



Senate

General Assembly

File No. 613

January Session, 2005

Substitute Senate Bill No. 1264

Senate, May 2, 2005

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING SPENDTHRIFT AND DISCRETIONARY TRUSTS AND THE CLAIMS OF CREDITORS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2005*) As used in sections 1 to 9,
2 inclusive, of this act:

3 (1) "Beneficiary" means a person that (A) has a present or future
4 beneficial interest in a trust, vested or contingent, or (B) in a capacity
5 other than that of trustee, holds a power of appointment over trust
6 property;

7 (2) "Power of withdrawal" means a presently exercisable general
8 power of appointment other than a power exercisable only upon
9 consent of the trustee or a person holding an adverse interest;

10 (3) "Revocable", as applied to a trust, means revocable by the settlor
11 without the consent of the trustee or a person holding an adverse
12 interest;

13 (4) "Settlor" means a person, including a testator, who creates, or
14 contributes property to, a trust. If more than one person creates or
15 contributes property to a trust, each person is a settlor of the portion of
16 the trust property attributable to such person's contribution except to
17 the extent another person has the power to revoke or withdraw such
18 portion, except as otherwise provided in section 9 of this act;

19 (5) "Spendthrift provision" means a term of a trust that restrains
20 both voluntary and involuntary transfer of a beneficiary's interest; and

21 (6) "Terms of the trust" means the manifestation of the settlor's
22 intent regarding a trust's provisions as expressed in the trust
23 instrument or as may be established by other evidence that would be
24 admissible in a judicial proceeding.

25 Sec. 2. (NEW) (*Effective October 1, 2005*) To the extent a beneficiary's
26 interest is not subject to a spendthrift provision, except as otherwise
27 provided in sections 1 to 9, inclusive, of this act, the court may
28 authorize a creditor or assignee of the beneficiary to reach the
29 beneficiary's interest by attachment of present or future distributions
30 to or for the benefit of the beneficiary. The court may limit the award
31 to such relief as is appropriate under the circumstances, provided, the
32 court may not grant relief beyond the attachment of present or future
33 distributions.

34 Sec. 3. (NEW) (*Effective October 1, 2005*) (a) A spendthrift provision is
35 valid only if it restrains both voluntary and involuntary transfer of a
36 beneficiary's interest. A provision in the terms of the trust permitting
37 the voluntary transfer of a beneficiary's interest, but only with the
38 consent of another person or entity, including the trustee, specified in
39 the terms of the trust, shall be deemed to be an acceptable restraint on
40 voluntary transfer.

41 (b) A term of a trust providing that the interest of a beneficiary is
42 held subject to a "spendthrift trust", or words of similar import, is
43 sufficient to restrain both voluntary and involuntary transfer of the
44 beneficiary's interest.

45 (c) A beneficiary may not transfer an interest in a trust in violation
46 of a valid spendthrift provision and, except as otherwise provided in
47 sections 1 to 9, inclusive, of this act, a creditor or assignee of the
48 beneficiary may not reach the interest or a distribution by the trustee
49 before its receipt by the beneficiary.

50 (d) A spendthrift provision is valid even though a beneficiary is
51 named as the sole trustee or as a cotrustee of the trust.

52 Sec. 4. (NEW) (*Effective October 1, 2005*) (a) For the purposes of this
53 section, "child" includes any person for whom an order or judgment
54 for child support has been entered in this or another state.

55 (b) Even if a trust contains a spendthrift provision, a beneficiary's
56 child who has a judgment or court order against the beneficiary for
57 support or maintenance may obtain from a court an order attaching
58 present or future distributions to or for the benefit of the beneficiary.

59 Sec. 5. (NEW) (*Effective October 1, 2005*) (a) For the purposes of this
60 section, "child" includes any person for whom an order or judgment
61 for child support has been entered in this or another state.

62 (b) Except as otherwise provided in subsection (c) of this section,
63 whether or not a trust contains a spendthrift provision, a creditor of a
64 beneficiary may not compel a distribution that is subject to the trustee's
65 discretion, even if:

66 (1) The discretion is expressed in the form of a standard of
67 distribution; or

68 (2) The trustee has abused the discretion.

