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Senator John Coghill

SB 191 – Trusts
Sponsor Statement

"An Act relating to trusts and trustees, including trust division, the powers of trustees, delayed gifts to trusts, and community property trusts; and providing for an effective date."

Senate Bill 191 sets out to clarify existing language within Alaska statutes regarding trust legislation and add a new opportunity to investors to take advantage of historically high estate and gift tax exemptions. Alaska is one of the top states for trusts, and a long-time leader in adopting laws to improve investing opportunities and estate planning. SB191 gives Alaska the opportunity to continue to draw in more investors and keep those who are invested in Alaskan trusts to remain here.

Estate management can be defined as an art of directing and supervising one's interest in land, property, or other securities in order to achieve optimum returns. In law, a trust is a relationship where assets or property are held by one party, the trustee, for the benefit of another party. A trust is created by the owner, also called a "settlor" or "trustor" who transfers property to a trustee. The trustee holds that property for the trust's beneficiaries.

This bill offers clarification on four things regarding trusts and trustees in the State of Alaska. First, it clarifies existing powers a trustee already has, placing the ability to divide trusts into statute. Second, the bill clarifies two powers trustees may act upon, including the ability to purchase fiduciary insurance and allow discretionary distribution to be made from realized capital gains. Third, it gives the ability to charge costs incurred from the duties on that list to the trust.

The fourth and final clarification this bill also offers is in relation to community property in trusts. The primary purpose of Alaska's optional community property system is to obtain an income tax benefit on property when the first spouse dies. To accomplish this purpose, appreciation and income must be characterized as community property. Currently, appreciation and income made from a community property trust must be specifically claimed as community property. The proposed changes, have the income made from the community property be automatically community property unless expressly stated otherwise, allowing for easier management of the assets in the trust.

The 'gift promise' section of the bill is a new concept. This new language would provide that a promise to make a gift to a trust is enforceable under Alaska law and may be treated as a note or a negotiable instrument after 180 days. The promise need not be backed by consideration (a transfer of property or cash), so long as the promise is to a qualifying trust, in writing, references the specific statute, expresses intent to be legally bound, and the money will be transferred within nine months after the person's death. This additional section will allow taxpayers throughout the United States to use their current estate and gift tax exemptions, which are at historic highs, without having to give up the ownership of property until later when the promise is fulfilled.

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