available to accept the **covered person** [ENROLLEE].

(e) Except as provided in this subsection, a managed care entity that offers a [GROUP] managed care plan shall permit **a covered person** [AN ENROLLEE] to receive medically necessary or appropriate specialty care, subject to appropriate referral procedures, from any qualified participating health care provider that is available to accept the individual for medical care. This subsection does not apply to specialty care if the managed care entity clearly informs **covered persons** [ENROLLEES] of the limitations on choice of participating health care providers with respect to medical care. In this subsection,

(1) "appropriate referral procedures" means procedures for referring patients to other health care providers as set out in the applicable member contract and as described under (a) of this section;

(2) "specialty care" means care provided by a health care provider with training and experience in treating a particular injury, illness, or condition.

(f) If a contract between a health care provider and a managed care entity is terminated, a covered person may continue to be treated by that health care provider as provided in this subsection. If a covered person is pregnant or being actively treated by a provider on the date of the termination of the contract between that provider and the managed care entity, the covered person may continue to receive **medical** [HEALTH] care service from that provider as provided in this subsection, and the contract between the managed care entity and the provider shall remain in force with respect to the continuing treatment. The covered person shall be treated for the purposes of benefit determination or claim payment as if the provider were still under contract with the managed care entity. However, treatment is required to continue only while the [GROUP] managed care plan remains in effect and

(1) for the period that is the longest of the following:

(A) the end of the current plan year;

(B) up to 90 days after the termination date, if the event triggering the right to continuing treatment is part of an ongoing course of treatment; [OR]

(C) through completion of postpartum care, if the covered

person is pregnant on the date of termination; or

(2) until the end of the medically necessary treatment for the condition, disease, illness, or injury if the person has a terminal condition, disease, illness, or injury; in this paragraph, "terminal" means a life expectancy of less than one year.

(g) The requirements of this section do not apply to **medical** [HEALTH] care services covered by Medicaid.

* **Sec. 7.** AS 21.07.040(c) is amended to read:

(c) Nothing in this section may be construed to prohibit the exchange of medical information between and among health care providers of an applicant or a person currently or formerly covered by a managed care plan for purposes of providing **medical** [HEALTH] care services.

* **Sec. 8.** AS 21.07.050(a) is amended to read:

(a) A managed care entity offering **a managed care plan** [GROUP HEALTH INSURANCE COVERAGE] shall provide for an external appeal process that meets the requirements of this section in the case of an externally appealable decision for which a timely appeal is made in writing either by the managed care entity or by the **covered person** [ENROLLEE].

* **Sec. 9.** AS 21.07.050(c) is amended to read:

(c) Except as provided in this subsection, the external appeal process shall be conducted under a contract between the managed care entity and one or more external appeal agencies that have qualified under AS 21.07.060. The managed care entity shall provide

(1) that the selection process among external appeal agencies qualifying under AS 21.07.060 does not create any incentives for external appeal agencies to make a decision in a biased manner;

(2) for auditing a sample of decisions by external appeal agencies to **ensure** [ASSURE] that decisions are not made in a biased manner; and

(3) that all costs of the process, except those incurred by the **covered person** [ENROLLEE] or treating professional in support of the appeal, shall be paid by the managed care entity and not by the **covered person** [ENROLLEE].

* **Sec. 10.** AS 21.07.050(d) is amended to read:

(d) An external appeal process must include at least the following:

(1) a fair, de novo determination based on coverage provided by the plan and by applying terms as defined by the plan; however, nothing in this paragraph may be construed as providing for coverage of items and services for which benefits are excluded under the plan or coverage;

(2) an external appeal agency shall determine whether the managed care entity's decision is (A) in accordance with the medical needs of the patient involved, as determined by the managed care entity, taking into account, as of the time of the managed care entity's decision, the patient's medical needs and any relevant and reliable evidence the agency obtains under (3) of this subsection, and (B) in accordance with the scope of the covered benefits under the plan; if the agency determines the decision complies with this paragraph, the agency shall affirm the decision, and, to the extent that the agency determines the decision is not in accordance with this paragraph, the agency shall reverse or modify the decision;

(3) the external appeal agency shall include among the evidence taken into consideration

(A) the decision made by the managed care entity upon internal appeal under AS 21.07.020 and any guidelines or standards used by the managed care entity in reaching a decision;

(B) any personal health and medical information supplied with respect to the individual whose denial of claim for benefits has been appealed;

(C) the opinion of the individual's treating physician or health care provider; and

(D) the [GROUP] managed care plan;

(4) the external appeal agency may also take into consideration the following evidence:

(A) the results of studies that meet professionally recognized standards of validity and replicability or that have been published in peer-reviewed journals;

(B) the results of professional consensus conferences conducted or financed in whole or in part by one or more government

agencies;

(C) practice and treatment guidelines prepared or financed in whole or in part by government agencies;

(D) government-issued coverage and treatment policies;

(E) generally accepted principles of professional medical practice;

(F) to the extent that the agency determines it to be free of any conflict of interest, the opinions of individuals who are qualified as experts in one or more fields of health care that are directly related to the matters under appeal;

(G) to the extent that the agency determines it to be free of any conflict of interest, the results of peer reviews conducted by the managed care entity involved;

(H) the community standard of care; and

(I) anomalous utilization patterns;

(5) an external appeal agency shall determine

(A) whether a denial of a claim for benefits is an externally appealable decision;

(B) whether an externally appealable decision involves an expedited appeal, and

(C) for purposes of initiating an external review, whether the internal appeal process has been completed;

(6) a party to an externally appealable decision may submit evidence related to the issues in dispute;

(7) the managed care entity involved shall provide the external appeal agency with access to information and to provisions of the plan or health insurance coverage relating to the matter of the externally appealable decision, as determined by the external appeal agency; and

(8) a determination by the external appeal agency on the decision must

(A) be made orally or in writing and, if it is made orally, shall be supplied to the parties in writing as soon as possible;

(B) be made in accordance with the medical exigencies of the case involved, but in no event later than 21 working days after the appeal is filed, or, in the case of an expedited appeal, 72 hours after the time of requesting an external appeal of the managed care entity's decision;

(C) state, in layperson's language, the basis for the determination, including, if relevant, any basis in the terms or conditions of the plan or coverage; and

(D) inform the **covered person** [ENROLLEE] of the individual's rights, including any time limits, to seek further review by the courts of the external appeal determination.

*** Sec. 11.** AS 21.07.050(h) is amended to read:

(h) In this section, "externally appealable decision"

(1) means

(A) a denial of a claim for benefits that is based in whole or in part on a decision that the item or service is not medically necessary or appropriate or is investigational or experimental, or in which the decision as to whether a benefit is covered involves a medical judgment; or

(B) a denial that is based on a failure to meet an applicable deadline for internal appeal under AS 21.07.020;

(2) does not include a decision based on specific exclusions or express limitations on the amount, duration, or scope of coverage that do not involve medical judgment, or a decision regarding whether an individual is a participant, beneficiary, or **other covered person** [ENROLLEE] under the plan or coverage.

*** Sec. 12.** AS 21.07.060(a) is amended to read:

(a) An external appeal agency qualifies to consider external appeals if, with respect to a **managed care** [GROUP HEALTH] plan, the agency is certified by a qualified private standard-setting organization approved by the director or by a health insurer operating in this state as meeting the requirements imposed under (b) of this section.

*** Sec. 13.** AS 21.07.060(b) is amended to read:

(b) An external appeal agency is qualified to consider appeals of **managed**

care [GROUP HEALTH] plan health care decisions if the agency meets the following requirements:

(1) the agency meets the independence requirements of this section;

(2) the agency conducts external appeal activities through a panel of two clinical peers, unless otherwise agreed to by both parties; and

(3) the agency has sufficient medical, legal, and other expertise and sufficient staffing to conduct external appeal activities for the managed care entity on a timely basis consistent with this chapter.

* **Sec. 14.** AS 21.07.060(d) is amended to read:

(d) In this section, "related party" means

(1) with respect to

(A) a **managed care** [GROUP HEALTH] plan [OR HEALTH INSURANCE COVERACE OFFERED IN CONNECTION WITH A PLAN], the plan or the insurer offering the coverage; or

(B) individual health insurance coverage, the insurer offering the coverage, or any plan sponsor, fiduciary, officer, director, or management employee of the plan or issuer;

(2) the health care professional that provided the health care involved in the coverage decision;

(3) the institution at which the health care involved in the coverage decision is provided;

(4) the manufacturer of any drug or other item that was included in the health care involved in the coverage decision;

(5) the covered person; or

(6) any other party that, under the regulations that the director may prescribe, is determined by the director to have a substantial interest in the coverage decision.

* **Sec. 15.** AS 21.07.080 is amended to read:

Sec. 21.07.080. Religious nonmedical providers. This chapter may not be construed to

(1) restrict or limit the right of a managed care entity to include

[HEALTH CARE] services provided by a religious nonmedical provider as **medical** [HEALTH] care services covered by the managed care plan;

(2) require a managed care entity, when determining coverage for [HEALTH CARE] services provided by a religious nonmedical provider, to

(A) apply medically based eligibility standards;

(B) use health care providers to determine access by a covered person;

(C) use health care providers in making a decision on an internal or external appeal; or

(D) require a covered person to be examined by a health care provider as a condition of coverage; or

(3) require a managed care plan to exclude coverage for [HEALTH CARE] services provided by a religious nonmedical provider because the religious nonmedical provider is not providing medical or other data required from a health care provider if the medical or other data is inconsistent with the religious nonmedical treatment or nursing care being provided.

* **Sec. 16.** AS 21.07.250(1) is amended to read:

(1) "clinical peer" means a health care provider who is licensed to provide the same or similar **medical** [HEALTH] care services and who is trained in the specialty or subspecialty applicable to the **medical** [HEALTH] care services that are provided;

* **Sec. 17.** AS 21.07.250(3) is amended to read:

(3) "emergency room services" means **medical** [HEALTH] care services provided by a hospital or other emergency facility after the sudden onset of a medical condition that manifests itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention would reasonably be expected by a prudent person who possesses an average knowledge of health and medicine to result in

(A) the placing of the person's health in serious jeopardy;

(B) a serious impairment to bodily functions; or

(C) a serious dysfunction of a bodily organ or part;

* **Sec. 18.** AS 21.07.250(5) is amended to read:

(5) "health care provider" means a person licensed in this state or another state of the United States to provide **medical** [HEALTH] care services;

* **Sec. 19.** AS 21.07.250(10) is amended to read:

(10) "managed care entity" means an insurer, a hospital or medical service corporation, a health maintenance organization, an employer or employee health care organization, a managed care contractor that operates a [GROUP] managed care plan, or a person who has a financial interest in **medical** [HEALTH] care services provided to an individual;

* **Sec. 20.** AS 21.07.250(12) is amended to read:

(12) "participating health care provider" means a health care provider who has entered into an agreement with a managed care entity to provide services or supplies to a patient covered by a [GROUP] managed care plan;

* **Sec. 21.** AS 21.07.250(13) is amended to read:

(13) "primary care provider" means a health care provider who provides general **medical** [HEALTH] care services and does not specialize in treating a single injury, illness, or condition or who provides obstetrical, gynecological, or pediatric **medical** [HEALTH] care services;

* **Sec. 22.** AS 21.07.250(15) is amended to read:

(15) "religious nonmedical provider" means a person who [DOES NOT PROVIDE MEDICAL CARE, BUT WHO] provides only religious nonmedical treatment or nursing care for an illness or injury;

* **Sec. 23.** AS 21.07.250(16) is amended to read:

(16) "utilization review" means a system of reviewing the medical necessity, appropriateness, or quality of **medical** [HEALTH] care services and supplies provided under a [GROUP] managed care plan using specified guidelines, including preadmission certification, the application of practice guidelines, continued stay review, discharge planning, preauthorization of ambulatory procedures, and retrospective review;

* **Sec. 24.** AS 21.07.250 is amended by adding new paragraphs to read:

(18) "managed care plan" or "plan" means an individual or group

health insurance plan operated by a managed care entity;

(19) "medical care" has the meaning given in AS 21.90.900.

* **Sec. 25.** AS 21.09 is amended by adding a new section to read:

Sec. 21.09.207. Statement of actuarial opinion and supporting documentation. (a) An insurer authorized to write property, casualty, surety, marine, wet marine, transportation, or mortgage guaranty insurance shall file annually with the director a statement of actuarial opinion, unless the insurer is exempt or otherwise not required to file an opinion in the insurer's state of domicile. The statement of actuarial opinion must

(1) be issued by an actuary appointed by the insurer;

(2) follow, for a given year, the reporting format and requirements specified in the annual financial statement instructions most recently approved by the National Association of Insurance Commissioners; and

(3) be supplemented with additional information as may be required by the director.

(b) A domestic insurer that is required to file a statement under (a) of this section shall file annually with the director an actuarial opinion summary written by the insurer's appointed actuary. A foreign insurer that is required to file a statement under (a) of this section shall, on written request of the director, file an actuarial opinion summary with the director. The actuarial opinion summary must follow, for a given year, the reporting format and requirements specified in the annual financial statement instructions most recently approved by the National Association of Insurance Commissioners and must be supplemented with additional information as required by the director.

(c) An insurer that is required to file a statement under (a) of this section shall prepare an actuarial report and work papers to support each statement of actuarial opinion as required by the annual financial statement instructions most recently approved by the National Association of Insurance Commissioners. If an insurer fails to provide a supporting actuarial report or work papers at the request of the director, or the director determines that the supporting actuarial report or work papers provided by the insurer are incomplete or otherwise unacceptable to the director, the director may

engage a qualified actuary at the expense of the insurer to review the statement of actuarial opinion and the basis for the statement and to prepare the supporting actuarial report or work papers.

(d) An actuarial report, actuarial opinion summary, or work paper provided in support of a statement of actuarial opinion and any other information provided by an insurer to the director in connection with the statement of actuarial opinion, the actuarial opinion summary, or the actuarial report issued under this section is confidential; however, nothing in this section limits the director's authority to release the documents to a national professional organization that disciplines actuaries that is recognized by the director, as long as the material is required for the purpose of professional disciplinary proceedings and the national professional organization establishes procedures satisfactory to the director for preserving the confidentiality of the documents.

