

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9289 HOUSE LABOR & COMMERCE

January 27, 1997

JAN 31 1997

Dear Representative Hudson:

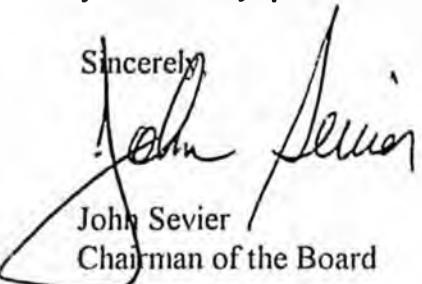
On behalf of the Alaska Seafood Marketing Institute, I extend to you our best wishes for a productive 20th session. We hope you enjoy the Alaska seafood samples enclosed, and that you take a few minutes to read the information provided to you about ASMI and the Alaska seafood industry.

The successful marketing of Alaska seafood in the United States is crucial to the economy of this state. The harvesting and processing of seafood is the number one private employer in Alaska, and contributes approximately \$1.3 billion to the Alaska economy each year. Not only do the state's small coastal communities benefit from seafood harvesting and processing, but it is also a \$100 million industry in Anchorage. In addition to harvesting, processing, transportation and agency support, Anchorage is home to more fishers than any other area in the state.

The seafood industry (harvester and shore-based processor assessments) supports ASMI's marketing in the United States. Last year, the harvesters contributed \$4.8 million and the processors contributed \$3.2 million. ASMI's overseas marketing is funded by a federal grant of \$3.9 million from the federal government. This grant was leveraged by a General Fund cash match from the state. A fact sheet on our export program is enclosed for your information, and we've also included a copy of *MarketLine*, which is our version of ASMI 101. We hope you'll find both helpful in understanding our relationship with the state.

As the newly appointed chairman, I look forward to meeting you. Again, best wishes for a productive session. Please call me or Art Scheunemann, ASMI's Executive Director, if you have any questions about our marketing programs or ASMI itself.

Sincerely,

  
John Sevier  
Chairman of the Board

cc: ASMI Board  
Art Scheunemann, Executive Director

Alaska Seafood Marketing Institute  
1111 West 8th Street, Room 100  
Juneau, Alaska 99801-1895  
Tel: (907) 465-5560  
In Alaska: 1-800-478-2903  
Fax: (907) 465-5572





L A K E   A N D   P E N I N S U L A   A I R L I N E S

February 17, 1997

House Special Committee on Fisheries  
ATTN: Sponsor Representative Bill Hudson

Re: House Bill 73 - 1% renewal to 2003

Dear Rep. Hudson:

As a fisherman in Bristol Bay for the last 30 years and with all of our immediate and extended family involved in both the salmon fishery and herring fishery, I (we) have real concern regarding our future.

Like any other industry we must market aggressively if we are to protect the Alaska industry from encroachment by every other protein source, especially farmed salmon.

Marketing is mostly a long term effort and results come only as we are consistent and aggressive, industry wide, in presenting our products.

Over the last three years ASMI has become an exceptional organization in the marketing arena. ASMI has a marketing plan and works the plan very aggressively.

On behalf of the many members of my family who are fishers in Bristol Bay and on behalf of many fishers in the "Lake Country" who may never contact you, I urge you to support H.B. #73. Please allow us as an industry to do what the Legislature must eventually expect of every other industry in the state. Assess ourselves 1% to market and promote the well being of the Alaska Seafood Industry.

Thank you for your consideration of my voice vote.

Sincerely,

David Wilder

Dear Art,

We sure do appreciate the letter you sent to Rebecca and myself. <sup>217197</sup> Even though we didn't get a chance to speak at the board meeting in Girdwood; hopefully, by expressing our views to Barbara and Ron Sparks our message made it to the rest of the board.

We are very passionate and committed to the state of Alaska, my profession (a 10 yr. commercial fisherman), our salmon and our seafood. We welcome and request the opportunity to speak to anyone who will listen; be it the public, the legislature, or the fishermen. As a fisherman and someone who is on the street in the lower 48, we listen to the public's cares, concerns, and perceptions. We can convey and produce a positive attitude towards wild Alaskan seafood.

ASMI needs to stay alive and the return from the state's funding and the 1% tax on fishermen will come to fruition. Anything short of this is nearsighted and impatient reasoning, which will cost the state and the fishermen money in the end.

Again we at Wild Alaskan Seafood Co. thank you for your help and response to our efforts and desires. One day I hope to sit on that Board or possibly as the legislator to fight for what I care very deeply for.

Thank you  
Michael Sundquist  
and  
Rebecca Weir

**Wild Alaskan**  
SEAFOOD CO.



Taste The Wild...Taste The Difference  
**GUARANTEED**  
Michael Sundquist

PO Box 1131  
Girdwood, AK 99587-1131

Bus/Fax 907-783-1380

CECELIA A. ANGASAN  
P.O. BOX 1389  
DILLINGHAM, ALASKA 99576  
PHONE (907) 842-5503  
FAX (907) 842-1538

February 18, 1997

Representative Bill Hudson  
HOUSE OF REPRESENTATIVES  
Juneau, Alaska 99801

Dear Representative Hudson:

My name is Cecelia A. Angasan, ASMI Board Member. I first became involved with ASMI in the '80's as a Canned Salmon Committee Member, and later was appointed to the Board.

I have watched with great anxiety what is happening to the salmon industry and the frustration of getting appropriate funds to market our wild salmon with direct competition of farmed salmon.

I have some great concerns about how our State Government views the salmon industry and why it seems to put it on the back burner of priorities.

I'd like to share an experience I had when I was in Juneau last year for an ASMI meeting. I met a man in the lounge who was with a large oil group coming to Juneau to lobby their cause, and what he said, was "its a piece of cake, you just have to have the right connections politically," I sat there and thought about this for a long time, and asked myself what does ASMI, fishermen, processors and Alaskan workers need to do to wake up the legislature to the fact that we have and are losing ground in getting our salmon to the domestic and foreign markets with little or no money to properly advertise our product effectively?

The 1% that is taken from the fishermen to help advertise our salmon in the domestic market has been a great help, but that is still not enough. The beef, poultry, and other commodities in the U.S. get such a large sum of money to market their product, and the results tell the story.

I would like to ask that you support House Bill 73 for another 5 years. Further I would like to ask you to consider a Bill to have the State of Alaska match the 1% that is currently being taken from Fishermen to help ASMI get the much needed funds for marketing in the foreign and domestic markets.

page 2

Again I would like to ask what you can do to emphasize the need for matching funds from the State to increase the ASMI Budget. What ASMI has accomplished with such a small budget is a miracle, but miracles don't last forever. The State of Alaska really needs to focus its attention on what can be done for the survival of our fisheries.

Thank you for your dedicated hard work that you are doing in Juneau and your support for House Bill No. 73.

Sincerely,



Cecelia A. Angasan  
ASMI Board Member

Representative Hudson  
State Legislator Office  
Juneau, Alaska  
Fax: 4652273

Dear Representative Hudson,

Thank you for submitting House Bill 73, the ASMI 1% renewal to 2003. The renewal this year will save money, time and energy. The salmon industry needs the efforts of ASMI.

I am a 20+ year harvester and have not been making much money lately but feel without ASMI's efforts, it would be even less.

Earlier this month at the Salmon Forum it became very obvious that ASMI is the only body the industry has in common. Every time there was an assignment or a need ASMI was the only entity that people thought of that could accomplish the goals. The industry is going through tough times but without ASMI we would be crippled!

Thank you again for your support.

Kathy Halgren  
Box 784  
Cordova, Alaska 99574-0784

# HOUSE COMMITTEE REPORT

2/21/97

(5)

Date Referred to Committee: January 15, 1997

FURTHER REFERRALS: Labor and Commerce  
Finance

Date of Committee Action: 1/19/97

The HOUSE SPECIAL COMMITTEE ON FISHERIES Committee considered: HB 73

HOUSE BILL NO. 73 SALMON MARKETING ASSESSMENT & ASMI

“An Act extending the termination dates of the salmon marketing programs of the Alaska Seafood Marketing Institute and the salmon marketing assessment; and providing for an effective date.”

recommends it be replaced [ ] the same title  
with the following committee substitute \_\_\_\_\_ [ ] a new title

[ ] additional referral to \_\_\_\_\_ Committee  
[ ] attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

2  fiscal note(s) Revenue, DCED [ ] fiscal note(s) \_\_\_\_\_  
 \_\_\_\_\_  
 [ ] zero fiscal note(s) \_\_\_\_\_ [ ] zero fiscal note(s) \_\_\_\_\_  
 \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
AUSTERMAN	✓			
KUBINA	✓			
IVAN			✓	
HODGINS	✓			
	(3)		(1)	

CHAIR'S SIGNATURE \_\_\_\_\_  
Austerman

**HB**

**101**

# HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: January 31, 1997

FURTHER REFERRALS:

Date of Committee Action: 2/10/97

The LABOR AND COMMERCE Committee considered:

HB 101

HOUSE BILL NO. 101

TRUSTS & PROPERTY TRANSFERS IN TRUST

“An Act relating to certain irrevocable transfers in trust, to the jurisdiction governing a trust, to challenges to trusts or property transfers in trust, to the validity of trust interests, and to transfers of certain trust interests; and providing for an effective date.”

recommends it be replaced with the following committee substitute CSHB 101 (L40)  the same title  a new title

additional referral to \_\_\_\_\_ Committee  
 attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_

APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note(s) COM, DOL & REV

zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>John J. Caudery</i>	✓			
<i>John J. Caudery</i>	✓			
<i>Paul Brice</i>			✓	
<i>Joe Ryan</i>	✓			
<i>Bill Anderson</i>	✓			
<i>Nancy Kelly</i>	✓			

CHAIR'S SIGNATURE *Nancy Kelly* 2/10/97

Revision Date: \_\_\_\_\_ Dept. Affected: Revenue  
 Title: Trusts & Property Transfers in Trust BRU: Child Support Enforcement  
 Component: Child Support Enforcement  
 Sponsor: Representative Vezey  
 Requestor: (H) L&C COMPONENT SERIAL NO. 111

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match					0.0	
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<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>

Estimate of any current year (FY97) cost \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Glenda Straube Phone: 269-6801  
 Division: Child Support Enforcement Date: January 7, 1997  
 Approved by Commissioner: Wilson L. Condon Date: January 7, 1997  
 Agency: Revenue

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# FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. HB 101

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
 Title: ...relating to certain irrevocable transfers in trust... BRU: Civil Division  
transfers of certain trust interests...an effective date Component: General Legal Services  
 Sponsor: Representative Vezey  
 Requester: House Labor and Commerce Committee COMPONENT SERIAL NO. 2087

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<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>

Estimate of any current year (FY97) cost: \$ 0.0

**POSITIONS**

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill will have no fiscal impact for the Department of Law.

