

12215

HOUSE

L&O



Lactation Support Program

This toolkit provides an example of how to create a comprehensive lactation, or breastfeeding, support program for nursing mothers at the work site. The term "lactation support program" is intended to signify a program that provides lactating employees with educational and environmental support of their breastfeeding goals. The word "lactation" (LSP) is used to clarify and avoid the implication that the mothers would need to have their babies at work to nurse them, rather, the toolkit is designed to help employers set up a program for employees to be able to pump and store their breast milk at work, to take home to their infants at the end of the workday.

Health Challenge

Mothers are the fastest-growing segment of the U.S. labor force. Approximately 70% of employed mothers with children younger than 3 years work full time. One-third of these mothers return to work within 3 months after birth and two-thirds return within 6 months. Working outside the home is related to a shorter duration of breastfeeding, and intentions to work full-time are significantly associated with lower rates of breastfeeding initiation and shorter duration. Low-income women, among whom African American and Hispanic women are overrepresented, are more likely than their higher-income counterparts to return to work earlier and to be engaged in jobs that make it challenging for them to continue breastfeeding. Given the substantial presence of mothers in the work force, there is a strong need to establish lactation support in the workplace. Barriers identified in the workplace include a lack of flexibility for milk expression in the work schedule, lack of accommodations to pump or store breast-milk, concerns about support from employers and colleagues, and real or perceived low milk supply.



CDC Guide to Breastfeeding Interventions (PDF-1.01Mb)

The purpose of establishing a work site LSP is to reduce barriers to breastfeeding among employees who have recently given birth, enabling them to transition back into the workplace while optimizing the benefits their infants receive from being breastfed.

A comprehensive LSP is a win-win-win situation. It benefits employers by making it easier for new moms to return to work. It benefits working new moms by giving them the peace of mind that they can still provide ideal nutrition for their infants. And, of course, it benefits infants, often covered as dependents under the employer health plan, by giving them a healthy start in life.


Toolkit Components

This toolkit describes how others in federal or non-federal workplaces can plan and implement a comprehensive LSP and evaluate its success. Three topics will be covered in the toolkit: lactation-supportive policies, lactation support services (such as classes and support groups), and creating a physical environment that supports lactation. The toolkit describes the following project phases:

- **Assessing Need and Interest**
- **Planning**
- **Implementation**
- **Maintenance**
- **Evaluation**

Note: this toolkit is simply an example of what we did at CDC. The examples and guidance provided should not be a substitute for working with your own internal policy and legal staff to develop appropriate guidelines and procedures for running a discount fitness club network. Additionally, CDC and the Department of Health and Human Services (DHHS) are in no way responsible or liable for guaranteeing the success of a discount fitness club network established as a result of this toolkit.

back to top

 Please note: Some of these publications are available for download only as *.pdf files. These files require Adobe Acrobat Reader in order to be viewed. Please review the **information on downloading and using Acrobat Reader software.**

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Page last reviewed: May 22, 2007

Page last updated: May 22, 2007

Content Source: **Division of Nutrition, Physical Activity and Obesity, National Center for Chronic Disease Prevention and Health Promotion**

Page Located on the Web at <http://www.cdc.gov/nccdphp/dnpa/hwi/toolkits/lactation/index.htm>

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR DISEASE CONTROL AND PREVENTION
SAFER • HEALTHIER • PEOPLE™

MAR 24 2008



Alaska

March 21, 2008

The Honorable Sharon Cissna
Alaska House of Representatives
State Capitol Building
Juneau, Alaska 99801-1182

RE: House Bill 190

Dear Representative Cissna,

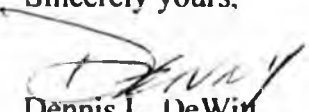
On behalf of the Alaska Chapter of the National Federation of Independent Business, I wish to express our opposition to House Bill 190. The Alaska Chapter of the National Federation of Independent Business is the largest small-business advocacy group in the state.

While we share your concern for the welfare of mothers who are nursing their infants, we oppose legislation mandating methods of accommodating the needs of our employees.

Independent businesses in Alaska are close to their employees who are not only our employees, but our friends and neighbors. Small businesses have a great record of working with our employees to accommodate their needs. State intervention more often than not creates mandates focused on activities much larger businesses and governments such as the state of Alaska.

While the current version of HB 190 contains no specific fine, it still carries the effect of state law. That allows state regulators to use the weight of our state government against small employers to impose the interpretation of that regulator on businesses that rarely have the resources to stand up against unreasonable interpretations of state law.

Sincerely yours,


Dennis L. DeWitt
Alaska State Director
National Federation of Independent Business

✓ cc: House Labor & Commerce Committee

HB

197

Eleanor Wolfe

From: Jane Pierson
Sent: Monday, April 23, 2007 10:42 AM
To: Eleanor Wolfe
Subject: FW: HB's 195, 196, 197

Eleanor -

Attached is a letter of support for HB195 and 197.

From: lhulbert [mailto:lhulbert@gci.net]
Sent: Monday, April 23, 2007 10:32 AM
To: Jane Pierson
Subject: HB's 195, 196, 197

Representative Ramras,

I would like to support House Bills 195, 196 and 197. I have been in the insurance industry for the last 16 years and have worked closely with legislature including the AK Trust Act, Com. Property Act and the Change to the State Premium Tax. I support these three House Bills as it will improve estate planning opportunities for alaskans and bring new business and revenue to the State.

Linda Hulbert
Agent
New York Life Insurance Company
110 Cushman St.
Fairbanks, AK 99701
907-452-4400
Registered Representative offering securities through NYLIFE Securities Inc. (member NASD/SIPC)

New York Life Insurance Company
701 West 8th Ave., Ste.900
Anchorage, AK 99501
907-279-6471

If you do not wish to receive email communications from New York Life and/or NYLIFE Securities, please reply to this small, using the words "Opt Out" in the subject line. Please copy email_optout@newyorklife.com
New York Life Insurance Co., 51 Madison Ave, New York, NY 10010



Alaska First
COMMUNITY
BANK & TRUST

Ron Kukes
President and
Chief Executive Officer

3301 C Street
Anchorage, AK 99503
907-844-1223
fax 907-561-7884
ron@fbank.com

April 23, 2007

Representative Jay Rumras
Chairman, House Judiciary Committee

Ref: HB 195 and HB 197

Dear Representative Ramras:

During the past eleven years, our local community bank (owned by 30 Alaskans) has benefited from Trust legislation that has made our State an advantageous location for placing assets. For this reason, I am particularly interested when new legislation is proposed that improves our State's benefit in providing Trust services. House Bill (HB) 195 and House Bill (HB) 197 are two such pieces of legislation. Clarifying the ability for a Professional to operate as a Limited Liability Company and improving the tax advantages by deleting subsection (d) of AS 10.50.150 are quality elements in HB 195. Allowing a Trust formed outside the State to transfer assets between trusts when the trusts are administered in Alaska (Section 9 of HB 197) is an addition that will improve our marketability to those considering moving assets into Alaska.

I appreciate your support for passing both bills.

Sincerely

The Importance of Trust Legislation

Due to changes in Alaska's trust legislation it has become one of the leading jurisdictions for trust administration and financial planning. The Alaska Bar Association has grown to 120-130 Lawyers in the 3 Trust and Real Estate Sections. The Anchorage Estate Planning Council has 88 members plus Fairbanks and Juneau Groups.

Competition from states such as Delaware, Nevada, South Dakota, Florida makes it very important that Alaska keeps fine tuning its Trust and Estate legislation to keep it competitive with other states.

Thousands of Alaskans from Fairbanks to Juneau have taken advantage of the legislative changes that have taken place over the past number of years.

As far as we know there have been no adverse consequences only positive developments.

There is over 50 million dollars of additional deposits to local banking institutions because of Alaska's unique legislation.

There have been at least 50 employees in trust positions in Trust Departments and Trust Companies that have been created since the Legislature passed it's first Trust Laws for Alaska.

Over a thousand clients from the lower 48 have set up trusts and related accounts in Alaska.

The state of Alaska has received directly over 2 million dollars in annual revenue

The legislative changes have increased business for banks, trust companies, attorneys, accountants, life insurance agents and stock brokers.

This has been accomplished with no financial outlay from the state.

ALASKA STATE LEGISLATURE HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman
(907) 465-3004
Fax: (907) 465-2070
Representative_Jay_Ramras@legis.state.ak.us

1292 Sadler Way, Suite 324
Fairbanks, AK 99701



Committee Members:
Representative Nancy Dahlstrom,
Vice-Chairman
Representative Lynn Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

Sponsor Statement HB 197

“An Act relating to trusts, to the issuance of shares of professional corporations to a trustee, to a trustee’s power to appoint property to another trust, to a trustee’s selection of the percentage of trust property to be considered principal, to the determination of the value of a trust, and to a settlor’s intent when transferring property in trust.”

It is important that Alaska’s trust statutes be updated so that Alaska’s investment laws stay competitive with other states. This bill proposes amendments to statutes relating to trusts registered in the state and governing the actions of trustees and co-trustees, which will accomplish this end.

HB197 bill provides for the following:

1. That shares in a professional corporation may be held by the trustees of the professional’s revocable trust.
2. Expands the coverage of AS 13.36.157, which allows the trustee of a trust to transfer trust assets to a similar trust. This expansion will only occur if the trust has an Alaskan trustee and the trust has its primary administration in Alaska.
3. Allows the Alaska trustee of a charitable trust to change the percentage of the value of the trust that will be considered income whenever the trustee determines that the new percentage is necessary and prudent.

4. Clarifies that a settlor's express intention to protect trust assets from beneficiary's potential future creditors is not evidence of an intent to defraud.

5. States needed provisions relating to trustees: compensation, accepting or declining trusteeship, co-trustees, vacancy, resignation, removal, delivery of property by former trustee, reimbursement of expenses, and certification of trust.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB197-COM-OL-04-30-07
 Bill Version: HB 197
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title Trusts RDU Corp. Bus & Prof Licensing (117)
 Component Corp. Bus & Prof Licensing
 Sponsor House Judiciary
 Requester House Labor & Commerce Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

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

| OPERATING EXPENDITURES | FY 2008 | FY 2009 | FY 2010 | FY 2011 | FY 2012 | FY 2013 |
|------------------------|------------|------------|------------|------------|------------|------------|
| 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 (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This legislation amends various provisions of AS 10.45 Professional Corporation Act, relating to the issuance of shares and AS 13.36 Trust Registration.

It would not result in a fiscal impact to the corporations operations of the division.

Prepared by: Chris Wyatt, Administrative Manager Phone (907) 465-2572
 Division Corporations, Business, and Professional Licensing Date/Time 4/30/07 9:32 AM
 Approved by: Emil Notti, Commissioner Date 4/30/2007
 Agency Commerce, Community, and Economic Development

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB197-LAW-CFB-3-31-0
 Bill Version: HB 197
 () Publish Date: _____

Revision Date/Time (Note if correction):
 Title An Act relating to trusts

Dept. Affected: Law
 RDU Civil
 Component Commercial & Fair Business

Sponsor: JUDICIARY
 Requester SENATE JUDICIARY

Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

| OPERATING EXPENDITURES | FY 2008 | FY 2009 | FY 2010 | FY 2011 | FY 2012 | FY 2013 |
|------------------------|------------|------------|------------|------------|------------|------------|
| 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 (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This bill proposes amendments to statutes relating to trusts registered in this state and governing the actions of trustees and co-trustees including provisions that will allow a professional corporation to issue stock to a trust, that establish certain requirements for accepting or rejecting a trusteeship, acting as co-trustees, establishing and fill vacancies in trusteeships, removing of or resigning as a trustee, and that provide requirements for certification of trusts to persons other than the trust beneficiaries. Enactment of the bill is not anticipated to fiscally impact the Department of Law.

Prepared by: Robert Meiners, Admin. Services Manager
 Division: Administrative Services Division
 Approved by: Robert Meiners for Talis Colberg, Attorney General
 Agency: Department of Law

Phone 465-5427
 Date/Time 3/31/07 11:52 AM
 Date 3/31/2007

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Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

Sectional HB197

Section 1. Amends AS 10.45.050 to expand who can be issued shares of capital stock in a professional corporation.

Section 2. Amends AS 13.36.020 - Effects of failure to register to include removal of the trustee under new section AS 13.36.076

Section 3. Amends AS 13.36.035(a) regarding exclusive jurisdiction of the court to include trusts where the trustee has been appointed or removed under new section AS 13.36.076.

Section 4. Amends AS 13.36.035(d) to include appointment and removal of a trustee under new section AS 13.36.076 under laws of the state

Section 5. Adds a new subsection (b) to AS 13.36.055 to deal with compensation of the trustee or his agent and the burden of proof being on the person who seeks review of that compensation, if the compensation is made within the terms of the trust or is reasonable.

Section 6. AS 13.36 is amended by adding new sections

Sec. 13.36.071. Accepting or rejecting trusteeship. Determines when a person designated as a trustee may accept or reject the position and the actions they may take prior to accepting or rejecting the trusteeship.

Sec. 13.36.072 Co-trustees. Defines co-trustees, their roles, and how their duties should be carried out.

Sec. 13.36.073 Vacancy in trusteeship; appointment of successor. Defines a vacancy in a trusteeship and how a successor to a vacancy shall be appointed.

Sec. 13.36.074. Resignation of trustee. Defines how a trustee may resign.

Section 7. AS 13.36 is amended by adding new sections

Sec. 13.36.076. Removal of trustee. States under what conditions a trustee may be removed from office and how a successor trustee shall be appointed.

Sec. 13.36.077. Delivery of property by former trustee. Defines how trust property shall be protected and provides for expeditious delivery of trust property by a trustee who has resigned or removed.

Sec. 13.36.078. Reimbursement of expenses. Defines how a trustee is to be reimbursed for incurred or advanced expenses paid for the benefit of the trust.

Sec. 13.36.079. Certification of trust; penalty Creates a "certification of trust" document, sets forth what must be included in the document, for what purposes it may be used, and the civil penalties that may be imposed for demanding the entire trust instrument in addition to certification of trust.

Section 8. AS 13.36.090 is amended to include a removal of a trustee under new section AS 13.36.076. Also removes language that gives weight to adult beneficiaries determining suitability of the trustee and place of administration.

Section 9. AS 13.36.157(b) is amended to further define a trustee's power to appoint to another trust under the laws of the State of Alaska.

Section 10. AS 13.36.198. Liability for violations is amended to include new section AS 13.36.076 - Removal of a trustee.

Section 11. AS 13.36.390 is amended by adding a definition for "qualified beneficiary"

Section 12. AS 13.38.460(a) amends the selection of percentage after charitable trust election so that the trustee may elect to change the percentage whenever the trustee determines that the new percentage is necessary and prudent.

Section 13. AS 13.38.480 - Value determination. This will amend this section to clarify how the average value of a trust will be determined if the trust has been in existence for less than three years.

Section 14. AS 34.40.110 Restricting transfers of trust interests. Sub-section (b) is amended to include that a settlor's expressed intention to protect trust assets from a beneficiary's potential future creditors is not evidence of an intent to defraud.

Section 15. Repeals 13.36.360(d) that defines "qualified beneficiary", which is now defined under AS 13.36.390.

Section 16. Deals with indirect court rule changes to Alaska Rules of Civil Procedures 54 (Costs) and 82 (Attorney's fees).

Section 17. Applicability section.

Section 18. Conditional Effect. AS 13.36.079(i), enacted by sec.7 of this Act, takes effect only if sec. 16 of this Act receives a two-thirds majority vote by each house.

Section 19. Immediate effective date under AS 01.10.070(c).



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 - 2006

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

SB 298 – Effective September 15, 2006

- Amendments to Trust and Estates Statutes



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.



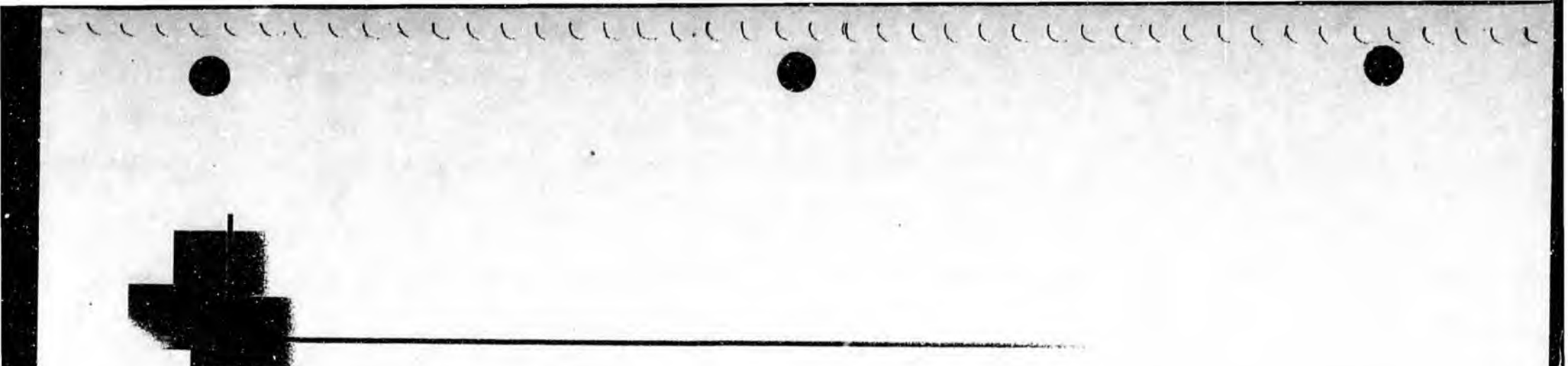
Alaska's 1st Independent Trust Company

- Has 9 full time employees; 4 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