(e) In this section,

(1) "appointed actuary" means a qualified actuary who is appointed or retained by a company to provide a statement of actuarial opinion and the related actuarial opinion summary, actuarial report, and work papers;

(2) "qualified actuary" means a member in good standing of the

(A) Casualty Actuarial Society; or

(B) American Academy of Actuaries who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries.

* **Sec. 26.** AS 21.27.020(c) is amended to read:

(c) To qualify for issuance or renewal of a license as a firm insurance producer, a firm managing general agent, a firm reinsurance intermediary broker, a firm reinsurance intermediary manager, a firm surplus lines broker, or a firm independent adjuster, an applicant or licensee shall

(1) comply with (b)(4) and (5) of this section;

(2) maintain a lawfully established place of business in this state, except when licensed as a nonresident under AS 21.27.270;

(3) [DISCLOSE TO THE DIRECTOR ALL OWNERS, OFFICERS,

DIRECTORS, OR PARTNERS OF THE FIRM;

(4)] designate one or more compliance officers for the firm;

(4) [(5)] provide to the director documents necessary to verify the information contained in or made in connection with the application; and

(5) [(6)] notify the director, in writing, within 30 days of a change in the firm's compliance officer or of the termination of employment of an individual in the firm licensee.

*** Sec. 27.** AS 21.27.020(g) is amended to read:

(g) The director shall establish a continuing education advisory committee. The committee consists of one representative from the division of insurance, one life and health insurance representative, [ONE LIMITED LINES INSURANCE REPRESENTATIVE,] one property and casualty insurance representative, and one independent insurance adjuster representative. Each committee representative from the insurance industry must possess a valid, current insurance license issued in this state for the field to be represented.

*** Sec. 28.** AS 21.27.040 is amended by adding a new subsection to read:

(f) If, through inaction, an applicant fails to complete the application process, the applicant's application filed with the director under (a) of this section is considered withdrawn. The withdrawal becomes effective 120 days after the filing of the application. If the director has initiated administrative action with respect to an application, withdrawal becomes effective at the time and on the conditions required by an order issued under this chapter.

*** Sec. 29.** AS 21.27.620(a) is amended to read:

(a) An insurer may not transact business with a managing general agent unless

(1) the insurer holds a certificate of authority in this state;

(2) the managing general agent is licensed under this chapter or **has filed a certification with the director certifying that** [, WHEN] the managing general agent is operating only for a foreign insurer **and** [,] is licensed by its resident insurance regulator in a state that the director has determined has enacted provisions substantially similar to those contained in this chapter and the state is accredited by the National Association of Insurance Commissioners;

(3) a written contract is in effect between the parties that establishes the responsibilities of each party, indicates both party's share of responsibility for a particular function, and specifies the division of responsibilities;

(4) a written contract between an insurer and a managing general agent contains the following provisions:

(A) the insurer may terminate the contract for cause upon written notice sent by certified mail to the managing general agent and may suspend the underwriting authority of the managing general agent during a dispute regarding the cause for termination;

(B) the managing general agent shall render accounts to the insurer detailing all transactions and remit all money due under the contract to the insurer at least monthly;

(C) all money collected for the account of an insurer shall be held by the managing general agent as a fiduciary;

(D) all payments on behalf of the insurer shall be held by the managing general agent as a fiduciary;

(E) the managing general agent may not retain more than three **months'** [MONTHS] estimated claims payments and allocated loss adjustment expenses;

(F) the managing general agent shall maintain separate records for each insurer in a form usable by the insurer; the insurer or its authorized representative shall have the right to audit and the right to copy all accounts and records related to the insurer's business; the director, in addition to authority granted in this title, shall have access to all books, bank accounts, and records of the managing general agent in a form usable to the director;

(G) the contract may not be assigned in whole or in part by the managing general agent;

(H) if the contract permits the managing general agent to do underwriting, the contract must include the following:

(i) the managing general agent's maximum annual premium volume;

(ii) the rating system and basis of the rates to be charged;

(iii) the types of risks that may be written;

(iv) maximum limits of liability;

(v) applicable exclusions;

(vi) territorial limitations;

(vii) policy cancellation provisions;

(viii) the maximum policy term; and

(ix) that the insurer shall have the right to cancel or not renew a policy of insurance subject to applicable state law;

(I) if the contract permits the managing general agent to settle claims on behalf of the insurer, the contract must include the following:

(i) written settlement authority must be provided by the insurer and may be terminated for cause upon the insurer's written notice sent by certified mail to the managing general agent or upon the termination of the contract, but the insurer may suspend the settlement authority during a dispute regarding the cause of termination;

(ii) claims shall be reported to the insurer within 30 days;

(iii) a copy of the claim file shall be sent to the insurer upon request or as soon as it becomes known that the claim has the potential to exceed an amount determined by the director or exceeds the limit set by the insurer, whichever is less, involves a coverage dispute, may exceed the managing general agent's claims settlement authority, is open for more than six months, involves extra contractual allegations, or is closed by payment in excess of an amount set by the director or an amount set by the insurer, whichever is less;

(iv) each party shall comply with unfair claims settlement statutes and regulations;

(v) transmission of electronic data at least monthly if electronic claim files are in existence; and

(vi) claim files shall be the property of both the insurer and managing general agent: upon an order of liquidation of the insurer, the files shall become the sole property of the insurer or the insurer's estate; the managing general agent shall have reasonable access to and the right to copy the files on a timely basis;

(J) if the contract provides for sharing of interim profits by the managing general agent and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves, by controlling claim payments, or in any other manner, interim profits may not be paid to the managing general agent until

(i) one year after they are earned for property insurance business and five years after they are earned on casualty business;

(ii) a later period established by the director for specified kinds or classes of insurance: and

(iii) not until the profits have been verified under (d) of this section;

(K) [IF] the insurer **shall provide** [IS DOMICILED IN THIS STATE OR THE MANAGING GENERAL AGENT HAS A PLACE OF BUSINESS IN THIS STATE,] a copy of the contract **to** [MUST BE FILED WITH AND APPROVED BY] the director **within** [AT LEAST] 30 days **after entering into a contract with a** [BEFORE THE] managing general agent [TRANSACTS BUSINESS ON BEHALF OF THE INSURER; IF THE INSURER IS NOT DOMICILED IN THIS STATE OR THE MANAGING GENERAL AGENT TRANSACTS BUSINESS RELATIVE TO A SUBJECT RESIDENT, LOCATED, OR TO BE PERFORMED IN THIS STATE FROM A PLACE OF BUSINESS NOT PHYSICALLY LOCATED IN THIS STATE, A COPY OF THE CONTRACT REQUIRED IN THIS SECTION MUST BE FILED WITH AND APPROVED BY THE DIRECTOR AT LEAST 30 DAYS BEFORE THE MANAGING GENERAL AGENT TRANSACTS BUSINESS ON BEHALF OF THE INSURER IN THIS STATE OR RELATIVE TO A SUBJECT RESIDENT, LOCATED, OR TO BE

PERFORMED IN THIS STATE IF THE INSURER OR THE MANAGING GENERAL AGENT ARE DOMICILED IN A STATE NOT ACCREDITED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS]; and

(L) [IF THE CONTRACT IS NOT REQUIRED TO BE APPROVED IN ADVANCE BY THE DIRECTOR] the insurer shall provide written notification to the director within 30 days of the [ENTRY INTO OR] termination of a contract with a managing general agent [; THE NOTICE MUST INCLUDE A STATEMENT OF DUTIES TO BE PERFORMED BY THE MANAGING GENERAL AGENT ON BEHALF OF THE INSURER. THE KINDS AND CLASSES OF INSURANCE FOR WHICH THE MANAGING GENERAL AGENT HAS AUTHORIZATION TO ACT, AND OTHER INFORMATION REQUIRED BY THE DIRECTOR].

*** Sec. 30.** AS 21.27.650(a) is amended to read:

(a) An insurer may not transact business with a third-party administrator unless

(1) the insurer holds a certificate of authority in this state if required under this title;

(2) the third-party administrator is registered under this chapter or the third-party administrator has filed a certification with the director certifying that the third-party administrator is operating only for a foreign insurer other than a self-funded multiple employer welfare arrangement regulated under AS 21.85 and is registered as a third-party administrator by the third-party administrator's resident insurance regulator in a state that the director has determined has enacted provisions substantially similar to those contained in AS 21.27.630 - 21.27.650 and that is accredited by the National Association of Insurance Commissioners;

(3) the third-party administrator provides the director on January 1, April 1, July 1, and October 1 of each year

(A) a list of **persons who supervise or have responsibility over personnel performing administrative functions, including claims administration and payment, marketing administrative functions,**

premium accounting, premium billing, coverage verification, underwriting, or certificate issuance [CURRENT EMPLOYEES, IDENTIFYING THOSE TRANSACTING BUSINESS IN THIS STATE OR] upon a subject resident, located, or to be performed in this state;

(B) a list of current insurers under contract; and

(C) other information the director may require;

(4) a written contract is in effect between the parties that establishes the responsibilities of each party, indicates both parties' share of responsibility for a particular function, and specifies the division of responsibilities;

(5) there is in effect a written contract between the insurer and third-party administrator that contains the following provisions:

(A) the insurer may terminate the contract for cause upon written notice sent by certified mail to the third-party administrator and may suspend the underwriting authority of the third-party administrator during a dispute regarding the cause for termination; but the insurer must fulfil all lawful obligations with respect to policies affected by the written agreement, regardless of any dispute between the insurer and the third-party administrator;

(B) the third-party administrator shall render accounts to the insurer detailing all transactions and remit all money due under the contract to the insurer at least monthly;

(C) all money collected for the account of an insurer shall be held by the third-party administrator as a fiduciary;

(D) all payments on behalf of the insurer shall be held by the third-party administrator as a fiduciary;

(E) the third-party administrator may not retain more than three **months'** [MONTHS] estimated claims payments and allocated loss adjustment expenses;

(F) the third-party administrator shall maintain separate records for each insurer in a form usable by the insurer; the insurer or its authorized representative shall have the right to audit and the right to copy all accounts and records related to the insurer's business; the director, in addition to other

authority granted in this title, shall have access to all books, bank accounts, and records of the third-party administrator in a form usable to the director; any trade secrets contained in books and records reviewed by the director, including the identity and addresses of policyholders and certificate holders, shall be kept confidential, except that the director may use the information in a proceeding instituted against the third-party administrator or the insurer;

(G) the contract may not be assigned in whole or in part by the third-party administrator;

(H) if the contract permits the third-party administrator to do underwriting, the contract must include the following:

(i) the third-party administrator's maximum annual premium volume;

(ii) the rating system and basis of the rates to be charged;

(iii) the types of risks that may be written;

(iv) maximum limits of liability;

(v) applicable exclusions;

(vi) territorial limitations;

(vii) policy cancellation provisions;

(viii) the maximum policy term; and

(ix) that the insurer shall have the right to cancel or not renew a policy of insurance subject to applicable state law;

(I) if the contract permits the third-party administrator to administer claims on behalf of the insurer, the contract must include the following:

(i) written settlement authority must be provided by the insurer and may be terminated for cause upon the insurer's written notice sent by certified mail to the third-party administrator or upon the termination of the contract, but the insurer may suspend the settlement authority during a dispute regarding the cause of termination;

(ii) claims shall be reported to the insurer within 30

days;

(iii) a copy of the claim file shall be sent to the insurer upon request or as soon as it becomes known that the claim has the potential to exceed an amount determined by the director or exceeds the limit set by the insurer, whichever is less, involves a coverage dispute, may exceed the third-party administrator's claims settlement authority, is open for more than six months, involves extra contractual allegations, or is closed by payment in excess of an amount set by the director or an amount set by the insurer, whichever is less;

(iv) each party to the contract shall comply with unfair claims settlement statutes and regulations;

(v) transmission of electronic data must occur at least monthly if electronic claim files are in existence; and

(vi) claim files shall be the sole property of the insurer; upon an order of liquidation of the insurer, the third-party administrator shall have reasonable access to and the right to copy the files on a timely basis; and

(J) the contract may not provide for commissions, fees, or charges contingent upon savings obtained in the adjustment, settlement, and payment of losses covered by the insurer's obligations; but a third-party administrator may receive performance-based compensation for providing hospital or other auditing services or may receive compensation based on premiums or charges collected or the number of claims paid or processed.

* **Sec. 31.** AS 21.34.050 is repealed and reenacted to read:

Sec. 21.34.050. Listing eligible surplus lines insurers. (a) In addition to meeting the requirements of AS 21.34.040, a nonadmitted insurer shall be considered an eligible surplus lines insurer if it pays fees required by regulation and appears on the most recent list of eligible surplus lines insurers published by the director. The list is to be published at least semi-annually by

(1) posting the list on the division's Internet website; and

(2) providing a copy of the list to a person on request to the division.

(b) Nothing in this section requires the director to place or maintain the name of a nonadmitted insurer on the list of eligible surplus lines insurers.

(c) A nonadmitted insurer shall be removed from the list of eligible surplus lines insurers if the nonadmitted insurer fails to pay, before July 1 of each year, the fee authorized under this section or fails to meet the requirement under AS 21.34.040(d). However, the director may reinstate a nonadmitted insurer on the list of eligible surplus lines insurers if

(1) the nonadmitted insurer inadvertently failed to pay the fee or meet the requirement under AS 21.34.040(d);

(2) the nonadmitted insurer has remedied the reason for removal from the list; and

(3) the nonadmitted insurer pays a late fee as established by regulation.

* **Sec. 32.** AS 21.36 is amended by adding a new section to read:

Sec. 21.36.052. Suitability. (a) A person may not recommend to a consumer the purchase, sale, or replacement of a life or health insurance policy or annuity contract, or any rider, endorsement, or amendment to the policy or annuity contract, without reasonable grounds to believe that the recommendation or transaction is suitable for the consumer based on reasonable inquiry concerning the consumer's insurance objectives, financial situation and needs, age, and other relevant information known by the person.

(b) The director may adopt regulations to implement this section.

