

**HB**

**208**

<TARGET><BILL>HB 208</BILL><SUBJECT>HB  
208</SUBJECT><COMM>HJUD30</COMM></TARGET>

*Alaska State Legislature*

*Seward Meridian · Greater Palmer · Walby · Mat-Su Campus · Palmer City · Trunk · Lazy Mountain · Springer Loop*

*Contact:*

*State Capitol Rm 405*

*Phone: (907) 465 - 4958*

*Rep.DeLena.Johnson@AKLeg.gov*



*Committees:*

*Standing Committee on State Affairs*

*Standing Committee on Resources*

*Special Committee on Energy*

*Representative DeLena Goodwin Johnson*

**Hearing Request**

**House Bill 208**

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To: Representative Matt Claman, House Judiciary Committee Chair

From: Representative DeLena Johnson

Date: 4/5/2017

Re: HB 208 AN ACT RELATING TO TRUSTS AND POWERS OF APPOINTMENT; AND PROVIDING FOR AN EFFECTIVE DATE

I respectfully request a hearing for HB 208 AN ACT RELATING TO TRUSTS AND POWERS OF APPOINTMENT; AND PROVIDING FOR AN EFFECTIVE DATE. This Bill is a companion to Senate Bill 94, and seeks to clarify and expand our current State Statutes having to do with trusts, and the powers of appointment that come with them; in an effort to preserve our State's reputation as a leader in estate and tax planning policies.

Shea Siegert in my office is available to answer any questions you might have. He is able to be reached at (907) 465-4958, and by email at [shea.siegert@akleg.gov](mailto:shea.siegert@akleg.gov).

Respectfully,

A handwritten signature in black ink, appearing to read "DeLena Johnson", written over a horizontal line.

Representative DeLena Johnson

House District 11—Greater Palmer Area

## *Alaska State Legislature*

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*Representative DeLena Goodwin Johnson*

### **Sponsor Statement**

### **House Bill 208**

*“An Act relating to trusts and powers of appointment; and providing for an effective date”*

Alaska has set a precedence as being a leader in the Nation’s estate and tax planning Industry. Banks, trust companies, Alaskans, and Americans from all over seek out Alaska to be the home of their financial assets due to our environment which promotes economic security, strength, and growth. House Bill 208, seeks to continue the prosperity of this environment through further fostering a conducive place where people can invest their assets and know that our statutes will insure their integrity, and ability to benefit their intended audience.

We can look at House Bill 208 as a “flexibility” bill which provides for those looking to perform the best estate planning, whether they are residents or non-residents, assurance that their irrevocable document won’t hinder its beneficiaries through unintended results including; providing financial resource to a dangerous habit, not providing ability to pay for treatment of an unforeseeable disability, or by providing financial resource to someone who would rather put it towards a suitable charity. Decanting may also provide the ability to keep documents viable in response to changes in State or Federal tax laws.

Since 1997, Alaska has been a leader in adopting laws to improve estate and tax planning options for both Alaskans and non-Alaskans. House Bill 208 is a continuation of this leadership as it provides expansion and clarification to our existing statutes. House Bill 208 focusses on expanding and clarifying four key areas of our State Statutes surrounding irrevocable trusts.

The four areas are Decanting of Trusts, Powers of Appointment, traceability of Trust Assets for Tax Efficiency, and Clarification of Trustees’ Specific Powers. These four areas have since, and in some cases prior to, 1997 been forced to be decided by a Judge. Providing the ability for these four areas to be clearly outlined by the original settlor, and by providing beneficiaries the ability to adapt to unforeseen events, we continue to provide an environment where irrevocable trusts, like our State and National Constitution, may be amended to provide, or not provide, in clearly outlined, yet commonly unforeseen, circumstances.

Keeping all of these things in mind, I humbly ask for your support in keeping Alaska a leader in innovation in the trust industry as the financial industry continues its perpetually changing mentality by passing House Bill 208.



