
OLR Bill Analysis

sHB 7104

AN ACT CONCERNING ADOPTION OF THE CONNECTICUT UNIFORM TRUST CODE.

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SUMMARY

This bill adopts the Connecticut Uniform Trust Code, establishing numerous rules on creating, modifying, terminating, and enforcing trusts. A trust, generally speaking, is an arrangement in which one person (the trustee), holds money or other property for the benefit of another person (the beneficiary). The trustee owes certain duties to the beneficiary with regard to safeguarding, managing, and disposing of the trust property and income according to the terms of the trust. The person who creates the trust is called the settlor.

With some exceptions, the bill establishes default rules that the terms of a trust can override. Among several other topics, the bill addresses the trustee's duties, powers, and liability; the rights of creditors; revocable trusts (in which the settlor retains the authority to amend or revoke the trust); representation of beneficiaries or other parties; and establishment of a trust's principal place of administration.

The bill outlines the powers and obligations of parties administering directed trusts, which are trusts in which a person other than a trustee has power over some aspect of the trust's administration (§§ 81-98). Among other things, the bill addresses trust directors' and directed

trustees' duties.

It sets up a framework for creating self-settled asset protection trusts, which are irrevocable trusts, the assets of which (1) the grantor may still benefit personally from and (2) creditors generally cannot reach (§§ 99-108).

The bill makes changes to the rule against perpetuities, extending the period in which future interests must vest to be valid (§§ 119).

It also makes minor, technical, and conforming changes.

EFFECTIVE DATE: January 1, 2020

§§ 1-12 — UNIFORM TRUST CODE GENERAL PROVISIONS

Establishes the code's scope; defines terms; provides that the code is a set of default rules that a trust can override, with exceptions; and addresses several other matters, such as methods of providing notice and nonjudicial settlement agreements

Scope (§ 2)

The bill applies to the following types of trusts:

1. express trusts, whether testamentary (i.e., a trust created under a will or, unless otherwise expressly provided, pursuant to a probate court order) or inter vivos (i.e., non-testamentary trusts) and
2. trusts created under a statute or court order requiring a trust to be administered as an express trust.

Except as provided below, the bill does not apply to charitable trusts (i.e., a trust, or portion of one, created for a charitable purpose, as set forth below, when property is dedicated for that purpose).

It also does not apply to statutory trusts created under the existing Connecticut Statutory Trust Act (CGS § 34-500 et seq.).

The bill provides that, for special needs trusts created under specified federal law, (1) the bill's applicable provisions must not be interpreted in a manner that is inconsistent with or contradicts federal law and (2) courts may not issue an order or other ruling that is

inconsistent with or contradicts federal law.

Knowledge of Facts; Methods and Waiver of Notice (§§ 4 & 9)

The bill sets standards for (1) determining when a person has knowledge of a fact involving a trust and (2) the manner for a trustee or someone else to provide required notices or documents. Among other things, it:

1. provides that an organization has notice or knowledge of a fact from the time (a) an employee responsible for acting for the trust received the information or (b) it would have been brought to the employee's attention if the organization had exercised reasonable diligence;
2. requires that notices or documents be sent in a reasonably suitable manner likely to result in their receipt, such as first-class mail; personal delivery; or electronic messages, if the person has consented to receive documents electronically; and
3. allows the intended recipient to waive receipt of a notice or document.

Default and Mandatory Rules (§ 5)

Except as the trust otherwise provides, the bill governs (1) trustees' duties and powers, (2) relations among trustees, and (3) beneficiaries' rights and interests.

It generally allows the terms of a trust to override the bill's provisions with 14 enumerated exceptions. These exceptions include, among other things, (1) requirements for creating a trust; (2) the trustee's duty to act in good faith; (3) certain court powers, such as to modify or terminate a trust under certain circumstances; and (4) provisions dealing with judicial supervision of testamentary trusts. (See § 5(b) of the bill for the complete list of exceptions.)

Common Law, Principles of Equity, and Governing Law (§§ 6 & 7)

The bill specifies that the common law (i.e., judge-made law) of trusts and principles of equity supplement its provisions, except to

the extent the bill or a statute modifies them. It provides that:

1. the bill's provisions expressly applying to charitable trusts apply only to supplement Connecticut common law and
2. the bill and existing probate laws must not be applied or construed to alter or diminish any charitable interest or purpose or any related condition or restriction.

The bill requires the meaning of a trust's terms to be determined by the law of (1) the jurisdiction the trust designates unless that is contrary to a strong public policy of the jurisdiction with the most significant relationship to the matter or (2) the jurisdiction with the most significant relationship to the matter, in the absence of a designation.

Principal Place of Administration (§ 8)

The bill establishes a non-exhaustive list of standards under which a trust's designation of its principal place of administration is valid (e.g., if the trustee lives or works there). A trustee is under a continuing duty to administer the trust at a location appropriate to its purposes and administration and the beneficiaries' interests.

With some exceptions, the bill allows trustees to transfer a trust's principal place of administration to other states or foreign jurisdictions. It requires probate court approval to transfer testamentary trusts and prohibits the transfer of charitable trusts to other countries.

The bill specifies that changing a trust's principal place of administration from Connecticut to another jurisdiction does not, by itself, deprive Connecticut courts of jurisdiction over the trust.

Before transferring a trust's principal place of administration, the bill requires a trustee to provide at least 60 days' notice, with specified information, to the qualified beneficiaries. "Qualified beneficiaries" are those who (1) are currently eligible to receive a trust distribution or (2) would be eligible upon termination of the trust or current qualified

beneficiaries' interests.

Others Treated as Qualified Beneficiaries (§ 10)

Under the bill, if a trustee must send a notice to the trust's qualified beneficiaries, the trustee must also send it to (1) any designated representatives (see § 21) and (2) other beneficiaries who request it.

Additionally, the bill grants the rights of a qualified beneficiary to:

1. a charitable organization that the trust expressly designated to receive distributions, if certain conditions are met;
2. the attorney general, with respect to charitable trusts (a) administered in Connecticut or (b) with the primary charitable beneficiary or intended charitable benefit in the state; and
3. a person appointed to enforce a (a) trust created for an animal's care or (b) noncharitable trust without an ascertainable beneficiary (see § 29).

Nonjudicial Settlement Agreements (§ 11)

The bill generally allows interested persons to enter into binding, nonjudicial settlement agreements for matters involving inter vivos trusts. Such an agreement is valid only if it (1) does not violate a material purpose of the trust and (2) includes terms that a court could properly approve.

The bill specifies matters that may be resolved in this way, such as (1) interpretation of a trust's terms or (2) a trustee's liability for a trust-related action. It does not allow a settlement agreement to modify or terminate an irrevocable trust.