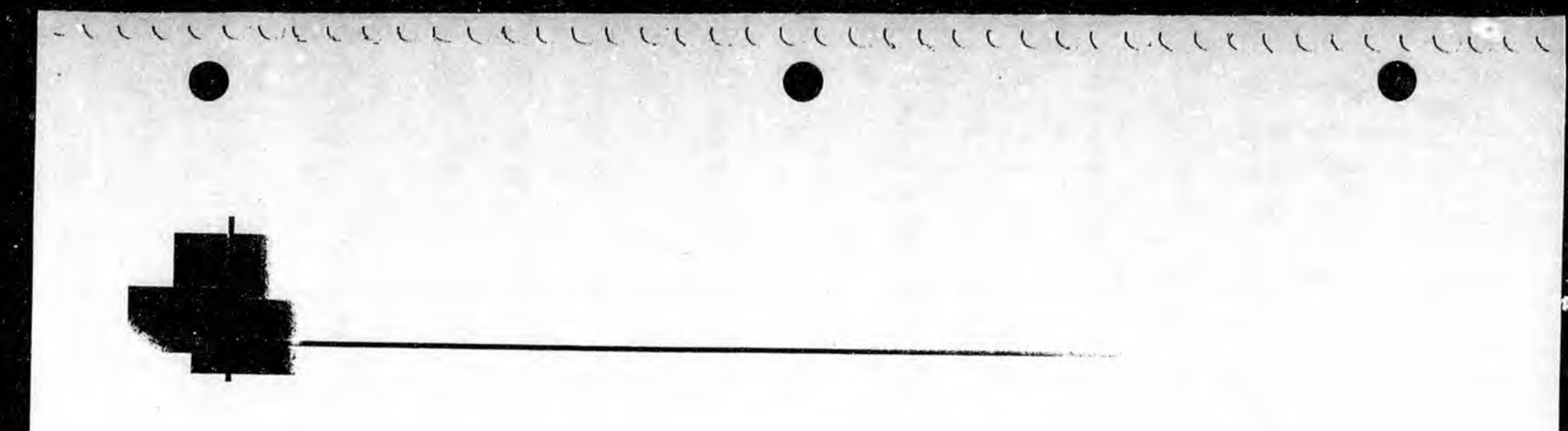
Many Alaskans are taking
advantage of the unique Trust &
Estate Legislation



State Of Alaska

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

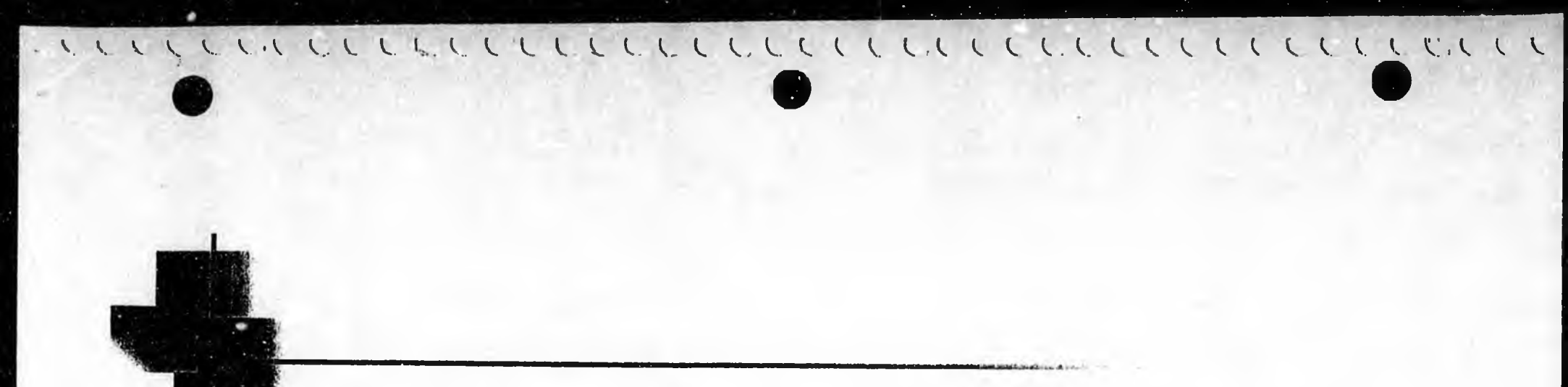
- Increase in Life Insurance Premium Taxes
- Increase Corporate Income Tax
- Increase revenue from LLC & LP filings



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

A New Direction In Estate Planning: North To Alaska

Two goals that often are sought to be achieved in estate planning are estate tax reduction and protection of assets from claims of creditors. Reducing taxes significantly may be a "sum zero" game if the assets are attached by creditors. Similarly, protecting assets from creditors' claims may not accomplish all goals sought unless taxes also are reduced. Fortunately, these two goals are not only compatible, they usually are complementary. That is, the steps to protect assets from claims of creditors may allow tax reduction to occur, as well. On the other hand, a transfer that fails to protect property from claims of the transferor's creditors is likely to fail to reduce taxes because, almost always, if a creditor of the transferor can attach the asset the transfer is regarded as incomplete for gift and estate tax purposes. The Alaska Trust Act (Chapter No. 6, SLA 1997, effective April 2, 1997) offers a new tool in the United States to accomplish the dual goals of asset protection and tax reduction. The Act also effectively repeals the rule against perpetuities for a trust created under Alaska law. This article discusses the dual goals of asset protection and estate tax reduction and how the Alaska Trust Act can be used in the context of estate planning. It also compares some aspects of Alaska trusts with certain offshore trusts.

Alaska recently has enacted legislation similar to laws in certain foreign asset protection jurisdictions. As a consequence, an American in any state can create a trust for his or her own benefit which is protected from creditors provided, among other things, it is not a transfer intended to defraud known creditors. Perhaps of greater importance, Alaska trusts open a new dimension in estate planning. One of this article's co-authors, Jonathan Blattmachr, was the principle draftsman of this new Alaska legislation.

Steps To Reduce Estate Taxation

It seems well accepted that an effective, if not the most effective, estate tax reduction planning step is to make lifetime transfers. Lifetime transfers can avoid gift tax (and, by removing an asset from an estate, can avoid estate tax, as well) in ways that cannot be used at death to avoid estate taxation. However, lifetime transfers are effective for these purposes only if they are "complete" under the federal estate and gift tax rules. The law appears well established that a transfer is complete for such tax purposes only if it is not (or when it no longer is) subject to the claims of the transferor's creditors.

Fraudulent Transfers, Etc.

IN GENERAL, "fraudulent conveyances" with respect to creditors whose claims arise either before or after the transfer are transfers (a)

that the debtor made with actual intent to hinder, delay or defraud his or her creditors or (b) (i) for which the debtor received less than "a reasonably equivalent value" and (ii) after which the debtor

had insufficient assets to meet future business needs or to pay debts. A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer if the debtor made the transfer without receiving "reasonably equivalent value" and the debtor was insolvent at the time of or as a result of the transfer. Proof of actual intent to defraud is not required. Most states have adopted these rules in the form of the Uniform Fraudulent Transfer Act. However, some states (including New York) still have in effect the Uniform Fraudulent Conveyance Act. (See N.Y. Debtor and Creditor Law Secs. 273-281.) Alaska has adopted neither the Uniform Fraudulent Transfers Act nor the Uniform Fraudulent Conveyance Act. [See *Summers v. Hasen*, 852 P.2d 1165, 1169 n.5 (Alaska 1993).] Its fraudulent transfer rules are contained in Alaska Statutes (AS) 34.40.010 et seq.

Similar rules are contained under the Bankruptcy Code, and in the case of bankruptcy, fraudulent conveyances may be defined with reference to the Bankruptcy Code or under applicable state law. The Bankruptcy Code permits such transfers to be set aside

By Douglas J. Blattmachr
Alaska Trust Company
Anchorage, Alaska
and Jonathan G. Blattmachr
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only if made within one year before filing of the petition, but many states permit reference to a much longer period, especially, in the case of transfers to family members. [See, e.g., *FDIC v. Pappadio*, 606 F. Supp. 631, 632 (S.D.N.Y. 1985) (under New York law a claim to set aside a fraudulent conveyance is governed by a six year statute of limitation.)] Avoided fraudulent conveyances are "brought back" into the debtor's estate, usually for distribution to the debtor's creditors. In addition, some fraudulent conveyances may deprive a debtor of (1) homestead or other property exemptions, and (2) a bankruptcy discharge.

As a general rule, a transfer is found to have been made with an actual intent to hinder, delay or defraud creditors only if it was intended to remove assets from claims of specifically known or anticipated creditors. "If the debtor has particular creditors in mind and is trying to remove his assets from their reach, this would be grounds to deny the [bankruptcy] discharge [on the ground of a fraudulent conveyance]. If the debtor is merely looking to his future well-being, [the conveyance would not be fraudulent and as such] the discharge will be granted."

An example will help illustrate this principle. A property owner makes a gift to a family member (whether outright or in trust) which does not result in the property owner being insolvent or unable to pay her debts as they mature. She has no known or specifically identifiable creditors. Nonetheless, she realizes that a claim against her could arise on account of unforeseen circumstances, such as being involved in a car accident, occurring in the future. This gift should not be regarded as a fraudulent conveyance, despite the fact that she is making it with the general intention to protect the property from claims that could arise against her in the future.

Although the fraudulent conveyance rules apply to creditors in bankruptcy, obviously they also have a broader application. For example, in a number of states a tort claimant is permitted to attack as

fraudulent a transfer made after the time of the tort but prior to any judgment.

Interests in Trusts

TWO SETS OF CONTRASTING rules must be considered to determine whether interests in trusts are subject to claims of creditors. First, as a general rule, a beneficial interest in trust that is subject to a restriction on transfer (called a "spendthrift provision") is not subject to the claims of a beneficiary's creditors. Thus, if the debtor is a beneficiary of a trust established for his or her benefit by another person (such as by a parent) which interest by its terms and/or applicable state law is not assignable, the trust assets should be protected.¹⁰ However, property transferred in trust for the beneficiary may be attached by the creditors of the grantor if the transfer to the trust was a fraudulent conveyance.¹¹

In virtually all states, property may be placed in trust for another and thereby be protected from the claims of most creditors of the beneficiaries (and of the grantor). The degree of "creditor proofing" usually varies depending on whether the trust gives the beneficiary the right to receive all of the income, is for the "support" of the beneficiary and/or restricts alienation of the beneficiary's interests.¹² It appears the maximum protection of trust property from the claims of the beneficiary's creditors may be achieved by placing property in a trust that gives the trustee complete discretion as to whether and when to distribute income and/or principal to the beneficiary or beneficiaries of the trust, and which also imposes spendthrift restrictions. The trustee, having control over distributions, probably should not be one of the beneficiaries, both to secure the creditor protection and to avoid inclusion of the property in the estate of a beneficiary for tax purposes (which may be viewed as an additional form of credit protection). The beneficiary, however, may participate as a trustee in investment decisions and may have a non-general power of appointment over all or part of the trust corpus.¹³

Such a trust offers major advan-

tages to the beneficiaries. First, the trust assets should be entirely protected from the claims of most creditors of the beneficiaries, including creditors in bankruptcy and spousal property, and in some cases, even support claims, in the event of divorce or upon death of the beneficiary.¹⁴ In order to maximize the creditor protection, the trustee may be given broad authority not only to distribute or accumulate income and principal, but also to purchase assets for the use of trust beneficiaries. For example, the trustee may be authorized to purchase a home for the use of the beneficiary, thereby preserving that asset in the trust protected from the claims of the beneficiary's creditors. (It seems that this use by a beneficiary should not cause any income to be imputed to the beneficiary.) The purchase of assets "inside" the trust as opposed to distributions also preserves the wealth transfer tax savings that may be achieved through the use of such a trust. Thus, the property owner can confer a substantial benefit on the chosen objects of his or her bounty by transferring during lifetime or bequeathing at death assets to such a "discretionary" trust.¹⁵

As noted above, however, a transfer for less than fair value¹⁶, including a gratuitous transfer in trust for the benefit of another, may be set aside if it constitutes a fraudulent conveyance. For example, a person could not defeat an outstanding liability by transferring while insolvent all of his or her assets into a trust for the benefit of his or her spouse. Thus, in the case of lifetime planning, it is best to have created trusts and make the transfers in advance of any financial difficulties in order to successfully avoid the challenge that such transfers were fraudulent conveyances.¹⁷

The second general rule relates to whether and to the extent of which the grantor of the trust has a beneficial interest in it. As to a trust created for one's own benefit, the "black letter" law is that a transfer in trust for the benefit of the transferor is void as against his or her creditors, whether their claims arise before or after the transfer.¹⁸ In other words, the general rule that has

prevailed throughout the United States, at least until the enactment of the Alaska Trust Act²¹, has been that the assets in the trust may be claimed by the creditors of the grantor to the extent the grantor is entitled or eligible to receive assets from the trust, even if the transfer to it was not in default of creditors and even though the statute of limitations for a person to make a claim that the transfer to the trust was fraudulent has expired.²² For example, an individual creates a trust in 1970 from which the individual is eligible, but not entitled, in the exercise of discretion of a third party as trustee, to receive distributions. A judgment is rendered against the grantor in 1997 on account of a car accident that occurred in 1996. To the extent the trustee has the capacity to make distributions of trust property to the grantor, the judgment against the grantor could be enforced according to the Restatement (2d) Trusts against the trust assets even though the grantor had no intention of defrauding that creditor, or any other creditor, when the trust was created in 1970. On the other hand, a judgment creditor of the grantor generally may not attach the assets in a trust of which the grantor is neither eligible nor entitled to receive distributions unless the transfer was in default of creditors.

The Tax Rule

THE TREATMENT OF self-settled domestic trusts has been explored in a series of federal tax cases that follow from the creditors' rights analysis. Specifically, if the grantor's creditors can reach the entire corpus of such a trust, the transfer to the trust is regarded as wholly incomplete and no gift tax is due upon creation of the trust. As a corollary, however, the entire trust is included in the creator's estate under Code Sec. 2036(a)(1).

Thus, in *Paolozzi v. Commissioner*²³, the settlor transferred property to a trust under which the trustees had discretion to pay over the income to her during her lifetime. The Tax Court determined that under Massachusetts law, the settlor's creditors could reach the maximum amount that, under the trust terms,

could be paid to the settlor — that is, the entire income interest. Accordingly, the gift was incomplete to the extent of that interest. In *Outwin v. Commissioner*²⁴, also considering Massachusetts law, the Tax Court reached the same result where the trustee could distribute income and principal to the settlor in the trustee's discretion but only with the consent of the settlor's spouse. The spouse had an income interest following the settlor's death, could receive principal in the discretion of the trustee at that time, and had a limited testamentary power of appointment. However, the Tax Court concluded that the spouse's veto power was not sufficient to distinguish the situation from *Paolozzi*, regardless of the fact that the spouse might be an adverse party for gift-tax purposes.²⁵

More recently, in *Paxton v. Commissioner*²⁶, the Tax Court held that a trust was included in the settlor's estate where the trustee had discretion to apply income and principal among a class of persons including the settlor; the trustee was the settlor's son, who also had a beneficial interest in the trust. The Tax Court looked to Washington state law, but relied primarily on the Restatement rule, discussed earlier, to support its holding.²⁷

Offshore Trusts

IN THE PAST FEW YEARS, there has been considerable use of trusts created in those foreign jurisdictions that provide greater protection against claims of creditors than is available under American law. A so-called "asset protection trust" allows a grantor to protect assets from his or her creditors without requiring the settlor to relinquish all interest in the assets in the trust. In general, asset protection trusts are trusts established in foreign jurisdictions that have limited the recourse of creditors to trust assets.

The selection of the foreign jurisdiction in which the asset protection trust will be established requires great care because of the existence of the English "Statute of Elizabeth" (precursor to U.S. fraudulent conveyance law, discussed above), which makes it possible to set aside a transfer that is intended

to defeat future, but currently unknown, creditors. Some offshore sites have enacted "Statute of Elizabeth override" statutes to circumvent any questions concerning the applicability of the Statute of Elizabeth. Some of the offshore sites that have passed such legislation are the Bahamas, Bermuda, the Cayman Islands, the Cook Islands (which appears to offer particularly strong protection against creditors) and Gibraltar.²⁸ Other concerns are political stability and the availability of adequate banking and other financial services in the chosen jurisdiction.

Asset protection trusts usually are designed so that the settlor, upon creation of the trust, will experience no tax consequences. In almost all cases, an asset protection trust will be a so-called "grantor trust" for federal income tax purposes, with the result that the creator will continue to be taxed on all the trust income in the same manner as if he or she continued to own the trust property outright.²⁹ In addition, the settlor typically retains certain powers or interests sufficient to render the transfer to the trust an incomplete gift, thereby avoiding gift tax and keeping the trust property within the settlor's gross estate for estate tax purposes. For example, in Private Letter Ruling 9536002 (May 12, 1995) (not precedent), the IRS ruled that a transfer to an offshore trust was incomplete because the grantors retained a limited power of appointment over the trust property.

The New Alaska Trust Law

Elimination of the Rule Against Perpetuities. Under the Alaska Trust Law, an interest in a trust will not fail to be valid because it is non-vested if all or part of the income or principal of the trust may be distributed, in the discretion of the trustee, to a person who is living when a trust is created.³⁰ As a practical matter, this means a trust can be of perpetual duration provided the Trustee has discretion to distribute trust income and principal to the beneficiaries, at least one of whom is living when the trust is created. (This might be contrasted with South Dakota law, which provides that a trust may be perpetual if the trustee is authorized

to sell the trust assets and with Delaware law which has abolished the rule against perpetuities in its entirety, except with respect to real estate.) Thus, a perpetual trust now can be created under the law of Alaska which imposes no income tax. And if the trust is not a grantor trust (causing the income to be attributed directly to the grantor), state (and local) income tax can be avoided to the extent trust income is not currently distributed to beneficiaries who are tax residents of states (or localities) that impose income tax.

Spendthrift Provisions. Alaska law also was amended expressly to provide that a person who transfers property in trust may direct that the interest of a beneficiary of the trust may not be either voluntarily or involuntarily transferred before payment or delivery of the property to the beneficiary by the trustee. It further provides that if the trust contains such a transfer restriction, the restriction prevents a creditor existing when the trust is created, a subsequent creditor or any other person from seeking to satisfy a claim out of the beneficiary's interest in the trust, subject to four exceptions.

First, if the settlor retains the power to revoke or terminate the trust, his or her creditors may attach the trust property to the extent of the power of revocation or termination. However, a power to revoke or terminate does not include a power to veto distributions from the trust to another beneficiary, the retention of a special testamentary power of appointment, or the right to receive a distribution of income, corpus or both in the discretion of another person, including a trustee, other than the settlor of the trust. The veto power and power of appointment may be retained by the grantor to prevent the transfer to the trust from being complete for federal gift-tax purposes.³⁹ By the same token, retention of such powers will cause the assets to be includable in the gross estate of the grantor at death.

Second, creditors of the settlor may also attach property in the trust to the extent that the trust income and principal must be distributed to the grantor.