April 1, 2017

Representative DeLena Johnson  
State House  
State Capital Room 405  
Juneau, Alaska 99801

Dear Representative Johnson,

On behalf of Peak Trust Company, we would like to emphasize the importance of House Bill 208 - *“An Act relating to trusts and powers of appointment; and providing for an effective date”*

Since 1997, Alaska has been a leader in adopting laws to improve estate and tax planning options for both Alaskans and non-Alaskans. Senate Bill 94 is a continuation of this leadership as it expands and adds clarification to our existing statutes. These distinctive statutes have provided Alaska with increased revenue, job creation and industry diversification.

Senate Bill 94 looks mainly to update two existing statutes, decanting and powers of appointment. The following is a description of each area.

**Decanting.** Decanting, of course, is the act of pouring liquid from one container to another as often occurs with wine. When one trust pays (or pours) its assets to another trust, this too is referred to as decanting. Decanting is used to correct drafting errors, reduce costs of trust administration, enhance tax effects and many other reasons. While Alaska has had decanting statutes for nearly 20 years, Senate Bill 94 would provide additional flexibility and clarification to this great statutory provision.

**Powers of Appointment.** One of the most powerful estate planning tools is to grant someone, such as a beneficiary, a “power of appointment,” which allows that person the right to specify where property will pass at certain times, such as when the

beneficiary dies. The proposal would clarify certain aspects of Alaska law relating to these powers so they can be used more efficiently for tax and other reasons.

These and many other Alaska laws the Legislature has enacted have benefitted Alaskans, has resulted in millions of dollars being deposited in financial institutions in the state which, in turn, have provided funding for Alaska businesses, and provided significant work for many Alaskans. We hope to see this success continue for years to come and thank you for your support in helping us to achieve this goal.

With this, we would like to voice our strong support for the ratification of House Bill 208.

Sincerely,

*Matthew Blattmachr*

Matthew D. Blattmachr  
Peak Trust Company

# Alaska Bankers Association

P.O. Box 241489 • Anchorage, Alaska 99524-1489 • T: 907-261-3525 • F: 907-562-1758

April 4, 2017

The Honorable Matt Claman, Chair  
House Judiciary Committee  
Alaska State Capitol  
Juneau, AK 99801-1182

Re: Support for House Bill 208

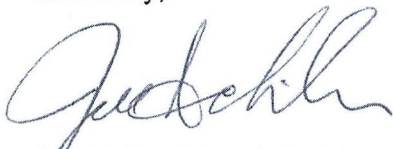
Dear Representative Claman:

The Alaska Bankers Association wishes to express its strong support for House Bill 208.

As the Legislature works its way through restructuring the state's fiscal operations, HB 208 has been brought forward as an opportunity to help diversify and fuel Alaska's economy. For 20 years, Alaska has been a leader in adopting laws to improve estate and tax planning options for both Alaskans and non-Alaskans. HB 208 is a continuation of this leadership as it expands and adds clarification to Alaska's existing statutes relating to decanting and powers of appointment. These and other business-friendly laws have benefitted Alaskans by bringing millions in investment capital to the state and by creating quality jobs in the financial services industry.

We urge your support for HB 208 in helping to maintain and advance Alaska's position as a favorable destination for the trust industry.

Sincerely,



Joe Schierhorn, President  
Alaska Bankers Association



PETER B. BRAUTIGAM  
MARIBETH CONWAY  
SANDON M. FISHER  
RYAN W. FITZPATRICK  
COLE M. LINDEMANN  
ROBERT L. MANLEY  
CHARLES F. SCHUETZE

OF COUNSEL  
F. STEVEN MAHONEY

April 3, 2017

VIA EMAIL: [Representative.DeLena.Johnson@akleg.gov](mailto:Representative.DeLena.Johnson@akleg.gov)

Representative DeLena Johnson  
State Capital Room 405  
Juneau, Alaska 99801

Dear Representative Johnson,

On behalf of myself and my law firm, we would like to emphasize the importance of House Bill 208 - "*An Act relating to trusts and powers of appointment; and providing for an effective date.*"

I am both the current and past state chair for ACTEC ([www.actec.org](http://www.actec.org)), and since 1997, a number of us have been working hard to make Alaska a leader in adopting laws to improve estate and tax planning options for both Alaskans and non-Alaskans. We like to consider ourselves as the "go-to jurisdiction" for estate and trust planning. I think we have done that well — so well that now a number of other states are copying us and trying to one-up us.

