SENATE BILL NO. 94

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY SENATOR COSTELLO

Introduced: 3/13/17
Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

"An Act relating to trusts and powers of appointment; and providing for an effective date."

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

*** Section 1.** AS 13.12.704 is amended by adding new subsections to read:

(b) A power of appointment shall be considered to be held as a nonfiduciary power of appointment unless granted to a trustee or other fiduciary in the capacity of a trustee or other fiduciary.

(c) A nonfiduciary power of appointment may be exercised or not exercised in any manner that is not unlawful subject only to any limitations expressed in the instrument that grants the power of appointment.

(d) The exercise or nonexercise of a power of appointment held in a nonfiduciary capacity may not be limited because the person who holds the nonfiduciary power is a trustee or other fiduciary under the instrument that grants the power.

(e) The person holding a nonfiduciary power of appointment may not be compelled by a person, court, or authority to exercise the power in any manner and may not be foreclosed from exercising the power in any lawful manner.

(f) Except as provided in AS 34.40.115, property subject to the exercise of a nonfiduciary power of appointment, whether a general power of appointment or a nongeneral power of appointment, is not subject to the claims of creditors of the person holding the power or to the claims of the creditors of any person, including the person who created the nonfiduciary power of appointment, in whose favor the power may be exercised.

*** Sec. 2.** AS 13.36.109 is amended to read:

Sec. 13.36.109. Specific powers of trustees. Except as otherwise provided by this chapter, in addition to the powers conferred by the terms of the trust, a trustee may perform all actions necessary to accomplish the proper management, investment, and distribution of the trust property, including the power

(1) to collect, hold, and retain trust property received from a settlor or another person; the property may be retained even if it includes property in which the trustee is personally interested;

(2) to accept additions to the property of the trust from a settlor or another person;

(3) to continue or to participate in the operation of a business or other enterprise that is part of the trust property and to effect an incorporation, dissolution, or other change in the form of the organization of the business or enterprise;

(4) to acquire or dispose of property, for cash or on credit, at public or private sale or by exchange;

(5) to manage, control, divide, develop, improve, exchange, partition, change the character of, or abandon trust property;

(6) to encumber, mortgage, or pledge trust property for a term within or extending beyond the term of the trust in connection with the exercise of a power vested in the trustee;

(7) to make ordinary or extraordinary repairs, alterations, or improvements in buildings or other trust property; to demolish improvements; and to

raze existing or erect new party walls or buildings;

(8) to subdivide or develop land; to dedicate land to public use; to make or obtain the vacation of plats and to adjust boundaries; to adjust differences in valuation on exchange or partition by giving or receiving consideration; and to dedicate easements to public use without consideration;

(9) to enter into a lease for any purpose as lessor or lessee with or without the option to purchase or renew and for a term within or extending beyond the term of the trust;

(10) to enter into a lease or arrangement for exploration and removal of gas, oil, or other minerals or geothermal energy; and to enter into a community oil lease, a pooling agreement, or a unitization agreement;

(11) to grant an option involving disposition of trust property or to take an option for the acquisition of property, including an option that is exercisable beyond the duration of the trust;

(12) with respect to shares of stock of a domestic or foreign corporation, a membership in a nonprofit corporation, or other property, to

(A) vote in person and to give proxies to exercise any voting rights with respect to the shares, memberships, or property;

(B) waive notice of a meeting or to give consent to the holding of a meeting; and

(C) authorize, ratify, approve, or confirm an action that could be taken by shareholders, members, or property owners;

(13) to pay calls, assessments, and other sums chargeable to or accruing against or on a securities account;

(14) to sell or exercise stock subscription or conversion rights;

(15) to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise; to participate in voting trusts, pooling arrangements, and foreclosures; and, in connection with a reorganization, consolidation, merger, dissolution, liquidation, voting trust, pooling arrangement, or foreclosure, to deposit securities with, transfer title, and delegate discretion to a protective or other committee

as the trustee considers advisable;

(16) to deposit securities in a securities depository;

(17) to insure the property of the trust against damage or loss and to insure the trustee against liability with respect to third persons **or beneficiaries of the trust**;

(18) to borrow money for a trust purpose to be repaid from trust property;