Prepared by: Fred Fisher Phone: 465-3672  
 Division: Administrative Services Division *Fred Fisher for* Date: 2/7/97  
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 2/7/97  
 Agency: Department of Law

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# FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. HB 101

Revision Date: \_\_\_\_\_  
 Title: Trusts and Property Transfers in Trust  
 Sponsor: Rep. Vezey  
 Requestor: (H) L&C

Department: Commerce and Economic Development  
 BRU: Banking, Securities & Corporations  
 Component: Banking, Securities & Corporations  
 COMPONENT SERIAL NO. \_\_\_\_\_ 1233

(Thousands of Dollars)

EXPENDITURES/REVENUES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
<b>OPERATING EXPENDITURES</b>						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CHANGE IN REVENUES</b>	0.0	0.0	0.0	0.0	0.0	0.0

(Thousands of Dollars)

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: \$ \_\_\_\_\_

**POSITIONS**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by: Willis F. Kirkpatrick, Director  
 Division: Banking, Securities and Corporations  
 Approved by Commissioner: William L. Hensley  
 Agency: Commerce and Economic Development

Phone: 465-2521  
 Date: 2-5-97  
 Date: 2-5-97

out of

2/10/97 Dick Swaites - 277-1595 (1:00)  
#B101-

Wrote reported case  
Federal Bankruptcy  
Case

- Court Decision -

Bankruptcy Hearing Judge McDonald of  
offshore Cook Islands -  
- borrowed money from Bank and  
shipped offshore -

Alaska state Statutes what they  
say in these

2-406  
Statute  
of limitations

16 years after the judgement - judge  
wishes  
to bring the  
action  
4 years and 1 year - from

Most states 2 years -  
statutes 2 yrs wrongful Tort  
4-6 Contract action

10 years some cases injury  
cases in certain  
cases

Hughes  
Business

Bob Monkeys office  
done their research

(263-8251)

- Mr. Brown -

02/10/97 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1150

15:12:53 PARTICIPANT LIST (ALL PARTICIPANTS) BY:ANC

TCN:70232 SCHEDULED FOR:02/10/97 15:15 TO 17:00 FOR:ANC

PUBLIC HEARING HOUSE LABOR & COMMERCE

LOCATION:ANCHORAGE

HB 101 DICK THWAITES TESTIFY

HB 101 BOB MANLEY TESTIFY

02/10/97 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1150

15:18:59 PARTICIPANT LIST (ALL PARTICIPANTS) BY:FBX

TCN:70232 SCHEDULED FOR:02/10/97 15:15 TO 17:00 FOR:FBX

PUBLIC HEARING HOUSE LABOR & COMMERCE

LOCATION:FAIRBANKS

HB 101 MR. RICH HOMPESCH ATTORNEY TESTIFY

HB 101 MR. KEVIN WALSH CPA TESTIFY

HB 101 MR. E.M. COX CPA TESTIFY

HB 101 MR. BILL BOLTON LIFE INSUR. TESTIFY

HB 101 MS. LINDA HULBERT LIFE INSUR. TESTIFY



# CORRECTION

THE FOLLOWING DOCUMENT(S)  
HAVE BEEN REFILMED TO  
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services  
Department of Education  
State of Alaska





OFFICIAL BUSINESS

# Alaska State Legislature Senate

STATE CAPITOL  
JUNEAU, ALASKA 99801-1182  
(907) 485-3701  
FAX: 485-2832

## CONCUR MESSAGE

March 13, 1997

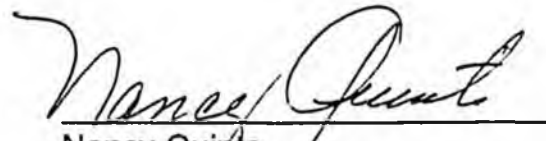
### MESSAGE TO THE HOUSE

MADAM SPEAKER:

The Senate passed CS FOR HOUSE BILL NO. 101 (L&C) with the following amendment:

SENATE CS FOR CS FOR HOUSE BILL NO. 101(JUD) ✓  
"An Act relating to certain irrevocable transfers in trust, to the jurisdiction governing a trust, to challenges to trusts or property transfers in trust, to the validity of trust interests, and to transfers of certain trust interests; and providing for an effective date."

and returned for consideration.

  
Nancy Quinto  
Secretary of the Senate

JAN 30 1997

TONY KNOWLES, GOVERNOR

**DEPT. OF ENVIRONMENTAL CONSERVATION**

Division of Air and Water Quality  
410 Willoughby Avenue, Suite 105  
Juneau, Alaska 99801-1795

Director's Office: (907)465-5260  
Fax: (907)465-5274  
TTY: (907)465-5133

January 28, 1997

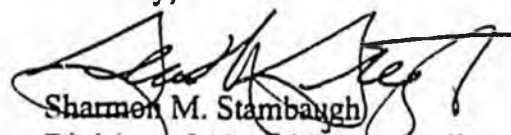
Dear Alaskan:

The Department has been requested by Coeur Alaska, Inc. to amend the Water Quality Standards, 18 AAC 70, to authorize increased levels of Total Dissolved Solids in Sherman Creek. Coeur Alaska, Inc. has separately applied for a National Pollution Discharge Elimination System permit (NPDES) from the Environmental Protection Agency for authorization to discharge mine drainage and industrial wastewater from minerals development at the Kensington Mine into Sherman Creek. The Department must certify that the limits in this permit meet State water quality standards. Additional information on the basis for the site-specific criteria request is contained in the enclosed public notice.

The process for making changes to the Water Quality Standards is through the creation of site-specific criteria under 18 AAC 70.025. Copies of 18 AAC 70.025 are available upon request. The Department has established a public comment period with hearings as described in the enclosed public notice. Also enclosed is a copy of the proposed site-specific criteria for Sherman Creek. Your comments on the proposed change are welcomed. Please send them to the address on the public notice or give comment at the public hearings in Juneau and Haines. These hearings will be recorded.

You have received this notice because you are either on the Department's Water Quality Standards mailing list or have been involved in the public process for permitting the Kensington Mine. If you do not wish to remain on the mailing list please contact Renee Stoll at 465-5161 and ask to have your name removed. If you have questions on this action please contact me at (907) 465-5257.

Sincerely,

  
Sharmen M. Stambaugh  
Division of Air and Water Quality

Enclosure

**NOTICE OF PROPOSED CHANGES IN THE WATER QUALITY REGULATIONS  
OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

**QUICK SUMMARY**

**What is being changed:** Water Quality Standards Regulations, 18 AAC 70, to provide site-specific criteria for Sherman Creek at the Kensington Mine.

**Who is affected:** Users of the fresh waters of Sherman Creek and adjacent waters of Lynn Canal.

**Why we are proposing changes:** The concentration of Total Dissolved Solids (TDS) in drainage from the mine adit discharge at the Kensington Mine is higher than the planned receiving waters of Sherman Creek (which averages about 50 mg/l). The mine developer has found, through discussions with users (fishers and others) that a discharge of mine drainage to fresh water is preferred to a marine discharge into Lynn Canal. The proposed change to the Water Quality Standards is necessary to accommodate the developer's mining plan and the users' preferred discharge location.

**Comment Period Ends:** March 28, 1997.

**Copies of Proposed Regulations:** Available at DEC's offices statewide, on DEC's home page, or you may call (907) 465-5300 to have a copy mailed to you (a copy is being mailed to all persons on DEC's Water Quality Standards mailing list).

**Your comments may be electronically submitted directly from DEC's home page by selecting "proposed regulations".**

**DEC Home page:** [Http://www.state.ak.us/dec](http://www.state.ak.us/dec)

**NOTICE IS GIVEN** that the Department of Environmental Conservation (DEC), under the authority of AS 46.03.020, 46.03.050, AS 46.03.070, and 46.03.080 proposes to adopt regulations in Title 18, Chapter 70, of the Alaska Administrative Code (18 AAC 70) dealing with the state water quality standards, to implement AS 46.03.070 and 46.03.080 as follows:

DEC has received a request under 18 AAC 70.025 from Coeur Alaska, Inc. ("Coeur") to establish site-specific criteria for Sherman Creek, at the Kensington mine 45 miles north of Juneau, Alaska, for Total Dissolved Solids (TDS) for the following fresh water uses: (1) water supply regulated under 18 AAC 70.020(b)(1)(A), and (2) growth and propagation of fish and other aquatic life regulated under 18 AAC 70.020(b)(1)(C). The request is for discharge of TDS up to 1000 mg/l, with sulfates not to exceed 500 mg/l.

The current criterion for water supply used for human consumption states that "TDS from all sources may not exceed 500 mg/l. Neither chlorides nor sulfates may exceed 200 mg/l." The basis of the request for a change to this standard is that Coeur has shown that the particular composition of the sulfates and chlorides contributing to TDS in the Kensington mine adit discharge is not harmful to uses protected under the Water Quality Standards at 18 AAC 70.020(b)(1)(A)(i) for drinking, culinary, and food processing. The Kensington discharge has low levels of magnesium and sodium. Research has shown that when present in high levels in the form of

NOTICE IS ALSO GIVEN that any person may present written statements or arguments related to the proposed action, including cost of compliance and alternate practical methods of complying with the statute being interpreted or implemented, by writing Ms. Sharmon Stambaugh, Department of Environmental Conservation, 410 Willoughby Ave., Juneau, AK 99801-1795, so that comments are received no later than March 28, 1997. In addition, any person may present oral (to be recorded) or written testimony, including cost of compliance and alternate practical methods of complying with the statute being interpreted or implemented, at a public workshop and hearing to be held as follows:

Date	City	Time	Location
March 19, 1997	Juneau	6 PM (workshop) 7-9 PM (hearing)	DEC 1st Floor Conference Room 410 Willoughby Avenue
March 20, 1997	Haines	6 PM (workshop) 7-9 PM (hearing)	Haines City Council Chambers Third Avenue & Haines Highway

The hearing may be extended allow of testimony of any person who is present before 8:30 PM.

To comply with Administrative Order 157 and to make its regulations easier to understand, DEC also seeks comments on this proposal regarding how it might be improved, including the use of "plain-English". If portions of this proposal are confusing, or if you have other suggested improvements, please send in your comments by the deadline given in this notice.

If you are a person with a disability who may need special assistance to participate in the process on this proposal, please contact Fran Podmolik at (907) 465-5041 before March 14, 1997, to make arrangements.

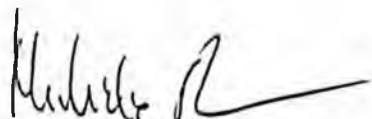
This action is not expected to require an increased appropriation.

Copies of the proposed regulations are being mailed to all persons on DEC's water quality standards mailing list and on DEC's list of persons who have participated in the Kensington mine public process. The regulation may also be obtained by writing to: Ms. Renee Stoll at the above address, or by calling (907) 465-5300.

The result of this action may be included in other state and federal regulatory actions, such as EPA's NPDES discharge permit, which will replace the existing permit, and DEC's Section 401 Certification of the NPDES permit. EPA and DEC will be taking additional public comment on those actions. As part of DEC's Section 401 Certification, specific monitoring requirements are expected to result from this action.

After the close of the public comment period, DEC will either adopt these or other proposals dealing with the same subject, without further notice, or may decide to take no action on them. The language of the final regulations may vary from that of the proposed regulations. You should comment during the time allowed if your interests could be affected.

DATE: January 23, 1997.

  
\_\_\_\_\_  
Michele Brown, Commissioner  
Department of Environmental Conservation

# CORRECTION

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HAVE BEEN REFILMED TO  
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Rev. 6/98

Central Microfilm Services  
Department of Education  
State of Alaska

**NOTICE OF PROPOSED CHANGES IN THE WATER QUALITY REGULATIONS  
OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

**QUICK SUMMARY**

**What is being changed:** Water Quality Standards Regulations, 18 AAC 70, to provide site-specific criteria for Sherman Creek at the Kensington Mine.

**Who is affected:** Users of the fresh waters of Sherman Creek and adjacent waters of Lynn Canal.

**Why we are proposing changes:** The concentration of Total Dissolved Solids (TDS) in drainage from the mine adit discharge at the Kensington Mine is higher than the planned receiving waters of Sherman Creek (which averages about 50 mg/l). The mine developer has found, through discussions with users (fishers and others) that a discharge of mine drainage to fresh water is preferred to a marine discharge into Lynn Canal. The proposed change to the Water Quality Standards is necessary to accommodate the developer's mining plan and the users' preferred discharge location.

**Comment Period Ends:** March 28, 1997.

**Copies of Proposed Regulations:** Available at DEC's offices statewide, on DEC's home page, or you may call (907) 465-5300 to have a copy mailed to you (a copy is being mailed to all persons on DEC's Water Quality Standards mailing list).

**Your comments may be electronically submitted directly from DEC's home page by selecting "proposed regulations".**

**DEC Home page:** [Http://www.state.ak.us/dec](http://www.state.ak.us/dec)

**NOTICE IS GIVEN** that the Department of Environmental Conservation (DEC), under the authority of AS 46.03.020, 46.03.050, AS 46.03.070, and 46.03.080 proposes to adopt regulations in Title 18, Chapter 70, of the Alaska Administrative Code (18 AAC 70) dealing with the state water quality standards, to implement AS 46.03.070 and 46.03.080 as follows:

DEC has received a request under 18 AAC 70.025 from Coeur Alaska, Inc. ("Coeur") to establish site-specific criteria for Sherman Creek, at the Kensington mine 45 miles north of Juneau, Alaska, for Total Dissolved Solids (TDS) for the following fresh water uses: (1) water supply regulated under 18 AAC 70.020(b)(1)(A), and (2) growth and propagation of fish and other aquatic life regulated under 18 AAC 70.020(b)(1)(C). The request is for discharge of TDS up to 1000 mg/l, with sulfates not to exceed 500 mg/l.

The current criterion for water supply used for human consumption states that "TDS from all sources may not exceed 500 mg/l. Neither chlorides nor sulfates may exceed 200 mg/l." The basis of the request for a change to this standard is that Coeur has shown that the particular composition of the sulfates and chlorides contributing to TDS in the Kensington mine adit discharge is not harmful to uses protected under the Water Quality Standards at 18 AAC 70.020(b)(1)(A)(i) for drinking, culinary, and food processing. The Kensington discharge has low levels of magnesium and sodium. Research has shown that when present in high levels in the form of

sulfates, magnesium and sodium can impair the taste of water and cause laxative effects. Because other sulfates such as calcium sulfate naturally occur in the adit discharge, Coeur is requesting the 500 mg/l sulfate criterion to cover all discharge and flow conditions expected during mine operations. The current criterion for chlorides, 200 mg/l, remains unchanged.