* **Sec. 33.** AS 21.36.090(d) is amended to read:

(d) Except to the extent necessary to comply with AS 21.42.365 and AS 21.56, a person may not practice or permit unfair discrimination against a person who provides a service covered under a [GROUP] health insurance policy that extends coverage on an expense incurred basis, or under a [GROUP] service or indemnity type contract issued by a health maintenance organization or a nonprofit corporation, if the service is within the scope of the provider's occupational license. In this subsection, "provider" means a state licensed physician, physician assistant, dentist, osteopath, optometrist, chiropractor, nurse midwife, advanced nurse practitioner, naturopath, physical therapist, occupational therapist, marital and family therapist, psychologist,

delete if passed in Senate Finance

psychological associate, licensed clinical social worker, or certified direct-entry midwife. deleted in FIN

* **Sec. 34.** AS 21.36 is amended by adding a new section to read:

Sec. 21.36.128. Prompt payment of health care insurance claims. (a) A health care insurer shall pay or deny indemnities under a health care insurance policy, whether or not services were provided by a participating provider, within 30 calendar days after the insurer or a third-party administrator under contract with the insurer receives a clean claim.

(b) If a health care insurer does not pay or denies a health care insurance claim, the insurer shall give notice to the covered person, or to the provider of the medical care services or supplies if the claim was assigned or if the covered person elected direct payment under AS 21.54.120(a)(2) or AS 21.54.020(a), of the basis for denial or the specific information that is needed for the insurer to adjudicate the claim. The health care insurer shall provide the notice required under this subsection within 30 calendar days after the insurer or third-party administrator under contract with the insurer receives the claim.

(c) If a health care insurer does not provide the notice as required under (b) of this section, the claim is presumed a clean claim, and interest shall accrue at a rate of 15 percent annually beginning on the day following the day that the notice was due and continues to accrue until the date that the claim is paid.

(d) If a health care insurer provides the notice required under (b) of this section and requests specific information that is needed to adjudicate the claim, the insurer shall pay the claim not later than 15 calendar days after receipt of the information specified in the notice or within 30 days after receipt of the claim. If a health care insurer does not pay the claim within the time period required under this subsection, the claim is presumed to be a clean claim, interest at a rate of 15 percent accrues, and interest continues to accrue until the date the claim is paid.

(e) For purposes of (c) and (d) of this section, if only a portion of a claim is covered under the terms of the insurance policy, interest accrues based only on the portion of the claim that is covered.

(f) For the purposes of this section, a claim is considered paid on the day

payment is mailed or transmitted electronically.

(g) If interest is accrued on a claim under (c) or (d) of this section, a health care insurer may not include the amount of interest accrued in calculating an applicable limit on benefits payable to a covered person or other person claiming payments under the health insurance policy.

(h) A health care insurer is not required to pay interest due as a result of the application of (c) or (d) of this section if the amount of the interest is $1 or less.

(i) In this section,

(1) "clean claim" means a claim that does not have a defect or impropriety, including a lack of any required substantiating documentation, or a particular circumstance requiring special treatment that prevents timely payment of the claim;

(2) "health care insurer" has the meaning given in AS 21.54.500.

* **Sec. 35.** AS 21.36.260 is amended to read:

Sec. 21.36.260. Proof and method of mailing notice. If a notice is required from an insurer under this chapter, the insurer shall

(1) mail the notice by first class mail to the last known address of the insured [;] and

[(2)] obtain a certificate of mailing from the **United States** [U.S.] Postal Service**; or**

(2) transmit the notice by electronic means, to the last known electronic address of the intended recipient, if the insurer can obtain an electronic confirmation of receipt by the intended recipient.

* **Sec. 36.** AS 21.45.305(b) is amended to read:

(b) In the case of contracts issued on or after the operative date of this section as defined in (k) of this section, no contract of annuity, except as stated in (a) of this section, may be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions that, in the opinion of the director, are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract: (1) that, upon cessation of payment of considerations under a contract **or upon the written request of the contract holder**,

the company will grant a paid-up annuity benefit on a plan stipulated in the contract of **the** [SUCH] value [AS IS] specified in (d) - (g) and (i) of this section; (2) if a contract provides for a lump sum settlement at maturity, or at any other time, that, upon surrender of the contract at or before the commencement of any annuity payments, the company will pay, in lieu of any paid-up annuity benefit, a cash surrender benefit of **the** [SUCH] amount [AS IS] specified in (d), (e), (g) and (i) of this section; the company **may** [SHALL] reserve the right to defer the payment of that cash surrender benefit for a period **not to exceed** [OF] six months after demand for the payment with surrender of the contract **after making a written request that addresses the necessity and equitableness to all contract holders of the deferral and after receiving written approval by the director**; (3) a statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender, or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of those benefits; (4) a statement that any paid-up annuity, cash surrender, or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which those benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract, or any prior withdrawals from or partial surrenders of the contract. Notwithstanding the requirements of this subsection, any deferred annuity contract may provide that, if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid before that period would be less than $20 monthly, the company may, at its option, terminate the contract by payment in cash of the then present value of **the** [SUCH] portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by that payment shall be relieved of any further obligation under the contract.

* **Sec. 37.** AS 21.45.305(e) is amended to read:

(e) For contracts **that** [WHICH] provide cash surrender benefits, **the** [SUCH]

cash surrender benefits available before maturity may not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit **that** [WHICH] would be provided under the contract at maturity arising from considerations paid before the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract. The present value shall be calculated on the basis of an interest rate not more than one percent higher than the interest rate specified in the contract for accumulating [THE NET] considerations to determine the maturity value, **unless a higher rate is approved by the director under AS 21.42.120.** decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. In no event may any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under **those** [SUCH] contracts shall be at least equal to the cash surrender benefit.

* **Sec. 38.** AS 21.45.305(g) is repealed and reenacted to read:

(g) For the purpose of determining the benefits calculated under (e) and (f) of this section,

(1) the maturity date shall be the latest date for which election is permitted by the contract, but not later than the anniversary of the contract next following the annuitant's 70th birthday or the 10th anniversary of the contract, whichever is later;

(2) a surrender charge may not be imposed on or past the maturity date of the contract, except that, for annuity contracts with one or more renewable guaranteed periods, a new surrender charge schedule may be imposed for each new guaranteed period if

(A) the surrender charge is zero at the end of each guaranteed period and remains zero for at least 30 days;

(B) the contract provides for continuation of the contract without surrender charges, unless the contract holder specifically elects a new guaranteed period with a new surrender charge schedule; and

(C) the renewal period does not exceed 10 years and the

maturity date complies with (1) of this subsection;

(3) a contract that provides for flexible considerations may have separate surrender charge schedules associated with each consideration; for purposes of determining the maturity date, the 10th anniversary of the contract is determined separately for each consideration.

*** Sec. 39.** AS 21.51.120(a) is amended to read:

(a) A health insurance policy delivered or issued for delivery must contain the following provisions:

(1) indemnity for loss of life shall be paid according to the beneficiary designation and payment provisions contained in the policy that are effective at the time of payment; if a beneficiary has not been designated, indemnity shall be paid to the estate of the insured; accrued indemnities unpaid at the insured's death shall be paid to either the beneficiary or the estate, at the option of the insurer; all other indemnities shall be paid to the insured;

(2) the insurer may, and upon written request of the insured shall, [WITHIN 30 WORKING DAYS AFTER RECEIVING A PROOF OF LOSS STATEMENT,] pay indemnities for hospital, nursing, medical, dental, or surgical services directly to the provider of the services; an insurer who pays indemnities to an insured, after the insured has given the insurer written notice in the proof of loss statement of an election of direct payment of indemnities to the provider of the services, shall also pay indemnities to the provider of the services; this paragraph does not require that services be provided by a particular hospital or person;

(3) a covered person may revoke an election of direct payment of indemnities made under this subsection by giving written notice of the revocation to the insurer and to the provider of the services; the written notice of revocation given to the insurer must certify that the covered person has given written notice of revocation to the provider of the services; revocation of an election of direct payment is not effective until the notice of revocation is received by the insurer and the provider of the services;

(4) the right of the insured to request payment of indemnities for hospital, nursing, medical, dental, or surgical services directly to the provider of the

services or to another person may be transferred to a person who is not the insured by a qualified domestic relations order; rights under the qualified domestic relations order do not take effect until the order is received by the insurer; in this paragraph, "qualified domestic relations order" means an order or judgment in a divorce or dissolution action under AS 25.24 that designates a person to determine to whom indemnities for a named beneficiary should be paid under a health insurance policy.

* **Sec. 40.** AS 21.54.020 is repealed and reenacted to read:

Sec. 21.54.020. Direct payment to providers. (a) On the written request of a covered person, a health care insurer shall pay amounts due under a health insurance policy directly to the provider of medical care services. A health insurance policy may not contain a provision that requires services be provided by a particular hospital or person, except as applicable to a managed care plan under AS 21.07 or a health maintenance organization under AS 21.86. If a health care insurer makes a claim payment to the covered person after the covered person has given written notice electing direct payment to the provider of the service, the health care insurer shall also pay that amount to the provider of the service.

(b) A covered person may revoke an election of direct claim payment made under (a) of this section by giving written notice of the revocation to the health care insurer and to the provider of the service. The written notice of revocation to the health care insurer must certify that the covered person has given written notice of revocation to the provider of the service. Revocation of direct claim payment is not effective until the later of the date the health care insurer received the notice of revocation or the date the provider of the service received the revocation.

(c) The right of the covered person to request payment of indemnities under a blanket health insurance policy directly to the provider of the services or to another person may be transferred by a qualified domestic relations order to a person who is not the covered person. Rights under the qualified domestic relations order do not take effect until the order is received by the health care insurer. In this subsection, "qualified domestic relations order" means an order or judgment in a divorce or dissolution action under AS 25.24 that designates a person to determine to whom indemnities for a covered person should be paid under a health insurance policy.

(d) This section does not prohibit a health care insurer from recovering an amount mistakenly paid to a provider or a covered person.

* **Sec. 41.** AS 21.54 is amended by adding a new section to read:

Sec. 21.54.151. Mental health benefits. (a) Except as provided in (d) of this section, a health care insurance plan sold in the large employer group market that provides both medical and surgical benefits and mental health benefits shall meet the following requirements:

(1) if the plan does not include an aggregate lifetime limit on substantially all medical and surgical benefits, the plan may not provide for an aggregate lifetime limit on mental health benefits;

(2) if the plan includes an aggregate lifetime limit on substantially all medical and surgical benefits, the plan must

(A) include the mental health benefits within the aggregate lifetime limit and may not distinguish in the application of the limit between medical and surgical benefits and mental health benefits; or

(B) provide an aggregate lifetime limit for mental health benefits that is not less than the aggregate lifetime limit for medical and surgical benefits;

(3) if the plan includes different aggregate lifetime limits or none on different categories of medical and surgical benefits, the plan must provide for aggregate lifetime limits on mental health benefits consistent with federal law;

(4) if the plan does not include an annual limit on substantially all medical and surgical benefits, the plan may not provide for an annual limit on mental health benefits;

(5) if the plan includes an annual limit on substantially all medical and surgical benefits, the plan must

(A) include the mental health benefits with the annual limit and may not distinguish in the application of the limit between medical and surgical benefits and mental health benefits; or

(B) provide an annual limit for mental health benefits that is not less than the annual limit for medical and surgical benefits; and

(6) if the plan includes different annual limits or none on different categories of medical and surgical benefits, the plan must provide for annual limits on mental health benefits consistent with federal law.

(b) Except as provided otherwise in this title, a health care insurance plan is not required to provide mental health benefits.

(c) Except as otherwise provided in this title, this section does not affect the terms and conditions relating to the amount, duration, or scope of mental health benefits under a health care insurance plan that provides mental health benefits, including cost sharing, limits on the number of visits or days of coverage, and requirements relating to medical necessity.

(d) This section does not apply if application of this section would result in an increase in the cost under the health care insurance plan of at least one percent.

*** Sec. 42.** AS 21.56.120(a) is amended to read:

(a) A premium rate for a health care insurance plan subject to this chapter is subject to the following provisions:

(1) the premium rate charged or offered during a rating period to small employers with similar case characteristics as determined by the insurer for the same or similar coverage may not vary from the applicable index rate by more than 35 percent of the applicable index rate;

(2) regarding a health care insurance plan issued before July 1, 1993, if premium rates charged or offered for the same or similar coverage under a health care insurance plan covering a small employer with similar case characteristics as determined by the insurer exceeds the applicable index rate by more than 35 percent, an increase in premium rates for a new rating period may not exceed the sum of

(A) a percentage change in the base premium rate measured from the first day of the prior rating period to the first day of the new rating period; plus

(B) adjustments due to changes in case characteristics or plan design of the small employer, as determined by the insurer;

(3) the percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

(A) the percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period; in the case of a health benefit plan into which the small employer insurer is no longer enrolling new small employers, the small employer insurer shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health care insurance plan into which the small employer insurer is actively enrolling new small employers;

(B) any adjustment, not to exceed 15 percent annually and adjusted pro rata for rating periods of less than one year, due to the claim experience, health status, or duration of coverage of the employees or dependents of the small employer as determined from the small employer insurer's rate manual; and

(C) any adjustment due to change in coverage or change in the case characteristics of the small employer, as determined from the small employer insurer's rate manual;

(4) adjustments in rates for claim experience, health status, and duration of coverage may not be charged to individual employees or dependents; any adjustment must be applied uniformly to the rates charged for all employees and dependents of the small employer;

(5) a premium rate for a health care insurance plan shall comply with the requirements of this section [NOTWITHSTANDING AN ASSESSMENT PAID OR PAYABLE BY SMALL EMPLOYER INSURERS UNDER AS 21.56.050(d)];

(6) a small employer insurer may use industry as a case characteristic in establishing premium rates, provided that the rate factor associated with an industry classification may not vary by more than 15 percent from the arithmetic average of the highest and lowest rate factors associated with all industry classifications;

(7) a small employer insurer shall

(A) apply rating factors, including case characteristics, consistently with respect to all small employers; rating factors must produce premiums for identical groups that differ only by amounts attributable to plan

design and do not reflect differences due to the nature of the groups assumed to select particular health care insurance plans; and

(B) treat all health care insurance plans issued or renewed in the same calendar month as having the same rating period;

(8) for the purposes of this subsection, a health care insurance plan that contains a restricted provider network may not be considered similar coverage to a health care insurance plan that does not use a restricted provider network if the restriction of benefits to network providers results in substantial differences in claim costs;

(9) a small employer insurer may not use case characteristics, other than age, sex, industry, geographic area, family composition, and group size without prior approval of the director.