Third, the transfer is void with respect to creditors if at the time of the transfer to the trust the settlor was in default by 30 or more days in making a payment due under a child support judgment or order.⁴⁰

Fourth, the transfer is subject to attachment by the settlor's creditors if the transfer was intended, in whole or in part, to hinder, delay or defraud creditors under the Alaska fraudulent transfer law. (AS 34.40.010.) However, an action to claim the transfer was fraudulent may not be commenced unless (1) if the claimant was a creditor when the trust was created, the action is brought within the later of four years after the transfer to the trust was made or one year after the trust is or could have been reasonably discovered, or (2) if the claimant becomes a creditor after the transfer, the action is commenced within four years after the transfer to the trust.⁴¹

The foregoing means that if the settlor is not in default by 30 or more days of making a child support payment, the transfer was not intended to defraud creditors and the grantor retains no power to revoke or terminate the trust or the mandatory right to receive income or principal but only retains the right to receive a distribution in the discretion of a trustee, creditors of the grantor cannot reach the assets contained in the Alaska trust. If the grantor retains the power to veto a distribution to other beneficiaries and a special testamentary power of appointment or similar right, the transfer to the trust will not be complete for gift and estate tax purposes even though it is not subject to the claims of the grantor's creditors. On the other hand, if the grantor retains no such power to veto or power of appointment or similar right, the transfer to the trust will be complete for estate and gift tax purposes. Thus, the Act offers flexibility to integrate creditor protection with the grantor's tax and other estate planning objectives.

The Rule for Making the Trust Alaskan

ALTHOUGH FOUR OTHER jurisdictions (Delaware, South Dakota, Idaho and Wisconsin) allow trusts to

last perpetually in their jurisdictions, no statutory guidance is provided by their laws as to what connection or nexus is sufficient to cause their state's law to apply to the trust. The Alaska statute, however, provides an explicit rule as to what makes a trust an Alaskan trust for both the purpose of avoiding the rule against perpetuities and the purpose of creating a trust that will not be subject to claims of the settlor's creditors. First, some of the trust assets must be deposited in the state and be administered by a "qualified person." Deposited in Alaska means held in a checking account, time deposit, certificate of deposit, brokerage account, trust company fiduciary account or other similar account located in Alaska. A "qualified person" is an Alaskan domiciliary or an Alaskan trust company or bank. Second, the Alaskan trustee's duties must at least include an obligation to maintain records for the trust (on an exclusive or nonexclusive basis with other trustees) and the obligation to prepare or arrange for the preparation of income tax returns that must be filed by the trust (again on an exclusive basis or on a nonexclusive basis with other trustees). Third, part of the administration must occur in the state.

Some Contrasts to Foreign Asset Protection Trusts

ALTHOUGH AN AMERICAN now is able to create an Alaskan trust of which he or she is a discretionary beneficiary which will be protected from the claims of his or her creditors, an Alaska trust will not provide the same level of practical protection from claims of creditors which may be afforded to a trust created in one of the offshore jurisdictions, such as the Cook Islands or the Bahamas. The laws of such offshore jurisdictions typically have extremely short statutes of limitations before the period to commence an action claiming the transfer to the trust was fraudulent runs which, as a practical matter, cannot be met by a creditor especially if the trust is created and funded sufficiently in advance of the entry of a final judgment against the debtor in an American court.⁴² Second, the

jurisdiction may prohibit the enforcement of American judgments. That means the action must be retried in the offshore jurisdiction. As a practical matter, that may well be impossible. Because Alaska is one of the American states, its courts will be required to give full faith and credit to any judgment of a sister state although, as indicated, a judgment against the debtor will not be enforceable against the Alaska trust unless there is a finding that the transfer to the trust was a fraudulent transfer or some other reason for voiding the trust, such as the grantor having been in default by 30 or more days in child support payments at the time the trust was created. Third, at least some of these offshore jurisdictions explicitly exclude some claimants from contending a transfer was fraudulent. For instance, in some cases, a claim founded on a domestic right (such as an equitable distribution claim to property in the event of a divorce) cannot be brought against a trust situated in that jurisdiction.

In some ways, however, a foreign asset protection trust may be less desirable than an Alaska trust. Obviously, there is greater political risk in these offshore jurisdictions than there is in the United States. In addition, new "anti-foreign trust" provisions added to the Internal Revenue Code (see, e.g., Code Sec. 6048) will not apply to an Alaska trust. Also, it may be that a court would be more prone to view the creation of a foreign asset protection trust as an attempt to remove or secrete assets than it would the creation of an Alaska trust. In a recent bankruptcy court case, the court expressed considerable hostility to the creation of an offshore trust and ultimately applied New York law to determine whether the debtor had retained a property interest in the trust (which was established under Jersey law) for purposes of determining whether he should be denied a discharge in bankruptcy.³⁴ It appears, however, that this case may have turned on the rather extraordinary facts, which the court apparently perceived as involving a course of deception and concealment of assets by the debtor.

Options Under the Alaska Trust Act

A SIGNIFICANT OBSTACLE to the making of lifetime transfers is that the property owner is then cut off from the property. For example, some persons are willing to make a gift, and anticipate that they will be comfortable without the gifted asset and/or the income therefrom under the most likely scenarios, but are concerned about a "disaster" situation in which they might need access to the funds. They may not be at all concerned about protecting assets from creditors. In such a case, an offshore trust may be appropriate to consider. Precisely because the normal U.S. rule permitting creditors to reach the trust does not apply, the fact that the grantor is a permissible beneficiary of trust income and/or principal in the discretion of an independent trustee should not render the gift incomplete and includable in the estate under Code Sec. 2036 or 2038. Thus, the trust can be structured so that the transfer is a completed gift upon creation.³⁵ Gift tax would be paid (or unified credit applied). In that way, the "normal" estate planning benefits of removing gifted assets and the appreciation thereon from the estate are achieved. However, the Trustee can give the settlor access to the trust assets.

These same opportunities are now available to Americans using Alaska trusts. For example, an individual could create a so-called "Crummey trust"³⁶ in Alaska for the benefit of himself or herself as well as members of his or her family and protect transfers to the trust from gift tax using annual exclusions with respect to the other family members. For instance, a woman who is married and has two children could transfer up to \$50,000 under the protection of the annual exclusion under Code Sec. 2503(c) granting her husband and each child the right, respectively, to withdraw \$10,000 and \$20,000 from the trust. The transfers to such a trust created under Alaska law would be complete and should be excludable from the grantor's estate at death even though the grantor is eligible, although not entitled, to receive

distributions from the trust in the discretion of a trustee other than himself or herself. Of course, the beneficiaries may exercise the powers of withdrawal so that there is no property left in the trust from which the grantor could benefit. In addition, to the extent that the powers of withdrawal have not lapsed tax-free pursuant to Code Sec. 2514(e) and 2041(b)(2), the property subject to the powers of withdrawal will be includable under Code Sec. 2041(a) in the gross estates of the powerholders.

An individual also could create an Alaska trust and transfer the amount of his or her remaining gift tax exemption equivalent (which can be as great as \$600,000) and remain a beneficiary eligible to receive distributions in the discretion of a trustee other than himself or herself and avoid having the property includable in his or her estate. This provides an opportunity to remove the income and appreciation earned on the property during the balance of his or her lifetime from his or her gross estate even though the grantor has retained the possibility of receiving assets back in the discretion of the trustee if appropriate circumstances arise. Similarly, an individual could make a transfer, which is complete for estate and gift tax purposes, to an Alaska trust, of which he or she is eligible to receive distributions, equal to his or her remaining GST exemption under Code Sec. 2631(a) which can be as great \$1 million. This would allow the amount protected from generation-skipping transfer tax to increase by post-transfer income and appreciation during the balance of the transferor's lifetime even though the grantor is an eligible beneficiary of the trust.

The entitlement to payments from a grantor retained annuity trust (GRAT) described in Code Sec. 2702(b)(1) or grantor retained unitrust (GRUT) described in Code Sec. 2702(b)(2) must terminate prior to the death of the grantor or the trust assets will be includable, in whole or in part, in the grantor's estate.³⁷ However, if the GRAT or GRUT is created under Alaska law, the property may continue in trust after the grantor's annuity or uni-

trust term ends, and the grantor thereafter could be eligible to receive distributions from the trust without causing the trust to be includable in his or her estate, provided the grantor survives the annuity or unitrust term.

Conclusions

THE DUAL GOALS OF asset protection and reduction in taxation are often compatible and complementary. The new Alaska Trust Act provides an opportunity for Americans in all states to create trusts in Alaska which may help achieve both goals. Although not providing all of the practical protection that may be available through similar trusts created in offshore jurisdictions, many Americans will prefer for their assets to remain in the United States. For them, Alaska trusts may be considered. Although not discussed in detail in this article, making the trust perpetual may offer additional financial, tax and estate planning benefits. ♦

End Notes

1. See, e.g., *Paolozzi v. Commissioner*, 22 T.C. 182 (1954).
2. Compare Reg. Sec. 25.2511-2(c) with Code Sec. 2038(a).
3. "If and when the grantor's dominion and control of the trust assets ceases, such as by the trustee's decision to move the situs of the trust to a state where the grantor's creditors cannot reach the trust assets, then the gift is complete for Federal gift tax purposes...." Rev. Rul. 76-103, 1976-1 CB 293. See generally, Kartiganer, Rollins & Pontolica, "Completed Gifts to Offshore Trusts and the Three-Year Rule," *Journal of Asset Protection* (March/April 1996).
4. See generally, P. Alces, *The Law of Fraudulent Conveyance*, Sec. 504 (1989) (1991 Cum. Supp. No. 2).
5. See, e.g., Tex. Prop. Code Sec. 42.004(a); (under Texas law, a debtor who acquires otherwise exempt personal property with intent to hinder, delay or defraud creditors loses the personal property exemption—however, that is not the case with the Texas homestead exemption, although a bankruptcy discharge may be denied); *Anderson Mill & Lumber Co. v. Clements*, 134 So. 588, 592 (Fla. 1931); (under Florida law, debtor who acquires otherwise exempt homestead property with intent to hinder, delay or defraud creditors loses homestead exemption).
6. See, e.g., Bankruptcy Code Sec. 727(a)(2); *In re Reed*, 700 F.2d 986, 988 (5th Cir. 1983) ("a debtor who converts nonexempt assets to an exempt homestead immediately before bankruptcy, with intent to defraud his creditors, must be denied a dis-

charge in bankruptcy because of the provisions of Section 727 of the Bankruptcy Code"); *In re Myerson & Kubn*, 121 B.R. 145, 158-159 & n.15 (Bkrcty. S.D.N.Y. 1990).

7. *Oberst v. Oberst*, 91 B.R. 97, 101 (Bkrcty. C.D. California 1988). See, also, *Klein v. Klein et al.*, 122 NYS 2d 546 (1952) (similar).
8. See *Myers v. Redmill*, 266 Ala. 270, 96 So. 2d 450 (1957) (conveyance to wife two days after automobile accident), and cases cited in annot., 73 A.L.R.2d 749. See, also, annot., 38 A.L.R.3d 597.
9. Such an interest would normally be excluded from a beneficiary's bankruptcy estate as well. See Bankruptcy Code Sec. 541(c)(1) and (2). *In re Remington*, 14 BR 496 (Bankr. DNJ 1981) (in bankruptcy proceeding of New Jersey resident, both income and principal of trust created for his benefit by relative who resided in Pennsylvania protected under Bankruptcy Code because under Pennsylvania law spendthrift provision was effective to provide that protection).
10. In some states, trusts are "spendthrift" only to the extent so provided in the governing instrument. In other states, they are "automatically" spendthrift unless the governing instrument provides otherwise. In still others, they may not be "spendthrift" at all (i.e., they are subject to creditor claims regardless of spendthrift provisions in the instruments). See, e.g., *Industrial Nat'l Bank v. Budlong*, 106 RI 780, 264 A2d 18 (1970).
11. See e.g., N.Y. Debtor and Creditor Law, Secs. 278 and 279.
12. See, e.g., Scott, 11A *The Law of Trusts*, Secs. 152, 155-157.1 (4th ed. 1987); Restatement (2d) *Trusts*, Secs. 155 and 157; Cal. Prob. Code Ann. Secs. 15400-15307.
13. See Code Sec. 2041.
14. See *Converstan v. Kellogg*, 136 Mich. App. 504, 357 N.W. 2d 705 (Mich. App. 1984); Scott, *supra*, Sec. 157.1.
15. See Oshins & Blattmachr, "The Mega-trust: An Ideal Family Wealth Preservation Tool", *Trusts & Estates* 20 (November 1991).
16. It is not always clear whether a transfer is for fair value for this purpose. The analysis will depend on applicable law and the facts of the case.
17. See *Oberst v. Oberst*, 91 B.R. 97 (Bkrcty. C.D. Cal. 1988).
18. See, e.g., Restatement (2d) *Trusts*, Sec. 156.2.
19. Although apparently not widely known, a rule somewhat similar to that in Alaska is contained in Missouri Revised Statute Sec. 456.080.
20. However, it seems that not every retained interest will trigger the application of this rule. For example, a power to direct investments probably is not attachable by the grantor's creditors. A related issue is whether creditors can reach the assets of a trust over which the settlor retained a power of revocation (or a general power of appointment), and whether creditors can reach the assets of such a trust to satisfy the debts of the settlor/decedent. It appears that the trend is to allow assets in

such a trust to be used to satisfy the debts of the settlor/decedent and toward extending the recourse of creditors (including creditors of a decedent) against such trusts, in some cases by statute. See, e.g., Cal. Prob. Code Ann. Secs. 18200 and 18201; *State Street Bank & Trust Co. v. Reiser*, 389 N.E.2d 768 (Mass. App. 1979).

21. 22 T.C. 182 (1954). See, also, Rev. Rul. 77-378, 1972-2 CB 347; Rev. Rul. 76-103, 1976-1 CB 394.
22. 76 T.C. 153 (1981), acq. 1981-2 C.B. 1.
23. See *Comm'r v. Vander Weele*, 254 F.2d 895 (6th Cir. 1958), acq. 1962-1 CB 5 (same result under Michigan law); PLR 8350004 (same result under California law). Neither a private letter ruling (PLR) nor a national office technical advice memorandum may be cited or used as precedent. Code Sec. 6110(f).
24. 86 T.C. 785 (1986).
25. See, however, *Estate of German v. United States*, 85-1 TC ¶ 13,610 (Cl. Ct. 1985) and *Herzog v. Comm'r*, 116 F.2d 591 (2d Cir. 1941), finding that creditors could not reach assets of a trust of which the settlor was one of several discretionary beneficiaries (or found that the Internal Revenue Service had failed to meet its burden to show that settlor's creditors could reach the asset held in the trust). However, the conclusion reached by the Federal courts in these cases may not be the same as those reached by state courts. Compare *Vanderbilt Credit Corp. v. Chase Manhattan Bank, N.A.*, 100 AD2d 544, 473 NYS 2d 242 (2d Dep't 1984) with *Herzog v. Comm'r*, *supra*.
26. In general, it appears that asset protection trusts will be effective only against future, but currently unknown, creditors. The settlor, generally, cannot be insolvent at the time the trust is created or become insolvent as a result of the creation of the trust.
27. See Code Sec. 77(a) (a trust is a grantor trust if, among other situations, the trustee, without the consent of an "adverse party", can distribute the trust assets to the grantor.) There will be no Code Sec. 1491 excise tax consequences since no tax will apply to the transfer of appreciated assets to a foreign trust so long as that trust is a "grantor trust" and the settlor is a U.S. person. Rev. Rul. 87-61, 1987-1 CB 219.
28. AS 34.27.050(a)
29. Reg. Sec. 25.2511-1(c).
30. Code Sec. 2036(a)(2), 2038(a).
31. An Alaska trust could not be used to avoid child support or alimony payments because neither a judgment for child support nor one for alimony is dischargeable in bankruptcy. Bankruptcy Code Sec. 523(a)(5).
32. It is possible that a court would determine that the statute of limitations of the grantor's domicile state (or another state) should be applied rather than the one provided under the new Alaska law. This could mean a shorter, longer or "different" statute of limitations. However, the determination that the trust is "spendthrift" under Alaska law should apply even if the grantor is domiciled elsewhere. See *Collier on Bankruptcy*, 544.02 at 544-13 to 544-14 and fn. 17 (15th ed. 1989) ("The

tendency of the courts is to treat the law of the site of property at the commencement of the case as governing to the extent that Sec. 544(a) refers to non-bankruptcy law"); 4A *Collier on Bankruptcy*, ¶ 70.26 at 364-365 (14th ed.) ("Whether the bankrupt's interest as a *situs qua trust* was, at the time of bankruptcy, assignable or transferable, or subject to attachment, seizure or judicial sale, is a matter generally to be determined by the law of the state where the trust has its situs" [footnote omitted]); *Ferrari v. Barclays Business Credit, Inc.*, 108 B.R. 384, 387 (D. Mass. 1989) ("The authorities ... have shown a preference for applying the law of the site of the conveyed property"); *In re Remington, supra* (applying Pennsylvania law to determine interest of New Jersey debtor in trust established under Pennsylvania law). But cf. *In re Portnoy, infra* (alleged concealment of assets of offshore trust as grounds for denial of discharge in bankruptcy).

33. But, see 515 S. *Orange Grove Owners Ass'n v. Orange Grove Partners*, Plaintiff No. 208/94 (High Ct. Rarotonga, Civil Div., Nov. 6, 1995)

34. *In re Larry Portnoy*, 201 B.R. 685, 695 (S.D.N.Y. 1996).

35. See, e.g., PLR 9332006 (not precedent) (transfer to offshore trust of which grantor

and members of grantor's family are eligible beneficiaries a completed gift and will not be in grantor's estate because under the law governing the trust creditors of the grantor cannot attach the trust assets).

36. See, generally, Blattmachr & Slade, "Building an Effective Life Insurance Trust"

continued on page 94

Trusts & Estates 29 (May 1990) explaining how to structure such a trust to hold insurance policies on the grantor's life. Crummey trusts can hold other assets as well. It seems that the life insurance proceeds should not be includable in the grantor's estate under Code Sec. 2042 if the grantor is merely an eligible beneficiary of the trust which is not subject to the claims of his or her creditors, because the incidents of ownership (which is the "touchstone" for application of Code Sec. 2042) held by a trust are not automatically attributed to the beneficiary whose life is insured. See, e.g., PLR 9434028 (not precedent).

37. The Internal Revenue Service has contended that a GRAT is includable in its entirety under Code Sec. 2039(a) if the grantor dies during the term for which he or she is entitled to annuity payments. See PLR 9345035 (not precedent).