69 (c) To the extent a trustee has not complied with a standard of
70 distribution or has abused a discretion:

71 (1) A distribution may be ordered by the court to satisfy a judgment
72 or court order against the beneficiary for support or maintenance of
73 the beneficiary's child; and

74 (2) The court may direct the trustee to pay to the child only such
75 amount as is equitable under the circumstances, but in no event more
76 than the amount the trustee would have been required to distribute to
77 or for the benefit of the beneficiary had the trustee complied with the
78 standard or not abused the discretion.

79 (d) This section does not limit the right of a beneficiary to maintain a
80 judicial proceeding against a trustee for an abuse of discretion or
81 failure to comply with a standard for distribution.

82 (e) With respect to the powers set forth in section 9 of this act, the
83 provisions of this section shall apply even though the beneficiary is the
84 sole trustee or a cotrustee of the trust.

85 Sec. 6. (NEW) (*Effective October 1, 2005*) (a) Whether or not the terms
86 of the trust contain a spendthrift provision, the following rules apply:

87 (1) During the lifetime of the settlor, the property of a revocable
88 trust is subject to claims of the settlor's creditors.

89 (2) With respect to an irrevocable trust, a creditor or assignee of the
90 settlor may reach the maximum amount that can be distributed to or
91 for the benefit of the settlor. If a trust has more than one settlor, the
92 amount the creditor or assignee of a particular settlor may reach may
93 not exceed the settlor's interest in the portion of the trust attributable to
94 such settlor's contribution.

95 (3) After the death of a settlor, and subject to the settlor's right to
96 direct the source from which liabilities will be paid, except as
97 otherwise provided in section 45a-472 of the general statutes, the
98 property of a trust that was revocable at the settlor's death is subject to
99 claims of the settlor's creditors, costs of administration of the settlor's
100 estate, the expenses of the settlor's funeral and disposal of remains,
101 and the allowance to a surviving spouse or family as provided in
102 section 45a-320 of the general statutes to the extent the settlor's probate
103 estate is inadequate to satisfy such claims, costs, expenses and
104 allowance.

105 (b) With respect to claims, expenses and taxes in connection with
106 the settlement of a trust that was revocable at the settlor's death, the
107 following rules apply:

108 (1) Any claim of a creditor that would be barred against the
109 fiduciary of a decedent's estate, the estate of the decedent or any
110 creditor or beneficiary of the decedent's estate shall be barred against
111 the trustee, the trust property and the creditors and beneficiaries of the
112 trust.

113 (2) The trustee may use the optional notice procedures set forth in
114 section 45a-357 of the general statutes and, upon the trustee's
115 compliance with such procedures, any person notified in accordance
116 with said section shall be forever barred from asserting or recovering
117 on any claim such person may have from the trustee, the trust
118 property or any creditor or beneficiary of the trust.

119 (3) The provisions of section 45a-365 of the general statutes
120 concerning the order of payment of claims, expenses and taxes shall
121 apply to the settlement of the revocable trust.

122 (4) If any claim is not presented in writing to the fiduciary of the
123 settlor's estate or the trustee within one hundred fifty days from the
124 date of the appointment of the first fiduciary of the settlor's estate or, if
125 no fiduciary is so appointed, within one hundred fifty days from the
126 date of the settlor's death, no trustee shall be chargeable for any assets
127 that a trustee may have paid or distributed in good faith in satisfaction
128 of any lawful claims, expenses or taxes or to any beneficiary before
129 such claim was presented. A payment or distribution of assets by a
130 trustee shall be deemed to have been made in good faith unless the
131 creditor can prove that the trustee had actual knowledge of such claim
132 at the time of such payment or distribution. Such one-hundred-fifty-
133 day period shall not be interrupted or affected by the death,
134 resignation or removal of a trustee, except that the time during which
135 there is no fiduciary in office shall not be counted as part of such
136 period.

137 (c) For the purposes of this section:

138 (1) Except as otherwise provided in section 9 of this act, during the
139 period the power may be exercised, the holder of a power of
140 withdrawal is treated in the same manner as the settlor of a revocable
141 trust to the extent of the property subject to the power; and

142 (2) Upon the lapse, release or waiver of the power, the holder is
143 treated as the settlor of the trust only to the extent the value of the
144 property affected by the lapse, release or waiver exceeds the greater of
145 the amount specified in Section 2041(b)(2) or 2514(e) of the Internal
146 Revenue Code of 1986, and the regulations thereunder, or Section
147 2503(b) of the Internal Revenue Code of 1986, and the regulations
148 thereunder, in each case as from time to time amended.