*** Sec. 43.** AS 21.56.140(a) is amended to read:

(a) Except as provided under AS 21.56.160, a small employer insurer shall, as a condition of transacting business in this state with small employers, offer to small employers all health care insurance plans the small employer insurer actively markets to small employers in this state, including a basic health care insurance plan and a standard health care insurance plan **approved by the director**.

*** Sec. 44.** AS 21.56.140 is amended by adding a new subsection to read:

(i) The director may, by order, establish benefits, cost sharing levels, exclusions, and limitations for the basic and standard health care insurance plans offered under (a) of this section.

*** Sec. 45.** AS 21.66.480(8) is amended to read:

(8) "title insurance limited producer" means a person, firm, association, trust, corporation, cooperative, joint-stock company, or other legal entity authorized in writing by a title insurance company to solicit title insurance, collect premiums, determine insurability in accordance with the underwriting rules and standards prescribed by the title insurance company that the licensee represents, and issue policies in its behalf [; HOWEVER, THE TERM "TITLE INSURANCE LIMITED PRODUCER" DOES NOT INCLUDE OFFICERS AND SALARIED EMPLOYEES OF A TITLE INSURANCE COMPANY].

*** Sec. 46.** AS 21.90.900(17) is repealed and reenacted to read:

(17) "firm" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity;

*** Sec. 47.** AS 21.90.900(29) is repealed and reenacted to read:

(29) "managing general agent" means a person who

(A) manages all or part of the insurance business of an insurer, including the managing of a separate division, department, or underwriting office; and

(B) acts as an agent for an insurer, whether known as a managing general agent, manager, or other similar term, who, with or without the authority, separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five percent of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year together with the following activity related to the business produced, adjusts or pays claims over $10,000 a claim, or negotiates reinsurance on behalf of the insurer.

*** Sec. 48.** AS 25.24.160(b) is amended to read:

(b) If a judgment under this section distributes benefits to an alternate payee under AS 14.25, AS 21.51.120(a), **AS 21.54.020(c)** [AS 21.54.020(g)], 21.54.050(c), AS 22.25, AS 26.05.222 - 26.05.226, or AS 39.35, the judgment must meet the requirements of a qualified domestic relations order under the definition of that phrase that is applicable to those provisions.

*** Sec. 49.** AS 25.24.230(h) is amended to read:

(h) If a judgment under this section distributes benefits to an alternate payee under AS 14.25, AS 21.51.120(a), **AS 21.54.020(c)** [AS 21.54.020(g)], 21.54.050(c), AS 22.25, AS 26.05.222 - 26.05.226, or AS 39.35, the judgment must meet the requirements of a qualified domestic relations order under the definition of that phrase that is applicable to those provisions.

*** Sec. 50.** AS 21.07.250(4), 21.07.250(6); AS 21.27.900(10); AS 21.51.110; AS 21.56.010, 21.56.020, 21.56.030, 21.56.040, 21.56.050, 21.56.060, 21.56.070, 21.56.075, 21.56.080, 21.56.090, 21.56.100, 21.56.250(6), 21.56.250(9), 21.56.250(17), 21.56.250(19),

21.56.250(22), 21.56.250(24), and 21.56.250(25) are repealed.

*** Sec. 51.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. AS 21.45.305(g), as repealed and reenacted by sec. 38 of this Act, applies to annuity contracts issued on or after January 1, 2007.

*** Sec. 52.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: SMALL EMPLOYER HEALTH REINSURANCE ASSOCIATION. Notwithstanding the repeal of AS 21.56.010 - 21.56.100 by sec. 50 of this Act, the Small Employer Health Reinsurance Association shall continue to exist and operate for purposes of winding up the affairs of the association. The association shall be governed by the board of directors as it existed on June 30, 2006, and shall operate according to former AS 21.56.010 - 21.56.100, as they read on June 30, 2006, except that, beginning July 1, 2006, the association

(1) may not assume reinsurance on any new small employer groups or eligible employees or dependents of small employers;

(2) shall terminate reinsurance on each small employer group and each eligible employee or dependent of a small employer covered by the association on the first plan anniversary following July 1, 2006;

(3) shall continue to perform and carry out the provisions of former AS 21.56.010 - 21.56.100 as they read on June 30, 2006, with respect to each small employer group and eligible employee and dependent reinsured by the association until all administrative expenses and losses are paid;

(4) shall refund to small employer insurers any money remaining after all administrative expenses and losses are paid in the same proportion as the last assessment imposed by the association on member insurers;

(5) shall submit a final accounting to the director of the division of insurance for review and approval; and

(6) shall cease to operate on order of the director of the division of insurance finding that the affairs of the association have been concluded.

*** Sec. 53.** Sections 26 - 31 of this Act take effect immediately under AS 01.10.070(c).

*** Sec. 54.** Sections 25, 38, and 50 of this Act take effect January 1, 2007.

* **Sec. 55.** Except as provided in secs. 53 and 54 of this Act, this Act takes effect July 1, 2006.

SB

298

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: March 28, 2006 **FURTHER REFERRALS:** Judiciary

Date of Committee Action: April 3, 2006

The LABOR AND COMMERCE Committee considered: CSSB 298(JUD)

CS FOR SENATE BILL NO. 298(JUD) **TRUSTS: CHALLENGES; CLAIMS; LIABILITIES**

"An Act relating to loans from trust property; relating to a trustee's power to appoint the principal of a trust to another trust; relating to challenges to, claims against, and liabilities of trustees, beneficiaries, and creditors of trusts and of trusts and estates; relating to individual retirement accounts and plans; relating to certain trusts in divorce and dissolutions of marriage situations; and providing for an effective date."

Recommends it be replaced with [X] HCS or [ ] CS for CS SB 298 (L&C)

For Senate Bills with new title: [ ] *Technical Title* [ ] *New Title: HCR*_____ [X] Same Title [ ] New Title

[ ] attach amendments
[ ] add new referral to _____ Committee
[ ] Letter of Intent_____ Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LEG
LAW
I WF
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES *Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero

PREVIOUS FISCAL NOTES

List by Dept(s):	FN#	Fiscal	Indet.	Zero
CED	1			X

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
Harry J Crawford Jr	CRAWFORD			X	
	LYNN	X			
	KOTT	X			
	LEDOUX	X			
Rokey	ROKEBERG	X			
	GUTTENBERG			X	
Chair: Tom Anderson	ANDERSON	X			
Chair:					

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MEMORANDUM March 30, 2006

SUBJECT: Sectional summary of HCS CSSB 298( ) relating to trusts and estates (Work Order No. 24-LS1113\S)

TO: Senator Ralph Seekins
Attn: Brian

FROM: Theresa Bannister
Legislative Counsel

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

Section 1. Amends AS 13.36.109(21) to change that loans from trust property may be made to eligible beneficiaries and eligible third-party entities.

Section 2. Amends AS 13.36.157(a) to change the conditions under which a trustee may appoint the principal of a trust in favor of a trustee of another trust.

Section 3. Amends AS 13.36.157 to add two subsections. AS 13.36.157(d) provides that the governing instrument of a trust that receives principal from another trust may provide that the trust assets of the trust that receives the principal are to be held for the beneficiaries of the invaded trust on the same terms as the invaded trust. AS 13.36.157(e) defines terms for AS 13.36.157.

Section 4. Adds a new section to the probate chapter to coordinate a new provision that is added in bill sec. 11 (sec. 13.36.368(b)(3)). States that a trustee may take under sec. 13.36.368(b)(3) the action a personal representative may take under certain statutes in the probate chapter.

Section 5. Amends AS 13.36.100(a) to expand the application of the subsection to more than just final reports.

Section 6. Amends AS 13.36.100(b) to change, for the purpose of barring claims against trustees, the notice period, the notification requirements, and the claim deadline.

Section 7. Amends AS 13.36.100(c) to change the claim commencement period to six months after receipt of a report.

Section 8. Amends AS 13.36.100 to add a new subsection. Indicates what type of notice in a report is considered adequate to notify a beneficiary that there is a time limitation for filing a claim against the trustee.

Section 9. Amends AS 13.36.310(a). Adds that, except as provided in the new cross-reference, the assets of certain qualifying trusts are not subject to the claim of a creditor of the settlor or a creditor of a beneficiary on the grounds that the trust or a transfer to a trust avoids or defeats certain interests.

Section 10. Amends AS 13.36.310(b) to change a cross-reference in the section.

Section 11. Adds a new section that addresses claims against revocable trusts.

Section 12. Amends AS 34.40.110(b) to establish two exemptions (for eligible individual retirement account trusts) from the paragraphs that provide exceptions to the transfer restriction provision.

Section 13. Amends "eligible individual retirement account trust" for the previous bill section.

Section 14. Adds AS 34.40.110(m), a new subsection that provides that if a trust has a transfer restriction, the beneficiary's interest in the trust is not considered property subject to division (or part of a property division) in the event of the divorce or dissolution of the beneficiary's marriage. Limits the application of the section.

Section 15. Repeals the definition of "final report."

Section 16. States that AS 13.36.157(a), (d), and (e) apply to a trust that is created by a will or another instrument before, on, or after the effective date of these subsections.

Section 17. Gives two sections of the bill an immediate effective date.

If I may be of further assistance, please advise.

TLB:ljw
06-170.ljw

24-LS1113\S
Bannister
3/31/06

HOUSE CS FOR CS FOR SENATE BILL NO. 298( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS SEEKINS, Wilken, Bunde, Cowdery, Green, Stedman, Therriault, Wagoner, Dyson, Huggins, Ben Stevens, Gary Stevens

A BILL

FOR AN ACT ENTITLED

"An Act relating to loans from trust property; relating to a trustee's power to appoint the principal of a trust to another trust; relating to chalienges to, claims against, and liabilities of trustees, beneficiaries, and creditors of trusts and of trusts and estates; relating to individual retirement accounts and plans; relating to certain trusts in divorce and dissolutions of marriage situations; and providing for an effective date."

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

*** Section 1.** AS 13.36.109(21) is amended to read:

(21) to make loans out of trust property to **an eligible** [A] beneficiary **or an eligible third-party entity** on terms and conditions the trustee considers to be fair and reasonable under the circumstances and to guarantee loans to the **eligible** beneficiary **or eligible third-party entity** by encumbrances on trust property; **in this paragraph,**

(A) "eligible beneficiary" means a beneficiary of the trust

New Text Underlined [DELETED TEXT BRACKETED]

who is currently eligible for or entitled to a distribution of income or principal of the trust;

(B) "eligible third-party entity" means a third-party entity if more than 50 percent of the equity of the entity is owned by the trust or by one or more beneficiaries of the trust;

*** Sec. 2.** AS 13.36.157(a) is amended to read:

(a) **Subject to (d) of this section, unless** [UNLESS] the terms of the instrument expressly provide otherwise, a trustee who has **authority** [THE ABSOLUTE DISCRETION] under the terms of **an** [A TESTAMENTARY] instrument or irrevocable inter vivos agreement to invade the principal of a trust for the benefit of **a** [THE] beneficiary who is eligible or entitled to the income of the trust may exercise without prior court approval the trustee's **authority** [DISCRETION] by appointing, **whether or not there is a current need to invade the principal under any standard stated in the governing instrument,** part or all of the principal of the trust in favor of a trustee of **another** [A] trust under an instrument other than that under which the power to invade was created if the exercise of this **authority** [DISCRETION]

(1) does not reduce any fixed income interest of **a** [AN INCOME] beneficiary of the **invaded** trust;

(2) is in favor of the **beneficiaries** [BENEFICIARY] of the **invaded** trust; [AND]

(3) does not violate the limitations on validity under AS 34.27.051 or 34.27.100**; and**

(4) results, in the appointed trust, in a standard for invading principal that is the same as the standard for invading principal in the invaded trust.

*** Sec. 3.** AS 13.36.157 is amended by adding new subsections to read:

(d) The governing instrument of an appointed trust may provide that, after a time or an event specified in the governing instrument, the trust assets of the appointed trust remaining after the time or event shall be held for the benefit of the beneficiaries of the invaded trust on terms and conditions regarding the nature and extent of the

interests of the beneficiaries of the invaded trust that are substantially identical to the terms and conditions governing the interests of the beneficiaries in the invaded trust.

(e) In this section,

(1) "appointed trust" means the trust to which principal is appointed under (a) of this section;

(2) "invaded trust" means the trust whose principal is invaded under (a) of this section.

* **Sec. 4.** AS 13.16 is amended by adding a new section to article 8 to read:

Sec. 13.16.530. Application to trustees. Notwithstanding AS 13.16.450 - 13.16.525, the trustee of a trust may, under AS 13.36.368(b)(3), take the action a personal representative may take under AS 13.16.450 - 13.16.525.

* **Sec. 5.** AS 13.36.100(a) is amended to read:

(a) Unless resolved or barred under (b) or (c) of this section, and notwithstanding the lack of adequate disclosure, all claims against a trustee who has issued a [FINAL] report received by the beneficiary and who has informed the beneficiary of the location and availability of records for examination by the beneficiary are barred unless a proceeding to assert the claims is commenced within three years after the beneficiary's receipt of the [FINAL] report.

* **Sec. 6.** AS 13.36.100(b) is amended to read:

(b) If a trustee petitions a court for an order approving a report that adequately discloses the existence of a potential claim, serves the report on all beneficiaries to be bound by the report, [AND] gives the beneficiaries at least **60** [90] days' notice of the court proceeding, **and notifies the beneficiary that a claim must be begun within 45 days after the beneficiary is served with notice of the court proceeding,** all potential claims of the beneficiaries against the trustee are barred unless the claims are served on the trustee and filed with the court within **45** [60] days after the beneficiaries **are served with notice of** [RECEIVE THE REPORT, OR DURING] the **court** proceeding.

* **Sec. 7.** AS 13.36.100(c) is amended to read:

(c) If a trustee serves a report on a beneficiary that adequately discloses the existence of a potential claim against the trustee, the trustee informs the beneficiary

that a proceeding to assert any claim against the trustee must be commenced by the beneficiary within [24 MONTHS AFTER RECEIPT OF THE REPORT IF IT IS AN INTERIM REPORT OR WITHIN] six months after receipt of the report [IF IT IS A FINAL REPORT], and the beneficiary fails to assert a claim against the trustee, all claims of the beneficiary are barred.