I see House Bill 208 as a continuation of keeping Alaska in the forefront and as leader in the 50 states for estate and trust planning. House Bill 208 expands and adds clarification to our existing statutes allowing us to better serve all of those that want to use Alaska as their primary estate trust planning jurisdiction. Our distinctive trusts statutes have provided Alaska with increased revenue, job creation and industry diversification.

House Bill 208 looks mainly to update two existing statues, decanting and powers of appointment. The following is a description of each area.

**Decanting.** Decanting, of course, is the act of pouring liquid from one container to another as often occurs with wine. When one trust pays (or pours) its assets to another trust, this too is referred to as decanting. Decanting is used to correct drafting errors, reduce costs of trust administration, enhance tax effects and many

other reasons. While Alaska has had decanting statutes for nearly 20 years, House Bill 208 would provide additional flexibility and clarification to this great statutory provision.

**Powers of Appointment.** One of the most powerful estate planning tools is to grant someone, such as a beneficiary, a "power of appointment," which allows that person the right to specify where property will pass at certain times, such as when the beneficiary dies. The proposal would clarify certain aspects of Alaska law relating to these powers so they can be used more efficiently for tax and other reasons.

These and many other Alaska laws the Legislature has enacted have benefitted Alaskans, and have resulted in increased revenues and millions of dollars being deposited in financial institutions in the state which, in turn, have provided funding for Alaska businesses, and provided significant work for many Alaskans. We hope to see this success continue for years to come and thank you for your support in helping us to achieve this goal.

With this, my law firm and I would like to voice our strong support for the ratification of House Bill 208.

Sincerely,

MANLEY & BRAUTIGAM, P.C.

By:

  
Peter B. Brautigam

## 2<sup>nd</sup> Annual Trust Decanting State Rankings Chart (updated)

Rank	State	Has Decanting Statute? (60% weight)	Can Decant Trust with Ascertain. Standard? (7.5% weight)	Notice to Beneficiaries Required? (7.5% weight)	Can Decant Trust with Ascertainable Standard into Discretionary Trust? (7.5% weight)	Can Remove Mandatory Income Interest? (2.5% weight)	Allow Power of Appointment in Second Trust to Bene for Non-Bene? (2.5% weight)	Can Accelerate Remainder Bene's Interest? (2.5% weight)	Dynasty Trust State Ranking (7.5% weight)	Domestic Asset Protection Trust State Ranking (2.5% weight)	Total Score
1	SD	Yes	Yes	No	Yes	Yes	Yes	Yes	Ranked #1	Ranked #2	99.5
2	NV	Yes	Yes	No	Yes	No	Yes	Silent	Ranked #2	Ranked #1	94.5
3	TN	Yes	Yes	No	Yes	No	Yes	Silent	Ranked #4	Ranked #3 (tie)	93.5
4	NH	Yes	Yes	No, except charitable trusts	Yes	No	Yes	Silent	Ranked #8	Ranked #9	90.5
5	DE	Yes	Yes	No	No	Yes	Yes	No	Ranked #7	Ranked #7	86
6	OH	Yes	Yes	Yes	No	Yes	Yes	No	Ranked #6	Ranked #3 (tie)	79.5
7	AK	Yes	Yes	Yes	No, except after the first trust would have ended	No	Yes	No	Ranked #3	Ranked #5	78.5
8 (tie)	AZ	Yes (short provisions)	Yes	No	Yes	No	Silent	Silent	Unranked	Not allowed	77.5
8 (tie)	VA	Yes	Yes	Yes	No, except if court approval	No	Yes	No	Unranked	Ranked #13	77.5
10	IL	Yes	Yes	Yes	No	No	Yes	Silent	Ranked #9	Not allowed	76.5
11 (tie)	MO	Yes	Yes	Yes, only to beneficiaries of second trust	No	Yes	Silent	Yes	Unranked	Ranked #8	76
11 (tie)	WY	Yes (very short provisions)	Yes	No	Yes	Silent	Silent	Silent	Ranked #5	Ranked #6	76
13	IN	Yes	Yes	Yes	Yes	No	Silent	Silent	Unranked	Not allowed	75
14	SC	Yes	Yes	Yes	No	Yes	Yes	No	Unranked	Not allowed	72.5
15 (tie)	KY	Yes	Yes	Yes	No	No	Yes	No	Unranked	Not allowed	70
15 (tie)	MI	Yes	No	Yes	No	No	Yes	Silent	Unranked	Not allowed	70
15 (tie)	NC	Yes	Yes	Yes	No	No	Yes	No	Unranked	Not allowed	70
15 (tie)	TX	Yes	Yes	Yes	No	No	Yes	Silent	Unranked	Not allowed	70
19 (tie)	FL	Yes	No	Yes	No	No	Silent	Silent	Ranked #10	Not allowed	69
19 (tie)	RI	Yes	Yes	Yes	Silent	No	Silent	No	Unranked	Ranked #11	69
21	NY	Yes	Yes	Yes	No	No	No	No	Unranked	Not allowed	67.5
22	WI	Yes	Yes	Yes	No	No	Silent	No	Unranked	Not allowed	67.5