149 Sec. 7. (NEW) (*Effective October 1, 2005*) (a) For the purposes of this
150 section, "mandatory distribution" means a distribution of income or
151 principal that the trustee is required to make to a beneficiary under the
152 terms of the trust, including a distribution upon termination of the
153 trust. The term excludes a distribution subject to the exercise of the
154 trustee's discretion, regardless of whether the terms of the trust (1)
155 include a support or other standard to guide the trustee in making
156 distribution decisions, or (2) provide that the trustee "may" or "shall"
157 make discretionary distributions, including distributions pursuant to a
158 support or other standard.

159 (b) Except as otherwise provided in section 9 of this act, whether or
160 not a trust contains a spendthrift provision, a creditor or assignee of a
161 beneficiary may reach a mandatory distribution of income or principal,
162 including a distribution upon termination of the trust, if the trustee has
163 not made the distribution to the beneficiary within a reasonable time
164 after the mandated distribution date.

165 Sec. 8. (NEW) (*Effective October 1, 2005*) Trust property is not subject
166 to personal obligations of the trustee, even if the trustee becomes
167 insolvent or bankrupt.

168 Sec. 9. (NEW) (*Effective October 1, 2005*) (a) For all purposes under
169 sections 1 to 9, inclusive, of this act, whether or not a trust contains a
170 spendthrift provision, a creditor of a beneficiary, other than the settlor
171 if the settlor is a beneficiary of the trust, may not attach or compel a
172 distribution of property that is subject:

173 (1) To a power of withdrawal held by the beneficiary if the value of
174 the property subject to the power does not exceed the greater of the
175 amount specified in Section 2041(b)(2) or 2514(e) of the Internal
176 Revenue Code of 1986, and the regulations thereunder, or Section
177 2503(b) of the Internal Revenue Code of 1986, and the regulations
178 thereunder, in each case as from time to time amended;

179 (2) Except as otherwise provided in subsection (c) of section 5 of this
180 act, to a power, whether mandatory or discretionary, held by the
181 trustee of the trust, including a power held by the beneficiary as the
182 sole trustee or a cotrustee of the trust, to make distributions to or for
183 the benefit of the beneficiary, if the power is exercisable by the trustee
184 only in accordance with an ascertainable standard relating to such
185 beneficiary's individual health, education, support or maintenance
186 within the meaning of Section 2041(b)(1)(A) or Section 2514(c)(1) of the
187 Internal Revenue Code of 1986, and the regulations thereunder, as
188 from time to time amended; or

189 (3) To a power, whether mandatory or discretionary, held by the
190 trustee of the trust, including a power held by the beneficiary as the
191 sole trustee or a cotrustee of the trust, to make distributions to or for
192 the benefit of a person who the beneficiary has an obligation to
193 support, if the power is exercisable by the trustee only in accordance
194 with an ascertainable standard relating to such person's individual
195 health, education, support or maintenance within the meaning of
196 Section 2041(b)(1)(A) or Section 2514(c)(1) of the Internal Revenue
197 Code of 1986, and the regulations thereunder, as from time to time
198 amended.

199 (b) A beneficiary holding a power set forth in subsection (a) of this
200 section shall not, during the period the power may be exercised or

201 upon the lapse, release or waiver of the power, be treated as a settlor of
202 the trust.

203 Sec. 10. Section 52-321 of the general statutes is repealed and the
204 following is substituted in lieu thereof (*Effective October 1, 2005*):

205 [Except as provided in sections 52-321a and 52-352b:

206 (a) If property has been given to trustees to pay over the income to
207 any person, without provision for accumulation or express
208 authorization to the trustees to withhold the income, and the income
209 has not been expressly given for the support of the beneficiary or his
210 family, the income shall be liable in equity to the claims of all creditors
211 of the beneficiary.

212 (b) Any creditor of the beneficiary who has secured a judgment
213 against the beneficiary may bring an action against him and serve the
214 trustees with garnishee process, and the court to which the action is
215 returnable may direct the trustees to pay over the net income derived
216 from the trust estate to the judgment creditor, as the income may
217 accrue, until the creditor's debt is satisfied.

218 (c) The court having jurisdiction over the fund may make such an
219 order for payment pursuant to subsection (b) when the beneficiary is a
220 nonresident of this state, as well as when the beneficiary is a resident,
221 but in the case of a nonresident beneficiary notice shall be given to the
222 nonresident of the action against him as provided in section 52-87. The
223 nonresidence of the beneficiary shall not deprive the court of authority
224 to make such an order.