It allows an interested person to request that a court approve the agreement and determine whether (1) it contains terms the court could have properly approved and (2) adequate representation was provided (see §§ 17-21 below).

Insurable Interest of Trustee (§ 12)

The bill establishes the conditions under which a trustee has an

insurable interest in the life of someone insured under a life insurance policy owned by the trustee or the trust. Generally, this applies if the insured is the settlor or someone in whom the settlor has an insurable interest. The insurance proceeds must primarily benefit trust beneficiaries that (1) have an insurable interest in the insured's life or (2) are certain family members of the insured.

§§ 13-16 — JUDICIAL PROCEEDINGS

Provides that testamentary trusts, and not inter vivos trusts, are subject to continuing judicial supervision; addresses jurisdiction and venue over trust-related court matters

Role of Court in Administration of Trust (§ 13)

The bill provides that testamentary trusts, but not inter vivos trusts, are subject to continuing judicial supervision.

Personal and Subject Matter Jurisdiction (§§ 14 & 15)

Under the bill, a trustee submits to the personal jurisdiction of Connecticut's courts for any trust matter by (1) accepting the trusteeship of a trust having its principal place of administration in this state or (2) moving the trust to this state. Beneficiaries of a trust administered in Connecticut are subject to the jurisdiction of the state's courts for any trust matter. If a beneficiary accepts a trust distribution, he or she submits personally to the jurisdiction of the state's courts for any trust matter.

The bill specifies that, notwithstanding the above provisions, Connecticut courts have jurisdiction over the trustees of charitable trusts if the primary charitable beneficiary or intended charitable benefit is in the state.

Testamentary Trusts. For testamentary trusts, the bill specifies several matters over which the state's probate or Superior Courts have jurisdiction or concurrent jurisdiction.

For example, it specifies that probate courts have sole original jurisdiction over matters to (1) determine the validity of the will establishing the trust, (2) compel a trustee to account or to approve a trustee's account or proposed final distribution, and (3) terminate a charitable trust.

Under the bill, probate and Superior Courts have concurrent original jurisdiction over several matters, such as to (1) determine title or right of possession and use in property that constitutes or may constitute trust property, (2) reform a trust to qualify for the marital deduction or charitable deduction under tax law, and (3) modify or terminate a noncharitable trust. (Please refer to § 15(a) and (b) of the bill for the complete lists.)

The bill specifies that the Superior Court has original jurisdiction over:

1. proceedings relating to a testamentary trust that the court consolidates with another proceeding involving the same trust over which the court has original jurisdiction and
2. any matters over which the Superior Court has statutory or common law jurisdiction or has powers or remedies that are not available to the probate court.

Inter Vivos Trusts. Under the bill, the Superior Court has original jurisdiction over all matters relating to inter vivos trusts. The bill specifies several matters over which the probate court has concurrent original jurisdiction with the Superior Court, such as (1) compelling a trustee to account or approving a trustee's account, (2) terminating a charitable trust, or (3) determining title or right of possession and use in property that constitutes or may constitute trust property.

(Please refer to § 15(d) of the bill for the complete list.)

Request for Instruction or Approval of Action. The bill allows the court, with respect to a matter over which it has jurisdiction, to hear and decide a trustee's request for instructions or for approval of an action or a party's request to compel or prohibit a trustee's action.

Venue (§ 16)

Under the bill, trust-related proceedings in Superior Court must follow existing law's venue rules (see chapter 890 of the general statutes).

The bill requires probate court petitions concerning testamentary trusts to be filed with (1) the court that admitted the will to probate or (2) if the trust was established through a court order, the court that issued the order or the court to which the trust was subsequently transferred.

The bill also establishes rules for where probate court proceedings about inter vivos trusts must be filed – for example, in the probate district where the settlor resides or where the principal place of administration is located.

§§ 17-21 & 123 — REPRESENTATION

Establishes rules for representation, such as when a fiduciary may represent and bind a trust beneficiary

Basic Rules (§ 17)

Under the bill, (1) notice to a person’s representative has the same effect as if the person were directly notified and (2) a representative’s consent is binding unless the represented person objects before the consent takes effect. The bill generally allows a person representing a settlor who lacks capacity to give binding consent on the settlor’s behalf.

The bill prohibits a settlor from representing or binding a beneficiary with respect to a trust termination or modification. It specifies that a non-attorney cannot serve as someone’s legal counsel.

These provisions apply to all judicial proceedings, nonjudicial settlements, and other provisions of law pertaining to trust matters.

Fiduciaries and Other Representatives (§§ 18-20 & 123)

The bill provides that the holders of a power of appointment (i.e., authority to designate the recipients of a property interest) represent the appointee unless there is a conflict of interest between them. It sets a similar requirement for holders of a power of revocation or general power of appointment to represent the takers in default.

Additionally, unless there is a conflict of interest, the bill establishes the following conditions for representation:

1. conservators of an estate, agents, trustees, and estate executors and administrators may represent and bind another party or estate, as applicable;
2. conservators of persons or guardians of adults with intellectual disability may represent and bind such a person only with court approval;
3. a parent may represent and bind his or her minor or unborn child, if a guardian of the estate has not been appointed; and
4. unless otherwise represented, minors, incapacitated or unborn persons, or those whose identity is unknown and not reasonably ascertainable may be represented and bound by another person having a substantially identical interest to the extent there is no conflict of interest.

If the court determines that an interest is not represented or the available representation may be inadequate, it may appoint a guardian ad litem (GAL) for the person. In making any decisions, the GAL may consider the general benefit accruing to the living members of the person's family.

The bill also repeals current laws on these matters, which contain generally similar provisions (CGS §§ 45a-487a to -487f).

Representation of Beneficiaries (§ 21)

Under the bill, the trust instrument may (1) designate one or more persons other than the settlor to represent and bind a beneficiary that is not a charity or (2) authorize a person or persons, other than a trustee or the settlor, to designate one or more persons to represent and bind a beneficiary that is not a charity.

Except as the bill provides otherwise, (1) a designated representative may not represent and bind a beneficiary while the person is serving as trustee and (2) a designated representative who is a beneficiary may not represent and bind another beneficiary unless certain conditions are met (e.g., they are married).

A designated representative is not liable to the beneficiary, or to anyone claiming through that beneficiary, for any actions or omissions to act made in good faith.

§§ 22-38 & 123 — CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF A TRUST

Establishes methods for creating, modifying, or terminating a trust, including both general and specific rules for different types of trusts

Methods of Creating a Trust; Oral Trusts (§§ 22 & 28)

The bill allows a trust to be created by:

1. transferring property to someone else as trustee during the settlor's lifetime or by will or other disposition that takes effect upon the settlor's death;
2. the property owner's declaration that he or she holds identifiable property as trustee;
3. exercising a power of appointment or distribution in favor of a trustee;
4. transferring property under a statute or court judgment requiring property to be administered as an express trust; or
5. court order.