Coeur does not seek a change to the current criterion for water supply for agriculture use (including irrigation and stock watering) under 18 AAC 70.020(b)(1)(A)(ii) which states that "TDS may not exceed 1000 mg/l. Sodium absorption ratio must be less than 2.5, sodium percentage less than 60%, residual carbonate less than 1.25 mg/l, and boron less than 0.3 mg/l." Agricultural use of the waters of Sherman Creek is not planned.

The current criterion for the aquaculture at 18 AAC 70.020(b)(1)(A)(iii) states that "TDS may not exceed 1,500 mg/l, including natural conditions. Increases in TDS may not exceed one-third of the concentration of the water body." See the discussion below describing Coeur's request for a change to the standard

Coeur does not seek a change to the current criterion for water supply for industrial use under 18 AAC 70.020(b)(1)(A)(iv) which states that "No amounts above natural conditions that can cause corrosion, scaling, or process problems."

The current criterion for the standard for the growth and propagation of fish, shellfish, other aquatic life, and wildlife standard at 18 AAC 70.020(b)(1)(C) states that "TDS may not exceed 1,500 mg/l, including natural conditions. Increases in TDS may not exceed one-third of the concentration of the water body." The natural concentration of TDS in upper Sherman Creek, unaffected by TDS from tidal or industrial sources, averages 50 mg/l. Since 1988, DEC has allowed discharge of mine adit drainage into a Sherman Creek tributary under an industrial wastewater permit, with mean concentrations of 539 mg/l. TDS was not a reporting parameter for this permit, but Coeur has sampled TDS as part of its monitoring program. The basis for the request for this change in the standard is that salmon, the primary aquatic species of concern, move freely between the marine waters of Lynn Canal (seawater TDS is typically in the 30,000 to 40,000 mg/l range) and the fresh water of lower Sherman Creek, tolerating both environments. The concentration of TDS is reduced by downstream dilution to an average of 72 mg/l in lower Sherman Creek. In addition, other fish species present, primarily Dolly Varden trout in the upper reaches of the creek, appear to have acclimated to increased TDS from the existing mine drainage.

The concentration of TDS from mine drainage is expected to average 500-700 mg/l when the mine is operating. The request for 1000 mg/l is to ensure compliance during all operational conditions based on a statistical analysis of water quality from existing monitoring, plus projections of increased flows from the mine during operation. TDS levels are expected to return to background levels after the mine closes.

DEC proposes to make a finding under 18 AAC 70.025 after evaluating the request for site-specific criteria. The finding will be based on (1) Coeur's documentation that supports TDS and sulfate discharge at the proposed levels, (2) DEC's own research on the basis of the standards in 18 AAC 70.020, and (3) public comment. 18 AAC 70.025 sets out requirements to protect all uses of a water bodywater supply. All information regarding this action is available for review at DEC's Juneau office at 410 Willoughby Ave. In addition, key support documentation for the request has been compiled and made available at: (1) the three Juneau public libraries, (2) the Haines public library, and (3) the EPA Region 10 offices at 1200 Sixth Ave. in Seattle.

**NOTICE IS ALSO GIVEN** that any person may present written statements or arguments related to the proposed action, including cost of compliance and alternate practical methods of complying with the statute being interpreted or implemented, by writing Ms. Sharmon Stambaugh, Department of Environmental Conservation, 410 Willoughby Ave., Juneau, AK 99801-1795, so that comments are received no later than **March 28, 1997**. In addition, any person may present oral (to be recorded) or written testimony, including cost of compliance and alternate practical methods of complying with the statute being interpreted or implemented, at a public workshop and hearing to be held as follows:

<b>Date</b>	<b>City</b>	<b>Time</b>	<b>Location</b>
March 19, 1997	Juneau	6 PM (workshop) 7-9 PM (hearing)	DEC 1st Floor Conference Room 410 Willoughby Avenue
March 20, 1997	Haines	6 PM (workshop) 7-9 PM (hearing)	Haines City Council Chambers Third Avenue & Haines Highway

The hearing may be extended allow of testimony of any person who is present before 8:30 PM.

To comply with Administrative Order 157 and to make its regulations easier to understand, DEC also seeks comments on this proposal regarding how it might be improved, including the use of "plain-English". If portions of this proposal are confusing, or if you have other suggested improvements, please send in your comments by the deadline given in this notice.

If you are a person with a disability who may need special assistance to participate in the process on this proposal, please contact Fran Podmolik at (907) 465-5041 before **March 14, 1997**, to make arrangements.

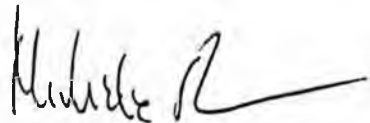
This action is not expected to require an increased appropriation.

Copies of the proposed regulations are being mailed to all persons on DEC's water quality standards mailing list and on DEC's list of persons who have participated in the Kensington mine public process. The regulation may also be obtained by writing to: Ms. Renee Stoll at the above address, or by calling (907) 465-5300.

The result of this action may be included in other state and federal regulatory actions, such as EPA's NPDES discharge permit, which will replace the existing permit, and DEC's Section 401 Certification of the NPDES permit. EPA and DEC will be taking additional public comment on those actions. As part of DEC's Section 401 Certification, specific monitoring requirements are expected to result from this action.

After the close of the public comment period, DEC will either adopt these or other proposals dealing with the same subject, without further notice, or may decide to take no action on them. The language of the final regulations may vary from that of the proposed regulations. You should comment during the time allowed if your interests could be affected.

DATE: January 23, 1997.

  
\_\_\_\_\_  
Michele Brown, Commissioner  
Department of Environmental Conservation

# DEPARTMENT OF ENVIRONMENTAL CONSERVATION



18 AAC 70

## WATER QUALITY STANDARDS (SITE-SPECIFIC CRITERIA FOR KENSINGTON MINE)

PUBLIC COMMENT DRAFT

January 28, 1997

**Tony Knowles**  
Governor

**Michele Brown**  
Commissioner

**PROPOSED CHANGES TO THE ALASKA WATER QUALITY STANDARDS**  
**COMMENT PERIOD ENDS: March 28, 1997**  
See public notice for more information

**18 AAC 70 is amended by adding a new section to read:**

**18 AAC 70.026. WATERS PROTECTED BY SITE-SPECIFIC CRITERIA.** Under 18 AAC 70.025(b) or (c), the department has established site-specific criteria that modify certain general criteria set out in 18 AAC 70.020(b) for the waters listed in Table A of this section. The site-specific criteria apply only to the affected designated use class indicated in Table A. All other criteria set out in 18 AAC 70.020(b) continue to apply to the waters listed in Table A.




ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
ADDITIONAL REGULATIONS NOTICE INFORMATION  
(AS 44.62.190 (d))

1. **General subject:** Site Specific Criterion for Total Dissolved Solids (TDS), Sherman Creek, at the Kensington Mine Site
2. **Citation:** 18 AAC 70
3. **Reason for proposed action:** To allow discharge of dissolved inorganic substances (TDS) and sulfate at a level above the current criterion
4. **Program category and BRU affected:** Air and Water
5. **Cost of implementation (in thousands of dollars):**

	Initial Year FY97	Subsequent FY98
General Funds *	\$ 10.0	\$ 15.0
Federal Funds	\$ 0	\$ 0
Other:	\$ 0	\$ 0
<b>TOTAL COST</b>	<b>\$ 10.0</b>	<b>\$ 15.0</b>

\* Funds are reimbursed through an agreement with Coeur Alaska, Inc.

6. **Contact person:** Sharmon M. Stambaugh, ADEC, 410 Willoughby Ave, Juneau, AK 99801-1795  
(907) 465-5257
7. **Origin of the proposed action:** Department of Environmental Conservation, Air and Water Quality
8. **Date:** January 28, 1997

Prepared by:  1/28/97  
(signature)

Name (typed): Sharmon M. Stambaugh

Title: Environmental Specialist III

Phone: (907) 465-5257

407 Renee Stoll  
State of Alaska  
Department of Environmental Conservation  
Air & Water Quality, Water Quality Protection  
410 Willoughby Avenue, Suite 105  
Juneau, AK 99801-1795

**ADDRESS CORRECTION REQUESTED**

Representative Norman Rokeberg  
20th Alaska State Legislature, MS-3100  
State Capitol, Room 24  
Juneau, AK 99801-1182



Attorneys at Law

FEB 13 1997

**COOK SCHUHMAN & GROSECLOSE, INC.**

714 Fourth Avenue, Suite 200 • Post Office Box 70810 • Fairbanks, Alaska 99707-0810 • 907 / 452-1855 • Fax 907 / 452-8154  
Tok (907) 883-5459 • Delta Junction (907) 895-4439 • Toll Free Number 800-550-1855 (Alaska Only)  
Email [esg@alaskalaw.com](mailto:esg@alaskalaw.com) • [www.alaskalaw.com](http://www.alaskalaw.com)

February 10, 1997

**Via Facsimile: (907) 465-2040**

Rep. Norm Rokeberg  
House of Representatives  
State Capitol  
Juneau, Alaska 99801

Re: *Alaska Trust Act*  
HB 101  
Labor & Commerce Committee Meeting

Dear Rep. Rokeberg:

Today your committee is set to hear testimony on Rep. Al Vezey's bill, The Alaska Trust Act. I wanted to express my strong support for this bill and join in the comments and support for the bill you will undoubtedly hear from members of the Alaska Bar, accountants, bank trust departments and others. Unfortunately I will be unable to testify.

Should this bill become law, Alaska will become the preeminent State in the United States for estate planning and trust work. Presently many wealthy people interested in avoiding estate taxes form trusts which are administered by off-shore financial institutions, such as the Cook Islands. If HB 101 passes most of those types of investments will transfer back onshore to Alaska. This could bring millions of dollars of outside investments into our State.

The passage of this bill will increase investment and job opportunities for Alaskans without harming our natural resources and without costing us a thing. This bill will also increase work in the banking, investment, legal, and trust professions.

I strongly encourage you and the members of your committee to recommend due passage for HB 101. I understand the Governor's Office has or is mounting a campaign to kill this bill.<sup>1</sup> Attorneys and other professionals have revised the language of this bill to address the Governor's concerns. I believe any opposition the Governor

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<sup>1</sup> I am sure you are aware the Governor vetoed this bill last year and the Legislature missed override by one vote.

Dennis E. "Skip" Cook  
Barbara L. Schuhmann  
Robert H. Groseclose

*Of Counsel*  
Grace Berg Schathle

Jo A. Kuchle  
Zane D. Wilson  
Bret D. Cook

Rep. Norm Rokeberg  
February 10, 1997  
Page 2


may have is strictly political and has nothing to do with its merits. Passage of Rep. Vezey's bill will make Alaska be to estate planning as Delaware is to corporations.

I appreciate your committee's work on the Alaska Trust Act. If you have questions about this bill or if I can be of any assistance to you regarding this bill, please contact me.

Sincerely,

COOK SCHUHMANN & GROSECLOSE, INC.

By

  
Jo A. Kuchle

JAK/lam:AKTrust.doc

Cc: Rep. Al Vezey (via fax)  
Rep. Gene Therriault (via fax)  
Rich Hompesch (via fax)  
Jonathan Blattmachr  
Dick Thwaites

Rep. Norm Rokeberg  
February 10, 1997  
Page 2

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H8459



**HUGHES THORSNESS POWELL  
HUDDLESTON & BAUMAN LLC**  
ATTORNEYS AT LAW

January 31, 1997

Direct Dial:(907)263-8251

Jonathan Blattmachr  
Millbank Tweed Hadley & McCloy  
1 Chase Manhattan Plaza  
New York, NY 10005

**Via Fax: 212-530-0222**  
Original Not to Follow by Mail

Re: 1997 Trust Legislation  
Our File No. 2270-72

Post-it® Fax Note	7671	Date	2/4/97	# of Pages	4
To	Rep. Al Vezev	From	DICK THWAITES		
Co./Dept.		Co.			
Phone #		Phone	(907) 277-1575		
Fax	(907) 465-3258	Fax #			

Dear Jonathan:

As we discussed the language of the amended memorandum decision in *Higashi v. Brown*, A95-00200-DMD (Bankruptcy Court District of Alaska 1996) continues to concern me regarding the above matter. At page 10 of the decision the judge concludes that a six year statute of limitations under AS 09.10.050 is applicable for a fraudulent transfer action. The judge goes on to conclude that the clock started when the state court rendered judgment against the defendant. Since the actual transfer the trust was made in late 1989 or early 1990 (a number of years prior to the alleged tort) we have a transfer to "avoid" future creditors situation. Unless we do something about this issue I am concerned that the trusts will be less effective and subject to litigation long after they are established.