225 (d) If any such trust has been expressly provided to be for the
226 support of the beneficiary or his family, a court of equity having
227 jurisdiction may make such order regarding the surplus, if any, not
228 required for the support of the beneficiary or his family, as justice and
229 equity may require.

230 (e) The defendant trustee in any such action] In any action brought
231 by a creditor of a beneficiary of a trust to enforce a judgment against

232 the beneficiary in which a defendant trustee is served with garnishee
233 process, the trustee shall be entitled to charge in the administration
234 account of the trust such expenses and disbursements as the court to
235 which the action is brought determines to be reasonable and proper.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2005</i>	New section
Sec. 2	<i>October 1, 2005</i>	New section
Sec. 3	<i>October 1, 2005</i>	New section
Sec. 4	<i>October 1, 2005</i>	New section
Sec. 5	<i>October 1, 2005</i>	New section
Sec. 6	<i>October 1, 2005</i>	New section
Sec. 7	<i>October 1, 2005</i>	New section
Sec. 8	<i>October 1, 2005</i>	New section
Sec. 9	<i>October 1, 2005</i>	New section
Sec. 10	<i>October 1, 2005</i>	52-321

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 06 \$	FY 07 \$
Probate Court	GF - Cost and Revenue Gain	Minimal	Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill could result in an increase in the number of hearings regarding the claims procedure for trustees and creditors for revocable trusts. The Probate Court is responsible for sending notices to the parties involved with the hearings, and this will result in a minimal cost to the Probate Court.

The involved parties are responsible for paying a \$150 petition or application fee. The increase in the number of hearings will generate additional minimal revenue to the Probate Court Administration fund.

It is estimated that the Probate Court will hear between 5 and 10 related cases annually.

OLR Bill Analysis

sSB 1264

AN ACT CONCERNING SPENDTHRIFT AND DISCRETIONARY TRUSTS AND THE CLAIMS OF CREDITORS**SUMMARY:**

The bill creates a claims procedure for trustees and creditors for revocable trusts after the settlor's death, clarifies the law regarding the liability of trust assets for creditors' claims regardless of the type of distribution standard in the trust, and authorizes spendthrift provisions in trusts. A spendthrift provision prohibits a beneficiary's creditor from attaching his interest in a trust until the trustee actually distributes assets to him, thereby preserving the trust for the beneficiary. Thus, with spendthrift protection, creditors may attach proceeds only when a distribution is made from the trust.

Under the bill, whether or not a trust contains a spendthrift provision, a creditor of a beneficiary, other than a settlor who is a beneficiary, may not attach or compel a distribution of property that is subject to either a power of withdrawal or a power to make distributions for the beneficiary, or someone the beneficiary has an obligation to support, under certain circumstances

The bill permits a spendthrift trust that names a beneficiary as the sole trustee or as a co-trustee.

Under the bill, whether or not the trust contains a spendthrift provision, the property of a trust is subject to claims of the settlor's creditors. A "settlor" is the person who creates, or contributes property to, a trust.

EFFECTIVE DATE: October 1, 2005

DEFINITIONS (§1)

The bill defines a "beneficiary" as a person that:

1. has a present or future interest in a trust, vested or contingent,
or

2. holds a power of appointment over trust property in a capacity other than that of trustee. (A power of appointment is the right to designate the new owner of property.)

A "power of withdrawal" is a presently exercisable general power of appointment other than a power exercisable only with the consent of the trustee or a person holding an adverse interest.

A trust is "revocable" if the settlor can revoke it without the consent of the trustee or a person holding an adverse interest.

The bill defines a "settlor" as a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to his contribution except to the extent another person has the power to revoke or withdraw that portion.

A "spendthrift provision" means a term of the trust, which restrains both voluntary and involuntary transfer of a beneficiary's interest.

"Terms of the trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust document or as established by other evidence that would be admissible in court.

RIGHTS OF BENEFICIARY'S CREDITOR OR ASSIGNEE (§ 2)

The bill empowers the court to authorize a beneficiary's creditor or assignee to reach the beneficiary's interest in a trust by attaching present or future distributions to, or for the benefit of, the beneficiary, if a beneficiary's interest is not protected by a spendthrift provision. The court may limit the extent to which a beneficiary's creditor or assignee may do so as appropriate under the circumstances.