* **Sec. 8.** AS 13.36.100 is amended by adding a new subsection to read:

(h) The report of a trustee under this section is considered to provide adequate notice to the beneficiary that there is a time limitation for filing a claim against the trustee if the cover page or top of the first page of the report contains the following language in at least 14 point bold type: "BY RECEIPT OF THIS REPORT, ANY ACTION YOU MAY HAVE AS A BENEFICIARY AGAINST THE TRUSTEE FOR BREACH OF TRUST BASED ON ANY MATTER ADEQUATELY DISCLOSED IN THIS REPORT MAY BE BARRED UNLESS THE ACTION IS BEGUN WITHIN SIX MONTHS AFTER YOU RECEIVE THIS REPORT. IF YOU HAVE ANY QUESTIONS, YOU MAY WISH TO OBTAIN PROFESSIONAL ADVICE REGARDING THIS REPORT."

* **Sec. 9.** AS 13.36.310(a) is amended to read:

(a) Except as provided in **AS 34.40.110(b)** [AS 34.40.110], a trust that is covered by AS 13.36.035(c) or that is otherwise governed by the laws of this state, or a property transfer to a trust that is covered by AS 13.36.035(c) or that is otherwise governed by the laws of this state, is not void, voidable, liable to be set aside, defective in any fashion, or questionable as to the settlor's capacity, **and the assets of the trust are not subject to the claim of a creditor of the settlor or a creditor of a beneficiary,** on the grounds that the trust or transfer avoids or defeats a right, claim, or interest conferred by law on a person by reason of a personal or business relationship with the settlor **or beneficiary** or by way of a marital or similar right.

* **Sec. 10.** AS 13.36.310(b) is amended to read:

(b) If a trust or a property transfer to a trust is voided or set aside under **AS 34.40.110(b)** [(a) OF THIS SECTION], then the trust or property transfer shall be voided or set aside only to the extent necessary to satisfy the settlor's debt to the creditor or other person at whose instance the trust or property transfer is voided or set

aside and the costs and attorney fees allowed under the rules of court.

* **Sec. 11.** AS 13.36 is amended by adding a new section to read:

Sec. 13.36.368. Claims against revocable trusts. (a) Whether or not the terms of the trust contain a spendthrift restriction,

(1) during the lifetime of the settlor of a revocable trust, the property of the trust is subject to claims of the settlor's creditors; and

(2) except as otherwise provided in (b) of this section, after the death of the settlor of a trust that was revocable at the settlor's death, and subject to the settlor's right to direct the source from which claims may be paid, the property of the trust is subject to claims to the extent the settlor's estate is not adequate to satisfy the claims.

(b) With respect to claims in connection with the settlement after the death of the settlor of a trust that was revocable at the settlor's death,

(1) a creditor's claim that would be allowed or barred against a decedent's estate under AS 13.16.450 - 13.16.525 shall be allowed or barred against the trustee of the trust, the trust property, and the creditors and beneficiaries of the trust;

(2) if the personal representative of the decedent's estate follows the procedures provided by AS 13.16.450 - 13.16.525, then claims that are allowed or barred against the decedent's estate shall also be allowed or barred against the assets of the trust;

(3) if the personal representative of the decedent's estate fails to follow the procedures stated by AS 13.16.450 - 13.16.525, the trustee of the trust may file a petition with the superior court for a determination of claims and follow the procedures established by AS 13.16.450 - 13.16.525, and claims against the trust and against the decedent's estate shall be allowed or barred under those procedures.

(c) In (a)(2) and (b) of this section, "claim" means a claim

(1) of a creditor of the settlor;

(2) for the expenses of the administration of the settlor's estate;

(3) for the expenses of the settlor's funeral; and

(4) for the expenses of the disposal of the settlor's remains.

* **Sec. 12.** AS 34.40.110(b) is amended to read:

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

(1) the settlor's transfer of property in trust was made with the intent to defraud that creditor, and a cause of action or claim for relief with respect to the fraudulent transfer complies with the requirements of (d) of this section;

(2) the trust**, except for an eligible individual retirement account trust,** provides that the settlor may revoke or terminate all or part of the trust without the consent of a person who has a substantial beneficial interest in the trust and the interest would be adversely affected by the exercise of the power held by the settlor to revoke or terminate all or part of the trust; in this paragraph, "revoke or terminate" does not include a power to veto a distribution from the trust, a testamentary nongeneral power of appointment or similar power, or the right to receive a distribution of income, principal, or both in the discretion of a person, including a trustee, other than the settlor, or a right to receive a distribution of income or principal under **(3)(A), (B), (C), or (D)** [(3)(A) OR (B)] of this subsection;

(3) the trust**, except for an eligible individual retirement account trust,** requires that all or a part of the trust's income or principal, or both, must be distributed to the settlor; however, this paragraph does not apply to a settlor's right to receive the following types of distributions, which remain subject to the restriction provided by (a) of this section until the distributions occur:

(A) income or principal from a charitable remainder annuity trust or charitable remainder unitrust; in this subparagraph, "charitable remainder annuity trust" and "charitable remainder unitrust" have the meanings given in 26 U.S.C. 664 (Internal Revenue Code) as that section reads on October 8, 2003, and as it may be amended;

(B) a percentage of the value of the trust each year as determined from time to time under the trust instrument, but not exceeding the amount that may be defined as income under AS 13.38 or under 26 U.S.C.

643(b) (Internal Revenue Code) as that subsection reads on October 8, 2003, and as it may be amended;

(C) the transferor's potential or actual use of real property held under a qualified personal residence trust within the meaning of 26 U.S.C. 2702(c) (Internal Revenue Code) as that subsection reads on September 15, 2004, or as it may be amended in the future; or

(D) income or principal from a grantor retained annuity trust or grantor retained unitrust that is allowed under 26 U.S.C. 2702 (Internal Revenue Code) as that section reads on September 15, 2004, or as it may be amended in the future; or

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

*** Sec. 13.** AS 34.40.110(*l*) is amended by adding a new paragraph to read:

(2) "eligible individual retirement account trust" means an individual retirement account under 26 U.S.C. 408(a) or an individual retirement plan under 26 U.S.C. 408A(b) (Internal Revenue Code), as those sections read on the effective date of this paragraph or as they may be amended in the future, that is in the form of a trust, if a trust company or bank with its principal place of business in this state is the trustee or custodian.

*** Sec. 14.** AS 34.40.110 is amended by adding a new subsection to read:

(m) If a trust has a transfer restriction allowed under (a) of this section, in the event of the divorce or dissolution of the marriage of a beneficiary of the trust, the beneficiary's interest in the trust is not considered property subject to division under AS 25.24.160 or 25.24.230 or a part of a property division under AS 25.24.160 or 25.24.230. Unless otherwise agreed to in writing by the parties to the marriage, this subsection does not apply to a settlor's interest in a self-settled trust with respect to assets transferred to the trust after the settlor's marriage.

*** Sec. 15.** AS 13.36.100(g)(1) is repealed.

*** Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION. AS 13.36.157(a), as amended by sec. 2 of this Act, and

AS 13.36.157(d) and (e), as added by sec. 3 of this Act, apply to a trust that is created by a will or another instrument before, on, or after the effective date of secs. 2 and 3 of this Act.

*** Sec. 17.** Sections 2 and 3 of this Act take effect immediately under AS 01.10.070(c).

ALASKA STATE SENATE

Session:
State Capitol
Juneau, Alaska 99801-1182
(907) 465-2327
(907) 465-5241 Fax

Interim:
119 N. Cushman, Suite 201
Fairbanks, Alaska 99701
(907) 456-8161
Senator_Ralph_Seekins@legis.state.ak.us

Senator Ralph Seekins
District D

Senate Bill 298 Sponsor Statement

"An Act relating to loans from trust property; relating to a trustee's power to appoint the principal of a trust to another trust; relating to challenges to, claims against, and liabilities of trustees, beneficiaries, and creditors of trusts and of trusts and estates; relating to individual retirement accounts and plans; relating to certain trusts in divorce and dissolutions of marriage situations."

Senate Bill 298 revises Titles 13 and 34 pertaining to the administration of trust assets. Updates incorporated into Title 13 include the addition of clarifying language relating to: (1) the various powers conferred upon the trustee; (2) trustee reporting requirements, and; (3) claims made against trust assets.

Updates integrated into Title 34 include language pertaining to: (1) the exemption from transfer provisions for certain IRA trust assets; (2) technical corrections made to AS 34.40.110(b), and; (3) the handling of trust assets in cases of divorce or dissolution.

Since 1997, the Alaska State Legislature has consistently worked to update and improve laws regarding the use and administration of trusts. As a result, Alaska is considered one of the premier trust jurisdictions in the country.

But, it is a very competitive environment. In fact, at least seven other states – Delaware, Missouri, Nevada, Oklahoma, Rhode Island, South Dakota and Utah – have enacted legislation similar to our own.

The updates proposed in this Bill are in keeping with revisions made to Alaska's Trust Laws in 1997 and 2003. They are intended to preserve Alaska's leading position within the universe of trust products and services offered nationwide.

Our laws encourage Alaskan's to keep their trust assets here in the state. Moreover, capital is *attracted* to Alaska from all over the country creating greater job and investment opportunities for residents of our state.

Senate Bill 298 clarifies prior trust legislation, makes the administration of trusts in Alaska more efficient and cost effective, and will keep Alaska as the jurisdiction of choice for trust administration.

LEGAL SERVICES

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

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

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

MEMORANDUM March 3, 2006

SUBJECT: Sectional summary of CSSB 298(JUD) relating to trusts and estates (Work Order No. 24-LS1113\I)

TO: Senator Ralph Seekins
Attn: Brian

FROM: Theresa Bannister
Legislative Counsel

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

Section 1. Amends AS 13.36.109(21) to change that loans from trust property may be made to eligible beneficiaries and eligible third-party entities.

Section 2. Amends AS 13.36.157(a) to change the conditions under which a trustee may appoint the principal of a trust in favor of a trustee of another trust.

Section 3. Amends AS 13.36.157 to add another subsection. Provides that the governing instrument of a trust that receives principal from another trust may provide that the trust assets of the trust that receives the principal are to be held for the beneficiaries of the invaded trust on the same terms as the invaded trust.

Section 4. Adds a new section to the probate chapter to coordinate a new provision that is added in bill sec. 11 (sec. 13.36.368(b)(3)). States that a trustee may take under sec. 13.36.368(b)(3) the action a personal representative may take under certain statutes in the probate chapter.

Section 5. Amends AS 13.36.100(a) to expand the application of the subsection to more than just final reports.

Section 6. Amends AS 13.36.100(b) to change, for the purpose of barring claims against trustees, the notice period, the notification requirements, and the claim deadline.

Section 7. Amends AS 13.36.100(c) to change the claim commencement period to six months after receipt of a report.

Section 8. Amends AS 13.36.100 to add a new subsection. Indicates what type of notice in a report is considered adequate to notify a beneficiary that there is a time limitation for filing a claim against the trustee.

Section 9. Amends AS 13.36 310(a). Adds that, except as provided in the new cross-reference, the assets of certain qualifying trusts are not subject to the claim of a creditor of the settlor or a creditor of a beneficiary on the grounds that the trust or a transfer to a trust avoids or defeats certain interests.

Section 10. Amends AS 13.36.310(b) to change a cross-reference in the section.

Section 11. Adds a new section that addresses claims against revocable trusts.

Section 12. Amends AS 34.40.110(b) to establish two exemptions (for eligible individual retirement account trusts) from the paragraphs that provide exceptions to the transfer restriction provision.

Section 13. Amends "eligible individual retirement account trust" for the previous bill section.

Section 14. Adds AS 34.40.110(m), a new subsection that provides that if a trust has a transfer restriction, the beneficiary's interest in the trust is not considered property subject to division (or part of a property division) in the event of the divorce or dissolution of the beneficiary's marriage. Limits the application of the section.

Section 15. Repeals the definition of "final report."

Section 16. States that AS 13.36.157(a) and 13.36.157(d) apply to a trust that is created by a will or another instrument before, on, or after the effective date of these subsections.

Section 17. Gives two sections of the bill an immediate effective date.

If I may be of further assistance, please advise.

TLB:ljw
06-110.ljw

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 298
(S) Publish Date: 2/27/06

Revision Date/Time (Note if correction):
Dept. Affected: Commerce
Title: Trusts: Challenges; Claims; Liabilities
RDU: Banking & Securities (536)
Component: Banking & Securities
Sponsor: Seekins
Requester: Labor & Commerce
Component No.: 2808

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type -Do not abbreviate)						
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2006) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

This legislation makes various changes to AS13.36 which covers the administration of trusts. Provisions in this legislation do not impact the operations of the division.

Prepared by: Mark Davis, Director
Phone 907.465.2521
Division: Banking and Securities
Date/Time 2/22/06 5:07 PM
Approved by: William C. Noll, Commissioner
Date 2/22/2006
Agency: Commerce, Community, and Economic Development

2/13/04

THE WALL STREET JOURNAL.

PERSONAL FINANCE

New IRA Protects Against Lawsuits, Bankruptcy

Two Delaware Trust Firms Offer Retirement Products Shielded by State's Statutes

By Rachel Emma Silverman

A NEW TYPE of individual retirement account aims to address an increasing concern among doctors, business executives and other professionals: how to protect your IRA if you're sued or have to file for bankruptcy.

WEALTH MANAGER

Unlike 401(k)s and other employer-sponsored retirement plans, IRAs generally aren't protected from creditors under federal law. Instead, IRA protection is covered by state laws, which vary. In recent years, a few states, such as Delaware, have also changed their trust laws to offer additional protections that may affect IRAs.

Two Wilmington, Del., trust companies, NatCity Trust Co., a unit of National City Corp. in Cleveland, and Capital Trust Co., now offer souped-up IRAs that are structured to take advantage of the state's generous asset-protection and trust laws. These IRAs operate like typical custodial IRAs, where the money is held in a bank or investment firm, but they offer the protection of a trust, which can have special provisions to stave off creditors.

These "Delaware IRAs" are targeted at wealthy professionals who have big retirement accounts and are worried about professional liability. NatCity Trust's president, Jeffrey Getty, says the number of accounts has grown 66% since the start of the year, with the average account size at more than $1 million. But how effective these IRAs are in keeping creditors at bay is still an open question.