I suggest that we provide an extinguishment of claim for relief provision in the bill. I suggest the following addition:

Sec. 34.40.110(f). A claim for relief with respect to fraudulent transfer under (b)(1) this section is extinguished as to a person who becomes a creditor subsequent to the transfer unless action is brought within four (4) years after the transfer was made.

Sec. 34.40.110(g) A claim for relief with respect to fraudulent transfer under (b)(1) this section is extinguished as to a person who was creditor when the trust was created unless action is brought within four (4) years after the transfer was made or, if later, within one (1) year after

Jonathan Blottmachr  
January 31, 1997  
Page 2

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HUGHES THORSNESS POWELL  
HUDDLESTON & BAUMAN LLC  
ATTORNEYS AT LAW

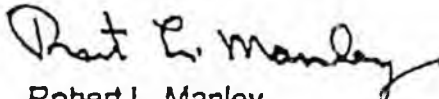
the transfer was or could reasonably have been discovered  
by the claimant.

The coverage for past and future creditors can be modified and the time limit can be  
changed to six years if necessary. However, I think it is critical that we specifically  
address this issue.

Please provide me with your thoughts.

Very truly yours,

HUGHES THORSNESS POWELL  
HUDDLESTON & BAUMAN LLC

By   
Robert L. Manley

RLM:baz/50886

cc: Richard S. Thwaites, Jr. via fax  
Richard Hompesch via fax

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1 (C) a bank that is organized under AS 06.05, or a national  
2 banking association that is organized under 12 U.S.C. 21 - 216d, if the bank  
3 or national banking association possesses and exercises trust powers and has  
4 its principal place of business in this state;

5 (2) "state jurisdiction provision" means a provision that the laws of this  
6 state govern the validity, construction, and administration of a trust and that the trust  
7 is subject to the jurisdiction of this state.

8 \* Sec. 6. AS 34.27.050(a) is amended to read:

9 (a) A nonvested property interest is invalid unless

10 (1) when the interest is created, it is certain to vest or terminate no later  
11 than 21 years after the death of an individual then alive; [OR]

12 (2) the interest either vests or terminates within 90 years after its  
13 creation; or

14 (3) the interest is in a trust and all or part of the income or  
15 principal of the trust may be distributed, in the discretion of the trustee, to a  
16 person who is living when the trust is created.

17 \* Sec. 7. AS 34.40.010 is amended to read:

18 Sec. 34.40.010. Invalidity generally. Except as provided in AS 34.40.110,  
19 a [A] conveyance or assignment, in writing or otherwise, of an estate or interest in  
20 land, or in goods, or things in action, or of rents or profits issuing from them or a  
21 charge upon land, goods, or things in action, or upon the rents or profits from them,  
22 made with the intent to hinder, delay, or defraud creditors or other persons of their  
23 lawful suits, damages, forfeitures, debts, or demands, or a bond or other evidence of  
24 debt given, action commenced, decree or judgment suffered, with the like intent, as  
25 against the persons so hindered, delayed, or defrauded is void.

26 \* Sec. 8. AS 34.40.110 is repealed and reenacted to read:

27 Sec. 34.40.110. Restricting transfers of trust interests. (a) A person who  
28 in writing transfers property in trust may provide that the interest of a beneficiary of  
29 the trust <sup>(including any beneficiary who is the settlor)</sup> may not be either voluntarily or involuntarily transferred before payment or  
30 delivery of the interest to the beneficiary by the trustee. In this subsection,

31 (1) "property" includes real property, personal property, and interests

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0-LS03911E

1 in real or personal property;

2 (2) "transfer" means any form of transfer, including deed, conveyance,  
3 or assignment.

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

8 (1) transfer was intended in whole or in part to hinder, delay, or  
9 defraud creditors or other persons under AS 34.40.010;

10 (2) trust provides that the settlor may revoke or terminate all or part  
11 of the trust without the consent of a person who has a substantial beneficial interest  
12 in the trust and the interest would be adversely affected by the exercise of the power  
13 held by the settlor to revoke or terminate all or part of the trust; in this paragraph,  
14 "revoke or terminate" does not include a power to veto a distribution from the trust,  
15 a testamentary special power of appointment or similar power, or the right to receive  
16 a distribution of income, corpus, or both in the discretion of a person, including a  
17 trustee, other than the settlor;

18 (3) trust requires that all or a part of the trust's income or principal, or  
19 both, must be distributed to the settlor; or

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

23 (c) The satisfaction of a claim under (b)(1) - (4) of this section is limited to  
24 that part of the trust to which (b)(1) - (4) of this section applies.

25 (d) Notwithstanding a provision in the trust instrument to the contrary, when  
26 a distribution is declared by and payable from a trust, the child support enforcement  
27 agency established under AS 25.27 may enforce the support obligations of a  
28 beneficiary, including a trust settlor who is a beneficiary, of the trust against the  
29 portion of the distribution to which the beneficiary is entitled.

30 (e) In this section, "settlor" means a person who transfers real property,  
31 personal property, or an interest in real or personal property, in trust.

INSERTS (r)  
(9)

12 pages

McC Donald trust decision

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF ALASKA

FILED

MAR 12 1996

CLERK U.S. BANKRUPTCY COURT By Deputy Clerk

In re: Case No. A95-00200-DMD) SANFORD WAYNE BROWN and CARROL A. BROWN, Debtors.

Chapter 11

VICKEY HIGASHI, Plaintiff,

Bancap No. 95-3072 Adversary No. A95-00200-002-DMD

v.

SANFORD WAYNE BROWN and CARROL A. BROWN, Defendants.

RECEIVED MAR 15 1996

HUGHES, THORSNESS, GANTZ, POWELL & BRUNDIN

AMENDED MEMORANDUM DECISION

This is an action by a judgment creditor to determine the validity of certain trusts in which the debtors have an interest. This is a core proceeding in accordance with 28 U.S.C. 5 157(b) (2) (B), (E) and (O). I find for the plaintiff.

Background

The defendant, S. Wayne Brown, is a certified public accountant and successful businessman. In late 1989 and 1990, he and his wife Carrol created a series of self-settled trusts. One of these trusts was called the 'CAW Family Trust.' This trust was formed in the United States and governed by American law. The defendants have acted as trustees of this trust and admit that its

This decision is amended on page 10 to be consistent with existing precedent in this District. Because the amendment does not alter the result, it is unnecessary to alter the order and judgment dated February 21, 1996, in this case.

Ford + Haysen 2-347

34

signed the trust documents through an attorney-in-fact in Belize.

One Gregory McDonald was the "creator" of the trust. A trust certificate for 100-trust units was executed in favor of Mr. Brown for each trust. Trust certificates are similar to shares of stock. Mr. Brown, through his attorney-in-fact, immediately amended the trust certificates such that 50 were issued in his favor and 50 in favor of his wife in each trust. Immediately upon formation of the Leones Company, the defendants S. Wayne and Carrol A. Brown became the president and secretary, respectively, of the trust.

The assets of the American International Retail trust are insignificant. That trust has an undocumented loan of about \$11,000.00 payable from a Washington manufacturing firm. The trust currently has about \$8,100.00 in cash and no other business assets. Mr. Brown initially placed \$25,000.00 in the trust.

The Leones Company trust has substantial assets. It owns a Merrill Lynch whole life insurance policy on defendant S. Wayne

Brown with a net cash value as of July 31, 1995, of \$202,897.91. The policy was purchased for \$200,000.00 in October of 1990. The trust also owns a Merrill Lynch annuity with a cash value as of July 31, 1995, of \$148,831.00. The annuity was purchased for \$100,000.00 in October of 1990.

There has been no business activity in Belize by either American International Retail or the Leones Company. All communication between the Leones Company and Merrill Lynch has been done by Mr. Brown. The funds utilized to purchase the annuity and the life insurance policy came from Mr. Brown. None of the funds were ever placed in the hands of the trustee, George A. Griffith, nor have any of the trust assets ever been controlled by Mr. Griffith.

The defendants filed for chapter 11 relief on March 31, 1995, after the plaintiff had obtained a judgment against them and their business corporation, Nome Commercial Company, for approximately 1.4 million dollars. The judgment is on appeal to the Alaska Supreme Court. The defendants have submitted a joint chapter 11 plan for themselves and Nome Commercial Company. The plan initially went to hearing on confirmation on January 23, 1996. The confirmation hearing has been continued pending resolution of this proceeding.

#### Analysis

11 U.S.C. § 541(c)(2) excludes transfers of the debtors' beneficial interest in a trust from the bankruptcy estate when a transfer restriction is enforceable under 'applicable non-

bankruptcy law." For example, the debtors' interest in a pension trust arising under the Employment Retirement Income Security Act of 1974 (ERISA), is exempt from the estate under applicable non-bankruptcy law. Patterson v. Shumate, 504 U.S. 753 (1992); In re Conner, 73 F.3d 258 (9th Cir. 1996).

The trusts at issue here are not governed by ERISA or any other federal law. Ordinarily, this court would turn to Alaska law to determine whether or not trust assets are included in the bankruptcy estate. In re Anderson, 2 A.B.R. 82 (Bankr. D. Alaska 1991); In re Daniel, 771 F.2d 1352, 1360 (9th Cir. 1985), cert. denied, 475 U.S. 1016 (1986); In re Kincaid, 917 F.2d 1162, 1166 (9th Cir. 1990). Although both the American International Retail and the Leones Company trust documents specifically provide that the instruments are governed by the laws of Belize, under Alaska conflict of law principles, it is inappropriate to apply the law of Belize to this controversy. The driving force behind this bankruptcy and the cause of the debtors' current financial problems is Vicky Higashi's tort judgment for 1.4 million dollars. Because this case is an outgrowth of that controversy, it should be governed by tort conflicts of law principles. In determining whether or not the trust assets are property of the estate, this court faces the same issues that would confront a state court in post-judgment execution proceedings concerning the trusts. As such, the application of tort conflict of law principles is clearly warranted.

Two tests have evolved over time to determine the proper choice of law in tort cases. The first is the "lex loci delicti"

rule. Under this older rule, the law of the place of the wrong was uniformly applied to all tort cases. In later cases, however, the place of injury alone was not the controlling factor. Armstrong v. Armstrong, 441 P.2d 699, 701 (Alaska 1968). Alaska has now adopted a second test, "the most significant relationship" test, for conflicts of law questions. It requires the court to consider:

- (a) the place where the injury occurred,
- (b) the place where the conduct causing the injury occurred,
- (c) the domicil[e], residence, nationality, place of incorporation and place of business of the parties, and
- (d) the place where the relationship, if any, between the parties is centered.

These contacts are to be evaluated according to their relative importance with respect to the particular issue.

Restatement (Second) of Conflict of Laws, § 145, as quoted in Ehredt v. DeHavilland Aircraft Co. of Canada, 705 P.2d 446, 453 (Alaska 1985) (footnotes omitted).

Applying this test to the current conflict, I conclude as follows: (1) the injury occurred in Nome, Alaska, entirely within the state; (2) the place where the conduct causing the injury occurred was in Nome, Alaska; (3) Vickey Higashi was a citizen of the state of Alaska at the time of the injury, and the Browns had an ownership interest in Nome Commercial Company, although they were residents of the state of Washington just prior to the tortious conduct; (4) the place where the relationship between the parties was centered was Alaska. Since the parties' most significant relationship is with Alaska, Alaska law should determine the outcome of this controversy.

There are other reasons for applying Alaska law in this case. The relevant policies of the forum state and the non-forum state are relevant factors in choosing the applicable rule of law. Restatement (Second) of Conflicts of Laws, § 6 (1971). The relevant policies of the state of Alaska will not be served by applying the laws of Belize. Alaska statutes specifically provide for the invalidation of fraudulent transfers, including transfers to trusts. A.S. 34.40.010 - 34.40.130. Belize, on the other hand, appears to actively encourage such transactions. It does not even have a fraudulent conveyance law. Rather, trusts in Belize are immune from attack from creditors even when created by fraudulent transfers. Moreover, the trusts can be self-settled. As noted by one author:

C. But Belize is Best.

The Cook Islands adopted at least some version of fraudulent conveyance law; Belize (the former British Honduras) did not even try.