SPENDTHRIFT PROVISION (§ 3)

Under the bill, a spendthrift provision is valid only if it restrains both voluntary and involuntary transfers of a beneficiary's interest.

The bill specifies that a term of a trust:

1. providing that the interest of a beneficiary is held subject to a "spendthrift trust," or words of similar meaning, is sufficient to restrain both a voluntary and an involuntary transfer of the beneficiary's interest; or
2. permitting the voluntary transfer of a beneficiary's interest, but only with the consent of another person or entity the trust specifies, including the trustee, is an acceptable restraint on voluntary transfer.

The bill prohibits a beneficiary from transferring an interest in a trust in violation of a valid spendthrift provision. It also prohibits, except as otherwise provided in the bill, a beneficiary's creditor or assignee from reaching the beneficiary's interest while it is in the trust or before the trustee distributes it.

The bill permits a spendthrift provision that names a beneficiary as the sole trustee or as a co-trustee.

CHILD SUPPORT EXCEPTION TO SPENDTHRIFT PROVISION (§ 4)

Even if a trust contains a spendthrift provision, the bill allows a beneficiary's child who has a judgment or court order for support or maintenance to obtain a court order attaching present or future distributions to, or for the benefit of, the beneficiary. The bill specifies that the term "child" includes any person for whom an order or judgment for child support has been entered in Connecticut or another state.

DISCRETIONARY TRUSTS; EFFECT OF STANDARD (§ 5)

Under the bill, whether or not a trust contains a spendthrift provision, a beneficiary's creditor (other than a child with a valid support order) may not compel a distribution that is subject to the trustee's discretion, even if (1) the discretion is expressed in the form of a standard of distribution or (2) the trustee has abused the discretion.

But if a trustee has not complied with a distribution standard or has abused a discretion, the court may:

1. order a distribution to satisfy a judgment or court order

against the beneficiary for support or maintenance of the beneficiary's child; and

2. direct the trustee to pay to the child an equitable amount under the circumstances but not more than the amount the trustee would have been required to distribute to, or for the benefit of, the beneficiary had the trustee complied with the standard or not abused the discretion.

The bill also specifies that it does not limit a beneficiary's right to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution, even if a creditor has no right to do so.

These provisions apply to protected powers held by beneficiaries who are also trustees (see § 9).

CREDITOR'S CLAIM AGAINST SETTLOR (§ 6)

Creditors' Claims

The bill establishes certain rules that apply to the claims of the settlor's creditors. All of the following apply whether or not the trust contains a spendthrift provision.

1. The property of a revocable trust is subject to claims of the settlor's creditors during the settlor's lifetime.
2. With respect to an irrevocable trust, a settlor's creditor or assignee may reach the maximum amount that can be distributed to the settlor or for the settlor's benefit. If a trust has more than one settlor, the amount a settlor's creditor or assignee may reach cannot exceed the settlor's interest in the portion of the trust attributable to his contribution.
3. After the settlor's death, and subject to his right to direct the source from which liabilities will be paid (except as otherwise provided by law regarding pension, retirement, death benefit, and profit sharing plans), the property of a trust that was revocable at the settlor's death is subject to claims of his creditors, costs of administering his estate, his funeral and burial expenses, and the family allowance to a surviving

spouse and children as provided by existing law to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowance.

Claims, Expenses, and Taxes to Settle a Trust

The bill establishes certain rules regarding claims, expenses, and taxes to settle a trust that was revocable at the settlor's death.

1. Any creditor's claim, which would be barred against the fiduciary of a decedent's estate, the estate of the decedent, or any creditor or beneficiary of the decedent's estate, is barred against the trustee, the trust property, and the trust's creditors and beneficiaries.
2. A trustee may use the optional notice procedures in existing law for creditors in connection with decedent's estates. (Generally, the optional procedures allow a fiduciary at any time to give notice to anyone he has reason to believe may have a claim. The notice gives such creditors 90 days from the date they receive notice from the fiduciary to make a claim.) Upon the trustee's compliance with these procedures, any person so notified is barred from asserting or recovering on any claim from the trustee, the trust property, or any creditor or beneficiary of the trust.
3. The same preference and order of payment of claims, expenses, and taxes apply to a revocable trust as apply to a decedent's estate.
4. No trustee may be chargeable for any assets that a trustee may have paid or distributed in good faith in satisfaction of any lawful claims, expenses, or taxes or to any beneficiary before the claim was presented if any claim is not presented in writing to the fiduciary of the settlor's estate or the trustee within 150 days from the date of the appointment of the first fiduciary of the settlor's estate, or within 150 days from the settlor's death if no fiduciary is appointed within this period. A payment or distribution of assets by a trustee is deemed to have been made in good faith unless the creditor can prove that the trustee knew about the claims when making the payment or distribution. The 150-day period

may not be interrupted or affected by a trustee's death, resignation, or removal. But the bill specifies that the time during which there is no fiduciary in office may not be counted as part of the period.