Under the bill a trust need not be in writing unless another law requires otherwise. But the creation and terms of an oral trust, other than a charitable trust, must be established by clear and convincing evidence.

Requirements for Creation; Purposes; Void Trusts (§§ 23, 25, & 27)

Under the bill, a trust is created only if the:

1. settlor has capacity and indicates an intention to do so;
2. trustee has duties to perform; and
3. trust has a definite beneficiary or is a charitable trust, trust for

the care of an animal, or trust for non-charitable purposes that meets the bill's requirements (see § 29).

Under the bill, a trust may grant a trustee the power to select a beneficiary from an indefinite class, but that authority fails if it is not exercised within a reasonable time. For charitable trusts, if the trust instrument does not name a default beneficiary, the property subject to such power passes to one or more charitable purposes or beneficiaries that the court selects. The court must make that selection consistent with the settlor's intention to the extent it can be ascertained.

The bill specifies that a charitable trust is created if the donor makes a gift with a charitable intent.

It allows a trust to be created only to the extent its purposes are lawful and not contrary to public policy. It makes a trust or trust provision void if its creation was induced by fraud, duress, or undue influence.

Inter Vivos Trusts Created in Other Jurisdictions (§ 24)

Under the bill, an inter vivos trust is valid if its creation complies with the law of the jurisdiction where it was executed or in which, upon its creation:

1. the settlor was domiciled, had a residence, or was a national;
2. a trustee was domiciled or had a business; or
3. any trust property was located.

Charitable Purposes; Enforcement (§ 26)

The bill authorizes a charitable trust to be created to relieve poverty; advance education or religion; promote health, governmental, or municipal purposes; or for other purposes that benefit the community. The settlor, or someone the settlor designates who would not otherwise have standing, may enforce it in court only to the extent specified in the trust instrument.

If a charitable trust does not indicate a particular charitable

purpose or beneficiary, and if the trustee is not given discretion to select the beneficiaries, the court may select them. The court must do this consistent with the settlor's intent to the extent it can be determined.

If a charitable trust, whose purposes are set forth in the trust instrument, is converted to a corporation or other entity, then the new entity's governing instrument must recite the charitable purposes of the original instrument.

Noncharitable Trust Without an Ascertainable Beneficiary (§ 29)

The bill allows a trust to be created for (1) general but noncharitable purposes or (2) specific noncharitable purposes the trustee selects. Such a trust may be enforced for up to 90 years by someone appointed in the trust or, if none, a court-appointed person. The 90-year period applies only to trusts that become irrevocable on or after January 1, 2020.

The trust's property may be applied only to its intended use, unless the court determines that the property's value exceeds the amount required for that use. Unless the trust provides otherwise, property not required for the intended use must be distributed to the settlor.

These provisions apply except as existing law provides otherwise.

Modification or Termination (§ 30)

Under the bill:

1. a charitable trust terminates only in accordance with existing law's requirements (see § 121 of the bill, CGS § 45a-520) or the bill's cy pres provisions (§§ 33 & 34) and
2. a noncharitable trust terminates if it is revoked or expires or in accordance with the bill's provisions (§§ 31, 32, & 35).

A trustee or beneficiary may bring a court proceeding to approve or disapprove a modification, termination, combination, or division. The settlor of a charitable trust may bring a proceeding to modify a

trust if the instrument expressly grants that right.

The trustee is a necessary party in any such proceeding and may appeal any related court order, denial, or decree.

Modification or Termination by Consent (§ 31)

The bill sets standards for terminating or modifying trusts with consent of the beneficiaries, in some cases without the settlor's consent. For example, for noncharitable irrevocable trusts:

1. if the settlor, trustee, and all beneficiaries consent, the court can approve a modification or termination even if it is inconsistent with the trust's material purpose and
2. if all beneficiaries consent, the court can approve such an action if continuing the trust is not necessary to achieve any material purpose of the trust or modifying it is not inconsistent with such a purpose.

The above provisions do not apply to irrevocable trusts created before January 1, 2020, or to trusts that became irrevocable before that date.

To approve such an action when not all beneficiaries consent, the court must find, among other things, that the interests of non-consenting beneficiaries will be protected.

The bill specifies that a spendthrift provision in a trust is not presumed to constitute a material purpose. A "spendthrift provision" allows the settlor to restrain both voluntary and involuntary transfers of a beneficiary's interest.

Upon the termination, the trustee must distribute the property as the beneficiaries agree and as the court approves.

Notwithstanding these provisions, the bill prohibits courts from terminating an irrevocable special needs trust established under specified federal law. The court may approve a modification for certain purposes, such as (1) complying with federal law or (2) modifying

someone's contingent beneficial interest that is available only after repaying Connecticut or another state for medical assistance or unreimbursed claims Connecticut would have had against the estate.

Modification or Termination Due to Unanticipated Circumstances (§ 32)

Subject to the cy pres provisions set forth below (§§ 33 & 34), the bill allows a court to:

1. modify or terminate a noncharitable trust if doing so would further the trust's purposes, due to circumstances not anticipated by the settlor, or
2. modify a trust's administrative terms if continuing the existing terms would be impracticable, wasteful, or impair the trust's administration.

Upon the termination the trustee must distribute the property in a manner consistent with the trust's purposes and as directed by the court.

The bill prohibits courts from terminating an irrevocable special needs trust established under specified federal law. It allows courts to modify these trusts for certain purposes.

Cy Pres (§§ 33 & 34)

Generally, the bill provides that if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful, the court may apply the common law "cy pres" doctrine to modify or terminate it by directing the property to be distributed in a manner consistent with the settlor's purposes. In certain circumstances, it provides that a charitable trust's provision that would distribute the property to a noncharitable beneficiary prevails over the court's power to apply cy pres.

Modification or Termination of Uneconomic Trust (§§ 35 & 123)

The bill generally allows a trustee to terminate a noncharitable inter vivos trust valued at under \$200,000 if the trustee concludes that the

property's value does not justify its administration costs. The trustee must first give 30 days' notice to the qualified beneficiaries and such other beneficiaries as the trustee deems reasonable. This authority to terminate does not apply to special needs trusts under specified federal law.

The bill also allows courts to modify or terminate a noncharitable trust or replace the trustee, if it determines that the trust property's value does not justify its costs relative to the trust's material purposes. This does not apply to special needs trusts under specified federal law, and the court may modify such a trust only for certain purposes.