In 1992, Belize adopted a new Trusts Act, a copy of which is appended to this paper. Section 7(6) is quite clear:

(6) Where a trust is created under the law of Belize, the court shall not vary it or set it aside or recognize the validity of any claim against the trust property pursuant to the law of another jurisdiction or the order of a court of another jurisdiction in respect of --

- (a) the personal and proprietary consequences of marriage or the termination of marriage;
- (b) succession rights (whether testate or intestate) including the fixed shares of spouses or relatives; or

(c) the claims of creditors in an insolvency.

(Emphasis added.)

Section 7(7) provides that the preceding Section 7(6) "shall have effect notwithstanding the provisions of section 149 of the Law of Property Act, section 42 of the Bankruptcy Act and the provisions of the Reciprocal Enforcement of Judgments Act.

Section 12 provides for the establishment of spendthrift trusts, and Section 12(4) specifically allows the settlor to establish a spendthrift trust with herself as beneficiary.

Thomas M. Mayer, Sheltering Assets in 1994: Real Estate Workouts and Bankruptcies 1994, Prac. L. Inst. 383, 446 (1994).

The policies underlying the current law of Belize are diametrically opposed to the fundamentals of Alaskan and American fraudulent transfer law. Belize is a popular trust jurisdiction precisely because it allows the types of fraudulent transfers that are unenforceable in America.

Under these circumstances, application of the law of Belize to the case at bar would be inappropriate. Alaska is the state with the most significant relationship to the controversy. Fundamental policies of Alaskan and American law will not be served by applying the laws of Belize. This case will be decided based on Alaskan and American law, not on the law of a foreign jurisdiction which actively solicits U.S. funds to insulate Americans from their creditors.

Alaska law prohibits fraudulent transfers. A.S. 34.40.010 provides that transfers made with the intent to hinder, delay or defraud creditors are void. A.S. 34.40.110 provides that

transfers made in trust for the benefit of the person making the transfer are void against existing and subsequent creditors. I find the initial transfer to the Leones Company business trust to be fraudulent and void for several reasons.

The transfer of funds that created the Leones Company was made to hinder, delay or defraud future creditors. The fact that the trusts were established in Belize, a country notorious for its anti-creditor policies<sup>2</sup>, rather than Alaska or Washington, indicates an intent to hinder, delay or defraud on the part of the defendants. Further, one of the express purposes for creation of the trust listed by the trustee was the protection of "assets from liability." However, the defendants' retention of control over the Merrill Lynch policies is the primary reason I find their transfers to the Leones Company trust fraudulent. Since the inception of the policies in 1990, Mr. Brown has retained complete control over trust assets. Neither Gregory McDonald, the "creator" of the trust or George Griffith, the trustee, has ever exercised any control over trust assets. They haven't even signed a trust document since the inception of the trust in 1989. The checks sent to Merrill Lynch originated with Mr. Brown and never passed through the hands of the supposed trustee. The Browns retain the ability, as trust officers, to instantly obtain all cash from the Merrill Lynch policies without interference from the trustee. I conclude that the Leones Company trust is simply a sham. The true substance and

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<sup>2</sup>The policies of Belize and other offshore jurisdictions are discussed at length by Elena Marty-Nelson, in Offshore Asset Protection Trusts: Having Your Cake and Eating It Too, 47 Rutgers L. Rev. 11 (1994).

business of this trust is to avoid creditors and nothing more.

The Browns contend that establishment of the Leones Company trust was simply an estate planning device. If estate planning was the only consideration, however, their needs could easily have been addressed through American wills or trusts. Mr. Brown is a shrewd businessman. As such he sought to shield his assets from exposure to creditors through use of friendly foreign jurisdiction. Dramshop liability, for instance, is a problem for Alaskan liquor store and bar owners. A.S. 04.21.020 allows only limited immunity to such owners. When minors are allowed to purchase liquor or when a "drunken" person is served, owners may be liable for the damages that result, which can be catastrophic. The Browns' principal business, Nome Commercial Company, is engaged in the sale of liquor. Although it had liability insurance in 1989, damages from a personal injury claim could exceed policy limits. I find that avoidance of such liability claims to future creditors was a major consideration in the establishment of the trust.

The transfer creating the Leones Company trust is also invalid because it violates the provisions of A.S. 34.40.110, which provides:

A deed of gift, a conveyance, or a transfer or assignment, oral or written, of goods and chattels or things in action made in trust for the person making the deed, conveyance, transfer, or assignment is void as against the creditors, existing or subsequent, of the person.

The Browns' October 1990 transfer of funds to Merrill Lynch Pearce Fenner & Smith to create an annuity and life insurance policy for

the Leones Company is void against Vickey Higashi, a subsequent creditor.

Statute of Limitations and Other Defenses

The Leones Trust was created in January of 1989. Transfers for the benefit of the Leones trust were made to Merrill Lynch Life Insurance Company on October 5, 1990. The Browns have failed to produce copies of checks that would detail the precise dates and amounts of payments. Alaska does not have a specific statute of limitations for fraudulent transfers. This court adopts the holding of Judge Ross in In re Ferrara (Barstow v. Ferrara, et. al.), 3 ABR 472, 491 (Bankr. D. Alaska 1994), which followed the March 12, 1992, ruling of District Judge Singleton in Battley v. Stanton, Case No. 91-0161-Civil. The six year period contained in AS 09.10.050 is the applicable limitation period for a fraudulent transfer action. In this instance, the limitation period for setting aside the fraudulent transfers commenced upon rendition of the state court judgment on February 10, 1995: Austin v. Fulton Insurance Company, 444 P.2d 536, 539 (Alaska 1968); 37 Am Jur 2d Fraudulent Conveyance § 196 (1968). This action was filed July 19, 1995, well within the limitation period. The statute of limitations provides no defense to the Browns.

The Browns allege that Vickey Higashi has no standing to file a complaint regarding the trusts because she will be paid in full under the plan and the trusts are an "abstract issue." I disagree. The Browns seek to cramdown a 1.4 million dollar tort claim. The plan must be proposed in good faith and be fair and

equitable with respect to Vickey Higashi's claim. 11 U.S.C. § 1129(a)(3) and § 1129(b)(1). Determination of the validity of the trusts is a key issue in deciding whether the case meets the confirmation requirements of the Code. It would be very unfair and inequitable, for example, for the Browns to retain all liquid assets while forcing Ms. Higashi to accept non-liquid assets in satisfaction of her claim. If the liquid assets were held in a valid trust, their differentiation in treatment could be warranted. Determination of the validity of the trusts is a significant factor for evaluating the confirmability of the plan.

The Browns claim that Higashi's failure to join George A. Griffith, the supposed trustee of the Leones Company and the American International Retail trusts, warrants dismissal for failure to join an indispensable party. Again, I disagree. When the Browns have in fact dominated and controlled the trusts from their inception, Griffith is merely a figurehead. Higashi's failure to name him as a party is meaningless when he had no control over the trust assets at any time. The Browns are the real parties in interest and have been given proper notice of these proceedings.

#### American International Retail and CAW Family Trust

I find that the American International Retail trust was created by the Browns for the same reasons as the Leones Company. Its assets are property of the bankruptcy estate.

The CAW Family trust is not really at issue in these proceedings. The Browns concede that the assets of the trust are

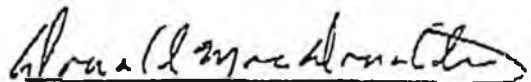
property of the estate. The Browns' California rental home is also property of the estate, as it was never transferred to any trust.

Conclusion

The Belizean trusts established and controlled by the Browns were created by fraudulent transfers. As such, the assets of these trusts are property of the bankruptcy estate. The assets of the CAW Family trust are also property of the estate, along with the Browns' California rental home. An order and judgment consistent with this decision will be entered.

DATED: March 11, 1996.

BY THE COURT

  
DONALD MacDonald IV  
United States Bankruptcy Judge

Serve: C.R. Kennelly, Esq.  
T. Byrnes, Esq.  
J. Stafford, Adv. Case Mgr.

3-12-96



# Alaska State Legislature

## HOUSE OF REPRESENTATIVES

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**Representative Al Vezey**

### **HB 101**

### **SPONSOR STATEMENT**

Throughout the United States there is a strong demand for means of preserving assets for future generations. The vehicle for doing this is called a trust. Across the U.S. there is a lack of strong trust law. As a result, we are seeing literally billions of dollars being transferred off shore to foreign countries where laws provide for strong trusts that can preserve assets for future generations.

Alaska is in a unique position of having a relatively simple trust law that has not been amended numerous times and augmented by confusing case law. Alaska also has a unique advantage in that we do not have a personal income tax nor do we have a state sales tax.

Currently only one state, Missouri, has enacted legislation similar to what is proposed here. Unfortunately for Missouri its trust law suffers from defects and ambiguities that are subject to court challenge. Thus investors have been reluctant to utilize Missouri trusts in lieu of off shore trusts.

Alaska is in an enviable position of being able to meet the demands of a huge financial market. In the process Alaska has the opportunity to establish itself as a major financial market for the U.S. and even the world.

To attract this potential industry and its accompanying investments, certain changes need to be made to Alaska's trust laws. These changes have the effect of strengthening Alaska's trust laws while maintaining strict liability for fraudulent transfers.

This bill is a win - win situation and I urge your support.

# 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


130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

## MEMORANDUM

February 3, 1997

**SUBJECT:** Sectional summary of HB 101 (Work Order 20-LS0391\E)

**TO:** Representative Al Vezey  
Attn: Rynniva Moss

**FROM:**   
Theresa Bannister  
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Modifies a provision in the state's probate code that relates to a spouse's elective share. Expressly includes in the augmented estate (on which the spouse's share is calculated) certain irrevocable transfers in trust that have a transfer restriction under the proposed AS 34.40.110(a).

Section 2. Modifies the statute that gives the superior court exclusive jurisdiction of certain trust proceedings. Includes trusts described in sec. 3 of the bill and coordinates the provisions of AS 13.36.035 with sec. 3. Makes a technical change by deleting "but are not limited to."

Section 3. Subsection (c) makes valid, effective, and conclusive a provision in a trust that this state's laws govern the trust and that the trust is subject to this state's jurisdiction. Sets several conditions for this. These conditions relate to the location of the trust assets, the relationship of the trustee to this state, the source of the trustee's authority, the powers of the trustee, and location of the trust administration..

Subsection (d) states that a trust's validity, construction, and administration are determined by this state's laws, if the trust has a state jurisdiction provision. Identifies some of the matters covered by this provision.

Subsection (e) defines "settlor" for (d).

Section 4. States that this state's superior court will not, if a party objects, handle a trust's proceedings under AS 13.36.035 if the trust is registered or has its principal place of

administration in another state, unless certain conditions are met. One of these conditions is that the trust satisfy AS 13.36.035(c).

Section 5. AS 13.36.310 states that, except as provided in AS 34.40.110, a trust or a property transfer to a trust that is governed by this state's laws is not void, voidable, liable to be set aside, defective, or questionable as to the settlor's capacity, on the grounds that the trust or transfer avoids or defeats certain rights, claims, or interests. Defines "settlor" for the section.

AS 13.36.390 defines "qualified person" and "state jurisdiction provision" for AS 13.36.

Section 6. States that a nonvested property interest is invalid unless, among the other listed reasons, the interest is in a trust and income or principal of the trust is subject to discretionary distribution by the trustee to a person living when the trust is created.

Section 7. Coordinates this section with the new provisions in sec. 8 of the bill.

Section 8. Subsection (a) allows a person who transfers property in trust and in writing to provide that a trust beneficiary's interest may not be transferred before payment or delivery of the interest to the beneficiary. Defines terms for the subsection.

Subsection (b) states that the above transfer restriction prevents a creditor or other person from using the beneficiary's trust interest to satisfy a claim unless certain conditions are found. The conditions include intending to defraud a creditor.

Subsection (c) limits the part of a trust that may be used to satisfy a claim otherwise allowed under (b).

Subsection (d) allows the child support enforcement agency to enforce a beneficiary's support obligations against the beneficiary's portion of a trust distribution.

Subsection (e) defines "settlor" for the section.

Section 9. Indicates that the bill's provisions only apply to trusts created on or after the effective date of bill.

Section 10. Gives the Act an immediate effective date.

If I may be of further assistance, please advise.