\*The Dynasty Trust State Ranking column is based on the 3rd Annual Dynasty Trust State Rankings Chart created in October 2014 at [http://www.oshins.com/images/Dynasty\\_Trust\\_Rankings.pdf](http://www.oshins.com/images/Dynasty_Trust_Rankings.pdf).

\*The Domestic Asset Protection Trust State Ranking column is based on the 5th Annual Domestic Asset Protection Trust State Rankings Chart (updated) created in July 2014 at [http://www.oshins.com/images/DAPT\\_Rankings.pdf](http://www.oshins.com/images/DAPT_Rankings.pdf).

\*This Trust Decanting State Rankings Chart created in January 2015 and updated in February 2014. Original Trust Decanting State Rankings Chart created in January 2014. Copyright © 2014-2015 by Steve Oshins - [soshins@oshins.com](mailto:soshins@oshins.com) / [www.oshins.com](http://www.oshins.com) / (702) 341-6000, ext. 2. All rights reserved.

**Steve Oshins** is a member of the Law Offices of Oshins & Associates, LLC in Las Vegas, Nevada. He is rated AV by the *Martindale-Hubbell Law Directory* and is listed in *The Best Lawyers in America*®. He was inducted into the NAEPC Estate Planning Hall of Fame® in 2011 and has been named one of the 24 "Elite Estate Planning Attorneys" by *The Trust Advisor* and one of the Top 100 Attorneys in *Worth*. He can be reached at 702-341-6000, ext. 2 or [soshins@oshins.com](mailto:soshins@oshins.com). His law firm's website is [www.oshins.com](http://www.oshins.com).

## Reasons to Decant a Trust

Planning Scenario	Reason to Decant
<p><b>Joe is 55 years old, a successful surgeon and is married with three adolescent children. He has accumulated substantial assets in addition to his high annual income. Joe would like an estate plan that provides for his family and future descendants as well as providing current asset protection.</b></p> <p><b>Based on these facts, it appears that Joe might be a good candidate for a self-settled Alaska Asset Preservation Trust. This trust provides the combination of great estate planning with an element of asset protection for Joe and his family.</b></p>	<p><b>During the drafting of Joe’s trust, the attorney accidentally made a scrivener’s error whereby he did not provide that Joe retained certain, required powers over the trust. In order to correct this error, Joe and his attorney can look to decant the document.</b></p>
<p><b>2. Suzy is 65 years old, unmarried and has no descendants. Suzy’s brother, Owen, has two children. Suzy would like an estate plan that provides for her niece and nephew while also fulfilling her philanthropic goals.</b></p> <p><b>Based on these facts, it appears that Suzy should discuss a Charitable Lead Trust with her estate planning attorney. This type of trust could provide benefits to charitable organizations during her life and then benefits to her niece and nephew after payments to the charity.</b></p>	<p><b>When Suzy had this trust drafted, her brother Owen only had two children, Sarah and Oscar, thus she specifically stated that the trust was for the benefit of Sarah and Oscar. Since that time, Owen has adopted another child, William. Since William is not specifically listed as a beneficiary of the trust and there is no broad definition of beneficiary to include all of Owen’s children, without modification William cannot benefit from the trust. This can be changed via decanting.</b></p>
<p><b>3. Darrell and Jean are retired school teachers both in their early 70’s. They have three children who are</b></p>	<p><b>When drafting these trusts, Darrell and Jean did not allow for “powers of appointment.” These powers allow</b></p>