In any such case the trustee must distribute the property in a manner consistent with the trust's purposes or, for terminations involving court approval, as directed by the court.

The bill correspondingly repeals a law on the termination of trusts valued at under \$150,000 (CGS § 45a-484).

These provisions do not apply to conservation or preservation easements.

Reformation to Correct Mistakes (§ 36)

Under the bill, a court may reform a noncharitable trust's terms to conform to the settlor's intention if it is proven by clear and convincing evidence what the intention was and that there was a mistake of fact or law.

Modification to Achieve Settlor's Tax Objectives (§ 37)

The bill authorizes a court to modify a trust to achieve the settlor's tax objectives in a manner that is not contrary to the settlor's probable intention. The court may make the modification retroactive.

Combination and Division (§ 38)

The bill allows the trustee of an inter vivos trust, after providing 30 days' notice to qualified beneficiaries, to combine multiple trusts or divide a trust into separate trusts, if it does not impair a beneficiary's rights or the trust's purposes. For testamentary trusts, rather than

providing such notice, the trustee must seek court approval to combine or divide trusts.

§§ 39 & 40 — CREDITORS' CLAIMS

Sets rules for when a trustee's or beneficiary's creditors can reach the trust's property

The bill provides that trust property is not subject to the trustee's personal obligations, even if the trustee becomes insolvent or bankrupt.

The bill prohibits a beneficiary's creditor, other than a settlor's creditor if the settlor is also a beneficiary, from attaching or compelling a distribution of property that is subject to a power of withdrawal or power to make distributions in three specific situations (see § 40(a)). For example, the prohibition applies if the beneficiary holds a power of withdrawal and the property's value does not exceed the greater of certain amounts specified in the federal tax code in effect on January 1, 2020. A power of withdrawal is a presently exercisable power of appointment meeting certain requirements.

Under the bill, a beneficiary holding such a power may not be treated as a settlor during the period the power may be exercised or upon the power's lapse, release, or waiver.

§§ 41-43 — REVOCABLE TRUSTS

Sets rules for revocable trusts, including when they can be revoked or amended and distribution upon the settlor's death

Revocation or Amendment (§ 41)

The bill generally gives the settlor the right to revoke or amend a trust unless the trust expressly provides otherwise. But this does not apply to (1) trusts created before January 1, 2020, (2) charitable pledges, or (3) other charitable gifts in which the interest has vested.

The bill establishes several related rules, such as providing that:

1. a settlor may revoke or amend a revocable trust by substantial compliance with a method the trust provides;
2. if a trust does not provide a method, a settlor may revoke or

amend it by (a) executing a later will or codicil that meets certain criteria or (b) any other method showing clear and convincing evidence of the settlor's intent, subject to certain conditions; and

3. upon revocation, the trustee must deliver the property as the settlor directs.

The bill also addresses related issues, such as establishing a process for revoking or amending a trust created by multiple settlors.

Under the bill, if a trustee does not know that a trust was revoked or amended, he or she is not liable to the settlor for actions taken on the assumption that it was still in effect.

Additionally, a special needs trust created under specified federal law is irrevocable if the trust prohibits revocation, even if the settlor's estate or heirs are named as the remainder beneficiaries.

Settlor's Powers; Powers of Withdrawal (§ 42)

Under the bill, if a trust is revocable by the settlor alone, or in some cases, the settlor and other specified persons (e.g., someone other than the trustee), a trustee may follow their directions that are contrary to the trust's terms. If a settlor has capacity to revoke a trust, the beneficiaries' rights are subject to the settlor's control, and the trustee's duties are owed exclusively to the settlor.

During the period the power to revoke may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust with respect to the property subject to the power.

Action Contesting Trust's Validity; Distribution (§ 43)

The bill allows a person (e.g., a beneficiary) to file a lawsuit contesting the validity of a trust that was revocable at the settlor's death within the earlier of (1) one year after the death or (2) 120 days after the trustee sent the person (not a representative) a copy of the trust instrument and a notice with certain related information.

Upon the settlor's death, the trustee may distribute the trust property in accordance with its terms. The trustee is not liable for doing so except in certain circumstances (e.g., if the trustee knows of a pending judicial proceeding contesting the trust's validity). If the court determines that a distribution is invalid, the beneficiary is liable to return it.

§§ 44-52 & 123 — OFFICE OF TRUSTEE

Establishes standards for several trustee-related matters, such as accepting the trusteeship; resignation or other vacancies; and compensation

Accepting or Declining Trusteeship (§ 44)

Under the bill, a person designated as trustee accepts the role by substantially complying with the trust's acceptance method, or if none or that method is not exclusive, by accepting delivery of the trust property, exercising trustee powers or duties, or otherwise indicating acceptance. For testamentary trusts, the person must file an acceptance in court.

The bill allows a person designated as trustee to reject it. Failure to accept within a reasonable period is deemed a rejection. Without accepting the trusteeship, a person designated as trustee may (1) act to preserve the trust property under certain conditions and (2) inspect the property to determine potential liability issues or for other purposes.

Trustee's Bond (§§ 45 & 123)

The bill requires the trustee to give a bond only if the court finds (1) it is needed to protect the beneficiaries' interests or (2) the trust requires it and, for noncharitable trusts, the court has not dispensed with the requirement. The court may (1) specify the bond amount, its liabilities, and whether sureties are necessary and (2) except for charitable trusts, modify or terminate a bond at any time.

Testamentary trustees that are foreign corporations must also comply with the law requiring them to appoint the secretary of the state as agent for service of process (see CGS § 45a-206).

The bill repeals the current requirement that, for trustees appointed by a testator to execute a trust created by a will, the probate court

require a bond unless the will provides otherwise (CGS § 45a-473).

Co-Trustees (§ 46)

The bill sets rules for co-trustees. For example, it (1) allows them to act by majority decision, (2) specifies when a co-trustee may delegate functions to another co-trustee, and (3) requires a co-trustee to participate in the performance of trustee functions unless he or she is unavailable (e.g., due to illness) or has delegated the function.

Under the bill, a trustee who does not join in an action of another trustee is generally not liable for the action. But the bill requires each trustee to exercise reasonable care to (1) prevent a co-trustee from committing a serious breach of trust and (2) compel a co-trustee to redress such a breach. A dissenting trustee who joins in an action at the direction of the majority and who timely notifies any co-trustee of the dissent is not liable for the action unless it is a serious breach.

Vacancy; Appointment of Successor (§ 47)

Under the bill, if at least one co-trustee remains, a vacancy in a trusteeship need not be filled unless the trust requires it. But a vacancy must be filled if (1) there is no remaining trustee or (2) it is a charitable trust, unless the trust's terms excuse the vacancy.