(19) to pay or contest a claim, to settle a claim by or against the trust by compromise, arbitration, or otherwise, and to release, in whole or in part, a claim belonging to the trust;

(20) to pay taxes, assessments, reasonable compensation of the trustee, employees, and agents of the trust, and other expenses incurred in the collection, care, administration, and protection of the trust;

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

(A) "eligible beneficiary" means a beneficiary of the trust who is currently eligible for or entitled to a distribution of income or principal of the trust;

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

(22) to pay an amount distributable to a beneficiary, whether or not the beneficiary is under a legal disability, by paying the amount to the beneficiary or by paying the amount to another person for the use or benefit of the beneficiary;

(23) to make a distribution of property and money in divided or undivided interests, pro rata or otherwise, and to adjust resulting differences in valuation;

(24) to employ accountants, attorneys, investment advisers, appraisers, or other persons, even if they are associated or affiliated with the trustee, to advise or

assist the trustee in the performance of administrative duties;

(25) to inspect or investigate property that the trustee has been asked to hold or property owned or operated by an entity in which the trustee holds or has been asked to hold an interest for the purpose of determining the application of environmental law to the property and to take action to prevent, abate, or otherwise remedy an actual or potential violation of an environmental law affecting property held directly or indirectly by the trustee;

(26) to establish for an asset a reserve for depreciation, depletion, or obsolescence, and to decide, under law, how and in what proportions a receipt or disbursement is to be credited, charged, or apportioned between principal and income;

(27) to execute and deliver instruments that are useful to accomplish or facilitate the exercise of the trustee's powers;

(28) to prosecute or defend an action, claim, or proceeding in order to protect trust property and the trustee in the performance of the trustee's duties; and

(29) to consider discretionary distributions to a beneficiary as being made from capital gains realized during the year.

* **Sec. 3.** AS 13.36.109 is amended by adding a new subsection to read:

(b) A trustee may pay as a charge against trust property the cost incurred to perform an action authorized under (a) of this section.

* **Sec. 4.** AS 13.36.157(a) is amended to read:

(a) An **<u>unlimited</u>** authorized trustee [WITH UNLIMITED DISCRETION TO INVADE TRUST PRINCIPAL] may appoint part or all of **<u>the</u>** [THAT] principal **<u>of the trust</u>** to a trustee of an appointed trust for, and only for**<u>,</u>** the **<u>current or future</u>** benefit of [,] one or more **<u>of the</u>** current beneficiaries of the invaded trust to the exclusion of **<u>one or more of the</u>** other current beneficiaries**<u>, and for the future benefit of beneficiaries who are not current beneficiaries</u>**. A permissible appointee of a power of appointment held by a beneficiary of the appointed trust is not considered a **<u>current</u>** beneficiary of the appointed trust [, REGARDLESS OF WHETHER THE PERMISSIBLE APPOINTEE IS A CURRENT BENEFICIARY OR A SUCCESSOR AND REMAINDER BENEFICIARY].

* **Sec. 5.** AS 13.36.157(b) is amended to read:

(b) An **unlimited** authorized trustee exercising the power under (a) of this section may grant a discretionary power of appointment, including a presently exercisable power of appointment **in favor of one or more permissible appointees**, in the appointed trust to one or more of the current beneficiaries of the invaded trust, **if** [TO THE EXTENT THAT] the beneficiary who is granted the power to appoint is authorized to receive the principal outright under the terms of the invaded trust. A permissible appointee **includes**

(1) a person who is not **a beneficiary** [LIMITED TO THE BENEFICIARIES] of the invaded trust**;**

(2) the holder of the power of appointment;

(3) the estate of the holder of the power of appointment;

(4) a creditor of the holder of the power of appointment; or

(5) a creditor of the estate of the holder of the power of appointment.

*** Sec. 6.** AS 13.36.157(c) is amended to read:

(c) Under (a) [AND (b)] of this section, if the beneficiaries of the invaded trust are described by a class, the beneficiaries of the appointed trust may include present or future members of that class**, except that a person may not become a beneficiary sooner than as provided in or authorized by the invaded trust**.