Self-Settled Estate Planning Trusts

The Alaska Act opens a new dimension in estate planning for Americans. They can now make lifetime transfers, which are complete for federal gift and estate tax purposes, to an Alaska trust of which the grantor is eligible; but not entitled, to receive distributions in the discretion of a trustee (other than himself or herself).¹ Such self-settled Alaska trusts could be used for virtually all lifetime estate planning transfers.

For instance, an individual may make transfers under the protection of the Internal Revenue Code §2503(b) gift tax annual exclusion by transferring property to an annual exclusion or so-called "Crummey" trust, which provides that certain individuals (such as a transferor's spouse, descendants, and perhaps others, but not the grantor) can withdraw property transferred to the trust up to the amount of annual exclusions not used elsewhere. With an Alaska trust, the grantor may remain eligible to receive distributions of trust property in the discretion of a trustee other than the grantor without causing the trust assets to be includable in his or her estate. From an estate planning perspective, the grantor will want distributions to him or her to be minimized, because such distributions diminish the estate tax planning benefits of having made completed transfers to the trust that otherwise would be excludable from his or her estate.

If an agreement that the grantor would receive the income from or the use of the assets held by the trust may be inferred from the circumstances, the assets almost certainly will be includable in the grantor's estate, under Code §2036(a)(1), even when coupled with the finding that the grantor had no legal entitlement to such income or use. See, e.g., *Estate of Skinner v. U.S.*, 197 F. Supp. 726 (E.D. Pa. 1961), *aff'd*, 316 F. 2d 517 (3rd Cir. 1963). On the other hand, only occasional use of trust assets or occasional receipt of trust income should avoid any such inference. See, e.g., *Estate of Wells v. Commissioner, supra*. Actual retention of the property or the income (that is, the failure actually to transfer the property or the income to another) may also result in estate tax inclusion. See, e.g., *Lee v. United States*, 86-1 U.S.T.C. ¶ 13,649 (CCH)(W.D. Ky. 1986).

Annual Exclusion Trusts

Not infrequently, a Crummey trust will acquire one or more life insurance contracts on the life of the grantor or on the lives of the grantor and the grantor's spouse. Ownership of the policies by the trust is an attempt to keep the proceeds paid at death from inclusion in the estate(s) of the insured(s). If the insured holds no "incident of ownership" in the policy at or within three years of death, and if the proceeds are not paid to the estate of the insured, the proceeds should

not be included in the insured's gross estate. Code §2035, 2042.

If the terms of an annual exclusion (or another type) Alaska trust that acquires a cash value life insurance contract provide merely that the trustee may, in the exercise of its discretion, distribute trust assets to the grantor, the incidents of ownership in the contract should not be attributed to the insured grantor so as to cause the proceeds to be includable in his or her estate. See, e.g., PLR 9434028 (incidents of ownership held by a trust are not automatically attributed to the beneficiary whose life is insured if the beneficiary is not a trustee).

This provides an opportunity for the grantor, through the exercise of discretion of a trustee other than himself or herself, to be eligible to receive cash value in the policy without causing the proceeds paid at death to be includable in his or her estate.

Unified Credit, GST Exemption, and Other Trusts

One of the most effective lifetime planning techniques is to transfer as early as possible in life the amount protected from gift tax by reason of the unified credit allowable under Code Sec. 2010 or by reason of the amount of GST exemption under Code Sec. 2631. Use of the unified credit (which under the Taxpayer Relief Act of 1997 will increase commencing in 1998 and continuing through 2006) early in life can result in a very large amount being excludable from the transferor's estate. The early use of the \$1 million GST exemption (which under the Taxpayer Relief Act of 1997 is indexed for inflation) can be even more effective from an estate planning perspective. In the long run, because the GST exemption can be used to avoid wealth transfer tax on property as it passes from one generation to the next without limit, the use of the GST exemption to avoid tax may be even more important than use of the unified credit. (As noted earlier, an Alaska trust can be structured so it can last perpetually. Also, Alaska has no income tax.)

The remainder following the grantor's retained interest term in a grantor retained annuity trust (GRAT), grantor retained unitrust (GRUT), or grantor retained income trust (GRIT), including a qualified personal residence trust, can pass on right to others or remain in trust. In most jurisdictions in the United States, the property will continue to be includable in the grantor's estate if the grantor is eligible to receive continuing distributions in the discretion of a trustee after the grantor's entitlement to payments ceases, because the grantor's creditors will be able to attach the trust assets. See Rev. Rul. 77-378, *supra*. However, if the GRAT, GRUT, or GRIT is an Alaska trust, the property should not be includable in the grantor's estate after the annuity, unitrust, income, or use term

IRC § 754. Moreover, entities treated as partnerships for income tax purposes can be much more flexible in formation, operation and ownership than so-called S corporations. Subject to certain exceptions (such as for domestic (U.S.) corporations), an entity may elect on its first tax return filed after 1997 to be treated as a partnership (or, alternatively, as a corporation) for federal income tax purposes.

Entities treated as partnerships, in certain circumstances, can be used to enhance the protection of assets from claims of creditors. First, "buy-out" provisions contained in a partnership agreement (or other document) sometimes provide other owners or the entity itself the right to buy partnership interests (or comparable interests in a LLC) from a partner who becomes bankrupt. Although these "triggered by bankruptcy" provisions sometimes are not enforceable, they may be enforceable in certain other cases. In any event, their mere existence may chill a creditor from attempting to attach a partnership interest. Second, as a general matter, any creditor who does succeed to the economic interest of the bankrupt partner but does not become a partner (because, for example, state law or the partnership agreement so provides) nonetheless may be taxed apparently on a pro rata portion of the income, even if no distributions are made. See Rev. Rul. 77-137, 1977-1 C.B. 178. This may make the attached interest in the partnership a liability in the hands of the creditor (because it may generate an income tax liability without a concomitant distribution of cash or other assets,) which may cause the creditor to agree to disgorge the asset at a lower price or possibly to abandon it. Under the law of virtually all jurisdictions, however, a court having jurisdiction over the partnership may order its liquidation for any "equitable" reason. See, e.g., 8A N.Y. Cons. Law §121-802. In addition, under those state laws that otherwise permit a partner to demand to be bought out upon six month's notice (which is the default rule contained in the Revised Uniform Limited Partnership Act), a creditor might convince a court that a creditor should be able to exercise that power to be liquidated out.

Under the new Alaska law, a court will be able to order the dissolution of a partnership or limited liability company only if it determines that it is impossible for the enterprise to continue to operate. Therefore, the court will be unable to order a liquidation merely for an "equitable" reason. In addition, unlike the default rules under most state laws, an Alaska limited partnership or limited liability company does not go out of existence upon the death of a general partner of a limited partnership or of a member of an LLC.

Limited partnerships and LLCs are widely used for estate planning. They can accomplish many goals, including providing a family unit with an opportunity

to shift income more efficiently, share in lower brokerage and investment advisory fees, and centralize and harmonize the management of assets and investment decisions. Use of these entities changes the nature of what is owned. In other words, family members no longer own an interest in the assets owned by the partnership or LLC, but rather own interests in the partnership or LLC. Because the nature of the family's interest changes, so does it value. Often, the value is reduced. Lower value may mean lower gift, estate, or generation-skipping transfer tax when an interest is transferred. It can also mean a smaller "step-up" in income tax basis at death. See IRC §1014.

The Internal Revenue Service has shown a strong and growing inclination to disregard the existence of the partnership (or LLC) when disregarding its existence would result in a larger value for estate, gift, or generation-skipping transfer tax purposes, and thus, higher taxes. The Service's attack, to date, has revolved around four primary arguments. See, generally, Aucutt, "More on Deathbed FLPs," 9 *Probate Practice Report* 1 (August 1997), for a discussion of some of these arguments.

First, the IRS has contended that the taxpayer may be making a gift upon formation of the entity to other equity owners (e.g., partners) if the taxpayer receives back an interest worth less than what he or she contributed. The argument may not be sound. For example, upon termination any such "gift" to the other partners may be offset by a "gift" back from the others. If so, any transfer upon formation must be for full consideration and cannot be a gift. At least in some cases, the courts have not completely dismissed the argument that a gift can be made upon formation, thus this argument should not be disregarded in forming a limited partnership or LLC. Cf. *Estate of Trenchard v. Commissioner*, T.C. Memo 1995-232. See, also, Horn, "Limited Partnerships: Some Thoughts and Theories about Key Issues," 23 *ACTEC Notes* 37 (Summer 1997).

Second, the IRS has contended that the existence of the partnership should not be respected in those cases where the partnership was formed only for tax reduction reasons, at least if its existence has no other substantial economic impact. It appears more likely that there will have been a smaller non-tax impact if a transfer of partnership units occurs immediately after the formation of the entity. See, e.g., National Office Technical Advice Memorandum (NOTAM) 9719006 (formation of partnership by individual who was terminally ill and died two days after partnership was formed). See, also, NOTAM 9723009 (formation 54 days before death), and NOTAM 9725002 (formation two months before death).

Third, the Internal Revenue Service also has recently contended that the existence of the partner-

limited liability companies last indefinitely (just as corporations do). In addition, as a matter of default Alaska law, the terms of a partnership agreement (or governing documents of a limited liability company) can only be changed with the unanimous of all partners (or members of an LLC). Hence, if there is any partner who is not a family member (such as a niece or nephew), the family will not be able to remove the restriction and, accordingly, it should not constitute an applicable restriction the existence of which may be disregarded under IRC §2704(b).

Alaska has also eliminated any right of a limited partner or LLC member to demand to be bought out on six months' notice. In fact, under default state law, a partner or member is entitled to distributions only as provided in the governing documents. Moreover, unlike the default rules under the law of virtually all the other states, neither a limited partnership nor a limited liability company is dissolved under Alaska law upon the death of any general partner or member. Rather, a limited liability company continues for as long as there is one member. A limited partnership continues in existence as long as there is another general partner, or if there is none, it dissolves only if a majority-in-interest of the remaining partners fail to elect a new general partner within 90 days.

New Delaware Asset Protection Trust Legislation

Effective July 1, 1997, Delaware enacted a new law similar to and intended to produce the same estate planning and asset protection benefits that the Alaska Trust Act provides. The official synopsis of the new Delaware law states that the purpose of the Act is to facilitate the establishment of trusts in Delaware and is intended to be like the Alaska Trust Act. In fact, much of the language in the Delaware law is identical to the Alaska law.¹

Unfortunately, it appears that the Delaware law will provide less asset protection than the Alaska law will. Perhaps of much greater significance, it may not be possible for a gift to a self-settled trust formed under Delaware law, as enacted, to be complete for

federal tax purposes. See Dela. Stat. Ann. §3573. Subsection §3573(a) appears to provide that the trust is permanently available to discharge the grantor's obligation to pay alimony, child support, and property settlement awards even if the obligation arises after the transfer to the trust occurs. As indicated above, a transfer is incomplete for Federal estate and gift tax purposes to the extent the grantor can relegate the grantor's creditors to the trust. Here, because the potential use of trust assets is limited and probably ascertainable, it seems the transfer might be only partly incomplete (i.e., to the extent potential use of trust assets for child support, etc. is ascertainable). See Treas. Reg. §20.2036-1(a)(ii).

Probably most troublesome is §3573(b), under which the grantor can certify in writing to any creditor (including apparently someone who becomes a creditor after the trust has been created) that the trust assets are available to satisfy the creditor's claim. That certification seems to make the trust assets available to that creditor. This virtually assures that the gift to the trust is incomplete, because the grantor can relegate his or her future creditors to the trust assets. This power of relegation is sufficient to render the gift incomplete. Rev. Rul. 77-378, *supra*.

Third, under §3573(c) the trust assets are permanently available to claimants who have suffered personal injury, death, or property damage that occurs prior to the transfer to the trust. It appears quite certain that these claimants continue for all time to have access to the property in the Delaware trust to satisfy their claims, even if the transfer to the trust was not a fraudulent conveyance. It seems that transfers to the Delaware trust are incomplete to the extent of any such pre-transfer claims, under Dela. Stat. Ann. §3573(c).

Nonetheless, supporters of the new Delaware trust act are likely to seek to have these potential problems with the legislation cured early in that state's 1998 legislative session. With certain changes, Delaware law will provide the same estate planning benefits currently available under Alaska law.

Notes

¹ The extent of asset protection is discussed in more detail in Hompesch, Rothschild and Blattmachr. "Does the New Alaska Trusts Act Provide an Alternative to the Foreign Trust?" *The Journal of Asset Protection*, 9 (July-August, 1997).

² For example, Rev. Rul. 77-378 states, in part:

There would be no doubt of his nonliability for gift tax upon the value of the income if he had reserved to himself the absolute right to the income for his life. But he made no such reservation. He transferred the entire property. Whether he would enjoy any of its income depended entirely on the trustee, who, in his uncontrolled discretion, could deprive him of it completely. It

was only by virtue of the trustee's direction, which on this record must be regarded as entirely voluntary, that the donor received any of the income; and this direction might be terminated whenever the trustee deemed it proper that the wife should receive the income. Such a hope of passive expectancy is not a right. It is not enough to lessen the value of the property transferred.... 'Whether the grantor enjoy any of the trust's assets is dependent entirely on the uncontrolled discretion of the trustee. Such a hope or passive expectancy does not lessen the value of the property transferred....' Rev. Rul. 62-13 is hereby clarified to remove any implication

ACTEC NOTES

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Jerold I.
Horn

President's Message

My first President's Message, appearing in the Summer, 1997, issue of *ACTEC Notes*, signalled my long-held belief that the most important issue that confronts trusts and estates lawyers, and the most significant issue that I can address and can induce the College to address, is an economic and professional malaise that befalls the legal specialty in which we practice. I devote this President's Message to revisiting the theme.

As I view the essentials and state them directly, the issue is nothing less than whether our work is sufficiently valuable to generate the fees that will enable us to continue to perform our work in the manner in which we are prepared and inclined and in which our professional standards require. The economic and professional standards that I see at the margins of the market are not cause for encouragement.

The recent and vast increase in the number of lawyers arguably is having the greatest impact upon those types of
(continued on page 183)

Volume 23, No. 3, Winter 1997

Table of Contents

| | |
|--|-----|
| President's Message | 177 |
| Calendar of Events | 178 |
| In Memoriam | 181 |
| Fellow in the News | 185 |
| Editor's Page | 186 |
| Washington Report | 187 |
| <i>John M. Bixler and Ronald D. Aucutt</i> | |
| Foundation News | 189 |
| <i>Thomas P. Sweeney</i> | |
| Committee Corner | 191 |
| <i>W. Bjarne Johnson</i> | |
| ACTech Talk: Push Technology | 193 |
| <i>Roger L. Shumaker</i> | |
| Spotlight on Attorneys' Fees | 195 |
| <i>Martin A. Heckscher</i> | |
| New Developments in Construction and Instruction Case Law | 198 |
| <i>Arlene Harris</i> | |
| The Taxpayer Relief Act of 1997 ("TAPRA"): A First Look, but Not the Last Word | 201 |
| <i>George L. Cushing, John H. Clymer and Natalie B. Choate</i> | |
| The Family-Owned Business Exclusion | 214 |
| <i>Donald H. Kelly</i> | |
| The New Charitable Remainder Trust Rules: Show Me the Charitable Gift | 234 |
| <i>Conrad Teitel</i> | |
| Estate Planning on America's Last Frontier: Alaska Trusts, Limited Partnerships, and LLCs | 240 |
| <i>Jonathan G. Blattmachr, George E. Goerig, Jr. and Richard S. Thwaites, Jr.</i> | |
| Written Communication with Clients: Observations on the Survey | 247 |
| <i>Stephen E. Martin</i> | |
| Contest Planning for the Client with Marginal Capacity | 251 |
| <i>Wills and Trusts Subcommittee of the Fiduciary Litigation Committee</i> | |

PLEASE NOTE

1998 Summer Meeting, Portland, Oregon, July 9-12

Enclosed with this issue are a letter from E. James Gamble, a hotel brochure and reservation form, and a return postcard for a free Northwest Oregon travel guide.

trust and by providing in the trust agreement that the property is community property.¹³ The Act requires for a valid Alaska Community Property Trust that:

1. One or both spouses transfer property to a trust;

2. The trust expressly declares that some or all the property transferred is community property under Chapter 75 of Title 34 of the Laws of the State of Alaska;

3. At least one trustee of the trust is a "qualified person" whose powers include or are limited to a. maintaining records of the trust and b. preparing or arranging for the preparation of any income tax returns that must be filed by the trust. A "qualified person" is an individual Alaska domiciliary, Alaska trust company or Alaska bank as described in AS 34.75.100(a) (Michie 1998). The powers to maintain trust records and prepare or arrange for the preparation of trust income tax returns may be

given either to the Alaska trustee alone or to the Alaska trustee and one or more other trustees;

4. The Trust must contain the following language (in capital letters) at the beginning of the trust agreement:

THE CONSEQUENCES OF THIS TRUST MAY BE VERY EXTENSIVE, INCLUDING, BUT NOT LIMITED TO, YOUR RIGHTS WITH RESPECT TO CREDITORS AND OTHER THIRD PARTIES, AND YOUR RIGHTS WITH YOUR SPOUSE BOTH DURING THE COURSE OF YOUR MARRIAGE AND AT THE TIME OF A DIVORCE. ACCORDINGLY, THIS AGREEMENT SHOULD ONLY BE SIGNED AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS AGREEMENT, YOU SHOULD SEEK COMPETENT ADVICE.¹⁴

5. Both spouses must sign the trust, even if only one transfers property to the trust;

6. The trustees must maintain records that identify which property held by the trust is community property and which property held by the trust is not community property.

An Alaska Community Property Trust that meets these requirements will allow the conversion of the trust assets from separate or joint property into community property. Furthermore, it allows the spouses to enter into enforceable agreements regarding:

1. Their rights and obligations in the property transferred to the trust;

2. The management and control of the property transferred to the trust;

3. The disposition of the property transferred to the trust in the event of the dissolution of the marriage or of the trust, death of either or both spouses or the occurrence or nonoccurrence of another event;

4. The choice of law governing the interpretation of the trust; and

5. Any other matter that affects the property transferred to the trust and does not violate public policy or a statute imposing a criminal penalty.