The bill (1) establishes the order of priority for filling a vacancy and (2) even if there is no vacancy, allows a court to appoint an additional trustee or special fiduciary if the court deems it necessary.

Resignation or Removal of Trustee (§§ 48 & 49)

The bill allows trustees of inter vivos trusts to resign by (1) providing at least 30 days' notice to certain parties or (2) obtaining court approval. For testamentary trusts, the trustee may resign only with court approval. The court may impose conditions to protect the property, beneficiaries, and other trustees.

In either case, resignation does not discharge any liability of the trustee.

The bill specifies which parties have the right to ask the court to

remove a trustee (e.g., the beneficiaries) and also allows the court to remove a trustee on its own initiative. A court may remove a trustee for, among other things, (1) wasting trust assets or other serious breaches of trust or (2) lack of cooperation among co-trustees that substantially impairs trust administration.

Delivery of Property by Former Trustee (§ 50)

The bill requires a trustee who has resigned or been removed to continue to protect the property, unless a co-trustee remains or the court orders otherwise, until the property is delivered to a successor trustee or other person entitled to it. A trustee who has resigned or been removed must expeditiously deliver the property to the co-trustee, successor trustee, or other person entitled to it.

Under the bill, lawsuits in favor of or against the original trustee survive and may be prosecuted by or against the successor trustee.

Trustee Compensation; Reimbursement of Expenses (§§ 51 & 52)

The bill gives a trustee the right to compensation that is reasonable under the circumstances if the trust does not specify the compensation. When a trust specifies the compensation, the trustee is entitled to it, except the court may allow a different amount if the (1) specified compensation would be unreasonably low or high or (2) trustee duties vary substantially from those first contemplated.

The bill establishes when a trustee has the right to be reimbursed out of the trust property, with interest, for expenses. In addition, if a trustee advances money to protect the trust, the trustee has a lien against the trust property to secure reimbursement with interest.

§§ 53-67 & 123 — DUTIES AND POWERS OF TRUSTEES

Establishes trustees' duties on matters such as loyalty and avoiding conflicts of interest, recordkeeping, and reporting to beneficiaries; sets forth trustees' general and specific authority of trustees

Duty to Administer Trust; Prudent Administration; Impartiality; Property Protection (§§ 53, 55-56, & 59)

The bill requires a trustee to administer the trust in good faith and according to its terms and purposes, the settlor's intent, the

beneficiaries' interests, and the bill's provisions. A trustee must administer the trust as a prudent person would.

A trustee must take reasonable steps to control and protect the trust property. If there are multiple beneficiaries, the trustee must act impartially in investing, managing, and distributing the trust property.

Duty of Loyalty (§ 54)

The bill requires a trustee to administer the trust assets solely in the beneficiaries' interests consistent with the settlor's intent. It sets several related rules about trustee conflicts of interest.

A transaction affected by a conflict between the trustee's fiduciary and personal interests is generally voidable by an affected beneficiary, subject to certain exceptions. The transaction is not voidable if, for example, (1) it was authorized by the trust's terms or approved by the court or (2) the beneficiary consented. The bill establishes conditions under which a transaction is presumed to present a conflict (e.g., if the trustee enters the transaction with certain close family members).

Certain transactions between the trustee and beneficiary not involving the trust property are voidable unless the trustee establishes that the transaction was fair to the beneficiary. It is a conflict for a trustee, in his or her personal capacity, to enter a transaction not involving the trust property if it concerns an opportunity properly belonging to the trust.

The bill provides that certain types of investments are not presumed to present a conflict of interest if they comply with the existing prudent investor law, are in the beneficiaries' best interests, and are not prohibited by the trust. If the trust is the sole owner of a business, the trustee must select directors or other managers who will manage it in the beneficiaries' best interests.

The bill specifies that it does not prevent certain transactions if fair to the beneficiaries, such as (1) paying reasonable compensation to the trustee or (2) depositing trust money in a financial institution operated by the trustee.

It allows a court to appoint a special fiduciary to decide whether any proposed transaction would violate these provisions.

Delegation by Trustee (§ 57)

The bill allows trustees to delegate duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee must exercise reasonable care in doing so and must periodically monitor the agent's actions. If the trustee complies with these requirements, he or she is not liable for the agent's actions.

By accepting the delegated functions, the agent is subject to Connecticut law and owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

When Settlor Not Deemed to Have Beneficial Interest (§ 58)

Under the bill, an irrevocable trust's settlor is not deemed to have a beneficial interest in the trust merely because the trust or other law authorizes the trustee to (1) reimburse the settlor for any tax on trust income or principal that is payable by the settlor by law or (2) pay the tax directly. The settlor's creditors are not entitled to reach any trust property based on these discretionary powers.

Recordkeeping and Identification of Trust Property (§ 60)

The bill requires trustees to (1) keep adequate records for the trust, (2) keep trust property separate from their own property, and (3) cause the trust property to be designated so that the trust's interest, if feasible, appears in records maintained by someone other than a trustee or beneficiary. It authorizes a trustee to invest as a whole the property of separate trusts, if he or she keeps records in doing so.

Enforcement and Defense of Claims (§ 61)

The bill requires a trustee to take reasonable steps to enforce trust claims and to defend claims against the trust.

Collecting Trust Property (§ 62)

The bill requires a trustee to (1) take reasonable steps to compel a former trustee or other person to deliver trust property and (2) redress a known breach of trust by a former trustee.

Duty to Inform and Report; Accounting (§ 63)

The bill requires a trustee to (1) keep the qualified beneficiaries reasonably informed about the trust's administration and the material facts necessary for them to protect their interests and (2) promptly respond to their requests for information on the trust's administration.

The bill generally requires a trustee to:

1. upon a beneficiary's request, promptly provide a copy of the trust instrument's relevant portions;
2. within 60 days after accepting a trusteeship, notify the qualified beneficiaries and provide his or her contact information; and
3. within 60 days after learning that an irrevocable trust was created or that a trust became irrevocable, notify the qualified beneficiaries of the trust's existence, the settlor's identity, the right to request a copy, and the right to the trustee's reports.

The trustee must send a report annually and upon the trust's termination to the current beneficiaries and to other qualified beneficiaries who request it. The report must include information on the trust property, liabilities, disbursements, trustee compensation, and trust assets (including market values, if feasible). (This requirement, and the foregoing list of three requirements, does not apply to irrevocable trusts created before January 1, 2020 or to trusts that became irrevocable before that date.)

The bill allows beneficiaries to petition the court for an accounting by the trust and sets standards for when the court may grant the petition. For example, the court may grant the petition of qualified beneficiaries of a testamentary trust, if it finds that an account is necessary to protect their interests.