*** Sec. 7.** AS 13.36.157(d) is amended to read:

(d) **A limited** [AN] authorized trustee [WITH THE POWER TO INVADE TRUST PRINCIPAL BUT WITHOUT UNLIMITED DISCRETION] may appoint part or all of the principal of the trust to a trustee of an appointed trust if the current beneficiaries of the appointed trust are the same as the current beneficiaries of the invaded trust and the successor and remainder beneficiaries of the appointed trust are the same as the successor and remainder beneficiaries of the invaded trust. **If the power to appoint trust principal is exercised in favor of more than one appointed trust, the appointed trusts must, in the aggregate, grant each beneficiary of the invaded trust beneficial interests in the appointed trusts that are substantially similar to the beneficial interests of the beneficiary in the invaded trust. A power to make a distribution for the benefit of a beneficiary under an appointed trust is**

considered to be substantially similar to a power to make a distribution to the beneficiary under the invaded trust [THE SHARES OF THE CURRENT BENEFICIARIES OF THE APPOINTED TRUST MUST BE THE SAME AS THE SHARES OF THE CURRENT BENEFICIARIES OF THE INVADED TRUST, AND THE SHARES OF THE SUCCESSOR AND REMAINDER BENEFICIARIES OF THE APPOINTED TRUST MUST BE THE SAME AS THE SHARES OF THE SUCCESSOR AND REMAINDER BENEFICIARIES OF THE INVADED TRUST].

*** Sec. 8.** AS 13.36.157(e) is amended to read:

(e) If **a limited** [THE] authorized trustee exercises the power under (d) of this section, the appointed trust must include the same standard authorizing the trustee to distribute the income or invade the principal of the appointed trust as the standard in the invaded trust. However, the standard authorizing the trustee to distribute the income or invade the principal of the appointed trust may be changed **by a limited authorized trustee other than the settlor** if the trustee appoints to an appointed trust that is a special needs trust, a pooled trust, or a third-party trust.

*** Sec. 9.** AS 13.36.157(g) is amended to read:

(g) Under **(k)** [(d) - (f)] of this section, if the beneficiaries of the invaded trust are described by a class, the beneficiaries of the appointed trust include present or future members of that class.

*** Sec. 10.** AS 13.36.157(h) is amended to read:

(h) If the **limited** authorized trustee exercises the power under **(d), (e), or (k)** [(d) - (g)] of this section and if the invaded trust grants a power of appointment to a beneficiary of the trust, the appointed trust must grant **the same** [THIS] power of appointment in the appointed trust [, AND THE CLASS OF PERMISSIBLE APPOINTEES SHALL BE THE SAME] as in the invaded trust.

*** Sec. 11.** AS 13.36.157 is amended by adding new subsections to read:

(i) An unlimited authorized trustee exercising the power under (a) of this section may establish a standard for the distribution of income or invasion of principal in the appointed trust that is a different standard from the standard in the invaded trust, and the trustee may appoint the invaded trust to an appointed trust that is a special needs trust, a pooled trust, or a third-party trust.

(j) Subject to the restriction in AS 13.36.158(i)(1), an unlimited authorized trustee may reduce a beneficiary's current right to a mandatory distribution of income or principal.

(k) A limited authorized trustee may not exercise power of appointment under this section to reduce a beneficiary's current right to a mandatory distribution of income or principal, except that a limited authorized trustee other than the settlor may exercise a power of appointment under this section to an appointed trust that is a special needs trust, a pooled trust, or a third-party trust, subject to the restriction in AS 13.36.158(i)(1).

* **Sec. 12.** AS 13.36.158(b) is amended to read:

(b) The appointed trust to which an **unlimited** authorized trustee appoints the assets of the invaded trust under AS 13.36.157 may have a duration that is longer than the duration set out in the invaded trust**, including a term measured by the length of the life of a current beneficiary**.

* **Sec. 13.** AS 13.36.158(c) is repealed and reenacted to read:

(c) If both an unlimited authorized trustee and a limited authorized trustee have the power to pay the trust principal of the same trust to or for a current beneficiary, the unlimited authorized trustee may exercise the power under AS 13.36.157(a), (b), (i), and (j).