starting families of their own. Darrell and Jean are “net savers” and thus have accumulated considerable assets. They would like an estate plan that provides for their children and future descendants.

Based on these facts, Darrell and Jean may be good candidates for a Dynasty/Perpetual Trust. They could create separate trusts for the benefit of their children. After their children’s passing, these trusts would transition into trusts for their grandchildren. As long as the respective trusts are not exhausted, this process would continue in perpetuity. These types of trusts are particularly powerful when created in a jurisdiction without a state income tax, such as Alaska.

beneficiaries the ability to appoint the assets to a certain class of people or entities, such as charity. Since drafting these trusts, two of their children have become quite wealthy and wish to appoint their trust assets directly to a charity of their choice. By decanting the trust these powers can be added.

Colleen is 45 years old and is married with four children. Colleen is the sole “bread-winner” of her family and her salary places her into the top tax bracket. She would like an estate plan that would provide income to her family should she suffer an unfortunate disability or untimely death. Colleen has previously discussed purchasing a life insurance policy to accomplish this goal.

Colleen should consider utilizing an Irrevocable Life Insurance Trust. The trust could purchase a large policy and the proceeds would be paid to the trust and they would be excluded from estate taxes. Additionally, Colleen, through her legal counsel, could draft the trust to support her family in her desired manner.

When drafting this trust, Colleen had the trust “payout”, in entirety, to the beneficiaries when they attained age 25. Upon reflection, Colleen is uncomfortable with this provision as she is concerned as to whether all her children will be able to properly manage a large sum of money at this age. By decanting the trust she can extend the trust term.

## Trust & Estate Glossary

**Ascertainable standard** – A standard that restricts the power of the Trustee to make distributions to a beneficiary within the needs of health, education, support, or maintenance.

**Beneficiary** – A person who will receive the benefit of property from an estate or trust through the right to receive a bequest or to receive income or trust principal over a period of time.

**Descendants** – An individual's children, grandchildren, and more remote persons who are related by blood or because of legal adoption.

**Estate Administration** – The process during which the executor or personal representative collects the decedent's assets, pays all debts and claims, and distributes the residue of the estate according to the will or the state law intestacy rules.

**Estate tax**- A tax imposed on a decedent's transfer of property at death.

**Executor** – Person named in a will and appointed by the court to carry out the terms of the will and to administer the decedent's estate. Also referred to as personal representative.

**Fiduciary** – An individual or a bank or trust company designated to manage money or property for beneficiaries and required to exercise the standard of care set forth in the legal document.

**Grantor** – A person, including a testator, who creates, or contributes property to a trust. More than one individual can create or contribute property to a trust, each person is a grantor with respect to the portion of the trust property attributable to that person's contribution, and except to the extent another person has the power to revoke or withdraw that portion. Dependent on the legal document, using the term grantor may imply the trust income is taxed to that individual for income tax purposes.

**Gross Estate** – A federal estate tax concept that includes all property owned by an individual at death and certain property previously transferred by him/her that is subject to federal estate tax.

**Intestate** – An individual dies without a valid will, the decedent's estate will be distributed in accordance with a state's intestacy law.

**Marital Deduction**- An unlimited federal estate and gift tax deduction for property passing to a spouse in a qualified manner.

**Personal Representative** – An executor or administrator of a decedent's estate. Also referred to as an executor.

**Per stirpes** – A Latin phrase meaning "per branch" and is a method for distributing property according to the family tree. Each branch of the named person's family is to receive an equal share of the estate. If all children are living, each child would receive a share, but if a child is not living, that child's share would be divided equally among the deceased child's children.