An Alaska Community Property Trust may not be amended or revoked unless the agreement itself provides for revocation on a particular date or on the occurrence of a particular event or unless the agreement is amended or revoked by a later community property trust. To amend or revoke the trust, the later community property trust is not required to declare any property held by the trustee as community property. This means that the spouses may amend the trust to transmute property back from community property to separate property. Both an Alaska Community Property Trust and a later (amending) Community Property Trust are enforceable without consideration,

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has a substantial relation to a trust if the settlor designates that the trust is to be administered there, if any trustee has its principal place of business or domicile in that state when the trust is created, if the trust is administered in that state or if it is the domicile of the beneficiaries.

As to trusts of interests in land, however, the law of the situs of the land becomes more important. The administration and validity of a trust in land is determined according to the law of the state in which the land is situated, even if the trustees are situated elsewhere.¹⁹ A court of a state other than that in which the property is situated may still exercise jurisdiction over the administration of the trust, if this does not unduly interfere with the control by the courts of the situs.²⁰

Issues of construction of the trust instrument, however, have not always been construed according to the situs. Some courts apply the law of the situs,²¹ but a few others have applied the law designated by the settlor in construing a trust on real estate.²² The law of the situs almost certainly controls issues of construction only in the absence of a designation in the instrument of the governing law.

Therefore, it appears very likely that an Alaska Community Property Trust holding personal property will be respected in matters of administration, construction and trust validity, as long as it meets the basic rules set forth by Alaska law. On the other hand, it is quite possible that a court would view an Alaska Community Property Trust as not creating community property interests in real estate, the title to which is held by the trust but the location of which is in another state that has no community property rules, or that has significantly different rules from those adopted in Alaska. A practitioner who wishes to create an Alaska Community Property Trust to hold out-of-state real estate should, therefore, arrange for the transfer of the real estate to an Alaska corporation or partnership or limited liability

The administration and validity of a trust in land is determined according to the law of the state in which the land is situated, even if the trustees are situated elsewhere.

company if that is otherwise compatible with the client's wishes, since stock, partnership interests and LLC interests are themselves personal property, even if the underlying assets are real property. The stock or partnership or LLC interests may then be transferred to an Alaska Community Property Trust, the terms of which would be governed more clearly by Alaska law.

Gift Tax Consequences Of Creating An Alaska Community Property Trust

Although an Alaska Community Property Trust could be irrevocable, the grantor or grantors should ensure that neither spouse will be deemed to make a completed gift for Federal gift tax purposes to any third party upon the transfer of property to the trust or thereafter unless that is what he, she or they wish. Because both spouses must sign the trust, even if only one of them transfers assets to it, one spouse cannot create the trust, make the assets community property and unilaterally control what the disposition of those assets will be. If the other spouse does not agree to the proposed disposition, he or she presumably will not sign the trust.

The gift tax marital deduction would appear to be a simple protection against adverse gift tax consequences on the creation of an Alaska Community Property Trust, but the law does not clearly establish that granting one's

spouse the immediate, unilateral and continuing right until death to withdraw one-half of any property transferred to and which becomes a community property asset should qualify such one-half interest for the gift marital deduction. In other words, the fact that the donee-spouse's interest in the community property under the Alaska Community Property Trust will terminate at his or her death (if the right to withdraw that interest from the trust is not exercised) may mean it is a terminable interest.²³

With reasonable planning and drafting, a transfer to an Alaska Community Property Trust should be capable of qualifying for the marital deduction.²⁴ One way is to create an interest which constitutes an "estate trust," that terminates in favor of the donee-spouse's own probate estate, making it thereby disposable by that spouse's Will.²⁵ Alternatively, the transfer may be made to qualify by falling under the life estate general power of appointment exception.²⁶ The donee-spouse must be entitled to all of the income for life payable at least annually and be granted a lifetime and/or testamentary general power of appointment exercisable by the donee-spouse alone and in all events in favor of that spouse and/or his or her estate. These are known as general powers of appointment marital deduction trusts.

Although the statute relating to such general power of appointment marital deduction trusts states that the income must be payable to the spouse at least annually, the regulations promulgated under the gift tax regulations relating to such trusts clarify that the income does not, in fact, have to be paid to the donee-spouse but merely be subject to withdraw by that spouse.²⁷

The interest created for the donee-spouse in the Alaska Community Property Trust could be made to qualify alternatively for QTIP treatment under Code Sec. 2523(f) by structuring the donee-spouse's interest that way and by election on a timely filed United

al right to withdraw none, some (e.g., half) or all of property so contributed if the income from the property contributed or the property itself may be distributed, without the consent of an adverse party, to either or both spouse.³² As a result, during the spouses' joint lifetimes, each spouse will be treated as owning for income tax purposes the assets he or she contributed. That probably will be the case even if the spouses are treated as exchanging interests in assets contributed. For example, the wife contributes Asset X worth \$2 million to the trust which became community property (and, therefore, treated as owned under Alaska law as one-half by the husband) and the husband contributes Asset Y worth \$1 million which became community property (and, therefore, treated as owned under Alaska law as one-half by the wife). Even if the wife is treated as exchanging a 25 percent interest of Asset X for a 50 percent interest in Asset Y and the

husband is treated as exchanging a 50 percent interest in Asset Y for a 25 percent interest in Asset X, the wife probably will be treated as owning all of Asset X and the husband probably will be treated as owning all of Asset Y for Federal income tax purposes. The reason is that for income tax purposes (of which the grantor trust rules are a part), that exchange normally would be treated as a gift rather than as an exchange.³³ Hence, the spouse who contributed the property presumably will be treated as the sole grantor of that asset for income tax purposes.

To the extent of the property contributed by him or her, the surviving spouse will continue to be treated as the property owner for income tax purposes under the grantor trust rules to the extent the property or its income may be distributed to that spouse, without the consent of any adverse party,³⁴ after (as well as before) the other spouse dies. In addition, the surviving spouse may become to

be treated as the owner under Code Sec. 678 of property contributed by the first spouse to die upon that spouse's death to the extent the survivor has a unilateral right to withdraw the property after the death of the first spouse to die.

Basis Adjustment At Death

One major tax advantage of creating an Alaska Community Property Trust is that it enables residents of non-community property states to take advantage of Sec. 1014(b)(6), which states that, upon the death of either spouse, the basis of the entire community property asset (and not just one-half of the asset) becomes equal to the value of the asset at the death of that spouse (or, if applicable, on the alternate valuation date determined under Code Sec. 2032). Sec. 1014(b)(6) does not distinguish between property that is held as community property under automatic (opt out) state laws or under elective (opt in) state laws. Furthermore, significant authority strongly suggests that community property under an opt in law, such as that adopted in Alaska, would be eligible for the basis adjustment at death under Sec. 1014(b)(6).³⁵

However, it is appropriate to note that Code Sec. 1014(b)(6) only requires that the property is community property under the laws of any State (or possession or foreign country). If a non-Alaska married person or persons transfers property to an Alaska Community Property Trust, the property will be community property under the law of Alaska. Therefore, it seems literally to fall under the section.

Although it seems the asset which is community property under Alaska law is "community property ... under the community property laws of [a] State," it is possible the courts will hold otherwise.³⁶ Accordingly, married couples should elect into the Alaska community property system only if that form of ownership reflects their wishes regardless of whether the basis of the surviving spouse's interest in the property

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4. Alaska Stat. 34.75.030 (Michie 1998).
5. See, e.g. Alaska Stat. 34.75.1101(c) (Michie 1998).
6. See, e.g., Alaska Stat. 34.75.30(c) (Michie 1998).
7. See, e.g., Alaska Stat. 34.75.040 and 34.75.909(d) (Michie 1998).
8. Alaska Stat. 34.75.010 (Michie 1998).
9. Alaska Stat. 34.75.050 (Michie 1998).
10. Alaska Stat. 25.24.160(d) (Michie 1998).
11. Alaska Stat. 13.12.208(d) (Michie 1998).
12. Alaska Stat. 34.75.090(g) and (h) (Michie 1998).
13. Alaska Stat. 34.75.60(b) (Michie 1998).
14. A similar requirement exists for an Alaska Community Property Agreement. See, Alaska Stat. 34.75.054(b) (Michie 1998).
15. See *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).
16. Restatement (2d) Conflicts of Law, Sec. 268.
17. *Hughes v. Commissioner of Internal Revenue*, 104 F.2d 144 (9th Cir. 1939); *Noble v. Rogan*, 49 F.Supp. 370 (S.D. Cal. 1943); *Application of Byrs*, 133 N.Y.S.2d 511 (1954); *Matter of Grant-Suttie*, 205 Misc. 940, 129 N.Y.S.2d 572 (1954); *Matter of Carter*, 13 Misc.2d 1040, 178 N.Y.S.2d 569 (1958).
18. Restatement (2d) Conflicts of Law, Sec. 270.
19. Restatement (2d) Conflicts of Law, Sec. 276.
20. *Fuller v. McKim*, 187 Mich. 667, 154 N.W. 55 (1915); *Knox v. Jones*, 47 N.Y. 389 (1872); *Matter of Osborn*, 151 Misc. 52,270 N.Y.S. 616 (1934); *In re Sandford's Will*, 81 N.Y.S.2d 377 (1948); *In re Fagan's Estate*, 84 N.Y.S.2d 558 (1948); *In re Plaxco's Estate*, 130 N.Y.S.2d 244 (1954); *In re Master's Will*, 136 N.Y.S.2d 907 (1954); *In re Warburg's Estate*, 237 N.Y.S.2d 557 (1963).
21. *Bowen v. Frank*, 179 Ark. 1004, 18 S.W.2d 1037 (1929); *Veach v. Veach*, 205 Ga. 185, 53 S.E.2d 98 (1949); *Peet v. Peet*, 229 Ill. 341, 82 N.E. 376 (1907); *Scofield v. Hadden*, 206 Iowa 597, 220 N.W. 1 (1928); *Thompson v. Penn*, 149 Ky. 158, 148 S.W. 33 (1912); *In re Estate of Hencke*, 220 Minn. 414, 19 N.W.2d 718 (1945); *Minor v. Minor*, 17 App.Div. 521, 45 N.Y.S. 554 (1st Dep't 1897); *Matter of Good*, 304 N.Y. 110, 106 N.E.2d 36 (1952), *aff'g* 278 App.Div. 806, 927, 104 N.Y.S.2d 804 (1st Dep't 1951), *aff'g* 278 App.Div. 806, 927, 104 N.Y.S.2d 804 (1st Dep't 1951), *aff'g* 96 N.Y.S.2d 798 (1950).
22. *Greenwood v. Page*, 138 F.2d 921 (D.C. Cir. 1943); *Guerard v. Guerard*, 73 Ga. 506 (1884); *Brown v. Ramsey*, 74 Ga. 210 (1884) (*inter vivos trust*); *Kelib v. Eaton*, 58 Kan. 732, 51 P. 271 (1897); *Houghton v. Hughes*, 108 Me. 233, 79 A. 909 (1911); *Martin v. Eslick*, 229 Miss. 234, 90 So.2d 635 (1956); *Zombro v. Moffett*, 329 Mo. 137, 44 S.W.2d 149 (1931); *Applegate v. Brown*, 344 S.W.2d 13 (Mo. 1951); *Cary v. Carman*, 116 Misc. 463, 190 N.Y.S. 193 (1921).
23. As a general rule, a terminable interest does not qualify for the marital deduction. Code Sec. 2523(b)(1). Certain terminable interests may so qualify. See, e.g., Code Sec. 2523(e), 2523(f).
24. As a general rule, no marital deduction is allowed if the transferor's spouse is not a citizen of the United States. Code Sec. 2523(i).
25. See, e.g., Reg. Sec. 20.2056(c)-2(b)(1)(i). Cf. Rev. Rul. 72-33, 1972-2 C.B. 530.
26. Code Sec. 2523(e).
27. Reg. Sec. 25.2523(c)-1(f)(8). See, also, Reg. Sec. 25.2523(f)-1(f), Example 2 and Example 3.
28. See, generally, Reg. Sec. 25.2511-2.
29. Code Secs. 672(e), 673, 676 and 677. The trust may be a grantor trust for income tax purposes for other reasons as well. See, Code Sec. 674 (control of beneficial interest in the trust) and 675 (administrative powers).
30. See, generally, Blattmachr & Sembler, "Crummey Powers and Income Taxation", *The Chase Review* (July 1995).
31. See PLR 9321050, essentially reversing PLR 9026036.
32. As mentioned above, the trust may be a grantor trust for other or additional reasons.
33. Code Sec. 1041.
34. As mentioned above, it may be a grantor trust for other or additional reasons.
35. On the validity of a consensual community property law for this purpose, see *Comm'r v. Harmon*, 323 US 44 (1944); and *McCollum v. United States*, 58-2 USTC ¶ 9957 (USDC ND Ok. 1958); and also see Rev. Rul. 77-359, 1977-2 C.B. 24.
36. The IRS seems to accept that separate property converted to community property by agreement is community property for Federal income tax purposes, at least under an opt-out system. See Rev. Rul. 77-359, *supra*.
37. If, as suggested by Rev. Rul. 77-359, *supra*, the transmutation of separate to community property is a gift, Code Sec. 1014(e) may control notwithstanding Code Sec. 1014(b)(6).
38. See, Code Sec. 2523(i)(2).
39. Caution should be exercised in converting certain assets to community property, for instance, if one spouse owns a policy of insurance on the life of the other, the conversion presumably will cause the insured spouse to hold an incident of ownership in the policy potentially causing proceeds paid at death to be included in his or her estate. Cf. *Estate of Cervon v. Commissioner*, 111 F.3d 1252 (5th Cir. 1997). It may be inappropriate also for one spouse to convert qualified plan and similar interests into community property. Generally such interests represent income in respect of a decedent under Code Sec. 691(a) which, under Code Sec. 1014(c), do not receive the income tax-free step-up in basis under Code Sec. 1014(a), but complications of such ownership can arise in the non-participant spouse dies first.
40. See, Alaska Stat. 34.75.110(c) (Michie 1998).
41. See, e.g., *Harvey v. United States*, 185 F.2d 463 (7th Cir. 1950).

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Many trust companies do not have the time or resources to build and operate a fully functioning investment services department. Are you facing any of the following challenges?

- ◆ Do you need help with new business development and marketing support to get that extra edge over your competition?
- ◆ Maybe you excel in domestic equity management but are not geared to offer the international exposure that some of your clients desire.
- ◆ Possibly fixed income management is your strength and you need to enhance your equity management capabilities.
- ◆ How many potential business clients did you have to turn away because you do not offer a broad array of retirement plans and services?
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- ◆ Do you have investment decision makers but lack the investment research for them to base decisions on?

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Sec. 10.45.050. Issuance of shares.

A professional corporation may issue shares of its capital stock to persons licensed by a regulatory board of the state to render the professional service specified in the articles of incorporation. It may not issue shares to any other person.

Sec. 13.36.020. Effect of failure to register.

A trustee who fails to register a trust in a proper place as required by AS 13.36.005 - 13.36.025, for purposes of any proceedings initiated by a beneficiary of the trust before registration is subject to the personal jurisdiction of any court in which the trust could have been registered. In addition, any trustee who, within 30 days after receipt of a written demand by a settlor or beneficiary of the trust, fails to register a trust as required by AS 13.36.005 - 13.36.025 is subject to removal and denial of compensation or to surcharge as the court may direct. A provision in the terms of the trust purporting to excuse the trustee from the duty to register, or directing that the trust or trustee is not subject to the jurisdiction of the court, is ineffective.

Sec. 13.36.035. Court jurisdiction; choice of law.

(a) The court has exclusive jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts, including trusts covered by (c) of this section. Except as provided in (c) and (d) of this section, proceedings that may be maintained under this section are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and beneficiaries of trusts. These include proceedings to

(1) appoint or remove a trustee;

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

(3) ascertain beneficiaries, determine any question arising in the administration or distribution of any trust including questions of construction of trust instruments, instruct trustees, and determine the existence or nonexistence of any immunity, power, privilege, duty, or right; and

(4) release registration of a trust.

(b) Neither registration of a trust nor a proceeding under this section results in continuing supervisory proceedings. The management and distribution of a trust estate, submission of accounts and reports to beneficiaries, payment of trustee's fees and other obligations of a trust, acceptance and change of trusteeship, and other aspects of the administration of a trust shall proceed expeditiously consistently with the terms of the trust, free of judicial intervention and without order, approval or other action of any

court, subject to the jurisdiction of the court as invoked by interested parties or as otherwise exercised as provided by law.

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

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

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

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

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

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

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

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

(1) capacity of the settlor;

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

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

(e) *[Repealed, Sec. 22 ch 105 SLA 1998].*

Sec. 13.36.055. Proceedings for review of employment of agents and review of compensation of trustee and employees of trust.

On petition of an interested person, after notice to all interested persons, the court may review the propriety of employment of any person by a trustee including any attorney, auditor, investment advisor or other specialized agent or assistant, and the reasonableness of the compensation of any person so employed, and the reasonableness of the compensation determined by the trustee for the trustee's services. Any person who has received excessive compensation from a trust may be ordered to make appropriate refunds.

Sec. 13.36.090. Trustee's duties; appropriate place of administration; deviation.

A trustee is under a continuing duty to administer the trust at a place appropriate to the purposes of the trust and to its sound, efficient management. If the principal place of administration becomes inappropriate for any reason, the court may enter any order furthering efficient administration and the interests of beneficiaries, including, if appropriate, release of registration, removal of the trustee and appointment of a trustee in another state. Trust provisions relating to the place of administration and to changes in the place of administration or of trustee control unless compliance would be contrary to efficient administration or the purposes of the trust. Views of adult beneficiaries shall be given weight in determining the suitability of the trustee and the place of administration.

Sec. 13.36.157. Trustee's special power to appoint to other trust.

(a) Subject to (d) of this section, unless the terms of the instrument expressly provide otherwise, a trustee who has authority under the terms of an instrument or irrevocable inter vivos agreement to invade the principal of a trust for the benefit of a beneficiary who is eligible or entitled to the income of the trust may exercise without prior court approval the trustee's authority 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 trust under an instrument other than that under which the power to invade was created if the exercise of this authority

(1) does not reduce any fixed income interest of a beneficiary of the invaded trust;

(2) is in favor of the beneficiaries of the invaded trust;

(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.

(b) This section applies to a trust governed by the laws of this state, including a trust whose governing jurisdiction is transferred to this state.

(c) The exercise of the power to invade the principal of a trust under (a) of this section is considered to be the exercise of a special power of appointment.

(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. 13.36.198. Liability for violations.

If a trustee violates a provision of AS 13.36.105 - 13.36.220, the trustee may be removed as trustee and denied compensation in whole or in part, and a beneficiary, co-trustee, or successor trustee may treat the violation as a breach of trust.