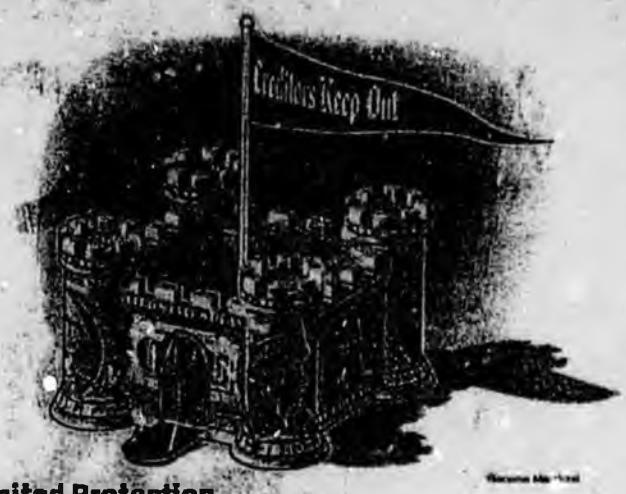
Asset Protectors

The Delaware IRAs are some of the latest offerings of the booming asset-protection industry. The growth of the industry is being driven by increasing concern among doctors, business executives and other professionals concerned about lawsuits and creditors. Financial-services companies and specialized asset-protection lawyers have been rolling out sophisticated trusts, partnerships and other vehicles to keep up with the demand for asset protection.

IRAs, however, are a thorny problem in asset-protection planning. Although retirement accounts make up a substantial portion of many people's wealth—there was more than $3 trillion in IRA assets at the end of last year—the question of whether creditors can pierce IRAs is still an unsettled area of the law.

"It's a convoluted area," says Ralph Mlaio Jr., a Pittsburgh asset-protection lawyer, who has had four physician clients, all Pennsylvania residents, set up Delaware IRAs in the past year because of creditor fears.

The legal landscape for IRA creditor protection is expected to shift further next month when the U.S. Supreme Court weighs in on the issue. The case, Rousey v. Jacoway, involves whether funds in IRAs are subject to creditors under Chapter 7 bankruptcy proceedings.



Limited Protection

Keeping individual retirement accounts from creditors is a growing concern, especially among doctors and other professionals worried about lawsuits and bankruptcy. IRA protection varies depending on where you live.

- Unlike employer-sponsored 401(k)s and pensions, IRAs generally aren't protected from creditors under federal law.
- IRA protection depends on state law, which varies. Most states, such as Delaware, have statutes that broadly protect IRAs from creditors, while others, such as Minnesota, have more limited exemptions.
- Delaware also allows IRAs to have "spendthrift" provisions, which are another measure that might keep creditors at bay.

IRAs aren't safe from creditors under the federal Employee Retirement Income Security Act which protects 401(k)s and pension plans. Many states, such as New York, Texas, Florida and Delaware, offer broad protections for IRAs. However, some states, such as California and Minnesota, provide more-limited protection—exempting, for instance, only what is reasonably necessary to support IRA owners and their dependents or limiting the exemption to a specific dollar amount.

Some lawyers and financial advisers are urging clients with creditor concerns to use the Delaware IRA, which might offer stronger protection. These IRAs operate like other retirement accounts, but the twists are in how they are structured. The IRAs are set up as trusts, rather than the typical custodial IRAs. The two vehicles are similar, but trusts are generally more complex and expensive structures to set up. Trusts also can offer greater legal protection against creditors, as well as more estate-planning options. Individual retirement trusts are popular among the wealthy and are offered by numerous private banks and trust companies.

The Delaware IRAs stand out because they use special language called a spendthrift provision. This spendthrift provision is meant to limit the rights of creditors to reach the funds inside the account. Delaware is one of only a few states that permit these spendthrift provisions in trusts, such as IRAs, where the individual setting up the trust is also the beneficiary. Just a handful of financial-services companies, including NatCity and Capital Trust, offer IRA trusts with the spendthrift provision.

The spendthrift clause "puts extra obstacles before creditors, so it's not an easy snatch and grab," says Marc Singer, who has developed many asset-protection plans for clients as a partner at Singer Xenos, a Coral Gables, Fla., wealth-management firm.

The Cost

Fees for Delaware IRAs vary. NatCity charges roughly 1.1% of assets, which includes asset management and requires an account minimum of about $750,000. (The fee is about half that for just an administrative trust.) Capital Trust, which sells its services through financial advisers, charges 0.3% on the first $1 million, with a minimum fee of $1,250. A typical Merrill Lynch custodial IRA is less expensive—0.25% of net assets, with a $50 minimum annual fee.

But how well Delaware IRAs hold up as asset-protection vehicles is still unclear, since they haven't been tested in court yet. There is still a possibility that a court in another state could rule that the assets in a Delaware IRA are fair game to a creditor outside the state. That's because the U.S. Constitution mandates that each state should have "full faith and credit" in the legal judgments made in other states. So a plaintiff who wins a judgment in a California court might be able to grab funds in an IRA located in Delaware.

Moreover, a Delaware IRA, like all retirement accounts, is still vulnerable in divorce proceedings, since family-court judges have wide discretion in divvying up marital assets. "In divorce, all bets are off," Mr. Singer says.

And since IRAs are already well protected in many states, setting up a Delaware IRA might not be worth the extra hassles or expenses of having an out-of-state trustee for many individuals.

Northrim Bank
Customer First Service

March 3, 2006

Honorable Senator Ralph Seekins
State Capitol, Room 125
Juneau, AK 99801-1182

Dear Senator Seekins:

I am writing this letter in support of SB 298, which as I understand it will implement changes in Alaska trust law that will benefit the trust industry in Alaska. Northrim Bank supports the proposed legislation to the degree that it benefits the trust industry in particular and the general business climate in the state as that facilitates state commerce, adds to the diversity and strength of our economy, and helps to build a stronger customer base for our bank.

I appreciate your work on this legislation.

Yours truly,

Joe Schierhorn
Executive Vice President
Chief Financial Officer

cc: Dick Thwaites
Chairman, Alaska Trust Company

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THE WALL STREET JOURNAL.

PERSONAL FINANCE

New IRA Protects Against Lawsuits, Bankruptcy

Two Delaware Trust Firms Offer Retirement Products Shielded by State's Statutes

By Rachel Emma Silverman

A NEW TYPE of individual retirement account aims to address an increasing concern among doctors, business executives and other professionals: how to protect your IRA if you're sued or have to file for bankruptcy.

Unlike 401(k)s and other employer-sponsored retirement plans, IRAs generally aren't protected from creditors under federal law. Instead, IRA protection is covered by state laws, which vary. In recent years, a few states, such as Delaware, have also changed their trust laws to offer additional protections that may affect IRAs.

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Glasser Herbert

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IRAs, however, are a thorny problem in asset-protection planning. Although retirement accounts make up a substantial portion of many people's wealth—there was more than $3 trillion in IRA assets at the end of last year—the question of whether creditors can pierce IRAs is still an unsettled area of the law.

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The legal landscape for IRA creditor protection is expected to shift further next month when the U.S. Supreme Court weighs in on the issue. The case, Rousey v. Jacoway, involves whether funds in IRAs are subject to creditors under Chapter 7 bankruptcy proceedings.

IRAs aren't safe from creditors under the federal Employee Retirement Income Security Act which protects 401(k)s and pension plans. Many states, such as New York, Texas, Florida and Delaware, offer broad protections for IRAs. However, some states, such as California and Minnesota, provide more-limited protection—exempting, for instance, only what is reasonably necessary to support IRA owners and their dependents or limiting the exemption to a specific dollar amount.

Some lawyers and financial advisers are urging clients with creditor concerns to use the Delaware IRA, which might offer stronger protection. These IRAs operate like other retirement accounts, but the twists are in how they are structured. The IRAs are set up as trusts, rather than the typical custodial IRAs. The two vehicles are similar, but trusts are generally more complex and expensive structures to set up. Trusts also can offer greater legal protection against creditors, as well as more estate-planning options. Individual retirement trusts are popular among the wealthy and are offered by numerous private banks and trust companies.

The Delaware IRAs stand out because they use special language called a spendthrift provision. This spendthrift provision is meant to limit the rights of creditors to reach the funds inside the account. Delaware is one of only a few states that permit these spendthrift provisions in trusts, such as IRAs, where the individual setting up the trust is also the beneficiary. Just a handful of financial-services companies, including NatCity and Capital Trust, offer IRA trusts with the spendthrift provision.

The spendthrift clause "puts extra obstacles before creditors, so it's not an easy snatch and grab," says Marc Singer, who has developed many asset-protection plans for clients as a partner at Singer Xenos, a Coral Gables, Fla., wealth-management firm.

The Cost

Fees for Delaware IRAs vary. NatCity charges roughly 1.1% of assets, which includes asset management and requires an account minimum of about $750,000. (The fee is about half that for just an administrative trust.) Capital Trust, which sells its services through financial advisers, charges 0.3% on the first $1 million, with a minimum fee of $1,250. A typical Merrill Lynch custodial IRA is less expensive—0.25% of net assets, with a $50 minimum annual fee.

But how well Delaware IRAs hold up as asset-protection vehicles is still unclear, since they haven't been tested in court yet. There is still a possibility that a court in another state could rule that the assets in a Delaware IRA are fair game to a creditor outside the state. That's because the U.S. Constitution mandates that each state should have "full faith and credit" in the legal judgments made in other states. So a plaintiff who wins a judgment in a California court might be able to grab funds in an IRA located in Delaware.

Moreover, a Delaware IRA, like all retirement accounts, is still vulnerable in divorce proceedings, since family-court judges have wide discretion in divvying up marital assets. "In divorce, all bets are off," Mr. Singer says.

And since IRAs are already well protected in many states, setting up a Delaware IRA might not be worth the extra hassles or expenses of having an out-of-state trustee for many individuals.

10/13/2004

Past & Future Of

Alaska Trust

Legislation

Presented By:

ALASKA TRUST COMPANY

Wealth Management Specialists

Legislation Passed Into Law 1997

HB 101 – Effective April 2, 1997

- Perpetual Trusts
- Self-Settled Spendthrift Trusts

HB 266 – Effective July 1, 1997

- Limited Partnership & LLC Improvements Statute

Legislation 1998

SB 354 – Effective April 12, 1998

- General Modernization of Trust and Estate Laws

HB 199 – Effective May 23, 1998

- Alaska Community Property Trust

HB 321 – Effective May 23, 1998

- Alaska Uniform Prudent Investor Act

HB 490 – Effective June 26, 1998

- Life Insurance Premium Tax

LEGISLATION 2000

HB 222 – Effective March 8, 2000

- Improvements & Technical Changes to Limited Partnerships LLC statute

SB 166 – Effective March 8, 2000

- Technical Changes to Alaska Community Property Trust

SB 162 – Effective April 22, 2000

- Modification to Perpetual Trust Statute

HB 275 – Effective August 9, 2000

- "Safety Net" Estate Planning Legislation

SB 163 – Effective August 30, 2000

- Modification and Improvement to General Trust Statutes

Legislation 2003 - 2004

SB 87 – Effective September 1, 2003

- Version of Uniform Principal & Income Act

HB 212 – Effective October 8, 2003

- 2003 Alaska Trust Act

SB 344 – Effective June 24, 2004

- Trust / Estate / Property Transfers

Why Alaska

- Personal
- Familiar with Alaska Statutes and Estate Planning Professionals
- Estate Planning Professionals Wanted Institutions That Would Specialize In Trust and Investment Management Services
- No State Income Tax On Trusts & Estates

Has It Been Successful?

Yes Yes Yes

Positive Developments

Alaska Has Become Known Throughout the Country for Being Creative and Innovative Regarding its Trust Laws. Alaska is Considered the Leading Jurisdiction for Trust Administration.

Alaska's 1st Independent Trust Company

- Has 9 full time employees; 5 are born & raised Alaskans
- Pays State Corporate Income Tax
- Annually puts hundreds of thousands of dollars into the Alaska Economy
- Have on deposit with local banks (Northrim & Alaska First) tens of millions of dollars
- Over 1,000 clients have come to Alaska from other states

Professionals in Alaska Have Benefited

- Attorneys have increased business both from outside clients and Alaska clients
- CPAs have increased business
- Insurance agents
- Stock brokers
- Others

Alaskans have benefited directly from the legislation

Many Alaskans are taking advantage of the unique Trust & Estate Legislation

State Of Alaska

The state of Alaska has received over $2 million in direct revenue

- Increase in Life Insurance Premium Taxes
- Increase Corporate Income Tax
- Increase revenue from LLC & LP filings

All This Has Happened With

No Financial Outlay From

the State

Why the Need to Have Additional Legislation

- Since 1997, the Alaska State Legislature has consistently worked to update and improve laws regarding the use and administration of trusts. As a result, Alaska is considered one of the premier trust jurisdictions in the country.
- But, it is a very competitive environment. In fact, at least seven other states – Delaware, Missouri, Nevada, Oklahoma, Rhode Island, South Dakota and Utah – have enacted legislation similar to our own.
- Much of this Legislation is structured to meet IRS rules & guidelines. When IRS makes a change, it may require a change in Alaska Statute to stay effective.
- Other states are trying to improve their Trust Laws. If they come up with a better approach, we need to adjust in Alaska to stay effective.
- Fine-tune legislation to make sure it is the best.

The Future Looks Very Bright for Alaska to Continue to Attract Business to the State. The Only Potential Problem Would Be the Implementation of an Income Tax on Trusts and Estates Set Up by Non-Residents.
The Implementation of Such a Tax Would Cause Alaska to Lose 99% of the Business It Has Attracted Within one Year. The Business Would Go to a State That Does Not Tax Non-Resident Trusts.

Thank You...

for your prior involvement and
hope for your continued support

ALASKA TRUST COMPANY

Wealth Management Specialists℠

THE ALASKA ADVANTAGE℠ HANDBOOK

Over the last four years, Alaska passed many unique pieces of trust and financial management legislation. We believe this makes Alaska the leading jurisdiction to setup and administer trusts and other wealth management techniques. This booklet provides a summary of each piece of legislation that has been passed. It is recommended that you read thoroughly each piece of legislation to fully appreciate and understand the flexibility and uniqueness of Alaska's legislation.