**Prudent Investor Act** – A law that provides for how fiduciaries must invest trust, estate and other assets they hold in a fiduciary capacity, such as a trustee or executor.

**Remainder Interest-** Future interest in property or assets but remainder men will not have possession of the property or asset until the expiration or natural end of a prior estate.

**Settlor** – Term used for one who establishes or settles a trust. Also called a “trustor” or “grantor.”

**Situs** – a place where property belongs for purposes of legal jurisdiction or taxation.

**Spendthrift provision-** A trust provision restricting both voluntary and involuntary transfers of a beneficiary’s interest, frequently in order to protect assets from claims of the beneficiary’s creditors.

**Testamentary** – Relating to a will or other document effective at death.

**Trust** – An arrangement whereby property is legally owned and managed by an individual or corporate fiduciary as trustee for the benefit of another.

**Trustee** - An individual person, bank, or trust company given control or powers of administration of property in trust with a legal obligation to administer it solely for the purposes specified within the document.

**Will** – A written document signed by the testator specifying which beneficiaries are to inherit the testator’s assets. The document names a representative or executor of the estate, responsible for distributing the assets to the beneficiaries.

# NORTHERN

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## LAW GROUP LLP

Phone (907) 374-5050 • Fax (907) 374-0745  
PO Box 80288, Fairbanks, Alaska 99708 • [www.northern-lawgroup.com](http://www.northern-lawgroup.com)

Michael J. Cavaliere, J.D., LL.M. (tax)  
[Mike@northern-lawgroup.com](mailto:Mike@northern-lawgroup.com)

Kalina Grabinska-Marusek, J.D., LL.M. (tax)  
[Kalina@northern-lawgroup.com](mailto:Kalina@northern-lawgroup.com)

April 4, 2017

Representative DeLena Johnson  
State Capitol Room 405  
Juneau, Alaska 99801

Dear Representative Johnson,

On behalf of Northern Law Group LLP, we would like to emphasize the importance of House Bill 208 - *“An Act relating to trusts and powers of appointment; and providing for an effective date”*.

Since 1997, Alaska has been a leader in adopting laws to improve estate and tax planning options for both Alaskans and non-Alaskans. House Bill 208 is a continuation of this leadership as it expands and adds clarification to our existing statutes. These distinctive statutes have provided Alaska with increased revenue, job creation and industry diversification.

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when the beneficiary dies. The proposal would clarify certain aspects of Alaska law relating to these powers so they can be used more efficiently for tax and other reasons.

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With this, we would like to voice our strong support for the ratification of House Bill 208.

Sincerely,  
NORTHERN LAW GROUP LLP



Michael J. Cavaliere

# House Bill 208

REPRESENTATIVE DELENA JOHNSON

STAFF: SHEA SIEGERT

# Continued

- ▶ Sec. 5 – Allows an Unlimited authorized trustee
  - ▶ To grant discretionary power of appointment to one or more current beneficiaries with a caveat
  - ▶ The discretionary power of appointment includes a presently exercisable power of appointment in favor of permissible appointees.
- ▶ Section 6
  - ▶ If the invaded trust's beneficiaries are described as a class, the appointed trust's beneficiaries may include present or future members of the class.
    - ▶ However a person may not become a beneficiary sooner than the invaded trust provides.
- ▶ Section 7
  - ▶ Unlimited authorized trustee may appoint principal to a trust of an appointed trust if the current beneficiaries and the successor and remainder beneficiaries are the same as the invaded trust
  - ▶ If Trust principal appointment is in favor of more than one appointment trust, the appointed trust must grant substantially similar interests as in the invaded trust.
  - ▶ Clarifies that a power to make a distribution for a beneficiary under an appointed trust is considered to be similar to a power to make a distribution to the beneficiary under the invaded trust

# Continued

- ▶ Sec. 12 - Permits an appointed trust to have a duration longer than the invade trust
- ▶ Sec. 13 An unlimited authorized trustee may exercise a power of appointment if both an unlimited and limited authorized trustee have the power to pay the trust principal.
- ▶ Sec. 14 - Removes limitation related to the settlor's intent on exercising a power. Authorized trustee has a fiduciary duty to act in the best interests of one or more proper objects of the exercise of the power and to act as a prudent person.