Sec. 13.36.390. Definitions.

In this chapter,

(1) "party in interest" means, if the trust is

(A) revocable and if the settlor is incapacitated, the settlor's legal representative under applicable law or the settlor's agent under a durable power of attorney; or

(B) irrevocable,

(i) each trustee serving at the time;

(ii) each beneficiary entitled to receive a mandatory distribution of income or principal from a trust or, if a beneficiary entitled to receive a mandatory distribution of income or principal from a trust is not 19 years of age or is incapacitated, the beneficiary's legal representative under applicable law or the beneficiary's agent under a durable power of attorney; and

(iii) each vested remainder beneficiary in existence at the time or, if a vested remainder beneficiary is not 19 years of age or is incapacitated, the vested remainder

beneficiary's legal representative under applicable law or the vested remainder beneficiary's agent under a durable power of attorney.

(2) "qualified person" means

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

(B) a trust company that is organized under AS 06.26 and that has its principal place of business in this state; or

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

(3) "settlor" means a person who transfers property in trust and includes a person who furnishes the property transferred to a trust even if the trust is created by another person.

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

Sec. 13.38.460. Selection of percentage after charitable trust election.

(a) After a trustee has elected under AS 13.38.440 for the trust to be governed by AS 13.38.440 - 13.38.490, the trustee shall, in a writing maintained as part of the permanent records of the trust, select the percentage of the value of the trust that will be considered income and determine that it is consistent with the long-term preservation of the real value of the principal of the trust, but the percentage may not be less than two percent or more than seven percent each year of the principal value of the trust. The trustee may elect to change a percentage previously selected if the trustee determines that the new percentage is consistent with the long-term preservation of the real value of the principal of the trust, but may not change the percentage more frequently than once every 10 years.

(b) For a charitable trust required by 26 U.S.C. 4942 (Internal Revenue Code) to distribute a higher amount than the percentage selected under (a) of this section, the amount required by 26 U.S.C. 4942 (Internal Revenue Code) controls over the percentage selected.

Sec. 13.38.480. Value determination.

For the purposes of applying AS 13.38.440 - 13.38.490, the value of the trust is the fair market value of the cash and other assets held by the trustee with respect to the trust, whether these assets would be considered income or principal under the other provisions of this chapter, determined at least annually. In the discretion of the trustee, the value of the trust may be averaged over a period of three or more preceding years when the trust has been administered as a unitrust under this section for at least three years.

Sec. 34.40.110. Restricting transfers of trust interests.

(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) 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.

HB

2000

CS FOR HOUSE BILL NO. 200()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES DAHLSTROM, Doll, Buch, Kerttula, Crawford, Gatto, Lynn, Hawker, Holmes, Johnson, LeDoux, Ramras, Roses, Gruenberg, Stoltze

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the presumption of coverage for a workers' compensation claim for**
2 **disability as a result of certain diseases for certain occupations."**

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

4 *** Section 1. AS 23.30 is amended by adding a new section to read:**

5 **Sec. 23.30.121. Presumption of coverage for disability from diseases for**
6 **certain occupations. (a) There is a presumption that a claim for compensation for**
7 **disability as a result of the diseases described in (b) and (c) of this section for the**
8 **occupations listed under (b) and (c) of this section is within the provisions of this**
9 **chapter. This presumption of coverage may be rebutted by a preponderance of the**
10 **evidence. The evidence may include the use of tobacco products, physical fitness and**
11 **weight, lifestyle, hereditary factors, and exposure from other employment or**
12 **nonemployment activities.**

13 **(b) For a fire fighter covered under AS 23.30.243,**

14 **(1) there is a presumption that a claim for compensation for disability**

1 as a result of the following diseases : within the provisions of this chapter:

2 (A) respiratory disease;

3 (B) cardiovascular events that are experienced within 72 hours
4 after exposure to smoke, fumes, or toxic substances; and

5 (C) the following cancers:

6 (i) primary brain cancer;

7 (ii) malignant melanoma;

8 (iii) leukemia;

9 (iv) non-Hodgkin's lymphoma;

10 (v) bladder cancer;

11 (vi) ureter cancer;

12 (vii) kidney cancer; and

13 (viii) prostate cancer;

14 (2) notwithstanding AS 23.30.100(a), following termination of service,
15 the presumption established in (1) of this subsection extends to the fire fighter for a
16 period of three calendar months for each year of requisite service but may not extend
17 more than 60 calendar months following the last date of employment;

18 (3) the presumption established in (1) of this subsection applies only to
19 an active or former fire fighter who has a disease described in (1) of this subsection
20 that develops or manifests itself after the fire fighter has served at least seven years
21 and who

22 (A) was given a qualifying medical examination upon
23 becoming a fire fighter or during employment as a fire fighter that did not
24 show evidence of the disease; and

25 (B) with regard to diseases described in (1)(C) of this
26 subsection, demonstrates that, while in the course of employment as a fire
27 fighter, the fire fighter was exposed to a known carcinogen, as defined by the
28 International Agency for Research on Cancer or the National Toxicology
29 Program, and the carcinogen is associated with a disabling cancer.

30 (c) The presumption in this subsection applies to fire fighters covered under
31 AS 23.30.243, peace officers, and emergency medical and rescue personnel. In this

1 subsection, "emergency medical and rescue personnel" means a trauma technician,
 2 emergency medical technician, rescuer, or mobile intensive care paramedic who is a
 3 paid employee of a first responder service, a rescue service, an ambulance service, or a
 4 fire department that provides emergency medical or rescue services as part of its
 5 duties; under this subsection,

6 (1) there is a presumption that a claim for compensation for disability
 7 as a result of the following contagious diseases is within the provisions of this chapter:

- 8 (A) human immunodeficiency virus;
- 9 (B) acquired immunodeficiency syndrome;
- 10 (C) all strains of hepatitis;
- 11 (D) meningococcal meningitis;
- 12 (E) mycobacterium tuberculosis; and
- 13 (F) any uncommon infectious disease the contraction of which

14 the United States Secretary of Labor determines to be related to the hazards to
 15 which an employee in fire protection activities may be subject.

16 (2) the presumption established in (1) of this subsection applies only to
 17 fire fighters covered under AS 23.30.243, peace officers, and emergency medical and
 18 rescue personnel who were given a qualifying medical examination upon becoming or
 19 during service as a fire fighter, peace officer, or provider of emergency medical or
 20 rescue services who did not show evidence of the disease.

21 (d) The provisions of (b)(1)(A) and (B) of this section do not apply to a fire
 22 fighter who develops a cardiovascular or lung condition and who has a history of
 23 tobacco product use as established under (f)(2) of this section.

24 (e) The provisions of (c)(2) of this section may not be interpreted to require a
 25 municipality or other employer of fire fighters covered under AS 23.30.243, peace
 26 officers, or emergency medical and rescue personnel, including a municipality or other
 27 organization that uses volunteers, to provide a qualifying medical examination.

28 (f) The department shall, by regulation, define

29 (1) for purposes of (b)(1) - (3) and (c)(1) - (2) of this section, the type
 30 and extent of the medical examination that is needed to eliminate evidence of the
 31 disease in an active or former fire fighter; and

1 (2) for purposes of (d) of this section, the nature and quantity of a
2 person's tobacco product use; the standards adopted under this paragraph shall use or
3 be based on existing medical research.

4 (g) In this section, "fire fighter" has the meaning given in AS 09.65.295.

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

7 **APPLICABILITY.** The presumption of coverage established by this Act applies to
8 claims made on or after the effective date of this Act, even if the exposure leading to the
9 occupational disease occurred before the effective date of this Act.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note: HB200-DOLWD-WC-04-20-07

Bill Version: HB 200

() Publish Date: _____

Revision Date/Time (Note if correction): _____

Title: Workers' Comp: Disease Presumption

Department: Labor and Workforce Development

RDU: Workers' Compensation

Component: Workers' Compensation

Sponsor: Representative Dahlstrom

Requester: House Labor and Commerce

Component Number: 344

Expenditures/Revenues

(Thousands of Dollars)

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

| OPERATING EXPENDITURES | FY 2008 | FY 2009 | FY 2010 | FY 2011 | FY 2012 | FY 2013 |
|------------------------|---------|---------|---------|---------|---------|---------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | * | * | * | * | * | * |

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| CAPITAL EXPENDITURES | | | | | | |
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| CHANGE IN REVENUES () | | | | | | |
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FUND SOURCE

(Thousands of Dollars)

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

Estimate of any current year (FY2007) cost: None

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

The broadly applicable presumptions included in the bill could result in numerous claims. The seriousness of the covered conditions would involve large amounts of benefits, and those factors coupled with the broad scope of defenses (like heredity and other life exposures) could lead to extensive, complicated hearings.

* The costs of this proposed legislation cannot be determined in advance as there are no comparable Workers' Compensation Act provisions at present. Increased costs, if any, would consist of additional personnel needed to resolve disputed claims for benefits based upon the new presumptions.

Prepared by: Paul F. Lisankle, Director

Division: Workers' Compensation

Phone: 465-6059

Date/Time: 4/20/07 9:11 AM

Approved by: Click Bishop, Commissioner

Agency: Department of Labor and Workforce Development

Date: 4/20/2007

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB200-DOA-RM-4-19-07
 Bill Version: HB 200
 () Publish Date: _____

Revision Date/Time (Note if correction): 3/14/2007 Dept. Affected: Administration
 Title An act relating to presumption of coverage RDU Risk Management
for w/c claims for certain occupations Component Risk Management
 Sponsor Representative Dahlstrom et al
 Requester Labor and Commerce Component No. 71

Expenditures/Revenues (Thousands of Dollars)

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

| OPERATING EXPENDITURES | FY 2008 | FY 2009 | FY 2010 | FY 2011 | FY 2012 | FY 2013 |
|------------------------|---------|---------|---------|---------|---------|---------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | * | * | * | * | * | * |

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| CAPITAL EXPENDITURES | | | | | | |
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| 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 | * | * | * | * | * | * |

Estimate of any current year (FY2007) cost:

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

Risk Management (RM) will be financially impacted by the changes in this legislation. RM administers the self insurance program providing workers' compensation protection for all State employees, including illness claims filed by occupations affected by this legislation.

The self insured workers' compensation claims will realize increased litigation and benefit costs. As the number of reported exposures will vary by year, it is difficult to present accurate projections.

Future Risk Management's workers' compensation assessments to those agencies with employee occupations affected will reflect actual costs incurred as premiums charged each agency are developed from actual claims expenses incurred.

Prepared by: J. Brad Thompson, Director
 Division: Risk Management
 Approved by: Kevin Brooks, Deputy Commissioner
 Agency: Department of Administration

Phone 465-5723
 Date/Time 4/19/2007 4:00 P.M.
 Date 4/19/2007

Sec. 09.65.295. Liability involving a peace officer or fire fighter.

(a) A peace officer or fire fighter injured while in the line of duty or the personal representative of a peace officer or fire fighter who died in the line of duty may not bring a civil action to recover damages for a negligent act or omission if the negligent act or omission created the need for the activity being performed by the peace officer or fire fighter.

(b) This section does not apply to a negligent act or omission that is unrelated to the activity that created the need for the presence of the peace officer or fire fighter.

(c) In this section, "fire fighter" means a person employed by a municipal fire department or who is a member of a volunteer fire department registered with the state fire marshal, or a person registered for purposes of workers' compensation with the state fire marshal as a member of a volunteer fire department.

Sec. 09.65.300. Immunity for providing free health care services.

(a) Except as otherwise provided in this section, a health care provider who provides health care services to another person is not liable for civil damages resulting from an act or omission in providing the health care services if the health care

(1) provider is licensed in this state to provide health care services;

(2) services provided were within the scope of the health care provider's license;

(3) services were provided at a medical clinic, medical facility, nonprofit facility, temporary emergency site, or other facility owned or operated by a governmental entity or nonprofit organization and the health care provider was acting within the scope of the provider's responsibilities in the medical clinic, governmental entity, or nonprofit organization;

(4) services were provided voluntarily and without pay to the health care provider for the services, except as provided in (b)(2) and (3) of this section; and

(5) provider

(A) obtains informed consent from the person receiving the health care services as described under AS 09.55.556, except in the case of an emergency; and

(B) provides the person receiving the health care services advance written notice of the immunity provided under this section to a health care provider when providing voluntary health care services as described under this section.

(b) This section does not preclude

(1) liability for civil damages that are the result of gross negligence or reckless or intentional misconduct;

(2) a health care provider from receiving payment or being reimbursed for expenses, including travel and room and board while providing voluntary services;

(3) a medical clinic or facility from charging for its services.

Journal Text for HB31 in the 24th Legislature



Full Journal

03-30-2006

House Journal

2958

There being no objection, it was so ordered.

Representative Coghill moved and asked unanimous consent that CSSSHB 31(FIN) be considered engrossed, advanced to third reading, and placed on final passage. There being no objection, it was so ordered.

CSSSHB 31(FIN) was read the third time.

The question being: "Shall CSSSHB 31(FIN) pass the House?" The roll was taken with the following result:

CSSSHB 31(FIN)
Third Reading
Final Passage

*Passed (H)
last year.*

YEAS: 34 NAYS: 3 EXCUSED: 2 ABSENT: 1

Yeas: Anderson, Berkowitz, Chenault, Cissna, Crawford, Croft, Dahlstrom, Elkins, Foster, Gara, Gardner, Gatto, Guttenberg, Harris, Hawker, Holm, Joule, Kapsner, Kerttula, Kott, LeDoux, Lynn, McGuire, Meyer, Moses, Neuman, Olson, Ramras, Rokeberg, Salmon, Samuels, Seaton, Stoltze, Thomas

Nays: Coghill, Kelly, Kohring

Excused: Gruenberg, Wilson

Absent: Weyhrauch

And so, CSSSHB 31(FIN) passed the House and was referred to the Chief Clerk for engrossment.

Bill Root:

[Display Bill Root](#)

[Next Bill](#)

[To Report Problems with Basis Inquiry](#)

[Live KTOO Streams](#)



[Return to Basis Main Menu \(24th Legislature\)](#)

[Return to Legislature Home Page](#)

LEGISLATIVE RESEARCH REPORT

FEBRUARY 26, 2007



REPORT NUMBER 07.125

PRESUMPTIVE DISABILITY LAWS

PREPARED FOR SENATOR HOLLIS FRENCH

BY PATRICIA YOUNG, MANAGER

You asked for information on presumptive disability laws in other states. As you may know, such laws link certain occupations with the occurrence of diseases and conditions known to be associated with those occupations. These laws establish a presumption that, for example, the death or disability of a firefighter from a cardiovascular disease, certain cancers, or certain infectious diseases is job-related for purposes of worker's compensation and disability retirement. The presumption shifts the burden of proof from the employee to the employer, who must attempt to prove that the disease or condition arose from causes other than the occupation.

Lawmakers in 41 states have enacted some form of presumptive disability law according to the International Association of Fire Fighters (IAFF).¹ We attach a chart, provided by the IAFF, which gives some detail on coverage among states.² The statutes vary widely, but as you will see, most of these laws cover heart and lung diseases, laws in only ten states cover certain cancers and certain infectious diseases as well as the cardiovascular diseases.³

Many states' laws allow for pre-employment screening. Nevada law, for example, requires that police officers, firefighters and emergency medical attendants submit to a blood test to screen for hepatitis C upon employment, upon the commencement of coverage, and annually thereafter during employment. Also, unless such individuals have been vaccinated, they must submit to similar testing for hepatitis A and B.

¹ The following ten jurisdictions have no presumptive disability law: Alaska, Arkansas, Delaware, District of Columbia, Mississippi, Montana, New Mexico, North Carolina, West Virginia, and Wyoming.

² Attachment A: International Association of Fire Fighters, "State Presumptive Disability Laws." The International Association of Fire Fighters represents more than 280,000 professional fire fighters and emergency medical responders across the U.S. and Canada.

³ States covering some form of each category of disease or condition are Alabama, Illinois, Indiana, Minnesota, Nevada, North Dakota, Oklahoma, Texas, Virginia, and Washington. According to the National Volunteer Fire Council, at Pennsylvania provides worker's compensation benefits to volunteer emergency service responders as well as to career responders who contract hepatitis C while on the job. We attach copies of statutes from Minnesota, Nevada, Virginia, and Washington as Attachments B through E, respectively. Preceding each set of statutes, we include the IAFF description from that organization's website, <http://www.iaff.org/state/content/presumptive/in/select.asp>.

In some states, factors that can be used to rebut the presumption are explicit in statute or regulation. Washington law, for example, specifies that the presumption of occupational disease may be rebutted by a preponderance of the evidence. Evidence may include factors such as use of tobacco products, physical fitness and weight, lifestyle, hereditary factors, and exposure from other employment or nonemployment activities.

As Attachment F we include copies of model presumptive disability laws provided by the International Association of Fire Fighters. As you will see, these model laws include coverage for cardiovascular diseases, cancer, and infectious diseases related to the line of duty for fire fighters and emergency medical providers. Also included is an IAFF model law relating to death benefits for the dependents of public safety officers who die while or from acting in line of duty. For the purpose of this law, *public safety officer* includes individuals serving in a public agency in an official capacity, with or without compensation, as a law enforcement officer, fire fighter, or member of a public rescue squad or ambulance crew.

We hope this information is useful. Please let us know if you have questions or need additional information.

