



General Assembly

Substitute Bill No. 1264

January Session, 2005

* SB01264BA 060205 *

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.*

BA *Joint Favorable*