* **Sec. 14.** AS 13.36.158(e) is amended to read:

(e) An authorized trustee exercising the power under AS 13.36.157 - 13.36.159 has a fiduciary duty to exercise the power in the best interests of one or more proper objects of the exercise of the power and as a prudent person would exercise the power under the prevailing circumstances. [THE AUTHORIZED TRUSTEE MAY NOT EXERCISE THE POWER UNDER AS 13.36.157 - 13.36.159 IF THERE IS SUBSTANTIAL EVIDENCE OF A CONTRARY INTENT OF THE SETTLOR AND IT CANNOT BE ESTABLISHED THAT THE SETTLOR WOULD BE LIKELY TO HAVE CHANGED THIS INTENTION UNDER THE CIRCUMSTANCES EXISTING AT THE TIME THE TRUSTEE EXERCISES THE POWER. THE PROVISIONS OF THE INVADED TRUST MAY NOT BE VIEWED ALONE AS SUBSTANTIAL EVIDENCE OF A CONTRARY INTENT OF THE

SETTLOR UNLESS THE INVADED TRUST EXPRESSLY PROHIBITS THE EXERCISE OF THE POWER IN THE MANNER INTENDED BY THE AUTHORIZED TRUSTEE.]

*** Sec. 15.** AS 13.36.158(f) is amended to read:

(f) **Notwithstanding the provisions of AS 13.36.157 - 13.36.159, the terms of the governing instrument of a trust may specifically expand or restrict the right of a trustee to appoint property of a trust.** The provisions of AS 13.36.157 - 13.36.159 may not be construed to abridge the right of a trustee to appoint property further in trust under the terms of the governing instrument of a trust, another provision of law, or common law, or as directed by a court having jurisdiction over the trust.

*** Sec. 16.** AS 13.36.158(i) is amended to read:

(i) An authorized trustee may not exercise a power authorized by AS 13.36.157 to

(1) reduce, limit, or modify a beneficiary's current right to a mandatory distribution of income**,** [OR PRINCIPAL, A MANDATORY] annuity**,** or unitrust interest **for which a marital deduction has been taken for federal tax purposes under 26 U.S.C. 2056 or 26 U.S.C. 2523 (Internal Revenue Code) or for state tax purposes under a comparable provision of applicable state law** [, A RIGHT TO WITHDRAW A PERCENTAGE OF THE VALUE OF THE TRUST, OR A RIGHT TO WITHDRAW A SPECIFIED DOLLAR AMOUNT, IF THE MANDATORY RIGHT HAS COME INTO EFFECT WITH RESPECT TO THE BENEFICIARY, BUT THE MANDATORY RIGHT MAY BE REDUCED, LIMITED, OR MODIFIED DURING ANY EXTENDED DURATION OF THE TRUST; HOWEVER, NOTWITHSTANDING THE OTHER PROVISIONS IN THIS PARAGRAPH, BUT SUBJECT TO THE OTHER LIMITATIONS IN AS 13.36.157 - 13.36.159, AN AUTHORIZED TRUSTEE MAY EXERCISE A POWER AUTHORIZED BY AS 13.36.157 TO APPOINT TO AN APPOINTED TRUST THAT IS A SPECIAL NEEDS TRUST, A POOLED TRUST, OR A THIRD-PARTY TRUST];

(2) decrease or indemnify against a trustee's liability or exonerate a

trustee from liability for failure to exercise reasonable care, diligence, and prudence unless the court having jurisdiction over the trust specifies otherwise;

(3) eliminate a provision granting another person the right to remove or replace the authorized trustee exercising the power under AS 13.36.157 unless a court having jurisdiction over the trust specifies otherwise;

(4) fix as binding and conclusive the value of an asset for purposes of distribution, allocation, or otherwise; or

(5) jeopardize

(A) the deduction or exclusion originally claimed with respect to a contribution to the invaded trust that qualified for the annual exclusion under 26 U.S.C. 2503(b), the marital deduction under 26 U.S.C. 2056(a) or 26 U.S.C. 2523(a), or the charitable deduction under 26 U.S.C. 170(a), 26 U.S.C. 642(c), 26 U.S.C. 2055(a), or 26 U.S.C. 2522(a) (Internal Revenue Code);

(B) the qualification of a transfer as a direct skip under 26 U.S.C. 2642(c) (Internal Revenue Code);

(C) the election to treat a corporation as a subchapter S corporation under 26 U.S.C. 1362 (Internal Revenue Code); or

(D) another specific tax benefit for which a contribution originally qualified for income, gift, estate, or generation-skipping transfer tax purposes under 26 U.S.C. (Internal Revenue Code).