Beneficiaries may waive their right to trustee's reports or other such information. Court approval of a trustee's report forecloses claims by those notified of the proceeding as to matters in the report.

Among other things, the bill provides that its representation provisions (§§ 17-21) apply with respect to all rights of beneficiaries under the foregoing provisions. Notice or information to a designated representative satisfies the trustee's duties.

Discretionary Powers; Tax Savings (§§ 64 & 123)

The bill requires the trustee to exercise a discretionary power in good faith and in accordance with the trust's terms and purposes, the settlor's intentions, and the beneficiaries' interests. This applies regardless of the breadth of discretion that the trust grants the trustee.

Unless the terms of the trust expressly provide otherwise, the bill applies the following limitations and prohibitions. First, the bill allows a person, other than a settlor, who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions for the trustee's personal benefit, to exercise the power only in accordance with an ascertainable standard relating to the trustee's health, education, support, or maintenance within the meaning established in the federal estate and gift tax laws.

Secondly, a trustee may not exercise a power to make discretionary distributions to satisfy a legal support obligation that the trustee personally owes another person.

A power that is limited or prohibited as described above may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited.

Under the bill, the limitations and prohibitions do not apply to:

1. a power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in the federal estate and gift tax laws, was previously allowed;

2. a trust during any period when the settlor may revoke or amend it; or
3. a trust if contributions to it qualify for the annual exclusion for a minor's trust under the federal tax laws.

The bill repeals current law on similar matters (e.g., limiting when a trustee is deemed to possess discretionary power to distribute trust income or principal to himself or herself) (CGS § 45a-487).

General and Specific Powers of Trustee (§§ 65 & 66)

The bill allows a trustee, without court authorization and subject to the bill's fiduciary duties, to exercise powers conferred by the trust and, except as limited by the trust:

1. all powers over the trust property which an unmarried competent owner has over individually owned property,
2. any other powers appropriate to properly invest, manage, and distribute the property, and
3. any other powers conferred by the bill.

Without limiting this general authority, and except as otherwise prohibited by law or the trust's terms, the bill authorizes a trustee to perform 27 categories of actions, such as to:

1. collect trust property and accept or reject additions to it from a settlor or any other person;
2. acquire or sell property, for cash or on credit, at a public or private sale;
3. exchange, partition, or otherwise change the character of trust property;
4. borrow money and mortgage trust property for a period within or extending beyond the trust's duration;
5. with respect to an interest in a business, continue the business

and take any action that shareholders, members, or property owners could take (e.g., merger or dissolution); and

6. subject to certain requirements, exercise all powers appropriate to achieve the proper investment, management, preservation, and distribution of digital assets held in the trust estate.

(Please refer to § 66(a) of the bill for the complete list.)

The bill's specifically enumerated powers do not apply to charitable trusts to the extent that such powers would authorize the trustee to deviate from a stated charitable purpose or violate a restricted gift.

The bill prohibits trustees of charitable trusts, or persons holding and administering endowment or institutional funds, from mortgaging or otherwise encumbering certain assets that were funded by charitable gifts.

These provisions apply to all trusts, whenever created, except they do not authorize powers for trusts established before January 1, 2020, if the trust instrument shows an intent to prohibit that power.

Distribution Upon Termination (§ 67)

The bill allows the trustee, upon a trust's total or partial termination, to send a distribution proposal to the qualified beneficiaries. Their right to object to the proposal ends in 30 days if the trustee notifies them of that right and the deadline.

When a trust terminates, the trustee must expeditiously distribute the property to the persons entitled to it, but he or she may retain a reasonable reserve to pay debts, expenses, and taxes.

A beneficiary may release a trustee from liability for a breach of trust, but the release is invalid if (1) it was induced by the trustee's improper conduct or (2) the beneficiary did not know his or her rights or the material facts about the breach.

These provisions do not apply to testamentary trusts.

§§ 68-78 — LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE

Establishes when a trustee is liable to a beneficiary or certain other parties and sets related requirements

Breach of Trust; Damages in Absence of Breach (§§ 68 & 69)

The bill makes a trustee's violation of a duty he or she owes to a beneficiary a breach of trust.

Even if the trustee did not commit a breach, he or she owes the affected beneficiary any profit the trustee made arising from the trust's administration. The trustee is not liable for a loss in the value of trust property or for not making a profit unless he or she committed a breach.

Limitation on Action against Trustee (§ 70)

The bill allows a beneficiary to bring a lawsuit against a trustee for a breach up to one year after the beneficiary was sent a report adequately disclosing the potential claim and informing the beneficiary of the one-year limit.

If the beneficiary did not receive such a report, he or she may bring the claim up to three years after the earlier of (1) the trustee's removal, resignation, or death or (2) the termination of the trust or the beneficiary's interest in it.

The above provisions do not apply to testamentary trusts.

Reliance on Trust Instrument (§ 71)

Under the bill, a trustee is not liable to a beneficiary for a breach of trust for acting in reasonable reliance on the trust's terms.

Event Affecting Administration or Distribution (§ 72)

Under the bill, a trustee who exercises reasonable care to ascertain the happening of an event affecting the trust's administration or distribution is not liable for a loss resulting from lack of knowledge. These events include marriage, divorce, performing educational requirements, or death.

Exculpation of Trustee (§ 73)

The bill makes a trust's term relieving a trustee's liability for a breach unenforceable to the extent it (1) relieves liability for a breach committed in bad faith or with reckless indifference to the trust's purposes or beneficiaries' interests or (2) was inserted due to the trustee's abuse of a fiduciary or confidential relationship to the settlor.

Beneficiary's Consent, Release, or Ratification (§ 74)

Under the bill, a trustee is not liable for breach of trust if the beneficiary consented to the conduct, released the trustee from liability, or ratified the transaction unless (1) the consent, release, or ratification was improperly induced or (2) the beneficiary did not know of his or her rights or of the material facts about the breach. These provisions do not apply to testamentary trusts.

Limitation on Personal Liability of Trustee (§ 75)

Under the bill, unless the contract provides otherwise, a trustee is not personally liable for a contract properly entered into in a fiduciary capacity while administering the trust, if he or she disclosed the fiduciary capacity in the contract.

The trustee is personally liable for torts committed while administering the trust, or obligations arising from owning or controlling the trust property, only if the trustee is personally at fault. The bill specifies that other laws could limit this liability.

It allows the trustee to be sued in his or her fiduciary capacity for claims based on such a contract, tort, or obligation even if the trustee is not personally liable.

Interest as General Partner (§ 76)

Under the bill, unless the contract imposes personal liability, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable for a contract the partnership enters after the trust acquires the interest, if he or she disclosed the fiduciary capacity in a specified manner. A trustee who holds an interest as a general partner is not personally liable

for the partnership's torts or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

But neither immunity applies if the trustee holds a partnership interest in a capacity other than trustee or if the interest is held by the trustee's spouse or certain other family members.