In summary, Alaska provides for:

- **Perpetual** Trusts - House Bill 101, effective April 2, 1997
- **Perpetual Trusts – Modification** - Senate Bill 162, effective April 22, 2000
- **Self-Settled Spendthrift** Trusts - House Bill 101, effective April 2, 1997
- **Unique Limited Partnership & LLC** Statutes - House Bill 266, effective July 1, 1997
- **Limited Partnership & LLC Improvement Statute** - House Bill 222, effective March 8, 2000
- **Alaska Community Property Trusts** - House Bill 199, effective May 23, 1998
- **Alaska Community Property Trust – Technical Changes** - Senate Bill 166, effective March 8, 2000
- **Innovative and Flexible Trust and Estate Law** - Senate Bill 354, effective April 15, 1998
- **Alaska Uniform Prudent Investor** Act - House Bill 321, effective May 23, 1998
- **Reduction in Life Insurance Premium** Tax - House Bill 490, effective June 26, 1998
- **"Safety Net" Estate Planning Legislation** - House Bill 275, effective August 9, 2000
- **Trust Notification – Rules; Modifying and Terminating Irrevocable Trusts** - Senate Bill 163, effective August 30, 2000
- **Version of Uniform Principal & Income** Act - Senate Bill 87, effective September 1, 2003
- **2003 Alaska Trust Act** - House Bill 212, effective October 8, 2003
- **Trust / Estate / Property Transfers** - Senate Bill 344, effective June 24, 2004

Alaska Trust Laws Provide for More Estate Planning Options Than Any Other State

- Perpetual (Dynasty) Trusts
- No State Income Tax
- Self-Settled Spendthrift Trusts
- No Special Class of Creditors
- Allows for Flexibility of Non-Resident Co-Trustees
- Only State to Receive PLR – Stating Transfer is a Completed Gift
- Only State to Allow Optional Community Property Trusts
- Statutes Protecting LPs and LLCs From Creditors
- Court Cannot Terminate LPs or LLCs
- Charging Order is the Only Remedy for Creditor
- Flexible Probate Court
- Lowest State Life Insurance Premium Tax on Large Policies
- Only State to Define Pre-Existing Creditor
- Best Protection from Future Creditors Because Creditors Cannot Use Constructive Fraud

ALASKA
SIMPLY THE BEST
BETTER THAN ALL THE REST

What Is a Trust?

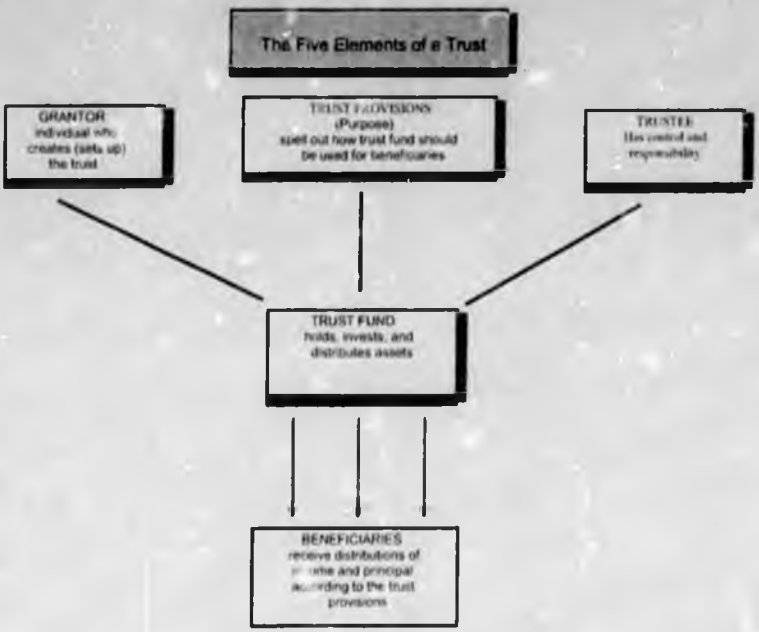
Most of this legislation effects trusts. Trusts are probably the most effective method to:

1. reduce, and in some cases, eliminate gift, estate and income taxes;
2. preserve assets for the family; and
3. accomplish the desires of the family;
4. provide asset protection;
5. improve quality of life by allowing use of trust assets by beneficiaries.

We have included a brief summary of what is a trust.

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

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



Summary of the Alaska Trust Act House Bill 101

On April 2, 1997, the Alaska Trust Act became effective. The Act makes two changes to Alaska law, both of which may be of significant interest to individuals throughout the United States. First, for Alaska trusts, the Act effectively eliminates the "rule against perpetuities." This rule limits the time a trust can last to approximately 90 years. Now, any American can create a trust in Alaska and provide for it to last forever. This means that the benefits that the trust can provide to the beneficiaries can last for as long as the family wants. Trust benefits can include protecting trust assets from claims of the creditors of the beneficiaries, including claims that may arise in a divorce of any beneficiary. Also, because Alaska has no income tax, an Alaska trust can be used to avoid state income tax on trust income that is not distributed currently to the trust beneficiaries. However, an Alaska trust cannot be used to avoid state income tax if the person who created the trust (called the "grantor" or "settlor") lives in a state that imposes an income tax and if the trust is a "grantor trust." A "grantor trust" is one that falls under a tax rule that causes the trust's income to be attributable to the grantor.

The second change, which results from the Act, relates to protecting trust assets from claims of creditors of the grantor of the trust. Throughout virtually all of the United

States, creditors of the grantor of a trust can attach the assets if the trustee can distribute trust property back to the grantor. Alaska law now provides that the assets in such a trust are not subject to the claims of the grantor's creditors, unless the original transfer to the trust was intended to defraud known creditors of the grantor or rendered the grantor insolvent.

Hence, an individual can transfer assets to an irrevocable Alaska trust and be a beneficiary to whom the trustee can distribute trust property. Yet, the trust assets will no longer be subject under Alaska law to the claims of the grantor's creditors. (The protection does not apply if the trust must distribute assets to the grantor.) This protection from creditor claims applies even if the grantor is the only person to whom the trustee may distribute trust assets and income. If there are beneficiaries in addition to the grantor, this protection from claims of creditors also applies even if the grantor retains the right to veto distributions to other beneficiaries of the trust. The protection also applies even if the grantor retains the right to direct where the trust property is to pass upon his or her death. By retaining these veto and control powers, transfers to the trust will not be subject to gift tax when the trust is created. However, retaining either of these powers will cause the trust assets to be includible in the grantor's taxable estate at death.

Alternatively, an individual may create an Alaska trust but not retain any power to veto distributions to other beneficiaries or to control the disposition of the trust property when the grantor dies. This should make the transfer to the trust a completed gift for gift tax purposes and should result in the exclusion of the assets from the grantor's taxable estate.

This opens a new dimension in estate planning because an individual can make a completed gift to be excluded from his or her estate while remaining eligible to receive distributions from the trust.

As indicated, an Alaska trust can now be used to protect assets from claims of creditors but not if the grantor transfers the assets in defraud of his or her creditors or retains the power to revoke or terminate the trust. Generally, a transfer is made in defraud of creditors only if it either renders the grantor insolvent (e.g., unable to pay current obligations) or is intended to remove assets from the reach of specifically known creditors. A person may be a known creditor even if that person does not yet have a judgment against the grantor.

It is probably sensible for a grantor wishing to provide protection from claims of creditors to transfer significantly less than one-half of his or her net wealth to an Alaska trust. First, such a transfer is unlikely to render the grantor insolvent. Second, because the grantor cannot retain the right to trust distributions, but only to be a beneficiary to whom the trustee may but is not required to distribute assets or income, it would not be wise to place most of one's assets in such a trust and lose entitlement to their use or income. This is especially important if the grantor wishes to use an Alaska trust for estate tax planning purposes. Where the transfer to the trust is a completed gift, the grantor presumably will want to minimize distributions back to himself or herself because such distributions would erode the estate tax reduction benefits of having made a completed gift to the trust.

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rust after 120 years with an after-tax return of 10%, the trust would be worth almost $93 illion. If the Alaska Perpetual (Dynasty) Trust was not used; the value of the property ould be less than $6 billion.

The Economics of Perpetual Trusts

After-Tax Growth	Value of Perpetual Trust After 120 Years	Value of Property if No Trust
3.00%	$34,710,987.	$2,169,437.
4.00%	$110,662,561.	$6,910,410.
5.00%	$348,911,561.	$21,806,999.
6.00%	$1,088,187,749.	$68,011,734.
7.00%	$3,357,788,383.	$209,861,774.
8.00%	$10,252,992,912.	$640,812,059.
9.00%	$30,987,015,749.	$1,938,688,484.
10.00%	$92,709,068,818.	$5,794,316,801.

Leveraging the Alaska Perpetual (Dynasty) Trust with Life Insurance

Having the trust purchase life insurance with the trust contributions is an xcellent strategy that can be used to leverage the $1 million generation-skipping ransfer tax (GST) exemption that can dramatically increase trust assets. The proceeds m the insurance that will be paid to the trust will escape initial income and wealth ransfer taxation in the estate and these proceeds will provide a large sum of money that an continue to benefit the beneficiaries for as long as the family desires.

lternative to Foreign Asset Protection Trusts

The Alaska Trust is an alternative to foreign asset protection trusts and has many dvantages. The Alaska Trust will have a trustee located in Alaska. Individuals should e more comfortable transferring assets to a trustee in a politically stable jurisdiction that part of the United States. An Alaska Trust will not be subject to the new Internal evenue Code foreign trust tax rules. In addition, Alaska occupies a central location on he globe. Alaska is mid-way from three of the largest financial centers of the world: ondon, New York, and Tokyo, and its time zone is just one hour earlier than Pacific ime.

For some people there may be disadvantages to using an Alaska Trust. If an dividual is looking for a way to hide taxable income or for a way to hide assets from xisting creditors, he or she should look elsewhere. The trustee of an Alaska Trust will e subject to the jurisdiction of the courts of Alaska and will have to comply with the ternal Revenue Code. As such, the trustee will report all taxable income of the trust as equired by the Internal Revenue Code. In addition, the trustee could be sued uccessfully under Alaska law if any transfers to the trust were fraudulent. Under new laska Statutes, a creditor who suspects that he or she has been defrauded has the nger of (1) four years from the date of the transfer to the trust or (2) one year after the

transfer is discovered, or reasonably could have been discovered, to file a claim against the trustee to set aside a fraudulent transfer.

Many offshore jurisdictions have shorter statutes of limitations for filing fraudulent transfer claims. On the other hand, if an individual has no known or ascertainable creditors and is willing to report all taxable income, an Alaska Trust could be an important estate and asset protection-planning vehicle.

Perpetual Dynasty Trust Modification Senate Bill 162

Updates and Strengthened Alaska Perpetual (Dynasty) Trust Statutes

Alaska's new legislation expressly states that the common law rule against perpetuities does not apply in Alaska. Alaska then adopts a two-pronged approach to avoid the Delaware Tax Trap. The purpose of the first prong is to reestablish a rule against perpetuities for Alaska in the limited circumstances of property interests subject to a limited power of appointment which is exercised to create a new limited power of appointment. All such property interests are invalid unless within 1,000 years from the time of creation of the original instrument or conveyance creating the original limited power of appointment the property interests vest or terminate.

This provision applies to a trust instrument or conveyance executed on or after 4/2/97, if the instrument or conveyance creates a non-vested property interest subject to the exercise of a power of appointment that creates a new or successive power of appointment. The goal of this provision is to cure the Delaware Tax Trap problem for all trusts created under Alaska law after the initial abolition of the rule against perpetuities in 1997.

The second prong of the new legislation enacts a rule against suspension of the power of alienation of property. The statute provides that a trust is void if the trust terms suspend the power of alienation for a period of at least 30 years after the death of an individual alive at the time of the creation of the trust. However, the statute expressly states that a suspension of the power of alienation can be avoided by giving the trustee the express or implied power to sell the trust property.

This second prong of Alaska's approach to avoid the Delaware Tax Trap is based on the Tax Court's decision in *Estate of Murphy*. In that case, the court held that the Delaware Tax Trap was not violated in Wisconsin, which had a perpetuities statute expressed in terms of a rule against suspension of the power of alienation (rather than a rule based on remoteness of vesting). The IRS has acquiesced in *Murphy*.

Alaska Limited Partnership and Limited Liability Companies House Bill 266 and House Bill 222

Alaska's amendments to its limited partnerships and limited liability company statutes makes Alaska the preferred jurisdiction to form these entities. Alaska is the first state to take advantage of the simplified formation operation of limited partnership and limited liability companies as permitted under the new Treasury Department "check the box" regulations. In addition, under the new Alaska law, a court will be able to order

ne dissolution of a partnership or limited liability company **only** if it determines that it is mpossible for the enterprise to continue to operate. Unlike the default rules under most tate laws, an Alaska limited partnership or limited liability company does not go out of xistence upon the death of a general partner of a limited partnership or the member of limited liability company. Alaska has eliminated any right to demand to be bought out n six months notice. In fact, under default state law, a partner is entitled to distributions nly as provided under the governing document. For these and other reasons, the ombination of the Alaska Trust Act and the changes to Alaska's limited partnerships nd LLC statutes provide for unique estate planning opportunities.

House Bill 222 strengthened and improved Alaska's limited partnerships and mited liability companies by clarifying by statute the only remedy for a creditor is a charging order."

Alaska's Voluntary Community Property Option House Bill 199 and Senate Bill 166

Income Tax Advantage of Community Property

A person who owns assets with his or her spouse as community property in one f the nine community property states (Louisiana, Texas, New Mexico, Arizona, California, Nevada, Washington, Idaho and Wisconsin) has a major income tax dvantage over a married person who owns assets with his or her spouse but that are ot community property. This advantage results from the incongruous operation of the tep-up in basis rule. This rule is one of the few, if only, income tax advantages that a erson's estate receives upon his or her death.

The best way to explain the step-up in basis rule is to start with an example of a ingle person living in any state on her death bed who twenty years ago paid $10,000 for homestead that is presently worth $110,000. If the person sold the homestead before he died, she would realize a long-term capital gain of $100,000. The gain would be ubject to a maximum capital gains tax of 15%, or $15,000. On the other hand, if the erson decided not to sell the homestead and died the next day, the $100,000 profit ould be forgiven. This means that her heirs could sell the homestead for $110,000and ay no income taxes! This is because the original cost basis of $10,000 is "stepped-up" o $110,000, the fair market value of the homestead at death. If the homestead is sold or $110,000, there is no gain and no income taxes will be owed.