*** Sec. 17.** AS 13.36.158(n) is amended to read:

(n) Unless the invaded trust expressly provides otherwise, the provisions in AS 13.36.157 - 13.36.159 apply to

(1) a trust, whether testamentary or inter vivos, governed by the laws of this state, including a trust whose governing law has been changed to the laws of this state; and

(2) a trust that has a trustee who is an individual domiciled in this state, or a trustee that is an entity having an office in this state, if a majority of the **authorized** trustees **of the invaded trust** select this state as the location for the primary administration of the trust and the selection is made by an instrument in writing that is signed and acknowledged by a majority of the **authorized** trustees **of**

the invaded trust; the instrument exercising this selection shall be kept with the records of the invaded trust.

* **Sec. 18.** AS 13.36.158(o) is amended to read:

(o) In this section, "Internal Revenue Code" means the Internal Revenue Code of the United States (26 U.S.C.) as it exists on **the effective date of this Act** [SEPTEMBER 9, 2013] and as it is amended from time to time.

* **Sec. 19.** AS 13.36.159(b) is amended to read:

(b) The exercise of the power to appoint to an appointed trust under AS 13.36.157 shall be evidenced by an instrument in writing that is signed, dated, and acknowledged by the authorized trustee. The exercise of the power is effective 30 days after the date of service of the instrument as specified in (d) of this section, unless the persons entitled to notice **waive part or all of the notice period to permit an earlier** [CONSENT IN WRITING TO A SOONER] effective date.

* **Sec. 20.** AS 13.36.159(d) is amended to read:

(d) A copy of the invaded trust, **a copy of** the **signed** appointed trust, **a conformed copy of the appointed trust or an unsigned copy or the substantial form of the proposed appointed trust,** and the instrument exercising the power shall be delivered to

(1) the settlor, if living, of the invaded trust;

(2) a person having the right, under the terms of the invaded trust, to remove or replace the authorized trustee exercising the power under AS 13.36.157; and

(3) **at least one** [A] qualified beneficiary or a person who may represent and bind a qualified beneficiary under AS 13.06.120.

* **Sec. 21.** AS 13.36.159(e) is amended to read:

(e) Notice under (d) of this section to a qualified beneficiary is not required if the settlor has exempted the authorized trustee from providing notification or information to beneficiaries under AS 13.36.080(b). **Notwithstanding AS 13.36.080, the trust instrument may authorize a trustee to exercise the power under AS 13.36.157 without notice to any beneficiaries.** Notice under (d) of this section shall be provided under AS 13.06.110.

* **Sec. 22.** AS 13.36.159 is amended by adding a new subsection to read:

(j) An authorized trustee may exercise the power authorized in AS 13.36.157 without the consent of the settlor or a person interested in the invaded trust and without court approval. However, an authorized trustee may seek court approval for the exercise. When seeking court approval, notice shall be sent to each qualified beneficiary of the invaded trust or to a person who can represent and bind the qualified beneficiary under AS 13.06.120.

* **Sec. 23.** AS 13.36 is amended by adding a new section to read:

Sec. 13.36.173. Dividing trust into separate portions for income tax purposes. Unless a governing instrument specifically refers to this section and provides otherwise, if a trust is created by more than one settlor, and if a trustee keeps records tracing contributions made to the trust by the different settlors and the earnings on and reinvestments of the contributions, a trustee may divide the trust into one or more separate trusts for which a specific settlor shall be treated as the sole settlor of the separate portion of the trust to which the settlor contributed. A trustee may exercise this power at any time, whether before, on, or after a settlor's death. A trustee may exercise this power whether or not the trust was initially governed by the law of this state or the situs of a trust was moved to this state.

* **Sec. 24.** AS 13.36 is amended by adding a new section to read:

Sec. 13.36.210. Standard. In AS 13.36.157 - 13.36.159, "standard" refers to the words in the governing instrument describing the purposes, if any, for which a trustee may invade principal, and the discretion, if any, given to a trustee to invade principal, whether or not the words constitute an ascertainable standard under 26 C.F.R. 25.2514-1. The words establishing a standard in a governing instrument may use "absolute," "best interest," "any reason," "no reason," or other words to grant a trustee unlimited discretion to invade principal.

