



General Assembly

January Session, 2005

Raised Bill No. 1264

LCO No. 4114

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Referred to Committee on Judiciary

Introduced by:
(JUD)

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 interest in a trust, vested or contingent, or (B) in a capacity other than
5 that of trustee, holds a power of appointment over trust property;

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

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

12 (4) "Settlor" means a person, including a testator, who creates, or
13 contributes property to, a trust. If more than one person creates or
14 contributes property to a trust, each person is a settlor of the portion of

15 the trust property attributable to such person's contribution except to
16 the extent another person has the power to revoke or withdraw such
17 portion, except as otherwise provided in section 9 of this act;

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

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

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

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

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

44 (c) A beneficiary may not transfer an interest in a trust in violation

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

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

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

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

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

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

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

67 (2) The trustee has abused the discretion.

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

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

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

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

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

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

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

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

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

103 allowance.

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

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

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

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

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

134 period.

135 (c) For the purposes of this section:

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

140 (2) Upon the lapse, release or waiver of the power, the holder is
141 treated as the settlor of the trust only to the extent the value of the
142 property affected by the lapse, release or waiver exceeds the greater of
143 the amount specified in Section 2041(b)(2) or 2514(e) of the Internal
144 Revenue Code of 1986, and the regulations thereunder, or Section
145 2503(b) of the Internal Revenue Code of 1986, and the regulations
146 thereunder, in each case as in effect on the effective date of this section.

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

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

163 Sec. 8. (NEW) (*Effective October 1, 2005*) Trust property is not subject

164 to personal obligations of the trustee, even if the trustee becomes
165 insolvent or bankrupt.

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

171 (1) To a power of withdrawal held by the beneficiary if the value of
172 the property subject to the power does not exceed the greater of the
173 amount specified in Section 2041(b)(2) or 2514(e) of the Internal
174 Revenue Code of 1986, and the regulations thereunder, or Section
175 2503(b) of the Internal Revenue Code of 1986, and the regulations
176 thereunder, in each case as in effect on the effective date of this section;

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

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

196 effective date of this section.

197 (b) A beneficiary holding a power set forth in subsection (a) of this
 198 section shall not, during the period the power may be exercised or
 199 upon the lapse, release or waiver of the power, be treated as a settlor of
 200 the trust.

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

Statement of Purpose:

To adopt article 5 of the Connecticut Uniform Trust Code concerning the validity of a spendthrift provision and the rights of creditors, both of the settlor and beneficiaries, to reach a trust to collect a debt.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]