust, subsection (a) also makes clear that in such circumstances the fiduciary or agent is deemed to be the equivalent of the settlor.

ACLI respectfully requests that the reference to the current AK statutory definition of "settlor" be stricken and that the term be defined in the bill to track the NCCUSL Insurable Interest Amendments' definition of "settlor." Our suggested amendment would be as follows on Page 22, lines 22 - 23:

Sec. 27. AS 21.42.020 is amended by adding new subsections to read:

13 (e) Notwithstanding (a) of this section, a trustee, acting in a fiduciary capacity,
14 may procure or cause to be procured an insurance contract that is on the life or body of
15 an individual and under which the proceeds of the insurance contract are payable to
16 the trustee, acting in a fiduciary capacity, if

17 (1) the trustee, acting in a fiduciary capacity, owns the insurance
18 contract or the trust itself owns the insurance contract;

19 (2) on the date the contract is made, a settlor of the trust is the
20 individual insured, has an insurable interest in the individual insured, or would have
21 had an insurable interest in the individual insured if the settlor were living at the time
22 the contract was made; in this paragraph, "settlor" ~~has the meaning given in~~

23 AS 13.36.390 means a person that executes a trust instrument, and the term includes a person for which a
fiduciary or agent is acting; and

24 (3) the proceeds of the contract are primarily for the benefit of a trust
25 beneficiary who has an insurable interest in the individual insured, except that, if the

26 determination of the trust beneficiary's insurable interest is based on (d)(1) of this
27 section, the trust beneficiary's relation by blood or law must be within the third degree.
28 (f) A person who has an insurable interest in the life or body of an individual
29 may form a business firm that is substantially or solely for the purpose of purchasing,
30 holding, or administering an insurance contract on the life or body of the individual. In
31 this subsection, "firm" has the meaning given in AS 21.97.900, but also includes a
27-LS0819\B

SB0165A -23- SB 165

New Text Underlined [DELETED TEXT BRACKETED]

1 business trust and a joint venture.

We appreciate your consideration of this amendment, and I am available to discuss at your convenience. My contact information is below. I am based in Austin, Texas and so there's a three hour time difference between us.

Brenda Nation

American Council of Life Insurers | Financial Security...for Life.

Regional Vice President, State Relations

(512) 394-0049 t (866) 953-4112 f

brendanation@acli.com

www.acli.com

101 Constitution Ave., NW, Suite 700

Washington, DC 20001-2133

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NICHOLAS I. BAJWA
PETER B. BRAUTIGAM
COLE M. LINDEMANN
ROBERT L. MANLEY
JANE E. SAUER
CHARLES F. SCHUETZE

OF COUNSEL
F. STEVEN MAHONEY

E-Mail: peter@mb.law.pro

January 31, 2012

VIA Fax
907-465-6595

Senator Hollis French
Alaska State Capitol, Room #417
Juneau, Alaska 99801

Re: Senate Bill No. 165

Dear Senator French:

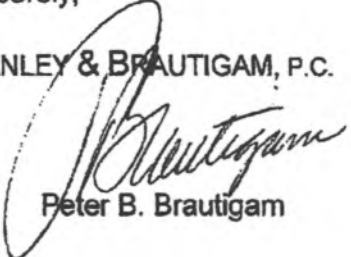
I am writing to express my support for SB 165. 8B165 goes a long way to improve our Alaska Statutes and is much needed to better meet the needs of Alaskans.

I know you are very familiar with this Bill. If you would like to discuss it, please call me.

Sincerely,

MANLEY & BRAUTIGAM, P.C.

By:


Peter B. Brautigam

PBB:elh

cc: Governor Sean Parnell
Dave Shaftel
Beth Chapman

M:\Forms\PBBForms\00hold\SenatorFrench-ltr.wpd

Memorandum

TO: Senator Hollis French, Chairman of the Senate Judiciary Committee,
Alaska State Legislature

FROM: Beth Chapman and Dave Shaftel

DATE: February 6, 2012

RE: Section Analysis: Amendments to AS 13.36.157, Trustee's Power to Appoint
to Another Trust

Section _____. Existing Alaska Statute 13.36.157 provides a trustee with a method to modify an existing trust, commonly referred to as "decanting". Alaska enacted its "decanting" statute in 1998. Alaska copied New York's statute. At the present time, the following states have enacted decanting statutes: Alaska, Arizona, Delaware, Florida, Indiana, Missouri, Nevada, New Hampshire, New York, North Carolina, Ohio, South Dakota, and Tennessee. In addition, decanting statutes are pending before Illinois, Michigan, and Virginia.

New York recently did a thorough revision of its decanting statute and enacted this new revised statute in 2011. The proposed amendment to Alaska's decanting statute closely tracks the changes made by New York with modifications necessary to accommodate Alaska's procedural provisions.