If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally liable for the partnership's contracts and obligations as if he or she were a general partner.

Protection of Person Dealing with Trustee (§ 77)

Under the bill, someone other than a beneficiary is protected from liability if he or she in good faith assists a trustee or in good faith and for value deals with a trustee without knowing that the trustee is improperly exercising his or her powers. The bill provides similar protection to someone who assists or deals with a former trustee without knowing that the trusteeship has terminated.

The bill specifies that comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the bill's protections.

Certification of Trust (§ 78)

Instead of providing a copy of the trust instrument to someone other than a beneficiary, the bill allows the trustee to provide a certification of trust with specified information (e.g., the settlor's identity and the trustee's powers). A certification does not have to contain the trust's dispositive terms. A recipient may require the trustee to furnish certain excerpts from the instrument.

Among other provisions, the bill provides that someone who:

1. acts in reliance upon a certification without knowing that its representations are incorrect is not liable for doing so, and may assume the existence of the facts contained in the certification;
2. in good faith, enters into a transaction in reliance upon a

certification may enforce the transaction against the trust property as if the representations were correct; and

3. makes a demand for the full trust instrument is liable for damages, including legal fees and costs, if the court determines that he or she did not act in good faith in demanding it.

§§ 79 & 80 — UNIFORMITY OF INTERPRETATION; SEVERABILITY

Addresses uniformity of interpretation and severability

The bill directs that, in applying and construing its uniform provisions, consideration be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

It also provides that its provisions are severable (i.e., if a provision is held invalid, the other provisions are not affected).

§§ 81-98 — CONNECTICUT UNIFORM DIRECTED TRUST ACT

Outlines the powers and obligations of parties administering directed trusts (i.e., trusts in which a person other than a trustee has a power over the trust's administration)

The bill outlines the powers and obligations of parties administering directed trusts, which are trusts in which a person other than a trustee has a power over some aspect of the trust's administration. Under the bill, this power over a trust held by a nontrustee is called the "power of direction." A "trust director" holds this power. A trustee that is subject to this power is a "directed trustee."

Among other things, the bill's provisions address:

1. trust directors' and directed trustees' duties,
2. information sharing between directed trustees and trust directors,
3. settlors' option to relieve co-trustees from duties and liabilities with respect to another co-trustee's exercise or nonexercise of powers (§ 91),
4. bringing suit against a trust director for breach of trust,

5. how the bill's other provisions apply to trust directors, and
6. the interplay between the bill's provisions and the federal Electronic Signatures in Global and National Commerce Act (§§ 97 & 98).

These provisions apply to trusts administered in Connecticut, regardless of whether they are created before or after the provisions' effective date (i.e., January 1, 2020). But with respect to trusts created before that date, the provisions apply only to decisions made or actions taken after (1) that date or (2) the date that the trust becomes principally administered in Connecticut, whichever applies (§ 82).

Definitions (§ 3)

Trust Director. A nontrustee with power over some aspect of a trust is the "trust director." Under the bill, a person can be a trust director even if (1) the trust does not use the term or (2) the person is a beneficiary or settlor.

Directed Trustee. A directed trustee is a trustee who is subject to the trust director's power of direction.

Power of Direction. These powers over a trust, granted by the terms of the trust to a trust director, can only be exercised by a nontrustee. "Power of direction" may include power over the investment, management, or distribution of trust property or administration of trust matters. But certain powers are excluded, including the nonfiduciary power of appointment, a settlor's power to revoke a trust, and powers held in a nonfiduciary capacity to achieve a settlor's tax objectives (see § 84(b)).

Trust Director's Powers (§ 85)

Unless the terms of the trust provide otherwise, in addition to a power of direction, a trust director may exercise any further power that is appropriate to the trust director's exercise of express powers (e.g., employing a professional to assist in the exercise of powers; suing a directed trustee who does not comply with the director's instructions).

Under the bill, trust directors with joint powers must act by majority decision.

Trust Director's Duties (§§ 86, 87, & 95)

Fiduciary Duties (§ 87). The bill generally makes trust directors fiduciaries by imposing the same fiduciary duties on them that apply to trustees in a similar position or circumstance (e.g., a director with the power to make investments must act prudently, in the sole interest of the beneficiary). The bill establishes minimum duties, but a trust's terms can impose additional duties.

Other Duties (§ 86). The bill specifically applies to trust directors all the rules applicable to a trustee in a like position and under similar circumstances in two situations: one involving a charitable interest in a trust and the other a Medicaid reimbursement requirement.

Other Applicable Provisions (§ 95). The bill requires trust directors to comply with certain other trust code provisions about trustees, unless a trust's terms provide otherwise. Specifically, trust directors must comply with provisions on (1) acceptance of a trusteeship (see § 44), (2) performance bonds (see § 45), (3) vacancy and appointment of a successor (see § 47), (4) resignation (see § 48), (5) removal (see § 49), and (6) reasonable compensation (see § 51).

Trust Director's Liability (§§ 92-94)

Under the bill, an action against a trust director for breach of trust must be commenced within the same timeframe applicable to an action against a trustee in a similar position or circumstance (see § 70, above). And directors may assert the same defenses that a trustee in a similar position or circumstance may assert (e.g., release or ratification by the beneficiary).

Under the bill, by accepting appointment as a trust director of a trust subject to the bill's provisions, the director submits to personal jurisdiction of Connecticut's courts with respect to matters relating to the director's powers and duties.

Directed Trustee's Duties (§ 88)

Under the bill, a directed trustee (1) must take reasonable action to comply with a trust director's exercise or nonexercise of power unless compliance would be willful misconduct and (2) is not liable for complying with a trust director's instruction.

Additionally, the bill:

1. imposes limits on a trust director's ability to release a trustee or another director from liability (e.g., when the release was obtained through improper conduct);
2. specifies that a trustee may petition the court to clarify the trustee's duties; and
3. specifies that a trust's terms may impose additional duties on a trustee.

Information Sharing (§§ 89 & 90)

The bill generally requires trustees and trust directors to keep one another informed to the extent the relayed information is reasonably related to each party's powers or obligations. Trustees and directors that act in reliance on such information are shielded from liability for breach of trust unless they engage in willful misconduct.

The bill specifies that it generally does not require trustees to (1) monitor a trust director or (2) inform or give advice to a settlor, beneficiary, trustee, or trust director when the trustee might have acted differently than the director. Likewise, trust directors do not have either of these obligations with respect to trustees or other directors. If either a trust director or directed trustee chooses to monitor, inform, or give advice, the director or trustee does not assume a continuing obligation to do so. The trust's terms can provide otherwise.

