

SENATE BILL NO. 63

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY SENATOR MCGUIRE

Introduced: 1/21/09

Referred: State Affairs, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to transfer restrictions on trust interests."**

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

3 * **Section 1.** AS 34.40.110(b) is amended to read:

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

8 (1) **the creditor establishes by clear and convincing language that**
9 the settlor's transfer of property in trust was made with the intent to defraud that
10 creditor, and a cause of action or claim for relief with respect to the fraudulent transfer
11 complies with the requirements of (d) of this section; however, a settlor's expressed
12 intention to protect trust assets from a beneficiary's potential future creditors is not
13 evidence of an intent to defraud;

14 (2) the trust, except for an eligible individual retirement account trust,
15 provides that the settlor may revoke or terminate all or part of the trust without the

1 consent of a person who has a substantial beneficial interest in the trust and the interest
 2 would be adversely affected by the exercise of the power held by the settlor to revoke
 3 or terminate all or part of the trust; in this paragraph, "revoke or terminate" does not
 4 include a power to veto a distribution from the trust, a testamentary nongeneral power
 5 of appointment or similar power, or the right to receive a distribution of income,
 6 principal, or both in the discretion of a person, including a trustee, other than the
 7 settlor, or a right to receive a distribution of income or principal under **(3)(A), (B),**
 8 **(C), (D), (E), (F), or (G)** [(3)(A), (B), (C), OR (D)] of this subsection;

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

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

19 (B) a percentage of the value of the trust each year as
 20 determined from time to time under the trust instrument, but not exceeding the
 21 amount that may be defined as income under AS 13.38 or under 26 U.S.C.
 22 643(b) (Internal Revenue Code) as that subsection reads on October 8, 2003,
 23 and as it may be amended;

24 (C) the transferor's potential or actual use of real property held
 25 under a qualified personal residence trust within the meaning of 26 U.S.C.
 26 2702(c) (Internal Revenue Code) as that subsection reads on September 15,
 27 2004, or as it may be amended in the future; or

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

1 **(E) distributions that are made under the exercise of**
 2 **discretion by a trustee who is not the settlor and that are not governed by**
 3 **a standard;**

4 **(F) distributions made under the exercise of discretion by a**
 5 **trustee who may be the settlor and that are governed by**

6 **(i) a reasonably definite standard as described in 26**
 7 **CFR 1.674(b)-1(b)(5); or**

8 **(ii) an ascertainable standard relating to health,**
 9 **education, support, or maintenance as described in 26 U.S.C.**
 10 **2041(b) (Internal Revenue Code); or**

11 **(G) the transferor's potential or actual receipt of income or**
 12 **principal to pay, in whole or in part, income taxes due on income of the**
 13 **trust if the potential or actual receipt of income or principal is made**
 14 **under a provision in the trust instrument that expressly provides for the**
 15 **payment of the taxes and if the potential or actual receipt of income or**
 16 **principal would be the result of a trustee's acting in the trustee's**
 17 **discretion or under a mandatory direction in the trust instrument;**
 18 **distributions to pay income taxes made under a discretionary or**
 19 **mandatory provision included in a governing instrument under this**
 20 **subparagraph may be made by direct payment to the taxing authorities;**
 21 or

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

24 * **Sec. 2.** AS 34.40.110(h) is repealed and reenacted to read:

25 (h) A transfer restriction is allowed under (a) of this section and is enforceable
 26 under (b) of this section even if the settlor has the authority under the terms of the trust
 27 instrument to

28 (1) appoint a trustee, a trust protector under AS 13.36.370, or an
 29 advisor under AS 13.36.375;

30 (2) remove a trustee or trust protector and appoint a replacement
 31 trustee or trust protector who is not a related or subordinate party; in this paragraph,

1 "related or subordinate party" has the meaning given in 26 U.S.C. 672(c) (Internal
2 Revenue Code); or

3 (3) remove an advisor and appoint a replacement advisor.

4 * **Sec. 3.** AS 34.40.110(l) is amended to read:

5 (l) If a trust has a transfer restriction allowed under (a) of this section, in the
6 event of the divorce or dissolution of the marriage of a beneficiary of the trust, the
7 beneficiary's interest in the trust, **whether or not vested**, is not considered **a factor or**
8 **economic circumstance in the division of** property subject to division under
9 AS 25.24.160 or 25.24.230 or a part of a property division under AS 25.24.160 or
10 25.24.230. Unless otherwise agreed to in writing by the parties to the marriage, this
11 subsection does not apply to a settlor's interest in a self-settled trust with respect to
12 assets transferred to the trust

13 (1) after the settlor's marriage; or

14 (2) within 30 days before the settlor's marriage unless the settlor gives
15 written notice to the other party to the marriage of the transfer.