The purposes of a decanting statute are to allow a trustee to modify a trust in order to correct errors and to adjust to changed circumstances and laws. The revised draft distinguishes between trustees who have unlimited discretion and those without unlimited discretion. A trustee without unlimited discretion must maintain the same beneficiaries in the new trust and apply the same standard for distributions. The trustee cannot be a settlor or beneficiary of the trust, and has a fiduciary duty to exercise the power of appointment in the best interests of one or more proper objects of the exercise of the power and as a prudent person would exercise the power under prevailing circumstances. A trustee must exercise the power in writing and must give written notice to the settlor, any person having the right to remove or replace the trustee, and any qualified beneficiary. A beneficiary may object to the exercise if it is an abuse of discretion, or fails to comply with the trustee's duties stated above. Restrictions exist to protect mandatory distribution rights, tax benefits, and to prohibit the trustee from exercising the power to either increase the trustee's compensation or decrease the trustee's liability.

Implementation of irrevocable trusts is best accomplished if the law provides reasonable flexibility to adjust to changed circumstances and to correct errors. The reason why so many states have enacted decanting statutes is because of the need for this flexibility. Amendment to Alaska's decanting statute to include these revised provisions will benefit the residents of the state of Alaska, many of whom use lifetime or testamentary trusts to implement their estate planning purposes.

Memorandum

TO: Senator Hollis French, Chairman of the Senate Judiciary Committee, Alaska State Legislature
FROM: David Shaftel & Caroline Wanamaker
DATE: February 3, 2012
RE: Amendments to Uniform Transfer to Minors Act

During the hearing on Senate Bill 165 before the Senate Judiciary Committee, Senators McGuire and French requested information concerning the ages of distribution under the Act. In addition, Senator McGuire wanted to make sure that the amendments did not reduce the ages for distributions under the existing Act. These matters are discussed below.

<u>Type of Transfer</u>	<u>Default Rule</u>	<u>Variations Permitted at Time Transfer is Made</u>
Irrevocable Gift <i>AS 13.46.030</i>	Age 21 <i>AS 13.46.190(1)</i>	Age 18 to 25, with minor's right to compel distribution at age 21 <i>AS 13.46.195</i> <i>AS 13.46.080</i>
Exercise of Power of Appointment <i>AS 13.46.030</i>	Age 21 <i>AS 13.46.190(1)</i>	Age 18 to 25 <i>AS 13.46.195</i> <i>AS 13.46.080</i>
Personal Representative's or Trustee's Transfer Authorized by Will or Trust <i>AS 13.46.040</i>	Age 21 <i>AS 13.46.190(1)</i>	Age 18 to 25 <i>AS 13.46.195</i> <i>AS 13.46.080</i>
Personal Representative's or Trustee's transfer under Will or Trust that does not authorize transfer <i>AS 13.46.050</i>	Age 18 <i>AS 13.46.190(2)</i>	Cannot presently be changed
Transfer by Obligor <i>AS 13.46.060</i>	Age 18 <i>AS 13.46.190(2)</i>	Cannot presently be changed

The latest version of these amendments is not intended to change any of the above periods of time in which the custodian can presently retain the assets in the account. The main purpose of the amendments is to allow the custodian to increase the duration of time in which the assets remain in the account. However, the minor will have the right to compel immediate distribution of the assets to the minor during the six month period that begins on the date that is the age for distribution specified in accordance with the Act ("this chapter").

It is very important that these amendments maintain the qualification of a gift to an account as a "present interest" within the meaning of Section 2503(b) of the Internal Revenue Code. This will allow gifts of \$13,000 or less each year to be gift tax-free.

Here are several examples of the intended goals of these amendments:

Example 1. (AS 13.46.030 Gift) Parent forms a UTMA account for child without specifying the age at which the account terminates and makes annual exclusion gifts of \$13,000 a year. Because Parent did not vary the default age at the time of setting up the account, the age upon which the account terminates and the assets are distributed to the child is 21. As child nears the age of twenty-one years, custodian of the account decides that it would be in the best interests of the child to extend the duration of the account until age thirty. Custodian would give the child notice of this intention to extend the account. Notice would be given within the six month period prior to age twenty-one. The child would have the right to compel distribution at age twenty-one. If the child did not compel distribution during the six month period that begins at age twenty-one, then the assets would remain in the account until age thirty.

Example 2. (AS 13.46.040 Gift) Parent's will leaves assets to minor child. A provision in the will authorizes the personal representative of parent's estate to form a UTMA account for child without specifying the age of termination of the account. . Because Parent did not vary the default age at the time of setting up the account, the age upon which the account terminates and the assets are distributed to the child is 21. As child nears age twenty-one, custodian of the account decides that it would be wise to extend the account to age twenty-five. Child will have the right to compel distribution at age twenty-one. As child approaches age twenty-five, personal representative again decides that it would wise to postpone distribution, now until age thirty. Child will have the right to compel distribution at age twenty-five.

Example 3. (AS 13.46.060 Transfer) Due to a personal injury accident, debtor owes minor child \$25,000. Debtor may pay this amount to a UTMA account with an appropriate custodian. As the child nears age eighteen, the custodian determines that it would be wise to extend the account until age thirty. Child has the right to compel distribution at age eighteen. If the child does not compel distribution, then the assets would remain in the account until age thirty.

Example 4. Assume that an account has been extended to age thirty and the custodian again decides that it would be wise to extend the account until age forty. The procedure for extension of time can be repeated again. The custodian would give the child notice during the six month period that proceeds age thirty. The child would have the right to compel distribution during the six month period that begins on the date that is the age for distribution specified by this chapter, which would be age thirty due to the prior extension of time.