TLB:glc  
97-044.glc

MILBANK, TWEED, HADLEY & McCLOY  
1 CHASE MANHATTAN PLAZA, NEW YORK, 10005-1413

COPY

September 26, 1996

BY EXPRESS MAIL

The Honorable Fran Ulmer  
Lieutenant Governor  
State of Alaska  
P.O. Box 110015  
Juneau, Alaska 99811-0015

Re: Alaska Trust Act of 1997

Dear Fran:

Thank you so much for taking your valuable time to meet with Linda Hulbert and me on September 6 in Anchorage. I greatly enjoyed the meeting and I hope it was informative.

As promised, I am enclosing a copy of a tentative draft of a new proposed bill which is based, in large part, on the bill entitled the "Alaska Family Trust Act of 1996," which, as you are aware, was passed by the Legislature but vetoed by the Governor. Please let me know if you would like me to prepare a "blacklined" version to show the changes from the 1996 bil. We anticipate that the proposed new bill will be called the "Alaska Trust Act of 1997." As discussed in more detail below, it would repeal Alaska's rule against perpetuities, permit individuals to create

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Honorable Fran Ulmer

Page -2-

September 25, 1996

certain trusts for their benefit and enact legislation which, with the other provisions of the bill, would facilitate the creation of so-called "settlement trusts" by Regional Corporations. The primary purpose of the bill is to increase trust and related financial businesses in Alaska by providing Americans an opportunity to enhance legitimate lifetime estate and related planning by using Alaska trusts rather than trusts created in certain foreign jurisdictions,

Repeal of the Ancient Rule Against Perpetuities

The proposed new bill would repeal the rule against perpetuities (which limits how long trusts can stay in existence) in Alaska. Four states, South Dakota, Delaware, Wisconsin and Idaho, have already repealed theirs. South Dakota and Delaware have received considerable trust business as a result. In fact, Citibank, N.A., one of the nation's largest banks, has now acquired a trust company in South Dakota and the business it has attracted is considerable according to its officers I have discussed it with. South Dakota and Delaware have received most of the business because no state income tax is imposed on the trusts situated there. Although Delaware has an income tax, it imposes the tax only if the trust has Delaware beneficiaries.

There are a few academics who have a vested interest in seeing that the rule against perpetuities is maintained. Some are reporters on the Uniform Statutory Rule Against Perpetuities. Perhaps, some honestly feel that the time trusts can last should be limited. They have argued with me that 90 or 100 years ought

Honorable Fran Ulmer

Page -3-

September 25, 1996

to be enough. (If 100 years is okay, why not 101? If 101, why not 102? As you know, it is, in any case, a hopelessly complex and misunderstood law.) That is their opinion. Maybe, they feel the same way about corporations. However, I am unaware of anyone who deals regularly with trusts in the real world, such as practicing lawyers and trust officers, who sees any reason to keep the rule against perpetuities in force. In fact, I am aware of movements of several bar groups to have the rule repealed in their state.

In any case, because Alaska currently has no income tax, it should experience an increase in trust business, just as South Dakota and Delaware have. (Also, like Delaware and New York, Alaska could prevent any state income tax being imposed on trusts created in its state by non-residents if it does eventually adopt an income tax.) I think it is appropriate to mention that avoiding state income tax is not the reason why Americans throughout the country are creating trusts in South Dakota and Delaware. Rather, the reason is to accomplish more effective estate planning because trusts there can be perpetual, providing the potential for greater ultimate estate tax savings. Once a decision is made to create a perpetual trust for that reason, individuals typically choose the most favorable income tax jurisdiction. If income tax savings were the only consideration, New Yorkers would create trusts in New Jersey and vice versa. Although each of those states imposes an income tax, they impose them only on trusts created by their own residents.

Honorable Fran Ulmer

Page -4-

September 25, 1996

Creation of Trusts for One's Own Benefit

The second change which the proposed bill would make would, in my judgment, bring even more trust and related financial business to Alaska than the repeal of the rule against perpetuities would alone. That change would be to permit an individual to create a trust of which he or she is eligible (but not entitled) to receive distributions without automatically and permanently subjecting the trust assets to attachment by the individual's creditors unless the transfer to the trust is in defraud of creditors.

In addition to making a few stylistic and clarification changes, the proposed new bill has been redrafted to address the concerns which we understand the Governor expressed as the reasons for vetoing the bill.

1. Possible Use to Disinherit a Spouse. The Governor apparently was concerned that one spouse could "disinherit" his or her surviving spouse from the minimum or elective share to which the surviving spouse would be entitled from the "augmented estate" by creating a trust for his or her own benefit. To address this concern, Section 1 of the proposed new bill would amend AS 13.12.205(2)(A) by adding the parenthetical material so that the deceased spouse's augmented estate automatically would include a trust described in AS 34.40.110 (i.e., one from which the deceased spouse was eligible, even if not entitled, to receive distributions). As with other predeath transfers, such a trust created before the marriage or one with respect to which

Honorable Fran Ulmer

Page -5-

September 25, 1996

the surviving spouse had in writing expressly waived his or her right of election would not be included in the augmented estate.

2. Possible Use to Avoid Child Support Payments.

Apparently, the Governor also was concerned that a parent might make transfers of property to a trust described in AS 34.40.110 (i.e., one from which the parent is eligible to receive distributions) to avoid having that property seized to satisfy child support payments. The proposed bill addresses that concern in three provisions ways. First, under Section 9 of the bill, at AS 34.40.110(b)(1), the transfer to the trust would be void if it was intended in whole or in part to hinder, delay or defraud creditors or other persons under AS 34.40.010. (As mentioned at our meeting, Alaska appears to have a six-year statute of limitations on fraudulent transfers; I do not believe any state has a longer one.) Presumably, a transfer to avoid making child support payments is a fraudulent transfer. Second, Section 9 at AS 34.40.110(b)(4) would, in effect, make the trust void if the settlor were in default on child support payments by 30 or more days. Third, Section 9 at AS 34.40.110(d) would make a distribution declared to the settlor, or any other beneficiary, attachable by the Child Support Enforcement Division. We hope and believe these three provisions adequately address the Governor's concern with respect to child support. We believe these changes will not adversely affect using Alaska trusts for estate planning purposes, discussed below.

Honorable Fran Ulmer

Page -6-

September 25, 1996

I think it also is appropriate to mention that, perhaps, the best thing that could happen from a child support enforcement viewpoint would be for a parent to create an Alaskan trust. The trust assets then would be directly under the jurisdiction of an Alaska court. As a result, I think it is extremely unlikely that a parent would even consider creating an Alaskan trust if the parent were trying to avoid making child support payments. If anything, the parent would hide assets, transfer them directly to someone else (such as a "new" spouse) or create an asset protection trust outside of the United States, so no U.S. court would have jurisdiction over its assets.

In any case, we hope these changes will allow the Knowles administration enthusiastically to support the proposed new bill. Please contact me at your most early convenience if these changes do not accomplish that.

No Change in Burden of Proof

We understood that there was some question raised as whether the Alaska Family Trust Act of 1996 would have changed the burden of proof on a transfer which allegedly was made in defraud of creditors. It would not do so. As mentioned above, under Section 9 of the bill, transfers to the trust are void if made in defraud of creditors under AS 34.40.010 just as other fraudulent transfers are.

The Bill Would Not Permit or Enhance Fraudulent Transfers

Under American law, transfers made to defraud known or anticipated creditors are void. But under every state, transfers

Honorable Fran Ulmer

Page -7-

September 25, 1996

can be made to immunize assets from claims of future unknown creditors. For example, one spouse can transfer assets to or in trust for the other spouse (or anyone else) and immunize them from claims of future unknown creditors. As I mentioned at our meeting, I have placed a portion of my assets in trust for my wife and children precisely for that reason. Nonetheless, under an ancient English law, known as the Statute of Elizabeth, which probably persists throughout the country, except perhaps Missouri, Indiana and Maryland, assets transferred to an irrevocable trust, even if not made in defraud of creditors, remain permanently subject to the claims of the transferor's creditors, even future unknown and unanticipated ones, if the transferor is merely eligible to receive assets back from the trust. Among other things, this frustrates legitimate estate planning for Americans in using American trusts, as will be explained in more detail later.

As indicated, the law of Alaska and all other states permits individuals, although not in defraud of known or anticipated creditors, to take legitimate action to immunize their personal assets from claims of unknown future creditors. These actions include making gifts to or creating trusts for others, placing money in qualified retirement plans and IRAs, and operating business through corporations, limited partnerships and limited liability companies. Many states permit an individual to immunize assets from future creditors in ways which Alaska does not permit. Several jurisdictions, for example, exempt without

Honorable Fran Ulmer

Page -8-

September 25, 1996

limit cash in a life insurance policy or in an annuity contract from claims of creditors. That is the case in New York. Other states, such as Florida, provide complete immunity for homes, regardless of their value. Alaska does not immunize life insurance policies, annuity contracts or homes from creditor claims. But, as mentioned above, Alaska, and all other states, permit an individual to immunize assets from claims of his or her creditors by transferring them into trust for other people, such as other family members. The Alaska Trust Act of 1997 would make one relatively minor change by maintaining the immunization for trust assets from claims of future unknown creditors where the transferor is eligible but not entitled to receive property from the trust, but only if the transfer to the trust is not in fraud of creditors. Although this is a minor change in creditor rights, it will result in a major change in opportunities in estate and financial planning.

In our meeting, you raised the question about whether the bill would send the wrong "message" about Alaska as being a place where one could defraud creditors. If anything, I think it would send the opposite message. Something like 17 countries (and the list appears to be growing) permit U.S. persons to create trusts to defraud creditors. Under their laws, it does not matter whether the trust is for the benefit of the settlor or someone else. Basically, once the property gets into a trust under the jurisdiction of that country it is immunized from the claims of the transferor's creditors. As a practical matter,

Honorable Fran Ulmer

Page -9-

September 25, 1996

these countries do not have real fraudulent transfer rules. I know that because clients of ours have been defrauded by transfers to such trusts. That could not happen under Alaska Trust Act of 1997.

Under Alaska law, there is a very long-term fraudulent transfer statute of limitations, six years. AS 09.10.050. Clearly, no one is going to try to transfer assets in defraud of creditors by creating an Alaskan trust.

Alaska Trusts Would Enhance Estate Planning for All Americans

Nonetheless, as we discussed, Americans will be able to use Alaskan trusts to enhance estate planning opportunities. As you know, the most effective estate planning almost always involves transferring assets well before death. Individuals, however, very often hesitate in doing that because, to be effective, there usually must be no way the property can ever be returned to the individual. Under the law of virtually all states, creditors can attach assets transferred to a trust even if not transferred in defraud of creditors if the transferor is merely eligible to receive the property in the discretion of an independent trustee. The ability of creditors to attach the property means the transfer is incomplete for estate and gift tax purposes. That is one of the ways foreign trusts can be legitimately used. A recent article written by Joseph Kartiganer, Esq., one of the nation's leading estate planning lawyers, discussing the use of foreign trusts for estate planning purposes, is enclosed. Under the proposed bill, this type of

Honorable Fran Ulmer

Page -10-

September 25, 1996

estate planning could be done in Alaska. We believe Americans would prefer to create trusts in Alaska rather than in foreign countries for estate planning purposes.

As mentioned at our meeting, under the bill, individuals could create trusts in Alaska to immunize assets from claims of future, unknown creditors. This can be done today anywhere in the United States. As mentioned, I have done it by transferring assets to a trust here in New York for my wife and children. But such a transfer cannot be done, except perhaps in Missouri, Indiana and Maryland, if the person who created the trust is eligible to receive property back from the trust. Under the bill, Alaska law would be changed so one could create a trust (provided it is not done in defraud of creditors) including himself or herself. According to one U.S. government report, nearly one-half trillion dollars has been transferred by Americans to foreign asset protection trusts. Some of these transfers are in defraud of creditors, and, hence, would not have been created in Alaska, even under the bill, or anywhere else in America. But many of the transfers to foreign trusts by Americans are not in defraud of creditors. These latter transfers are being made for estate planning reasons or to protect assets from future unknown creditors only, something permitted under the law of all states. Under the bill, these non-fraudulent transfers could be made to Alaska trusts rather than to foreign trusts and we believe most would choose Alaskan

Honorable Fran Ulmer

Page -11-

September 25, 1996

trusts. This would, in our judgment, substantively benefit the trust and financial industries in the state.

ANCSA Settlement Trusts

The proposed new bill contains a new section (Section 10) which expressly deals with "settlement trusts" created by Regional Corporations under Section 39(a) of the federal law, the Alaska Native Claims Settlement Act (ANCSA). Although we have been advised by legal counsel to certain of the Regional Corporations that the Alaska Family Trust Act of 1996 would have facilitated the creation of settlement trusts under Section 39(a) of ANCSA, it was recommended that additional changes be made to Alaska trust law with respect to settlement trusts, and we have done so.