# Continued

- ▶ Sec. 15 - Allows the terms of the trust to expand or restrict the right of the trustee to appoint the property of a trust. provides a rule of construction with regard to the right of a trustee to appoint property further in trust.
- ▶ Sec. 16 - Amends a prohibition on the a power authorized by AS 13.36.157
- ▶ Sec. 17 - Clarification of declaring situs in Alaska
- ▶ Sec. 18 - Changed Definition of Internal Revenue Code; to refer to the code as it exists on the effective date.

# Continued

- ▶ Sec. 19 - Set formal requirements for the trust, sets a time when the exercise becomes effective but allows persons entitled to notice of the exercise to permit an earlier effective date.
- ▶ Sec. 20 - Lists the documents that must be delivered to certain listed parties when exercising a power to invade a trust.
- ▶ Sec. 21 - Adds language permitting a trust instrument to authorize a trustee to exercise a power under AS 13.36.157 without giving notice to any beneficiaries.
- ▶ Sec. 22 - Allows an authorized trustee to exercise a specified power without other consent. Allows authorized trustee to seek court approval

# Traceability of Assets

- ▶ Isn't this just a way of avoiding taxes?
- ▶ Why don't we already have a statute protecting this already; if it is such a big deal?

## 23 – Dividing trust into separate portions for income tax purposes

Unless a governing instrument specifically refers to this section and provides otherwise, if a trust is created by more than one settlor, and if a trustee keeps records tracing contributions, a trustee may divide the trust into one or more separate trusts for which a specific settlor shall be treated as the sole settlor of the separate portion of the trust to which the settlor contributed. A trustee may exercise this power at any time, whether before, or, or after a settlor's death. A trustee may exercise this power whether or not the trust was initially governed by the law of this state or the situs of a trust was moved to this state.

# Clarification of Specific Powers of a Trustee

- ▶ What are Specific Powers of a Trustee?
- ▶ Can't specific powers be given by the trust?

## Section 2

- ▶ **Specific Powers of Trustees.** Except as otherwise provided by this chapter, in addition to the powers conferred by the terms of the trust, a trustee may perform all actions necessary to accomplish the proper management, investment, and distribution of the trust property, including the power...
  - ▶ This is followed by the 29 powers that are statutorily protected.
  - ▶ (17) to insure the property of the trust against damage or loss and to insure the trustee against liability with respect to third persons or **beneficiaries of the trust;**

# Section 3

(b) A trustee may pay as a charge against trust property the cost incurred to perform an action authorized under (a) of this section

# Sections 25-28 (Definitions)

- ▶ Sec. 25 - Changes definition to accommodate new subsections of Definition
- ▶ Sec. 26 - (b)(2) updates to include new legal term “power” instead of authority. Deletes clarification of “trustee” to agree with powers given in the proposal.
- ▶ Sec. 27 - includes a revocable trust in definition of “invaded trust”
- ▶ Sec. 28 - Adds definition of beneficiary

# Fiscal Note

State of Alaska  
2017 Legislative Session

Bill Version: HB 208  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: HB208-LAW-CIV-04-07-17  
Title: TRUSTS; COMM PROP TRUSTS; POWERS OF APPT  
Sponsor: JOHNSON  
Requester: House Judiciary

Department: Department of Law  
Appropriation: Civil Division  
Allocation: Commercial and Fair Business  
OMB Component Number: 2717

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2018	Included in	Out-Year Cost Estimates					
	Appropriation Requested	Governor's FY2018 Request	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
<b>OPERATING EXPENDITURES</b>	<b>FY 2018</b>	<b>FY 2018</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None								
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time								
Part-time								
Temporary								

**Change in Revenues**

None								
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Estimated SUPPLEMENTAL (FY2017) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2018) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

Not applicable, initial version.