The step-up in basis rule gets more complicated when a married couple is volved. If we assume that a married couple in a non-community property state bought he homestead twenty years ago for $10,000 and held title as husband and wife, then ach would own one-half of the homestead. If the husband was on his death bed and he couple sold the homestead before the husband died for its current fair market value f $110,000, the couple would realize a $100,000 long-term capital gain, just like the ingle person did. However, if the husband died and the wife inherited his half of the omestead and then sold it, she would only realize a $50,000 long-term capital gain. his is because the profit in the husband's half of the homestead would be forgiven by he step-up in basis rule. The husband's half of the homestead would get a "step-up" in asis to $55,000. When the husband's half was sold for $55,000 there would be no ain. However, the wife would have a gain on the sale of her half of the homestead. Her

half of the homestead would have a basis of $5,000 (one-half of the original cost basis of $10,000). When this half was sold for $55,000, the wife would realize a $50,000 long-term capital gain and would pay a maximum of $7,500 of income taxes (15% of $50,000).

If, on the other hand, the couple lived in a community property state like Washington, the income tax savings would be even greater. If the homestead was community property under Washington law, for example, the wife would get a step-up in basis in both halves of the homestead to $110,000. After her husband's death when she sold the homestead for $110,000 she would pay no income taxes! In contrast, in the prior example of the married couple who owned the homestead that was not community property, the wife who sold the homestead after her husband died would pay $7,500 of income taxes. In this way the income tax laws favor spouses in community property states that own assets as community property over spouses in non-community property states whom, as a general rule, cannot own assets as community

Overview of House Bill 199

This Act (signed into law 5/23/98) will allow married Alaskans to execute a written agreement to recharacterize their assets as community property. Unlike other states which have a community property form of ownership for married persons, Alaskans would have their assets treated as community property, only to the extent they execute a written agreement and elect into a community property system under Alaska law. In contrast, community property states mandate the married couple's assets to be community property unless the spouses elect out.

This Act not only allows Alaskan couples to enter into an agreement to have some or all of their assets treated as community property, but it also permits married persons who do not reside in Alaska to have their assets treated as community property under Alaska law by executing an Alaska Community Property Trust. Such a trust must have an Alaska trustee. It is anticipated that many married persons who reside outside of Alaska will wish to label a portion, or all, of their assets as community property because they believe that it is a more appropriate method of owning their assets and they wish to obtain the income tax advantages which are available to community property upon the death of the first spouse.

Some believe that community property represents a more fair and rational system of sharing the ownership of property during marriage because it essentially treats the marriage like a partnership; as assets are earned during the marriage, they are treated as owned 50/50 by the two partners (the husband and wife). Others believe community property is not a fair or rational system. Regardless of one's beliefs, it seems appropriate to allow Alaskans, and residents of other states, the freedom to choose the arrangement that is most appropriate for them.

It should be emphasized that no asset would be labeled as community property under the Act. Rather, the Act merely authorizes married persons to execute a written agreement or trust in which they expressly elect to treat some or all of their assets as community property under Alaska law.

Overview of Senate Bill 166

Community property agreements and trusts strengthened. These amendments clarify ambiguities regarding the right to amend and revoke community property agreements and trusts. The amendments to Alaska Statutes 34.77.090 and .100 specify that if a community property agreement or trust provides for the non-testamentary disposition of property at the death of the second spouse, without probate, then at any time after the death of the first spouse the surviving spouse may amend the community property agreement or trust with respect to the surviving spouse's property to be disposed of at his or her death.

In addition, the amendment eliminates the prior statutory language that a community property agreement or trust may be amended only "on a particular date or on the occurrence of a particular event" set forth in the instrument. Rather, a community property agreement or trust may be amended or revoked at any time if the instrument generally authorizes amendment or revocation by the spouses. The amendments will apply to all community property agreements and trusts executed after the effective date of the Alaska Community Property Act.

Note: The Chapter for Alaska Community Property Agreements and Trusts has been changed to AS 34.77.010-.100 from AS 34.75.010-.100

Innovative and Flexible Trust and Estate Revisions Senate Bill 354

This Act creates major changes to Alaska's Trust and Probate Laws making them, by far, the most effective and flexible while enhancing the use of Alaska Trusts. Outlined below is a summary of the key features of this Act.

Probate Jurisdiction - AS 13.06.068

This provision allows non-residents of Alaska to select to have their will probated under Alaska law. The advantages of this legislation are:

1. It should allow the estate to avoid state income tax during the probate administration.
2. It should avoid any statutory executor/personal representative fees and/or attorneys fees.
3. The probate process in Alaska is very simple and straightforward which should save time and money.
4. It seems that any trust that was created under the will would then have the ability to qualify as an Alaska perpetual trust and the other protective provisions of Alaska law.

Change of Trust Situs to Alaska - AS 13. 36.043

This provision makes it easier to move a trust to Alaska. It also clarifies that even though a trust was setup before Alaska changed its perpetual and asset protection provisions, a trust will still be valid under Alaska law. If someone has setup a trust in a foreign jurisdiction or in a U.S. jurisdiction and it either provides for asset protection and/or perpetual status, the trust can now be moved to Alaska and retain those advantages.

Trustees Special Power to Appoint to a Different Trust - AS 13. 36.157

This provision allows the trustee, without court approval, to appoint part or all of the trust principal to another trust if the trustee has the power to invade the principal of the trust for the benefit of the beneficiary. This power will be considered the exercise of a special Power of Appointment.

This can be done as long as the transfer does not reduce any fixed income interest of an income beneficiary of the trust and is in favor of the beneficiary of the trust and, as required by the generation-skipping transfer tax grandfathering regulations, does not exceed the common law rule against perpetuities measured from the original commencement of the trust. The advantage is that it allows the trustee to extend any grandfathering for generation-skipping taxation; and allows the benefits of the trust to continue for future beneficiaries.

Statute of Limitations Clarified - AS 34.40.110(d)

This provision clarifies that the four-year statute of limitations to commence a legal action that a transfer to a trust was fraudulent starts from the cause of action rather than just the remedy.

Challenges to Trusts - AS 13.36.310

This provision clarifies that unless the transfer to the trust was a fraudulent conveyance, the trust is not void, voidable, liable to be set aside, defective in any fashion or questionable as to the settlor's capacity, on the grounds that the trust or transfer avoids or defeats a right, claim or interest conferred by law on a person by reason of a personal or business relationship with the settlor by the way of a marital or similar right.

This new section also provides that even if the property in a trust is voided or set aside because it was considered a fraudulent conveyance, the trust can only be set aside to the extent necessary to satisfy the settlors' debt to the creditor and the cost and attorney's fees allowed.

Trustee has First Lien on Assets - AS 13.36.310

If the transfer to the trust is voided or set aside and the court is satisfied that the trustee has not acted in bad faith, in accepting or administering the trust, the trustee has the first and paramount lien against the property equal to the entire cost, including attorney's fees properly incurred by the trustee in defense of the trust. Also, the beneficiary, including the Grantor, may retain a distribution made prior to the commencement of an action to set aside the transfer.

Protection of Trustees and Others - AS 34.40.110(f)

This provision prohibits a creditor from asserting a cause of action against the trustee and others involved in the preparation or funding of the trust for conspiracy to commit fraudulent conveyance, aiding and abetting a fraudulent conveyance or participation in the trust transaction. This means that the trustee and the client's advisors cannot be held liable for this transaction. It further states that the creditor's only relief is limited to the trust assets and to those owned by the settlor.

Non-Alaska Co-Trustees - AS 13.36.320

This provision allows non-residents of Alaska and banks and trust companies

who are not headquartered in Alaska to act as a co-trustee with a qualified Alaska Trustee and not be considered engaged in business in Alaska solely by reason as serving as co-trustee.

Limitation on Trustee Liability - AS 13.36.110

This provision clarifies that a trustee, who has not been given a responsibility under the document, can not be held liable to the beneficiaries or others for the actions of the trustee who had that power. This provides extreme flexibility for the trustees in that different trustees may be given different responsibilities and the co-trustees do not have to be concerned about the actions of the other co-trustees who hold other powers. In addition, AS 13.36.192 clarifies that the settlor of the trust can relieve the trustee from any duties, restrictions and liabilities or can restrict the trustee's privileges and powers or add duties, restrictions and liabilities. AS 13.36.194 clarifies that a beneficiary who has full legal capacity and acts on full information and may relieve the trustee from any and all duties and restrictions and liabilities that would otherwise be imposed on trustees by Alaska Statutes.

Trust Incontestability Clause - AS 13.36.330

This provision clarifies that if an intervivos trust penalizes a beneficiary for contesting the trust or instituting other proceedings prohibited by the trust agreement, the penalty provision will be enforceable even if probable cause exists for instituting the proceeding.

Appreciation can be Considered as Income - AS 13.38.060

This provision allows Alaska to be a very favorable jurisdiction for Charitable Remainder Unitrusts that are income-only with a make-up provision. Under most state laws, even though the trust may be an income-only make-up provision Charitable Remainder Trust, it is not very effective because capital appreciation usually cannot be converted into income. Alaska Statutes have been clarified to allow appreciation to be considered income making Alaska one of the best jurisdictions for Charitable Remainder Trusts.

Alaska Uniform Prudent Investor Act House Bill 321

Alaska became the 17th state to adopt a version of the Uniform Prudent Investor Act. In essence, this Act brings trust investing up to the 21st Century by requiring the trustee to acknowledge the theory of efficient markets, more broadly known as the Modern Portfolio Theory. The trustee is required to consider, to the extent relevant, the following factors in formulating the investment portfolio:

- the size of the portfolio;
- the nature and likely duration of the trust;
- the liquidity and distribution requirements;
- the general economic conditions;
- the possible effects of inflation or deflation;
- the expected tax consequences of various investment and distribution decisions;

- the role of each investment in the overall portfolio;
- the expected total return of the portfolio; and
- the needs of the beneficiaries for present and future distributions.

This Act makes it clear that there are no investments, which are per se improper or imprudent, nor are there any which are per se proper or prudent. All investments must be reviewed and managed based upon the facts and circumstances of each trust situation, considering the above mentioned factors.

A trustee can no longer escape liability for embracing a very conservative investment approach such as purchasing treasury bills or CDs. If a trust is to last for a number or years and the trustee does not consider the effects of inflation on the purchasing power of the trust, it would be liable to the beneficiaries for not having a growth component in the portfolio. Diversification is generally regarded as a requirement under the Prudent Investor Act, unless circumstances require otherwise.

One significant change is that this Act allows the trustee to delegate investment management responsibility. For the majority of states that have not adopted a version of the Prudent Investor Act, delegation of investment responsibility by trustees is prohibited. The act also seems to indicate that if the trustee does not have investment management expertise it almost mandates that they do delegate their investment management responsibility. If a trustee delegates its management responsibility properly, it can be relieved of the liability and the liability would transfer to the organization or individual that has taken over the management duties. In order to properly delegate, the trustee must select the investment advisor in a prudent manner and must periodically review the manager's performance and the assets held in the trust. The trustee also has a duty to control the costs of delegation.

Reduction in Alaska's Insurance Premium Tax House Bill 490

This new law makes Alaska the preferred jurisdiction to have large life insurance policies written. All states impose a tax on life insurance premiums, which ranges from three-quarters of one percent to three percent. When calculating the premium, the insurance company adds on the applicable state insurance premium tax.

Life insurance is the last true tax shelter. Except for the Roth IRA, it is the only vehicle where you can receive tax-free earnings. Qualified retirement plans, IRA's and annuity contracts only provide income tax deferral because when you withdraw those funds you have to pay an income tax. With the cash value that is built up in a life insurance policy, any imputed gain vanishes at death.

With the advent of variable life insurance policies, where the insured has access to a broad range of investment strategies, including growth portfolios, this tax-free earning feature has gained greater significance. Individuals are now using private placement insurance policies where they may, in essence, select a specific manager and investment style. With this flexibility, they are investing significant sums in these policies ranging from $1 million to $50 million or more. Alaska has reduced its premium tax for premiums over $100,000 to only 10 basis points or one-tenth of one percent. Therefore, individuals who are purchasing large insurance policies should consider Alaska the premiere jurisdiction. With Alaska's unique trust laws, it is the ideal place to

establish an irrevocable life insurance trust.

"Safety Net" Estate Planning Legislation House Bill 275

All too frequently, estate planning documents fail to contain all the provisions necessary to maximize available federal gift, estate, and generation-skipping tax benefits. The documents may have been drafted long ago, and not appropriately updated. Alternatively, the drafter may have omitted necessary tax provisions.

To partially cure this problem, Alaska has enacted a "Safety Net" bill. This legislation supplements wills and trusts in the following areas: marital deduction trusts, funding, the family-owned business deduction, restriction of powers of a trustee-beneficiary, interest rate for pecuniary devises, conveyances of real property to and from trusts, and applicability to revocable trusts as well as to wills.

Trust Modification Rules; Modifying and Terminating Irrevocable Trusts Senate Bill 163

Trust Notification and accounting Rules

The general rules in Alaska are that within 30 days of acceptance of a trust, the trustee must inform all the current beneficiaries of the existence of the trust, and upon request, furnish them with an annual accounting. New legislation now allows a settlor to exempt the trustee from these duties. This exemption may not continue beyond the settlor's lifetime or a judicial determination of the settlor's incapacity.

Flexible Methods for Modifying and Terminating Irrevocable Trusts

The Alaska legislature has enacted flexible methods for the modification and termination of irrevocable trusts. A trustee, settlor, or beneficiary may initiate proceedings to modify or terminate a trust if, because of circumstances not anticipated by the settlor, modification or termination would substantially further the settlor's purposes in creating the trust. A court may also construe or modify the terms of a trust in order to achieve the settlor's tax objectives.

The legislation further provides that despite the settlor's purposes in creating the trust, the trust can nonetheless be modified by the court upon consent of all beneficiaries if the reasons for modifying or terminating the trust outweigh the interest in accomplishing the material purposes of the trust. The inclusion of a spendthrift clause may constitute a material purpose, but is not presumed to be so. This modification provision allows for the possibility of modification due to the changed circumstances of the beneficiaries, despite what might have been a material intention of the settlor in establishing the trust.

This new statute has particular relevancy for perpetual trusts because it provides a technique for future changes of a dispositive plan. Accordingly, this modification authority helps alleviate concern about control by a "dead hand." A virtual