

SENATE BILL NO. 192

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - SECOND SESSION

BY SENATOR COGHILL

Introduced: 2/14/20

Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to fiduciary discretion and the allocation of capital gains to income**
2 **under the Alaska Principal and Income Act."**

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

4 *** Section 1.** AS 13.38.220 is amended by adding a new subsection to read:

5 (c) A fiduciary may petition a court to determine if a decision proposed by the
6 fiduciary will result in an abuse of the fiduciary's discretion. If the petition describes
7 the proposed decision and the facts on which the fiduciary is relying, contains
8 sufficient information to inform the beneficiary of the reasons for the proposed
9 decision, and explains how the beneficiary will be affected by the proposed decision,
10 the beneficiary has the burden to prove that the proposed decision will result in an
11 abuse of the fiduciary's discretion.

12 *** Sec. 2.** AS 13.38.630 is amended to read:

13 **Sec. 13.38.630. Principal receipts.** A trustee shall allocate to principal any of
14 the following:

1 (1) to the extent not allocated to income under this chapter, assets
2 received from

3 (A) a transferor during the transferor's lifetime;

4 (B) a decedent's estate;

5 (C) a trust with a terminating income interest; or

6 (D) a payor under a contract naming the trust or its trustee as
7 beneficiary;

8 (2) **except as provided by AS 13.38.760**, money or other property
9 received from a principal asset's sale, exchange, liquidation, or change in form,
10 including realized profit subject to AS 13.38.600 - 13.38.750;

11 (3) amounts recovered from third parties to reimburse the trust because
12 of disbursements described in AS 13.38.810(a)(8) or for other reasons, to the extent
13 not based on the loss of income, except that a separate award made for the loss of
14 income with respect to an accounting period during which a current income
15 beneficiary had a mandatory income interest is income;

16 (4) net income received in an accounting period during which there is
17 not a beneficiary to whom a trustee may or must distribute income;

18 (5) other receipts as provided in AS 13.38.680 - 13.38.750.

19 * **Sec. 3.** AS 13.38 is amended by adding a new section to article 6 to read:

20 **Sec. 13.38.760. Discretionary allocation of capital gains to income.** In
21 addition to the power to adjust between principal and income under AS 13.38.210(a),
22 a fiduciary, whether or not the fiduciary is a beneficiary, may, if the fiduciary
23 exercises the fiduciary's discretion reasonably and impartially, allocate to income
24 gains from the sale or exchange of capital assets. However, a fiduciary may not
25 allocate to income gains from the sale or exchange of capital assets to the extent that
26 the fiduciary's possession or exercise of the power to allocate the gains would cause

27 (1) an asset of the estate or trust to be included in the gross estate of an
28 individual for federal estate tax purposes; or

29 (2) an individual to be treated as making a gift for federal gift tax
30 purposes.

31 * **Sec. 4.** AS 13.38.220(b)(4) is repealed.