Holder of Power of Withdrawal Treated Same as Settlor

Except as the bill otherwise provides, during the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust for the property subject to the power.

Upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount in three specified provisions of the federal tax code. (Currently, under two provisions, the amount is the greater of \$5,000 or 5% of the aggregate value of the assets under the power. Under the other provision, the amount is \$10,000 multiplied by a specified cost-of-living adjustment.)

OVERDUE DISTRIBUTION (§ 7)

Except as the bill otherwise provides, a beneficiary's creditor or assignee may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the mandated distribution date. The rule applies whether or not a trust contains a spendthrift provision.

A "mandatory distribution" means a distribution of income or principal that the trustee must make to a beneficiary, including a distribution when the trust terminates. The term excludes a discretionary distribution, regardless of whether the terms of the trust (1) include a support or other standard to guide the trustee in making distribution decisions, or (2) provide that the trustee "may" or "shall" make discretionary distributions, including distributions pursuant to a support or other standard.

PERSONAL OBLIGATIONS OF TRUSTEE (§ 8)

Under the bill, trust property is not subject to the trustee's

personal obligations, even if the trustee becomes insolvent or bankrupt.

PROTECTED POWERS (§ 9)

Whether or not a trust contains a spendthrift provision, a creditor of a beneficiary, other than a settlor who is a beneficiary, may not attach or compel a distribution of property that is subject to either a power of withdrawal or a power to make distributions for the beneficiary, or someone the beneficiary has an obligation to support, under certain circumstances.

Power of Withdrawal

A creditor of a beneficiary (other than a settlor who is a beneficiary) may not attach or compel a distribution of property that is subject to a power of withdrawal held by the beneficiary if the value of the property subject to the power does not exceed the greater of the amounts specified in three provisions of the federal tax code. Currently, under two provisions, the amount is the greater of \$5,000 or 5% of the aggregate value of the assets under the power. Under the other provision, the amount is \$10,000 multiplied by a specified cost-of-living adjustment.

Power to Make Distributions

A creditor of a beneficiary (other than the settlor who is a beneficiary) also may not attach or compel a distribution of property that is subject to a mandatory or discretionary power the trustee holds, including a power held by the beneficiary as the sole trustee or co-trustee, to make distributions to or for the benefit of a person who the beneficiary has an obligation to support, if the power is exercisable by the trustee only in accordance with an ascertainable standard relating to the person's health, education, support, or maintenance within the meaning of the federal tax code.

The same rule applies to a trustee's power to make distributions to or for the beneficiary, except if a trustee has not complied with a distribution standard or has abused a discretion, the court may order a distribution to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary's child, and direct the trustee to pay to the child an amount that is

equitable under the circumstances.

Beneficiary May Not Be Treated As A Settlor

A beneficiary holding a power of withdrawal or distribution may not be treated as a settlor of the trust during the period the power may be exercised or upon its lapse, release, or waiver.

LIABILITY OF INCOME OF TRUST FUND TO CREDITORS (§ 10)

The bill eliminates a law that subjects to the beneficiary's creditor's claims, trust income from property given to trustees with direction to pay over the income to any person, without provision for accumulation or express authorization to the trustees to withhold the income, and the income has not been expressly given for the support of the beneficiary or his family. Under that law, a creditor of the beneficiary who has secured a judgment against him could institute a legal proceeding for garnishment against him and serve the trustees. In such a case, the law allows the court to direct the trustees to pay over the net income derived from the trust estate to the judgment creditor, as the income may accrue, until the creditor's debt is satisfied.

Under current law, if any such trust has been expressly provided for the support of the beneficiary or his family, a court may make any order regarding the surplus, if any, not required for the support of the beneficiary or his family, as justice and equity may require.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 40 Nay 0