* **Sec. 25.** AS 13.36.215(b)(1) is amended to read:

(1) "appointed trust" means an irrevocable trust that receives principal from an invaded trust under AS 13.36.157 **<u>and that is</u>** [, INCLUDING A NEW TRUST] created by

<u>(A)</u> the settlor of the invaded trust**<u>;</u>**

(B) [OR BY] the trustees, acting in that capacity, of the invaded trust **or a restatement or modification of the invaded trust; or**

(C) another person;

*** Sec. 26.** AS 13.36.215(b)(2) is amended to read:

(2) "authorized trustee" means, with regard to an invaded trust, a trustee with the **power** [AUTHORITY] to pay trust principal to or for a current beneficiary; [IN THIS PARAGRAPH, "TRUSTEE" DOES NOT INCLUDE A SETTLOR OR A BENEFICIARY TO WHOM INCOME OR PRINCIPAL MUST BE PAID, CURRENTLY OR IN THE FUTURE, OR WHO IS OR WILL BECOME ELIGIBLE TO RECEIVE A DISTRIBUTION OF INCOME OR PRINCIPAL IN THE DISCRETION OF THE TRUSTEE OTHER THAN BY THE EXERCISE OF A POWER OF APPOINTMENT HELD IN A NONFIDUCIARY CAPACITY;]

*** Sec. 27.** AS 13.36.215(b)(5) is amended to read:

(5) "invaded trust" means **a revocable or** [AN] irrevocable inter vivos or testamentary trust the principal of which is appointed under AS 13.36.157;

*** Sec. 28.** AS 13.36.215(b) is amended by adding new paragraphs to read:

(11) "beneficiary" means a person who is, or in the future may be, eligible to receive income or principal under the terms of a trust, even if the person has a remote contingent remainder interest, unless the

(A) only interest of the person in the trust is the interest of a potential appointee under a nonfiduciary power of appointment held by another person; and

(B) power of appointment identified under (A) of this paragraph has not been exercised or will only be exercised in the future;

(12) "limited authorized trustee" means, with regard to an invaded trust, an authorized trustee who is a settlor or beneficiary;

(13) "unlimited authorized trustee" means, with regard to an invaded trust, an authorized trustee other than a settlor or beneficiary.

*** Sec. 29.** AS 13.36 is amended by adding a new section to read:

Sec. 13.36.380. Distribution of principal. (a) On petition by a trustee of an irrevocable trust, a court may authorize the trustee to invade the principal of a trust, for any reason, if the court finds that granting the authority for the principal invasion

(1) is consistent with the settlor's purpose in creating the trust;

(2) is in the best interests of the beneficiary to whom or on whose behalf the principal invasion would be made; and

(3) would not jeopardize a deduction or exclusion originally claimed with respect to a contribution to the trust that qualified for an annual exclusion under 26 U.S.C. 2503(b), a marital deduction under 26 U.S.C. 2056(a) or 26 U.S.C. 2523(a), or a charitable deduction under 26 U.S.C. 170(a), 26 U.S.C. 642(c), 26 U.S.C. 2055(a), or 26 U.S.C. 2522(a) (Internal Revenue Code).

(b) This section applies only to an irrevocable trust for which the trust instrument provides for income distributions, annuity distributions, or unitrust distributions, except that this section does not apply to an irrevocable trust that already permits discretionary distributions of principal.

* **Sec. 30.** AS 34.27.051 is repealed and reenacted to read:

Sec. 34.27.051. Statutory rule against perpetuities. (a) If a first power is exercised to create a second power, the second power may be validly exercised to postpone the vesting of the property over which the second power may be exercised without regard to the creation of the first power. In this subsection, "second power" means a presently exercisable nongeneral power of appointment or presently exercisable general power of appointment created by the exercise of the first power.

(b) If a first power is exercised to create a second power, the second power is not valid unless all property interests subject to the second power vest not later than 1,000 years after the creation of the first power. In this subsection, "second power" means a nongeneral power of appointment that is not presently exercisable, or a general power of appointment that is not presently exercisable, created by the exercise of the first power.