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Division:	Administrative Services Division	Date:	04/06/2017 08:26 AM
Approved By:	Jahna Lindemuth, Attorney General	Date:	04/07/17
Agency:	Department of Law		

## FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2017 LEGISLATIVE SESSION

BILL NO. HB 208

### Analysis

HB 208 amends AS 13.12.704 (Power of appointment; meaning of specific reference requirements) under AS 13.12 (rules of construction applicable to wills and other governing instruments), by adding provisions related to non-fiduciary power of appointments. The provisions describe when a power of appointment is considered non-fiduciary, when the exercise of non-fiduciary power cannot be limited, that a person holding a non-fiduciary power cannot be forced or prevented from exercising it, and when property subject to the exercise of a non-fiduciary power is not subject to claims by creditors.

The bill amends certain sections under AS 13.36 (trustees). AS 13.36.109 (specific powers of trustees) is amended to allow a trustee to insure against liability with respect to beneficiaries of the trust, and charge incurred costs against the trust.

HB 208 amends sections of AS 13.36.157 (exercise of power of appointment) to clarify that an unlimited authorized trustee may appoint principal of the trust to benefit future beneficiaries, establishes a standard for distributions from the trust, and defines who is a permissible appointee when an unlimited authorized trustee grants a discretionary power of appointment. The bill also clarifies when a limited authorized trustee may appoint principal of a trust to a trustee of an appointed trust, and sets limits on the exercise of the power of appointment. The bill also repeals AS 13.36.157(f) having to do with the ability of a trustee to invade the principal of an appointed trust while the duration of the trust is extended.

The bill amends sections AS 13.36.158 (additional provisions relating to exercise of a power of appointment) dealing with the duration of an appointed trust, and the authority of an unlimited authorized trustee when both a limited and unlimited authorized trustee have the power to pay trust principal. The section is also amended to remove limits on power of a trustee where there is substantial evidence of contrary intent by the settlor. The bill also allows the terms of the governing instrument to expand or restrict the right of a trustee to appoint property of the trust, and deals with an authorized trustee's ability to reduce, limit, or modify a beneficiary's right to a mandatory distribution. The bill also clarifies that the trust administration statutes apply when certain trustees select the state as the primary location for administration of the trust, and the requirements for a written acknowledgement of that selection. The definition of "Internal Revenue Code" is also clarified.

The bill amends sections of AS 13.36.159 (Implementation of power of appointment) dealing with the effective date to exercise the power of appointment, clarifies the documents related to an invaded and appointed trust that have to be delivered, and the authority of a trustee to exercise authority without notice to the beneficiaries or consent of the settlor. The bill repeals sections of the current statute having to do with the authority of a trustee to exercise the power of appointment without the consent of the settlor or court approval, and requiring that a copy of the trust instrument exercising the power of appointment be kept with the records of the invaded trust.

The bill amends AS 13.36.215 (definitions) to clarify the definitions of appointed trust, authorized trustee, and invaded trust and adds definitions of beneficiary, limited authorized trustee, and unlimited authorized trustee.

The bill adds new sections to AS 13.36 defining the term standard in a governing instrument, and allowing a trustee to divide a trust created by one or more settlors for income tax purposes. A new section is added describing when a court may authorize the trustee of an irrevocable trust to invade the trust.

## FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2017 LEGISLATIVE SESSION

BILL NO. HB 208

### Analysis

Further, the bill amends sections of AS 34.27 dealing with the rules against perpetuities. The bill repeals and replaces AS 34.27.051 (rule against perpetuities). The new section defines the term "first power" as a nongeneral power of appointment exercised to create a second power, and defines "second power" as a nongeneral power of appointment that is not presently exercisable, or a general appointment not presently exercisable. If a second power is created, it may be exercised to postpone vesting of the property without regard to the creation of the first power. The second power is not valid unless all property interests subject to the second power vest within 1,000 years of the creation of the first power. HB 208 amends AS 34.27.053 (savings provision) to reference the revised sections of AS 34.27.051, and amends AS 34.27.070 (application) to clarify which trusts the amendments apply to.

HB 208 provides an effective date, and adds new sections to the uncodified law of the State of Alaska dealing with the applicability of the bill to powers of appointment and trusts, and the retroactive effect of amendments to AS 34.27.

The bill affects trusts and the powers of appointment among private parties.

The Department of Law does not anticipate a fiscal impact to the department should this bill become law.