\* \* \*

Thank you again for meeting with me. It is an honor to be dealing with you about this important matter. I look forward to hearing from you.

Sincerely yours,

Jonathan G. Blattmachr

JGB:agw  
Enclosure

cc: Ms. Linda Hulbert  
Fax No.: 907-479-6536

bcc: Richard Thwaites, Jr., Esq.  
Fax No.: 907-274-1126

Richard Hompesch, Esq.  
Fax No.: 907-456-5693

Mr. Douglas Blattmachr  
Fax. No. 406-791-7385

# Alaska State Legislature

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**Representative Al Vezey**

January 30, 1997

Rep. Norm Rokeberg, Chairman  
House Labor & Commerce Committee  
State Capitol, Room 24  
Juneau, AK 99801-1182

Dear Rep. Rokeberg:

I am requesting that HB 101, "An Act relating to certain irrevocable transfers in trust, to the jurisdiction governing a trust, to challenges to trusts or property transfers in trust, to the validity of trust interests, and to transfers of certain trust interests; and providing for an effective date." Be scheduled for hearing in the House Labor & Commerce Committee.

Attached is the sponsor statement I have prepared.

Sincerely,

A handwritten signature in black ink, appearing to read "Al Vezey".

Rep. Al Vezey

0-LS0391\B  
Bannister  
2/10/97

CS FOR HOUSE BILL NO. 101( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES VEZEY, Bunde

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to certain irrevocable transfers in trust, to the jurisdiction  
2 governing a trust, to challenges to trusts or property transfers in trust, to the  
3 validity of trust interests, and to transfers of certain trust interests; and providing  
4 for an effective date."

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

6 \* Section 1. AS 13.12.205(2) is amended to read:

7 (2) property transferred in any of the following forms by the decedent  
8 during marriage:

9 (A) an irrevocable transfer, including an irrevocable transfer  
10 in trust with a transfer restriction under AS 34.40.110(a), in which the  
11 decedent retained the right to the possession or enjoyment of, or to the income  
12 from, the property, if and to the extent the decedent's right terminated at or  
13 continued beyond the decedent's death; the amount included is the value of the  
14 fraction of the property to which the decedent's right related, to the extent the

1 fraction of the property passed outside probate to or for the benefit of a person  
2 other than the decedent's estate or surviving spouse;

3 (B) a transfer in which the decedent created a power over the  
4 income or property, exercisable by the decedent alone or in conjunction with  
5 another person, or exercisable by a nonadverse party, to or for the benefit of  
6 the decedent, the decedent's creditors, the decedent's estate, or creditors of the  
7 decedent's estate; the amount included with respect to a power over property  
8 is the value of the property subject to the power, and the amount included with  
9 respect to a power over income is the value of the property that produces or  
10 produced the income, to the extent the power in either case was exercisable at  
11 the decedent's death to or for the benefit of a person other than the decedent's  
12 surviving spouse or to the extent the property passed at the decedent's death,  
13 by exercise, release, lapse, default, or otherwise, to or for the benefit of a  
14 person other than the decedent's estate or surviving spouse; if the power is a  
15 power over both income and property and the preceding provision defining the  
16 amount included produces different amounts, the amount included is the greater  
17 amount; and

18 \* Sec. 2. AS 13.36.035(a) is amended to read:

19 (a) The court has exclusive jurisdiction of proceedings initiated by interested  
20 parties concerning the internal affairs of trusts, including trusts covered by (c) of this  
21 section. Except as provided in (c) and (d) of this section, proceedings that [.  
22 PROCEEDINGS WHICH] may be maintained under this section are those concerning  
23 the administration and distribution of trusts, the declaration of rights, and the  
24 determination of other matters involving trustees and beneficiaries of trusts. These  
25 include [, BUT ARE NOT LIMITED TO,] proceedings to

26 (1) appoint or remove a trustee;

27 (2) review trustees' fees and to review and settle interim or final  
28 accounts;

29 (3) ascertain beneficiaries, determine any question arising in the  
30 administration or distribution of any trust including questions of construction of trust  
31 instruments, instruct trustees, and determine the existence or nonexistence of any

1 immunity, power, privilege, duty, or right; and

2 (4) release registration of a trust.

3 \* Sec. 3. AS 13.36.035 is amended by adding new subsections to read:

4 (c) A provision that the laws of this state govern the validity, construction, and  
5 administration of the trust and that the trust is subject to the jurisdiction of this state  
6 is valid, effective, and conclusive for the trust if

7 (1) some ~~for~~ all of the trust assets are deposited in this state and are  
8 being administered by a qualified person; in this paragraph, "deposited in this state"  
9 includes being held in a checking account, time deposit, certificate of deposit,  
10 brokerage account, trust company fiduciary account, or other similar account or deposit  
11 that is located in this state;

12 (2) a trustee is a qualified person who is designated as a trustee under  
13 the governing instrument or by a court having jurisdiction over the trust;

14 (3) the powers of the trustee identified under (2) of this subsection  
15 include or are limited to

16 (A) maintaining records for the trust on an exclusive basis or  
17 a nonexclusive basis; and

18 (B) preparing or arranging for the preparation of, on an  
19 exclusive basis or a nonexclusive basis, an income tax return that must be filed  
20 by the trust; and

21 (4) part or all of the administration occurs in this state, including  
22 physically maintaining trust records in this state.

23 (d) The validity, construction, and administration of a trust with a state  
24 jurisdiction provision are determined by the laws of this state, including the

25 (1) capacity of the settlor;

26 (2) powers, obligations, liabilities, and rights of the trustees and the  
27 appointment and removal of the trustees; and

28 (3) existence and extent of powers, conferred or retained, including a  
29 trustee's discretionary powers, the powers retained by a beneficiary of the trust, and  
30 the validity of the exercise of a power.

31 (e) In (d) of this section, "settlor" means a person who transfers property in

1 trust; "settlor" includes a person who furnishes the property transferred to a trust even  
2 if the trust is created by another person.

3 \* Sec. 4. AS 13.36.045(a) is amended to read:

4 (a) The court will not, over the objection of a party, entertain proceedings  
5 under AS 13.36.035 involving a trust registered or having its principal place of  
6 administration in another state, unless

7 (1) all appropriate parties could not be bound by litigation in the courts  
8 of the state where the trust is registered or has its principal place of administration;  
9 [OR]

10 (2) the interests of justice otherwise would seriously be impaired; or

11 (3) the trust satisfies AS 13.36.035(c).

12 \* Sec. 5. AS 13.36 is amended by adding new sections to read:

13 Sec. 13.36.310. Challenges to trusts. Except as provided in AS 34.40.110,  
14 a trust that is covered by AS 13.36.035(c) or that is otherwise governed by the laws  
15 of this state, or a property transfer to a trust that is covered by AS 13.36.035(c) or that  
16 is otherwise governed by the laws of this state, is not void, voidable, liable to be set  
17 aside, defective in any fashion, or questionable as to the settlor's capacity, on the  
18 grounds that the trust or transfer avoids or defeats a right, claim, or interest conferred  
19 by law on a person by reason of a personal or business relationship with the settlor or  
20 by way of a marital or similar right. In this section, "settlor" means a person who  
21 transfers property in trust; "settlor" includes a person who furnishes the property  
22 transferred to a trust even if the trust is created by another person.

23 Sec. 13.36.390. Definitions. In AS 13.36,

24 (1) "qualified person" means

25 (A) an individual who, except for brief intervals, military  
26 service, attendance at an educational or training institution, or for absences for  
27 good cause shown, resides in this state, whose true and permanent home is in  
28 this state, who does not have a present intention of moving from this state, and  
29 who has the intention of returning to this state when away;

30 (B) a trust company that is organized under AS 06.25 and that  
31 has its principal place of business in this state; or

1 (C) a bank that is organized under AS 06.05, or a national  
2 banking association that is organized under 12 U.S.C. 21 - 216d, if the bank  
3 or national banking association possesses and exercises trust powers and has  
4 its principal place of business in this state;

5 (2) "state jurisdiction provision" means a provision that the laws of this  
6 state govern the validity, construction, and administration of a trust and that the trust  
7 is subject to the jurisdiction of this state.

8 \* Sec. 6. AS 34.27.050(a) is amended to read:

9 (a) A nonvested property interest is invalid unless

10 (1) when the interest is created, it is certain to vest or terminate no later  
11 than 21 years after the death of an individual then alive; [OR]

12 (2) the interest either vests or terminates within 90 years after its  
13 creation; or

14 (3) the interest is in a trust and all or part of the income or  
15 principal of the trust may be distributed, in the discretion of the trustee, to a  
16 person who is living when the trust is created.

17 \* Sec. 7. AS 34.40.010 is amended to read:

18 Sec. 34.40.010. Invalidity generally. Except as provided in AS 34.40.110,  
19 a [A] conveyance or assignment, in writing or otherwise, of an estate or interest in  
20 land, or in goods, or things in action, or of rents or profits issuing from them or a  
21 charge upon land, goods, or things in action, or upon the rents or profits from them,  
22 made with the intent to hinder, delay, or defraud creditors or other persons of their  
23 lawful suits, damages, forfeitures, debts, or demands, or a bond or other evidence of  
24 debt given, action commenced, decree or judgment suffered, with the like intent, as  
25 against the persons so hindered, delayed, or defrauded is void.

26 \* Sec. 8. AS 34.40.110 is repealed and reenacted to read:

27 Sec. 34.40.110. Restricting transfers of trust interests. (a) A person who  
28 in writing transfers property in trust may provide that the interest of a beneficiary of  
29 the trust may not be either voluntarily or involuntarily transferred before payment or  
30 delivery of the interest to the beneficiary by the trustee. In this subsection,

31 (1) "property" includes real property, personal property, and interests

1 in real or personal property;

2 (2) "transfer" means any form of transfer, including deed, conveyance,  
3 or assignment.

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

8 (1) transfer was intended in whole or in part to hinder, delay, or  
9 defraud creditors or other persons under AS 34.40.010; *what does*

10 (2) trust provides that the settlor may revoke or terminate all or part  
11 of the trust without the consent of a person who has a substantial beneficial interest  
12 in the trust and the interest would be adversely affected by the exercise of the power  
13 held by the settlor to revoke or terminate all or part of the trust; in this paragraph,  
14 "revoke or terminate" does not include a power to veto a distribution from the trust,  
15 a testamentary special power of appointment or similar power, or the right to receive  
16 a distribution of income, corpus, or both in the discretion of a person, including a  
17 trustee, other than the settlor;

18 (3) trust requires that all or a part of the trust's income or principal, or  
19 both, must be distributed to the settlor; or

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

23 (c) The satisfaction of a claim under (b)(1) - (4) of this section is limited to  
24 that part of the trust to which (b)(1) - (4) of this section applies.

25 (d) Notwithstanding a provision in the trust instrument to the contrary, when  
26 a distribution is declared by and payable from a trust, the child support enforcement  
27 agency established under AS 25.27 may enforce the support obligations of a  
28 beneficiary, including a trust settlor who is a beneficiary, of the trust against the  
29 portion of the distribution to which the beneficiary is entitled.

30 (e) A person may not bring an action with respect to a claim allowed under  
31 (b)(1) of this section if the person

1 (1) is a creditor when the trust is created unless the action is brought  
2 within the later of

3 (A) four years after the transfer is made; or

4 (B) one year after the transfer is or reasonably could have been  
5 discovered by the person; or

6 (2) becomes a creditor subsequent to the transfer unless the action is  
7 brought within four years after the transfer is made.

8 (f) In this section, "settlor" means a person who transfers real property,  
9 personal property, or an interest in real or personal property, in trust.

10 \* Sec. 9. This Act does not apply to a trust unless the trust is created on or after the  
11 effective date of this Act.

12 \* Sec. 10. This Act takes effect immediately under AS 01.10.070(c).

# 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

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

## MEMORANDUM

January 16, 1997

**SUBJECT:** Bill on trusts (Work Order No. 20-LS0333\A)

**TO:** Representative Norman Rokeberg, Chair  
House Labor and Commerce Committee  
Attn: Shirley Armstrong

**FROM:** *TB*  
Theresa Bannister  
Legislative Counsel

This memo accompanies the draft that you requested of a bill on trusts. It was based on the material you sent me ("material"). Please note the following comments.