(c) In this section, "first power" means a nongeneral power of appointment that is exercised to create a second power.

* **Sec. 31.** AS 34.27.053 is amended to read:

Sec. 34.27.053. Savings provision. A property interest that, under **<u>AS 34.27.051(b)</u>** [AS 34.27.051], becomes invalid shall, upon the expiration of the

1,000-year period set out in **AS 34.27.051(b)** [AS 34.27.051],

(1) if income from the property interest is payable

(A) to one person, be distributed to the person to whom the income is then payable;

(B) to more than one person, be distributed to the persons to whom the income is then payable

(i) in the shares to which the persons are entitled to the income; or

(ii) equally among all persons who are entitled to the income if shares are not specified;

(2) if income from the property interest is payable in the discretion of a trustee and is payable

(A) to one person, be distributed to the person then eligible to receive the income; or

(B) to more than one person, be distributed to the persons then eligible to receive the income

(i) in the shares to which the persons are entitled to the income; or

(ii) equally among all persons who are entitled to the income if shares are not specified; or

(3) when there is no person then living to whom the property interest may be distributed under (1) or (2) of this section, be payable to one or more organizations described in 26 U.S.C. 2055(a) (Internal Revenue Code), or to one or more organizations described in any successor provision to 26 U.S.C. 2055(a), in the shares or proportions that the trustee or trustees then acting may determine.

* **Sec. 32.** AS 34.27.070(a) is amended to read:

(a) Except as extended by (b) of this section, the [FORMER] provisions of AS 34.27.051 - 34.27.100 **that existed before April 2, 1997,** apply to a nonvested property interest or a power of appointment that is created on or after January 1, 1996, and before April 2, 1997. For purposes of this subsection, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

*** Sec. 33.** AS 34.27.070(c) is amended to read:

(c) The provisions of AS 34.27.051 <u>**that exist on the effective date of this Act**</u> apply to a trust instrument or conveyance executed on or after April 2, 1997, if

<u>**(1)**</u> the trust instrument or conveyance creates a contingent power of appointment or nonvested property interest subject to the exercise of a power of appointment that creates a new or successive power of appointment<u>**; and**</u>

<u>**(2) before the effective date of this Act, the power of appointment identified under (1) of this subsection has not been irrevocably exercised or terminated**</u>.

*** Sec. 34.** AS 13.36.157(f), 13.36.159(c), 13.36.159(i), and 13.36.215(b)(10) are repealed.

*** Sec. 35.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY: POWERS OF APPOINTMENT; TRUSTS. (a) AS 13.12.704, as amended by sec. 1 of this Act, applies to powers of appointment that exist on or after the effective date of this Act.

(b) AS 13.36.109, as amended by secs. 2 and 3 of this Act, AS 13.36.157, as amended by secs. 4 - 11 of this Act, AS 13.36.158, as amended by secs. 12 - 18 of this Act, AS 13.36.159, as amended by secs. 19 - 22 of this Act, AS 13.36.173, added by sec. 23 of this Act, AS 13.36.210, added by sec. 24 of this Act, AS 13.36.215(b)(1), as amended by sec. 25 of this Act, AS 13.36.215(b)(2), as amended by sec. 26 of this Act, AS 13.36.215(b)(5), as amended by sec. 27 of this Act, AS 13.36.215(b)(11) - (13), added by sec. 28 of this Act, and AS 13.36.380, added by sec. 29 of this Act, apply to a trust that exists on or after the effective date of this Act.

*** Sec. 36.** The uncodified law of the State of Alaska is amended by adding a new section to read:

RETROACTIVE EFFECT. AS 34.27.051, as repealed and reenacted by sec. 30 of this Act, AS 34.27.053, as amended by sec. 31 of this Act, AS 34.27.070(a), as amended by sec. 32 of this Act, and AS 34.27.070(c), as amended by sec. 33 of this Act, are retroactive to April 2, 1997, and apply to a trust instrument or conveyance executed on or after April 2, 1997, on the conditions set out in those subsections.

*** Sec. 37.** This Act takes effect immediately under AS 01.10.070(c).