Uniformity (§ 96)

The bill requires anyone applying or construing the uniform provisions in the Connecticut Uniform Directed Trust Act to consider the need to promote uniformity among states that have adopted the uniform provisions.

§§ 99-108 — CONNECTICUT QUALIFIED DISPOSITIONS IN TRUST ACT

Sets up a framework for creating self-settled asset protection trusts, the assets of which (1) the grantor may still benefit from personally and (2) creditors generally cannot reach

The bill sets up a framework for creating self-settled asset protection trusts (APT), which are irrevocable trusts, the assets of which (1) the grantor may still benefit personally from and (2) creditors generally cannot reach. (A self-settled trust is an irrevocable trust that includes the settlor as a beneficiary.)

Under the bill, grantors (i.e., “transferors”) can make “qualified dispositions” of real property, tangible and intangible personal property, and interests in property to a “qualified trustee,” thereby establishing an APT. A disposition is not “qualified” if, among other things, it is made to circumvent state or federal Medicaid laws.

The bill’s provisions cover, among other things:

1. requirements for creating an APT;
2. a transferor’s rights to APT property and income;
3. allowable creditor claims, including when and to what extent an APT can be nullified;
4. dispositions to multiple trustees (§ 102);
5. the procedure for appointing successor trustees (§ 102);
6. multiple dispositions from the same trust instrument (§ 105(f));
and
7. protection for attorneys, trustees, and others involved in creating or administering an APT (§ 105(d)& (e)).

The bill’s provisions apply to qualified dispositions made on or after January 1, 2020 (i.e., the bill’s effective date) (§ 108).

Qualifying as an APT (§ 100)

The bill establishes criteria an APT must meet to qualify for

protection under the bill's provisions. Generally, an APT must:

1. expressly state that Connecticut law governs the validity, construction, and administration of the trust;
2. be irrevocable;
3. contain a spendthrift clause that is enforceable under applicable nonbankruptcy law; and
4. appoint a qualified trustee, other than the transferor.

Qualified Trustees (§ 100)

Under the bill, a qualified trustee cannot be the transferor. A qualified trustee must be a (1) Connecticut resident (in the case of an individual) or (2) state or federally chartered bank or trust company with a place of business in Connecticut, authorized to engage in a trust business. Qualified trustees must maintain some or all of the APT property in Connecticut and meet certain recordkeeping and administrative requirements.

Transferors (§§ 101, 103 & 104)

Under the bill, the transferor only has the powers and rights that are set forth in the trust instrument. The bill lists the powers and interests a transferor may retain under the trust instrument without rendering the trust revocable. Among other rights, the transferor may retain the right to:

1. veto a trust distribution;
2. receive income;
3. receive principal as a result of the trustee's exercise of discretion or compliance with a distribution standard (including action resulting from a trust director's direction);
4. annually receive up to 5% of the value of trust property;
5. remove a trustee or director and appoint a new one, other than

someone who is a related or subordinate party; and

6. use real property held under a qualified personal residence trust under specified federal law.

Under the bill, a qualified disposition is subject to the bill's provisions in spite of a transferor retaining any such rights.

The bill allows a transferor to appoint one or more trust directors, including directors with authority to (1) remove and appoint qualified trustees or trust directors or (2) direct, consent to, or disapprove of trust dispositions. A transferor may serve as trust director, but if so, his or her authority is limited to the right to veto trust distributions.

Claims against Trust Property (§§ 105-107)

The bill generally establishes rules that protect APTs from creditors' claims.

Under the bill, certain types of claims may be brought, including claims under the Uniform Fraudulent Transfer Act and claims resulting from the following, if the support obligation or injury, as applicable, occurred on or before a qualified disposition:

1. the transferor's breach of an agreement or court order about child support or alimony and
2. death, injury, or property damage for which the transferor is liable.

The bill sets deadlines for when a creditor may bring claims under the Uniform Fraudulent Transfer Act. For example, if the claim arose after a qualified disposition, the lawsuit must be filed within four years after the disposition was made, according to certain standards.

Under the bill, if a court declines to apply Connecticut law in an action brought against a trustee of a trust funded by a qualified disposition, the trustee must immediately cease serving as trustee. The trustee must turn over the trust property to the successor trustee (§ 105(g)).

The bill allows a qualified disposition to be avoided only to the extent necessary to satisfy the transferor's debt to the creditor, together with any costs, including attorney's fees, that the court allows. In such cases, the bill establishes certain protections for trustees and beneficiaries who did not act in bad faith. For example, the trustee has a first and paramount lien against the property that is subject to the disposition in an amount equal to the trustee's entire cost, including attorney's fees, in defending the case to avoid the disposition.

Under the bill, the creditor has the burden of proving by clear and convincing evidence that a trustee or beneficiary acted in bad faith; if the beneficiary is also the transferor, however, the creditor must show bad faith by a preponderance of the evidence.

§ 109 — APPLICABILITY

Establishes rules for the bill's applicability, such as that it generally applies to all trusts no matter when created

The bill establishes rules for applicability of the foregoing provisions. For example, unless the bill provides otherwise, it applies to:

1. all trusts created before, on, or after January 1, 2020;
2. all judicial proceedings for trusts begun on or after that date; and
3. judicial proceedings for trusts begun before that date, except that if the court finds that applying a particular provision would substantially interfere with the proceeding or prejudice the parties' rights, such provision would not apply.

Among other things, the bill specifies that any act done before January 1, 2020, is not affected by the bill.

§§ 110-118, 120-123 — OTHER PROVISIONS

Makes minor, technical, and conforming changes

The bill makes minor and conforming changes to current probate statutes. It also makes certain related changes to such statutes. For example, the bill specifies that unless court rules provide otherwise, a

provision of a will excusing the trustee from rendering periodic accounts does not excuse the trustee from rendering a final account upon the trust's termination (§ 112).

§ 119 — RULE AGAINST PERPETUITIES

Generally extends, from 90 to 800 years, the period within which certain interests must vest

The common law rule against perpetuities provides that a future interest in property or power of appointment must vest, if at all, within 21 years after the death of a person who was alive when the interest was created. Connecticut's statutory rule, which modifies the common law rule, creates a current vesting period of the later of (1) 90 years or (2) 21 years after the death of an individual alive at the time the interest was created. With certain exceptions, if the interest does not vest within these periods, it is void.

Under the bill, for a trust created on or after January 1, 2020, the bill substitutes an 800-year period for the current 90-year period, unless the trust's terms expressly require that all beneficial interests vest or terminate within a lesser period.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 38 Nay 0 (04/08/2019)