1. Proposed AS 13.36.035(c) contains the language from your material's new subsection (e). The language in (e) appeared to relate specifically to (c)(1), (2), and (3), so the draft locates some of the (e) language in the individual paragraphs to which it relates. Please examine (c)(1) in particular because the intent of your new (e) language was not entirely clear to me and it was necessary to interpret what you wanted.
2. Your material in proposed AS 13.36.045(a)(3) has been deleted, and a new phrase has been added as (a)(3) ("unless the trust satisfies AS 13.36.035(c), "). The reason is to avoid a conflict with the new language of proposed AS 13.36.035(c). Please examine the subsection to determine if the changes achieve what you had in mind.
3. The definition of "settlor" has been removed from AS 13.36.390 and placed in proposed AS 13.36.035(e) and 13.36.310. The reason for these changes is to limit the application of the definition to the new provisions in the bill where it appears; otherwise it would also apply to other sections of AS 13.36.
4. In your amendment to AS 34.27.060(3), the draft uses "AS 34.27.050(a)(1) or (3)." This is different from your draft, which used "AS 34.27.050(a)". The reasons are that the current language does not reference (a)(2) and that inclusion of (a)(2) may cause single subject problems with the bill.
5. In proposed AS 34.40.110(a), the draft uses "beneficiary" instead of "beneficiary or beneficiaries." Under AS 01.10.050(b), words in the singular include the plural, and vice versa.

Representative Norman Rokeberg

January 16, 1997

Page 2

6. In proposed AS 34.40.110(b)(2), a definition of "settlement trust" might be helpful. It is not clear just what "settlement trust" includes.

7. In proposed AS 34.40.110(d), the draft refers to "the distribution to which the beneficiary is entitled," since "otherwise entitled" seemed unnecessary.

If I may be of further assistance, please advise.

TLB:glc:pl

97-002.glc

Enclosure

**HOUSE BILL NO.**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTIETH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST**

**Introduced:**

**Referred:**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to certain irrevocable transfers in trust, to the jurisdiction  
2 governing a trust, to challenges to trusts or property transfers in trust, to the  
3 validity of trust interests, and to transfers of certain trust interests; and providing  
4 for an effective date."

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

6 \* Section 1 AS 13.12.205(2) is amended to read:

7 (2) property transferred in any of the following forms by the decedent  
8 during marriage:

9 (A) an irrevocable transfer, including an irrevocable transfer  
10 in trust with a transfer restriction under AS 34.40.110(a), in which the  
11 decedent retained the right to the possession or enjoyment of, or to the income  
12 from, the property, if and to the extent the decedent's right terminated at or  
13 continued beyond the decedent's death; the amount included is the value of the  
14 fraction of the property to which the decedent's right related, to the extent the

1 fraction of the property passed outside probate to or for the benefit of a person  
2 other than the decedent's estate or surviving spouse;

3 (B) a transfer in which the decedent created a power over the  
4 income or property, exercisable by the decedent alone or in conjunction with  
5 another person, or exercisable by a nonadverse party, to or for the benefit of  
6 the decedent, the decedent's creditors, the decedent's estate, or creditors of the  
7 decedent's estate; the amount included with respect to a power over property  
8 is the value of the property subject to the power, and the amount included with  
9 respect to a power over income is the value of the property that produces or  
10 produced the income, to the extent the power in either case was exercisable at  
11 the decedent's death to or for the benefit of a person other than the decedent's  
12 surviving spouse or to the extent the property passed at the decedent's death,  
13 by exercise, release, lapse, default, or otherwise, to or for the benefit of a  
14 person other than the decedent's estate or surviving spouse; if the power is a  
15 power over both income and property and the preceding provision defining the  
16 amount included produces different amounts, the amount included is the greater  
17 amount; and

18 \* Sec. 2. AS 13.36.035(a) is amended to read:

19 (a) The court has exclusive jurisdiction of proceedings initiated by interested  
20 parties concerning the internal affairs of trusts, including trusts covered by (c) of this  
21 section. Except as provided in (c) and (d) of this section, proceedings that [  
22 PROCEEDINGS WHICH] may be maintained under this section are those concerning  
23 the administration and distribution of trusts, the declaration of rights, and the  
24 determination of other matters involving trustees and beneficiaries of trusts. These  
25 include [, BUT ARE NOT LIMITED TO,] proceedings to

26 (1) appoint or remove a trustee;

27 (2) review trustees' fees and to review and settle interim or final  
28 accounts;

29 (3) ascertain beneficiaries, determine any question arising in the  
30 administration or distribution of any trust including questions of construction of trust  
31 instruments, instruct trustees, and determine the existence or nonexistence of any

1 immunity, power, privilege, duty, or right; and

2 (4) release registration of a trust.

3 \* Sec. 3. AS 13.36.035 is amended by adding new subsections to read:

4 (c) A provision that the laws of this state govern the validity, construction, and  
5 administration of the trust and that the trust is subject to the jurisdiction of this state  
6 is valid, effective, and conclusive for the trust if

7 (1) some or all of the trust assets are deposited in this state and are  
8 being administered by a qualified person; in this paragraph, "deposited in this state"  
9 includes being held in a checking account, time deposit, certificate of deposit,  
10 brokerage account, or other similar account or deposit that is located in this state;

11 (2) the trustee is a qualified person who is designated as a trustee under  
12 the governing instrument or by a court having jurisdiction over the trust;

13 (3) the trustee's powers include or are limited to

14 (A) maintaining records for the trust on an exclusive basis or  
15 a nonexclusive basis; and

16 (B) preparing or arranging for the preparation of, on an  
17 exclusive basis or a nonexclusive basis, an income tax return that must be filed  
18 by the trust; and

19 (4) part or all of the administration occurs in this state, including  
20 physically maintaining trust records in this state.

21 (d) The validity, construction, and administration of a trust with a state  
22 jurisdiction provision are determined by the laws of this state, including the

23 (1) capacity of the settlor;

24 (2) powers, obligations, liabilities, and rights of the trustees and the  
25 appointment and removal of the trustees; and

26 (3) existence and extent of powers, conferred or retained, including a  
27 trustee's discretionary powers, the powers retained by a beneficiary of the trust, and  
28 the validity of the exercise of a power.

29 (e) In (d) of this section, "settlor" means a person who transfers property in  
30 trust; "settlor" includes a person who furnishes the property transferred to a trust even  
31 if the trust is created by another person.

1 \* **Sec. 4.** AS 13.36.045(a) is amended to read:

2 (a) The court will not, over the objection of a party, entertain proceedings  
3 under AS 13.36.035 involving a trust registered or having its principal place of  
4 administration in another state, unless

5 (1) all appropriate parties could not be bound by litigation in the courts  
6 of the state where the trust is registered or has its principal place of administration;  
7 [OR.]

8 (2) the interests of justice otherwise would seriously be impaired; or

9 (3) the trust satisfies AS 13.36.035(c).

10 \* **Sec. 5.** AS 13.36 is amended by adding new sections to read:

11 **Sec. 13.36.310. Challenges to trusts.** Except as provided in AS 34.40.110,  
12 a trust that is covered by AS 13.36.035(c) or that is otherwise governed by the laws  
13 of this state, or a property transfer to a trust that is covered by AS 13.36.035(c) or that  
14 is otherwise governed by the laws of this state, is not void, voidable, liable to be set  
15 aside, defective in any fashion, or questionable as to the settlor's capacity, on the  
16 grounds that the trust or transfer avoids or defeats a right, claim, or interest conferred  
17 by law on a person by reason of a personal or business relationship with the settlor or  
18 by way of a marital or similar right. In this section, "settlor" means a person who  
19 transfers property in trust; "settlor" includes a person who furnishes the property  
20 transferred to a trust even if the trust is created by another person.

21 **Sec. 13.36.390. Definitions.** In AS 13.36,

22 (1) "qualified person" means

23 (A) an individual who, except for brief intervals, military  
24 service, attendance at an educational or training institution, or for absences for  
25 good cause shown, resides in this state, whose true and permanent home is in  
26 this state, who does not have a present intention of moving from this state, and  
27 who has the intention of returning to this state when away;

28 (B) a trust company that is organized under AS 06.25 and that  
29 has its principal place of business in this state; or

30 (C) a bank that is organized under AS 06.05, or a national  
31 banking association that is organized under 12 U.S.C. 21 - 216d, if the bank

1 or national banking association possesses and exercises trust powers and has  
2 its principal place of business in this state;

3 (2) "state jurisdiction provision" means a provision that the laws of this  
4 state govern the validity, construction, and administration of a trust and that the trust  
5 is subject to the jurisdiction of this state.

6 \* Sec. 6. AS 34.27.050(a) is amended to read:

7 (a) A nonvested property interest is invalid unless

8 (1) when the interest is created, it is certain to vest or terminate no later  
9 than 21 years after the death of an individual then alive; [OR]

10 (2) the interest either vests or terminates within 90 years after its  
11 creation; or

12 (3) the interest is in a trust and all or part of the income or  
13 principal of the trust may be distributed, in the discretion of the trustee, to a  
14 person who is living when the trust is created.

15 \* Sec. 7. AS 34.27.060 is amended to read:

16 Sec. 34.27.060. Reformation. Upon the petition of an interested person, a  
17 court shall reform a disposition in the manner that most closely approximates the  
18 transferor's manifested plan of distribution and is within the 90 years allowed by  
19 AS 34.27.050(a)(2), (b)(2), or (c)(2) if

20 (1) a nonvested property interest or a power of appointment becomes  
21 invalid under AS 34.27.050;

22 (2) a class gift is not but might become invalid under AS 34.27.050 and  
23 the time has arrived when the share of any class member is to take effect in possession  
24 or enjoyment; or

25 (3) a nonvested property interest that is not validated by  
26 AS 34.27.050(a)(1) or (3) can vest but not within 90 years after its creation.

27 \* Sec. 8. AS 34.40.010 is amended to read:

28 Sec. 34.40.010. Invalidity generally. Except as provided in AS 34.40.110,  
29 a [A] conveyance or assignment, in writing or otherwise, of an estate or interest in  
30 land, or in goods, or things in action, or of rents or profits issuing from them or a  
31 charge upon land, goods, or things in action, or upon the rents or profits from them,

1 made with the intent to hinder, delay, or defraud creditors or other persons of their  
2 lawful suits, damages, forfeitures, debts, or demands, or a bond or other evidence of  
3 debt given, action commenced, decree or judgment suffered, with the like intent, as  
4 against the persons so hindered, delayed, or defrauded is void.

5 \* Sec. 9. AS 34.40.110 is repealed and reenacted to read:

6 **Sec. 34.40.110. Restricting transfers of trust interests.** (a) A person who  
7 in writing transfers property in trust may provide that the interest of a beneficiary of  
8 the trust may not be either voluntarily or involuntarily transferred before payment or  
9 delivery of the interest to the beneficiary by the trustee. In this subsection,

10 (1) "property" includes real property, personal property, and interests  
11 in real or personal property;

12 (2) "transfer" means any form of transfer, including deed, conveyance,  
13 or assignment.

14 (b) If a trust contains a transfer restriction allowed under (a) of this section,  
15 the transfer restriction prevents a creditor existing when the trust is created, a person  
16 who subsequently becomes a creditor, or another person from satisfying a claim out  
17 of the beneficiary's interest in the trust, unless the

18 (1) transfer was intended in whole or in part to hinder, delay, or  
19 defraud creditors or other persons under AS 34.40.010;

20 (2) trust provides that the settlor may revoke or terminate all or part  
21 of the trust without the consent of a person who has a substantial beneficial interest  
22 in the trust and the interest would be adversely affected by the exercise of the power  
23 held by the settlor to revoke or terminate all or part of the trust; in this paragraph,  
24 "revoke or terminate" does not include a power to veto a distribution from the trust,  
25 a testamentary special power of appointment or similar power, or the right to receive  
26 a distribution of income, corpus, or both in the discretion of a person, including a  
27 trustee, other than the settlor;

28 (3) trust requires that all or a part of the trust's income or principal, or  
29 both, must be distributed to the settlor; or

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

1 settlor.

2 (c) The satisfaction of a claim under (b)(1) - (4) of this section is limited to  
3 that part of the trust to which (b)(1) - (4) of this section applies.

4 (d) Notwithstanding a provision in the trust instrument to the contrary, when  
5 a distribution is declared by and payable from a settlement trust, the child support  
6 enforcement agency established under AS 25.27 may enforce the support obligations  
7 of a beneficiary, including a trust settlor who is a beneficiary, of the trust against the  
8 portion of the distribution to which the beneficiary is entitled.

9 (e) In this section, "settlor" means a person who transfers real property,  
10 personal property, or an interest in real or personal property, in trust.

11 \* Sec. 10. This Act does not apply to a trust unless the trust is created on or after the  
12 effective date of this Act.

13 \* Sec. 11. This Act takes effect immediately under AS 01.10.070(c).