Attachment A

International Association of Fire Fighters
"State Presumptive Disability Laws"

State Presumptive Disability Laws

The following states have presumptive disability laws which recognize that fire fighters are at increased risk for certain illnesses. The laws create a presumption that the specified diseases are job related. Because the laws vary greatly from state to state, readers should review the specific state laws to determine the law's application.

| State | Heart Disease | Lung Disease | Cancer | Infectious Diseases |
|----------------------|---------------|--------------|--------|---------------------|
| Alabama | ✓ | ✓ | ✓ | ✓* |
| Alaska | | | | |
| Arizona | | | ✓* | ✓* |
| Arkansas | | | | |
| California | ✓ | | ✓ | ✓ |
| Colorado | ✓ | ✓ | | ✓ |
| Connecticut | ✓ | | | |
| Delaware | | | | |
| District of Columbia | | | | |
| Florida | ✓ | ✓* | | ✓* |
| Georgia | ✓ | ✓ | | |
| Hawaii | ✓ | ✓ | | |
| Idaho | ✓ | ✓ | | |
| Illinois | ✓ | ✓ | ✓ | ✓* |
| Indiana | ✓ | ✓ | ✓ | ✓* |
| Iowa | ✓ | ✓ | | |
| Kansas | ✓ | ✓ | ✓ | |
| Kentucky | ✓ | ✓ | | |
| Louisiana | ✓ | ✓ | ✓* | |
| Maine | ✓ | ✓ | | ✓ |
| Maryland | ✓ | ✓ | ✓* | |
| Massachusetts | ✓ | ✓ | ✓ | |
| Michigan | ✓ | ✓ | | |
| Minnesota | ✓ | ✓ | ✓ | ✓ |
| Mississippi | | | | |

| State | Heart Disease | Lung Disease | Cancer | Infectious Diseases |
|----------------|---------------|--------------|--------|---------------------|
| Missouri | ✓ | ✓ | | |
| Montana | | | | |
| Nebraska | | | ✓ | |
| Nevada | ✓ | ✓ | ✓ | ✓* |
| New Hampshire | ✓ | ✓ | | |
| New Jersey | | ✓ | | |
| New Mexico | | | | |
| New York | | | ✓* | |
| North Carolina | | | | |
| North Dakota | ✓ | ✓ | ✓ | ✓* |
| Ohio | ✓ | ✓ | | |
| Oklahoma | ✓ | ✓ | ✓ | ✓* |
| Oregon | ✓ | ✓ | | |
| Pennsylvania | ✓ | ✓ | | ✓* |
| Rhode Island | | ✓ | ✓ | ✓ |
| South Carolina | ✓ | ✓ | | |
| South Dakota | ✓ | ✓ | ✓ | |
| Tennessee | ✓** | ✓** | ✓** | |
| Texas | ✓ | ✓ | ✓ | ✓* |
| Utah | ✓ | ✓ | | ✓* |
| Vermont | ✓* | | | |
| Virginia | ✓ | ✓ | ✓* | ✓* |
| Washington | ✓ | ✓ | ✓ | ✓ |
| West Virginia | | | | |
| Wisconsin | ✓ | ✓ | ✓* | |
| Wyoming | | | | |

* Indicate that only specified diseases in these categories are covered

** Applies only to certain localities

Attachment B

IAFF Description
Minnesota Annotated Statutes § 176.011

Minnesota

Coverage: Heart Disease, Infectious disease, Cancer

Code Part: Minnesota Statutes Chapter 176: Worker's Compensation, Workers' compensation- definitions
§ 176.011 Subd. 15 (c) Chapter 299A 465

Description: § 176.011 Subd. 15 (a) "Occupational disease" means a disease arising out of and in the course of employment peculiar to the occupation in which the employee is engaged and due to causes in excess of the hazards ordinary of employment and shall include undulant fever. Ordinary diseases of life to which the general public is equally exposed outside of employment are not compensable, except where the diseases follow as an incident of an occupational disease, or where the exposure peculiar to the occupation makes the disease an occupational disease hazard. A disease arises out of the employment only if there be a direct causal connection between the conditions under which the work is performed and if the occupational disease follows as a natural incident of the work as a result of the exposure occasioned by the nature of the employment. An employer is not liable for compensation for any occupational disease which cannot be traced to the employment as a direct and proximate cause and is not recognized as a hazard characteristic of and peculiar to the trade, occupation, process, or employment or which results from a hazard to which the worker would have been equally exposed outside of the employment. (b) If immediately preceding the date of disablement or death, an employee was employed on active duty with an organized fire or police department of any municipality, as a member of the Minnesota State Patrol, conservation officer service, state crime bureau, as a forest officer by the Department of Natural Resources, state correctional officer, or sheriff or full-time deputy sheriff of any county, and the disease is that of myocarditis, coronary sclerosis, pneumonia or its sequel, and at the time of employment such employee was given a thorough physical examination by a licensed doctor of medicine, and a written report thereof has been made and filed with such organized fire or police department, with the Minnesota State Patrol, conservation officer service, state crime bureau, Department of Natural Resources, Department of Corrections, or sheriff's department of any county, which examination and report negatived any evidence of myocarditis, coronary sclerosis, pneumonia or its sequel, the disease is presumptively an occupational disease and shall be presumed to have been due to the nature of employment. If immediately preceding the date of disablement or death, any individual who by nature of their position provides emergency medical care, or an employee who was employed as a licensed police officer under section 626.84, subdivision 1, firefighter; paramedic; state correctional officer; emergency medical technician; or licensed nurse providing emergency medical care; and who contracts an infectious or communicable disease to which the employee was exposed in the course of employment outside of a hospital, then the disease is presumptively an occupational disease and shall be presumed to have been due to the nature of employment and the presumption may be rebutted by substantial factors brought by the employer or insurer. Any substantial factors which shall be used to rebut this presumption and which are known to the employer or insurer at the time of the denial of liability shall be communicated to the employee on the denial of liability. (c) A firefighter on active duty with an organized fire department who is unable to perform duties in the department by reason of a disabling cancer of a type caused by exposure to heat, radiation, or a known or suspected carcinogen, as defined by the International Agency for Research on Cancer, and the carcinogen is reasonably linked to the disabling cancer, is presumed to have an occupational disease under paragraph (a). If a firefighter who enters the service after August 1, 1988, is examined by a physician prior to being hired and the examination discloses the existence of a cancer of a type described in this paragraph, the firefighter is not entitled to the presumption unless a subsequent medical determination is made that the firefighter no longer has the cancer.

MINNESOTA ANNOTATED STATUTES

Labor, Industry
CHAPTER 176 WORKERS' COMPENSATION

Minn. Stat. § 176.011 (2005)

176.011 Definitions

Subdivision 1. Terms. For the purposes of this chapter the terms described in this section have the meanings ascribed to them

Subd. 15. Occupational disease. (a) "Occupational disease" means a disease arising out of and in the course of employment peculiar to the occupation in which the employee is engaged and due to causes in excess of the hazards ordinary of employment and shall include undulant fever. Ordinary diseases of life to which the general public is equally exposed outside of employment are not compensable, except where the diseases follow as an incident of an occupational disease, or where the exposure peculiar to the occupation makes the disease an occupational disease hazard. A disease arises out of the employment only if there be a direct causal connection between the conditions under which the work is performed and if the occupational disease follows as a natural incident of the work as a result of the exposure occasioned by the nature of the employment. An employer is not liable for compensation for any occupational disease which cannot be traced to the employment as a direct and proximate cause and is not recognized as a hazard characteristic of and peculiar to the trade, occupation, process, or employment or which results from a hazard to which the worker would have been equally exposed outside of the employment.

(b) If immediately preceding the date of disablement or death, an employee was employed on active duty with an organized fire or police department of any municipality, as a member of the Minnesota State Patrol, conservation officer service, state crime bureau, as a forest officer by the Department of Natural Resources, state correctional officer, or sheriff or full-time deputy sheriff of any county, and the disease is that of myocarditis, coronary sclerosis, pneumonia or its sequel, and at the time of employment such employee was given a thorough physical examination by a licensed doctor of medicine, and a written report thereof has been made and filed with such organized fire or police department, with the Minnesota State Patrol, conservation officer service, state crime bureau, Department of Natural Resources, Department of Corrections, or sheriff's department of any county, which examination and report negatived any evidence of myocarditis, coronary sclerosis, pneumonia or its sequel, the disease is presumptively an occupational disease and shall be presumed to have been due to the nature of employment. If immediately preceding the date of disablement or death, any individual who by nature of their position provides emergency medical care, or an employee who was employed as a licensed police officer under section 626.84, subdivision 1; firefighter; paramedic; state correctional officer; emergency medical technician; or licensed nurse providing emergency medical care; and who contracts an infectious or communicable disease to which the employee was exposed in the course of employment outside of a hospital, then the disease is presumptively an occupational disease and shall be presumed to have been due to the nature of employment and the presumption may be rebutted by substantial factors brought by the employer or insurer. Any substantial factors which shall be used to rebut this presumption and which are known to the employer or insurer at the time of the denial of liability shall be communicated to the employee on the denial of liability.

(c) A firefighter on active duty with an organized fire department who is unable to perform duties in the department by reason of a disabling cancer of a type caused by exposure to heat, radiation, or a known or suspected carcinogen, as defined by the International Agency for Research on Cancer, and the carcinogen is reasonably linked to the disabling cancer, is presumed to have an occupational disease under paragraph (a). If a firefighter who enters the service after August 1, 1988, is examined by a physician prior to being hired and the examination discloses the existence of a cancer of a type described in this paragraph, the firefighter is not entitled to the presumption unless a subsequent medical determination is made that the firefighter no longer has the cancer.

Attachment C

IAFF Description
Nevada Revised Statutes Annotated
§ 617.453 - .455
§ 617.457
§ 617.459 - .460
§ 617.470
§ 617.485
§ 617.487
§ 286.031
§ 286.225
§ 286.510

Nevada

Coverage: Cancer, Lung Disease, Heart Disease

Code Part: Nevada Revised Statutes, Chapter 617, Occupational Disease Cancer as occupational disease of firemen (NRS §617.453), Lung disease as occupational diseases of firemen and police officers (NRS §617.455), Heart diseases as occupational diseases of firemen and police officers (NRS §617.457), Bill 451 adopted on April 15, 2003, Silicosis and diseases related to asbestos as occupational diseases (NRS 617.460), "Disability retirement allowance" defined (NRS 286.031), "Firefighter" defined (NRS 286.042), Police and Firefighters' Retirement Fund (NRS 286.225), Eligibility: Age and service of police officers, firefighters and other employees; reduction of benefit for retirement before required age (NRS 286.510)

Description: NRS 617.453 Cancer as occupational disease of firemen. 1. Notwithstanding any other provision of this chapter, cancer, resulting in either temporary or permanent disability, or death, is an occupational disease and compensable as such under the provisions of this chapter if: (a) The cancer develops or manifests itself out of and in the course of the employment of a person who, for 5 years or more, has been: (1) Employed in this state in a full-time salaried occupation of fire fighting for the benefit or safety of the public, or (2) Acting as a volunteer fireman in this state and is entitled to the benefits of chapters 616A to 616D, inclusive, of NRS pursuant to the provisions of NRS 616A.145; and (b) It is demonstrated that: (1) He was exposed, while in the course of the employment, to a known carcinogen as defined by the International Agency for Research on Cancer or the National Toxicology Program; and (2) The carcinogen is reasonably associated with the disabling cancer. 2. With respect to a person who, for 5 years or more, has been employed in this state in a full-time salaried occupation of fire fighting for the benefit or safety of the public, the following substances shall be deemed, for the purposes of paragraph (b) of subsection 1, to be known carcinogens that are reasonably associated with the following disabling cancers: (a) Diesel exhaust, formaldehyde and polycyclic aromatic hydrocarbon shall be deemed to be known carcinogens that are reasonably associated with bladder cancer. (b) Acrylonitrile, formaldehyde and vinyl chloride shall be deemed to be known carcinogens that are reasonably associated with brain cancer. (c) Diesel exhaust and formaldehyde shall be deemed to be known carcinogens that are reasonably associated with colon cancer. (d) Formaldehyde shall be deemed to be a known carcinogen that is reasonably associated with Hodgkin's lymphoma. (e) Formaldehyde and polycyclic aromatic hydrocarbon shall be deemed to be known carcinogens that are reasonably associated with kidney cancer. (f) Chloroform, soot and vinyl chloride shall be deemed to be known carcinogens that are reasonably associated with liver cancer. (g) Acrylonitrile, benzene, formaldehyde, polycyclic aromatic hydrocarbon, soot and vinyl chloride shall be deemed to be known carcinogens that are reasonably associated with lymphatic or haematopoietic cancer. 3. The provisions of subsection 2 do not create an exclusive list and do not preclude any person from demonstrating, on a case-by-case basis for the purposes of paragraph (b) of subsection 1, that a substance is a known carcinogen that is reasonably associated with a disabling cancer. 4. Compensation awarded to the employee or his dependents for disabling cancer pursuant to this section must include: (a) Full reimbursement for related expenses incurred for medical treatments, surgery and hospitalization in accordance with the schedule of fees and charges established pursuant to NRS 616C.260 or, if the insurer has contracted with an organization for managed care or with providers of health care pursuant to NRS 616B.527, the amount that is allowed for the treatment or other services under that contract; and (b) The compensation provided in chapters 616A to 616D, inclusive, of NRS for the disability or death. 5. Disabling cancer is presumed to have developed or manifested itself out of and in the course of the employment of any fireman described in this section. This rebuttable presumption applies to disabling cancer diagnosed after the termination of the person's employment if the diagnosis occurs within a period, not to exceed 60 months, which begins with the last date the employee actually worked in the qualifying capacity and extends for a period calculated by multiplying 3 months by the number of full years of his employment. This rebuttable presumption must control the awarding of benefits pursuant to this section unless evidence to rebut the presumption is presented. 6. The provisions of this section do not create a conclusive presumption. NRS 617.455 Lung diseases as occupational diseases of firemen and police officers. 1. Notwithstanding any other provision of this chapter, diseases of the lungs, resulting in either temporary or permanent disability or death, are occupational diseases and compensable as such under the provisions of this chapter if caused by exposure to heat, smoke, fumes, tear gas or any other noxious gases, arising out of and in the course of the employment of a person who, for 2 years or more, has been: (a) Employed in this state in a full-time salaried occupation of fire fighting for the benefit or safety of the

public; (b) Acting as a volunteer fireman in this state and is entitled to the benefits of chapters 616A to 616D, inclusive, of NRS pursuant to the provisions of NRS 616A.145; 2. Except as provided in subsection 3, each employee who is to be covered for diseases of the lungs pursuant to the provisions of this section shall submit to a physical examination, including a thorough test of the functioning of his lungs and the making of an X-ray film of his lungs, upon employment, upon commencement of the coverage, once every even-numbered year until he is 40 years of age or older and thereafter on an annual basis during his employment. 3. A thorough test of the functioning of the lungs is not required for a volunteer fireman. 4. All physical examinations required pursuant to subsection 2 must be paid for by the employer. 5. A disease of the lungs is conclusively presumed to have arisen out of and in the course of the employment of a person who has been employed in a full-time continuous, uninterrupted and salaried occupation as a police officer or fireman for 5 years or more before the date of disablement. 6. Failure to correct predisposing conditions which lead to lung disease when so ordered in writing by the examining physician after the annual examination excludes the employee from the benefits of this section if the correction is within the ability of the employee. 7. A person who is determined to be: (a) Partially disabled from an occupational disease pursuant to the provisions of this section; and (b) Incapable of performing, with or without remuneration, work as a fireman or police officer, may elect to receive the benefits provided under NRS 616C.440 for a permanent total disability. NRS 617.457 Heart diseases as occupational diseases of firemen and police officers. 1. Notwithstanding any other provision of this chapter, diseases of the heart of a person who, for 5 years or more, has been employed in a full-time continuous, uninterrupted and salaried occupation as a fireman or police officer in this state before the date of disablement are conclusively presumed to have arisen out of and in the course of the employment. 2. Notwithstanding any other provision of this chapter, diseases of the heart, resulting in either temporary or permanent disability or death, are occupational diseases and compensable as such under the provisions of this chapter if caused by extreme overexertion in times of stress or danger and a causal relationship can be shown by competent evidence that the disability or death arose out of and was caused by the performance of duties as a volunteer fireman by a person entitled to the benefits of chapters 616A to 616D, inclusive, of NRS pursuant to the provisions of NRS 616A.145 and who, for 5 years or more, has served continuously as a volunteer fireman in this state and who has not reached the age of 55 years before the onset of the disease. 3. Except as otherwise provided in subsection 4, each employee who is to be covered for diseases of the heart pursuant to the provisions of this section shall submit to a physical examination, including an examination of the heart, upon employment, upon commencement of coverage and thereafter on an annual basis during his employment. 4. A physical examination is not required for a volunteer fireman more than once every 3 years after an initial examination. 5. All physical examinations required pursuant to subsection 3 must be paid for by the employer. 6. Failure to correct predisposing conditions which lead to heart disease when so ordered in writing by the examining physician subsequent to the annual examination excludes the employee from the benefits of this section if the correction is within the ability of the employee. 7. A person who is determined to be: (a) Partially disabled from an occupational disease pursuant to the provisions of this section; and (b) Incapable of performing, with or without remuneration, work as a fireman or police officer, may elect to receive the benefits provided under NRS 616C.440 for a permanent total disability. 8. Claims filed under this section may be reopened at any time during the life of the claimant for further examination and treatment of the claimant upon certification by a physician of a change of circumstances related to the occupational disease which would warrant an increase or rearrangement of compensation.

NEVADA REVISED STATUTES ANNOTATED
TITLE 53. Labor And Industrial Relations
CHAPTER 617. Occupational Diseases
Compensation for Disability and Death

Nev. Rev. Stat. Ann. § 617.453 (2006)

617.453. Cancer as occupational disease of firefighters.

1. Notwithstanding any other provision of this chapter, cancer, resulting in either temporary or permanent disability, or death, is an occupational disease and compensable as such under the provisions of this chapter if

(a) The cancer develops or manifests itself out of and in the course of the employment of a person who, for 5 years or more, has been:

(1) Employed in this state in a full-time salaried occupation of fire fighting for the benefit or safety of the public; or

(2) Acting as a volunteer firefighter in this state and is entitled to the benefits of chapters 616A to 616D, inclusive, of NRS pursuant to the provisions of NRS 616A.143; and

(b) It is demonstrated that:

(1) He was exposed, while in the course of the employment, to a known carcinogen as defined by the International Agency for Research on Cancer or the National Toxicology Program; and

(2) The carcinogen is reasonably associated with the disabling cancer.

2. With respect to a person who, for 5 years or more, has been employed in this state in a full-time salaried occupation of fire fighting for the benefit or safety of the public, the following substances shall be deemed, for the purposes of paragraph (b) of subsection 1, to be known carcinogens that are reasonably associated with the following disabling cancers:

(a) Diesel exhaust, formaldehyde and polycyclic aromatic hydrocarbon shall be deemed to be known carcinogens that are reasonably associated with bladder cancer

(b) Acrylonitrile, formaldehyde and vinyl chloride shall be deemed to be known carcinogens that are reasonably associated with brain cancer

(c) Diesel exhaust and formaldehyde shall be deemed to be known carcinogens that are reasonably associated with colon cancer.

(d) Formaldehyde shall be deemed to be a known carcinogen that is reasonably associated with Hodgkin's lymphoma

(e) Formaldehyde and polycyclic aromatic hydrocarbon shall be deemed to be known carcinogens that are reasonably associated with kidney cancer

(f) Chloroform, soot and vinyl chloride shall be deemed to be known carcinogens that are reasonably associated with liver cancer.

(g) Acrylonitrile, benzene, formaldehyde, polycyclic aromatic hydrocarbon, soot and vinyl chloride shall be deemed to be known carcinogens that are reasonably associated with lymphatic or haematopoietic cancer

3. The provisions of subsection 2 do not create an exclusive list and do not preclude any person from demonstrating, on a case-by-case basis for the purposes of paragraph (b) of subsection 1, that a substance is a known carcinogen that is reasonably associated with a disabling cancer.

4. Compensation awarded to the employee or his dependents for disabling cancer pursuant to this section must include:

(a) Full reimbursement for related expenses incurred for medical treatments, surgery and hospitalization in accordance with the schedule of fees and charges established pursuant to NRS 616C.260 or, if the insurer has contracted with an organization for managed care or with providers of health care pursuant to NRS 616B.527, the amount that is allowed for the treatment or other services under that contract; and

(b) The compensation provided in chapters 616A to 616D, inclusive, of NRS for the disability or death.

5. Disabling cancer is presumed to have developed or manifested itself out of and in the course of the employment of any firefighter described in this section. This rebuttable presumption applies to disabling cancer diagnosed after the termination of the person's employment if the diagnosis occurs within a period, not to exceed 60 months, which begins with the last date the employee actually worked in the qualifying capacity and extends for a period calculated by multiplying 3 months by the number of full years of his employment. This rebuttable presumption must control the awarding of benefits pursuant to this section unless evidence to rebut the presumption is presented.

6. The provisions of this section do not create a conclusive presumption.

HISTORY: 1987, ch. 481, § 1, p. 1109; 2003, ch. 316, § 1, p. 1739; 2005, ch. 118, § 52, p. 344.

Nev. Rev. Stat. Ann. § 617.454 (2006)

617.454. Physical examinations: Required tests.

1. Any physical examination administered pursuant to NRS 617.455; or 617.457 must include:

- (a) A thorough test of the functioning of the hearing of the employee, and
- (b) A purified protein derivative skin test to screen for exposure to tuberculosis

2. The tests required by this section must be paid for by the employer.

HISTORY: 1991, ch. 367, § 1, p. 959; 2001, ch. 228, § 5, p. 1017

ev. Rev. Stat. Ann. § 617.455 (2006)

617.455. Lung diseases as occupational diseases of firefighters and police officers.

1. Notwithstanding any other provision of this chapter, diseases of the lungs, resulting in either temporary or permanent disability or death, are occupational diseases and compensable as such under the provisions of this chapter if caused by exposure to heat, smoke, fumes, tear gas or any other noxious gases, arising out of and in the course of the employment of a person who, for 2 years or more, has been:

- (a) Employed in this state in a full-time salaried occupation of fire fighting for the benefit or safety of the public;
- (b) Acting as a volunteer firefighter in this state and is entitled to the benefits of chapters 616A to 616D, inclusive, of NRS pursuant to the provisions of NRS 616A 145; or
- (c) Employed in a full-time salaried occupation as a police officer in this state.

2. Except as otherwise provided in subsection 3, each employee who is to be covered for diseases of the lungs pursuant to the provisions of this section shall submit to a physical examination, including a thorough test of the functioning of his lungs and the making of an X-ray film of his lungs, upon employment, upon commencement of the coverage, once every even-numbered year until he is 40 years of age or older and thereafter on an annual basis during his employment.

3. A thorough test of the functioning of the lungs is not required for a volunteer firefighter.

4. All physical examinations required pursuant to subsection 2 must be paid for by the employer.

5. A disease of the lungs is conclusively presumed to have arisen out of and in the course of the employment of a person who has been employed in a full-time continuous, uninterrupted and salaried occupation as a police officer or firefighter for 5 years or more before the date of disablement.

6. Failure to correct predisposing conditions which lead to lung disease when so ordered in writing by the examining physician after the annual examination excludes the employee from the benefits of this section if the correction is within the ability of the employee.

7. A person who is determined to be:

- (a) Partially disabled from an occupational disease pursuant to the provisions of this section, and
 - (b) Incapable of performing, with or without remuneration, work as a firefighter or police officer,
- may elect to receive the benefits provided under NRS 616C.440 for a permanent total disability.

HISTORY: 1965, p. 368; 1975, p. 1195; 1981, pp. 623, 851; 1983, p. 458; 1987, ch. 256, § 1, p. 553; 1989, ch. 480, § 1, p. 1020; 2005, ch. 118, § 53, p. 345.

Nev. Rev. Stat. Ann. § 617.457 (2006)

617.457. Heart diseases as occupational diseases of firefighters and police officers.

1. Notwithstanding any other provision of this chapter, diseases of the heart of a person who, for 5 years or more, has been employed in a full-time continuous, uninterrupted and salaried occupation as a firefighter or police officer in this state before the date of disablement are conclusively presumed to have arisen out of and in the course of the employment.

2. Notwithstanding any other provision of this chapter, diseases of the heart, resulting in either temporary or permanent disability or death, are occupational diseases and compensable as such under the provisions of this chapter if caused by extreme overexertion in times of stress or danger and a causal relationship can be shown by competent evidence that the disability or death arose out of and was caused by the performance of duties as a volunteer firefighter by a person entitled to the benefits of chapters 616A to 616D, inclusive, of NRS pursuant to the provisions of NRS 616A.145 and who, for 5 years or more, has served continuously as a volunteer firefighter in this state and who has not reached the age of 55 years before the onset of the disease.

3. Except as otherwise provided in subsection 4, each employee who is to be covered for diseases of the heart pursuant to the provisions of this section shall submit to a physical examination, including an examination of the heart, upon employment, upon commencement of coverage and thereafter on an annual basis during his employment.

4. A physical examination is not required for a volunteer firefighter more than once every 3 years after an initial examination.

5. All physical examinations required pursuant to subsection 3 must be paid for by the employer.

6. Failure to correct predisposing conditions which lead to heart disease when so ordered in writing by the examining physician subsequent to the annual examination excludes the employee from the benefits of this section if the correction is within the ability of the employee.

7. A person who is determined to be:

(a) Partially disabled from an occupational disease pursuant to the provisions of this section, and

(b) Incapable of performing, with or without remuneration, work as a firefighter or police officer,

may elect to receive the benefits provided under NRS 616C.440 for a permanent total disability.

8. Claims filed under this section may be reopened at any time during the life of the claimant for further examination and treatment of the claimant upon certification by a physician of a change of circumstances related to the occupational disease which would warrant an increase or rearrangement of compensation.

HISTORY: 1969, p. 592; 1973, p. 768; 1981, pp. 623, 851; 1983, p. 459; 1987, ch. 587, § 1, p. 1424; 1989, ch. 480, § 2, p. 1021; 2005, ch. 118, § 54, p. 346.

Nev. Rev. Stat. Ann. § 286.031

Nev. Rev. Stat. Ann. § 617.459 (2006)

617.459. Determination of percentage of disability resulting from heart or lung diseases.

1. The percentage of disability resulting from an occupational disease of the heart or lungs must be determined jointly by the claimant's attending physician and the examining physician designated by the insurer, in accordance with the American Medical Association's Guides to the Evaluation of Permanent Impairment as adopted and supplemented by the division pursuant to NRS 616C.110.

2. If the claimant's attending physician and the designated examining physician do not agree upon the percentage of disability, they shall designate a physician specializing in the branch of medicine which pertains to the disease in question to make the determination. If they do not agree upon the designation of such a physician, each shall choose one physician so specializing, and two physicians so chosen shall choose a third specialist in that branch. The resulting panel of three physicians shall, by majority vote, determine the percentage of disability in accordance with the American Medical Association's Guides to the Evaluation of Permanent Impairment as adopted and supplemented by the division pursuant to NRS 616C.110.

HISTORY: 1981, pp. 850, 1538; 1987, ch. 554, § 52, p. 1313; 1991, ch. 228, § 64, p. 494; 1991, ch. 723, § 100, p. 2431; 1993, ch. 466, § 1179, p. 1879; 1995, ch. 587, § 117, p. 2162.

Nev. Rev. Stat. Ann. § 617.460 (2006)

617.460. Silicosis and diseases related to asbestos as occupational diseases; compensation and claims.

1. Except as otherwise provided in NRS 617.366, silicosis and diseases related to asbestos are occupational diseases and are compensable as such when contracted by an employee and when arising out of and in the course of the employment.

2. Claims for compensation on account of silicosis or a disease related to asbestos are forever barred unless application is made to the insurer within 1 year after the date of disability or death and within 1 year after the claimant knew or should have known of the relationship between the disease and the employment.

3. Nothing in this chapter entitles an employee or his dependents to compensation, medical, hospital and nursing expenses or payment of funeral expenses for disability or death because of silicosis or a disease related to asbestos in the event of the failure or omission on the part of the employee truthfully to state, when seeking employment, the place, duration and nature of previous employment in answer to an inquiry made by the employer.

4. No compensation may be paid in case of silicosis or a disease related to asbestos unless the injured employee has been exposed to harmful quantities of silicon dioxide dust or fibers of asbestos for not less than 1 year in employment in this state covered by this chapter and chapters 616A to 616D, inclusive, of NRS.

5. Compensation on account of silicosis or a disease related to asbestos is payable only in the event of a temporary or permanent disability, or death, in accordance with the provisions of chapters 616A to 616D, inclusive, of NRS. Except as otherwise provided in NRS 616C.505, the insurer shall not allow the conversion of the compensation benefits provided for in this section into the payment of a lump sum. Payment of benefits and compensation is limited to the claimant and his dependents.

6. Any claimant who has been disabled by silicosis or a disease related to asbestos before July 1, 1973, or his dependents, upon receiving the maximum sum payable, \$14,250, to which they are entitled, are not entitled to compensation from the insurer, but are entitled to continue to receive the same amount of compensation from the account for pensions for silicosis, diseases related to asbestos and other disabilities.

HISTORY: 1947, p. 66; 1949, p. 365; 1953, p. 297; 1957, p. 307; 1959, p. 250; 1961, p. 449; 1963, p. 84; 1965, p. 980; 1967, p. 206; 1969, p. 898; 1971, pp. 326, 1083; 1973, pp. 539, 1406; 1975, pp. 259, 510, 823; 1979, p. 1064; 1981, p. 1504; 1983, p. 460; 1985, p. 724; 1987, ch. 270, § 8, p. 590; 1991, ch. 556, § 179, p. 1803; 1993, ch. 265, § 235, p. 771; 1995, ch. 580, § 118, p. 2036.

Nev. Rev. Stat. Ann. § 617.470 (2006)

617.470. Occupational diseases of respiratory tract resulting from exposure to dusts.

All conditions, restrictions, limitations and other provisions of NRS 617.460 with reference to the payment of compensation or benefits on account of silicosis or a disease related to asbestos are applicable to the payment of compensation or benefits on account of any other occupational disease of the respiratory tract resulting from injurious exposure to dusts.

HISTORY: 1947, p. 70; CL 1929 (1949 Supp.), § 2800.28, 1987, ch. 270, § 9, p. 591.

Nev. Rev. Stat. Ann. § 617.481 (2006)

617.481. Certain contagious diseases as occupational diseases.

1. Notwithstanding any other provision of this chapter and except as otherwise provided in this section, if a person employed in this state contracts a contagious disease during the course and scope of his employment that results in a temporary or permanent disability or death, the disease is an occupational disease and compensable as such under the provisions of this chapter if:

(a) It is demonstrated that the employee was exposed to the contagious disease during the course and scope of his employment;

(b) The employee reported the exposure to his employer in compliance with the reporting requirements adopted by the employer; and

(c) A test to screen for the contagious disease that is approved by the state board of health is administered to the employee:

(1) Within 72 hours after the date of the exposure and the employee tests negative for exposure to the contagious disease; and

(2) After the incubation period for the contagious disease, as determined by the state board of health, but not later than 12 months after the date of the exposure, and the employee tests positive for exposure to the contagious disease.

2. Such an employee and his dependents are excluded from the benefits of this section if:

(a) The employee refuses to be tested for exposure to the contagious disease as required by subsection 1;

(b) The employee or his dependents are eligible to receive compensation pursuant to paragraph (b) of subsection 2 of NRS 616A.265 or NRS 616C.052, or

(c) It is proven by clear and convincing evidence that the contagious disease did not arise out of and in the course of the employment.

3. All tests for exposure to the contagious disease that are required pursuant to subsection 1 must be paid for by the employer.

4. Compensation awarded to an employee or his dependents pursuant to this section must include:

(a) Full reimbursement for related expenses incurred for:

(1) Preventive treatment administered as a precaution to the employee; and

(2) Other medical treatments, surgery and hospitalization; and

(b) The compensation provided in chapters 616A to 616D, inclusive, of NRS for the disability or death.

5. As used in this section:

(a) "Contagious disease" means hepatitis A, hepatitis B, hepatitis C, tuberculosis, the human immunodeficiency virus or acquired immune deficiency syndrome.

(b) "Exposed" or "exposure" means the introduction of blood or other infectious materials into the body of an employee during the performance of his official duties through the skin, eye, mucous membrane or parenteral contact. The term includes contact with airborne materials carrying tuberculosis.

(c) "Preventive treatment" includes, without limitation, tests to determine if an employee has contracted the contagious disease to which he was exposed.

HISTORY: 2001, ch. 161, § 1, p. 827

Nev. Rev. Stat. Ann. § 617.485 (2006)

617.485. Hepatitis as occupational disease of police officers, firefighters and emergency medical attendants.

1. Notwithstanding any other provision of this chapter and except as otherwise provided in this section, if an employee has hepatitis, the disease is conclusively presumed to have arisen out of and in the course of his employment if the employee has been continuously employed for 5 years or more as a police officer, full-time salaried firefighter or emergency medical attendant in this state before the date of any temporary or permanent disability or death resulting from the hepatitis.

2. Compensation awarded to a police officer, firefighter or emergency medical attendant, or to the dependents of such a person, for hepatitis pursuant to this section must include:

(a) Full reimbursement for related expenses incurred for medical treatments, surgery and hospitalization; and

(b) The compensation provided in chapters 616A to 616D, inclusive, of NRS for the disability or death.

3. A police officer, salaried firefighter or emergency medical attendant shall:

(a) Submit to a blood test to screen for hepatitis C upon employment, upon the commencement of coverage and thereafter on an annual basis during his employment.

(b) Submit to a blood test to screen for hepatitis A and hepatitis B upon employment, upon the commencement of coverage and thereafter on an annual basis during his employment, except that a police officer, salaried firefighter or emergency medical attendant is not required to submit to a blood test to screen for hepatitis A and hepatitis B on an annual basis during his employment if he has been vaccinated for hepatitis A and hepatitis B upon employment or at other medically appropriate times during his employment. Each employer shall provide a police officer, salaried firefighter or emergency medical attendant with the opportunity to be vaccinated for hepatitis A and hepatitis B upon employment and at other medically appropriate times during his employment.

4. All blood tests required pursuant to this section and all vaccinations provided pursuant to this section must be paid for by the employer.

5. The provisions of this section:

(a) Except as otherwise provided in paragraph (b), do not apply to a police officer, firefighter or emergency medical attendant who is diagnosed with hepatitis upon employment.

(b) Apply to a police officer, firefighter or emergency medical attendant who is diagnosed with hepatitis upon employment if, during the employment or within 1 year after the last day of the employment, he is diagnosed with a different strain of hepatitis.

(c) Apply to a police officer, firefighter or emergency medical attendant who is diagnosed with hepatitis after the termination of the employment if the diagnosis is made within 1 year after the last day of the employment.

6. police officer, firefighter or emergency medical attendant who is determined to be:

(a) Partially disabled from an occupational disease pursuant to the provisions of this section; and

(b) Incapable of performing, with or without remuneration, work as a police officer, firefighter or emergency medical attendant,

may elect to receive the benefits provided pursuant to NRS 616C 440 for a permanent total disability.

7. As used in this section:

(a) "Emergency medical attendant" means a person licensed as an attendant or certified as an emergency medical technician, intermediate emergency medical technician or advanced emergency medical technician pursuant to chapter 450B of NRS, whose primary duties of employment are the provision of emergency medical services.

(b) "Hepatitis" includes hepatitis A, hepatitis B, hepatitis C and any additional diseases or conditions that are associated with or result from hepatitis A, hepatitis B or hepatitis C.

(c) "Police officer" means a sheriff, deputy sheriff, officer of a metropolitan police department or city policeman.

HISTORY: 2001, ch. 388, § 4, p. 1874; 2003, ch. 506, § 2, p. 3413; 2005, ch. 118, § 55, p. 346.

Nev. Rev. Stat. Ann. § 617.487 (2006)

617.487. Hepatitis as occupational disease of certain other police officers.

1. Notwithstanding any other provision of this chapter and except as otherwise provided in this section, if an employee has hepatitis, the disease is conclusively presumed to have arisen out of and in the course of his employment if the employee has been continuously employed for 5 years or more as a police officer or a sheriff, deputy sheriff, officer of a metropolitan police department or city policeman in this State before the date of any temporary or permanent disability or death resulting from the hepatitis.

2. Compensation awarded to a police officer, or to the dependents of a police officer, for hepatitis pursuant to this section must include:

(a) Full reimbursement for related expenses incurred for medical treatments, surgery and hospitalization, and

(b) The compensation provided in chapters 616A to 616D, inclusive, of NRS for the disability or death.

3. A police officer shall:

(a) Submit to a blood test to screen for hepatitis C upon employment and upon the commencement of coverage.

(b) If the employer of the police officer provides screening for hepatitis C for police officers on an annual basis, submit to a blood test to screen for hepatitis C thereafter on an annual basis during his employment.

(c) If the employer of the police officer provides screening for hepatitis A and hepatitis B for police officers, submit to a blood test to screen for hepatitis A and hepatitis B upon employment, upon the commencement of coverage and thereafter on an annual basis during his employment, except that a police officer is not required to submit to a blood test to screen for hepatitis A and hepatitis B on an annual basis during his employment if he has been vaccinated for hepatitis A and hepatitis B upon employment or at other medically appropriate times during his employment. Each employer shall provide a police officer with the opportunity to be vaccinated for hepatitis A and hepatitis B upon employment and at other medically appropriate times during his employment.

4. All blood tests required pursuant to this section and all vaccinations provided pursuant to this section must be paid for by the employer.

5. The provisions of this section: