

**WORKING DRAFT**

HOUSE BILL NO. \_\_\_\_\_

Uniform Trust Code-amendments.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to the Uniform Trust Code; providing for  
2 the creation of qualified spendthrift trusts; specifying  
3 what constitutes qualified trust property; providing for  
4 qualified transfers of trust property and duties of  
5 trustees; providing for distribution of trust assets;  
6 specifying when and how trust assets may be attached;  
7 providing for burdens of proof and the weight of evidence  
8 in specified actions; amending and providing additional  
9 definitions; conforming provisions; clarifying effect of  
10 provisions; limiting consideration of case law from other  
11 jurisdictions as specified; repealing provisions; and  
12 providing for an effective date.

13

1 *Be It Enacted by the Legislature of the State of Wyoming:*

2

3       **Section 1.**       W.S. 4-10-505 and 4-10-509 through  
4 4-10-524 are created to read:

5

6       **4-10-505. Standards of distribution.**

7

8       (a) Regardless of whether a beneficiary's interest in  
9 trust income or principal or both is subject to a  
10 spendthrift provision, if the terms of the trust direct the  
11 trustee is to make distributions of trust income or  
12 principal or both according to a standard, which includes  
13 distributions for the beneficiary's maintenance or support,  
14 and the trustee has not complied with the standard of  
15 distribution:

16

17               (i) A distribution may be ordered by the court  
18 to satisfy a judgment or court order against the  
19 beneficiary for support or maintenance of the beneficiary's  
20 child; and

21

1           (ii) In the order of distribution, the court  
2 shall direct the trustee to pay to or for the benefit of  
3 the child that portion of the trust income or principal or  
4 both as is equitable under the circumstances, but not more  
5 than the amount the trustee would have been required to  
6 distribute to or for the benefit of the beneficiary had the  
7 trustee complied with the standard of distribution.

8

9           (b) Except as provided in subsection (a) of this  
10 section, a creditor or assignee of a beneficiary may not  
11 compel distributions from the trust or attach distributions  
12 to be made to a beneficiary until the distributions are  
13 received by the beneficiary, if the terms of the trust  
14 limit the trustee's ability to make distributions by a  
15 standard of distribution, even when the beneficiary is also  
16 a trustee or cotrustee of the trust.

17

18           (c) This section shall not limit the right of a  
19 beneficiary to maintain a judicial proceeding against a  
20 trustee for a failure to comply with a standard for  
21 distributions to the beneficiary.

22

23           **4-10-509. Personal obligations of trustee.**

1

2 Trust property is not subject to the personal obligations  
3 of the trustee, even if the trustee becomes insolvent or  
4 bankrupt.

5

6 **4-10-510. Creation of qualified spendthrift trust.**

7

8 (a) A settlor may create a qualified spendthrift  
9 trust with a trust instrument appointing a qualified  
10 trustee for qualified trust property, which instrument:

11

12 (i) States that the trust is a qualified  
13 spendthrift trust under this section;

14

15 (ii) Expressly incorporates the law of this  
16 state to govern the validity, construction and  
17 administration of the trust;

18

19 (iii) Provides that the interest of the settlor  
20 in the trust income or principal, or both, is held subject  
21 to a spendthrift provision under W.S. 4-10-502 and such  
22 provision of the trust instrument shall be deemed to be a

1 restriction on the transfer of the settlor's beneficial  
2 interest in the trust that is enforceable under applicable  
3 nonbankruptcy law within the meaning of Section 541(c)(2)  
4 of the Bankruptcy Code;

5

6 (iv) Is irrevocable, but a trust instrument may  
7 not be deemed revocable on account of its inclusion of one  
8 (1) or more of the following:

9

10 (A) A settlor's power to veto a  
11 distribution from the trust;

12

13 (B) An inter vivos or testamentary general  
14 or limited power of appointment held by the settlor;

15

16 (C) The settlor's potential or actual  
17 receipt of income, including rights to the income retained  
18 in the trust instrument;

19

20 (D) The settlor's potential or actual  
21 receipt of income or principal from a charitable remainder  
22 unitrust or charitable remainder annuity trust as those

1 terms are defined in Section 664 of the Internal Revenue  
2 Code;

3

4 (E) The settlor's receipt each year of a  
5 percentage, not to exceed five percent (5%), specified in  
6 the trust instrument, of the initial value of the trust or  
7 its value determined from time to time pursuant to the  
8 trust instrument;

9

10 (F) The settlor's potential or actual  
11 receipt or use of principal when a qualified trustee,  
12 including a trustee acting at the direction of a trust  
13 advisor other than the settlor, makes such distribution or  
14 grants such use in the trustee's sole discretion or  
15 pursuant to an ascertainable standard contained in the  
16 trust instrument;

17

18 (G) The settlor's right to add or remove a  
19 trustee, trust protector or trust advisor and to appoint a  
20 new trustee, trust protector or trust advisor, other than  
21 the settlor;

22

1                   (H) The settlor's potential or actual use  
2 of real property held under a qualified personal residence  
3 trust within the meaning of the term as described in  
4 Section 2702(c) of the Internal Revenue Code;

5

6                   (J) A trust protector as provided in W.S.  
7 4-10-710 has the power to add beneficiaries to the trust  
8 who are not the trust protector, the estate of the trust  
9 protector, the creditors of the trust protector or the  
10 heirs of the trust protector;

11

12                   (K) The settlor's right to serve as an  
13 investment advisor to the trust, with the powers provided  
14 in W.S. 4-10-712(a)(iii) and (iv).

15

16                   **4-10-511. Qualified trust property.**

17

18                   (a) Qualified trust property includes real property,  
19 personal property and interests in real or personal  
20 property and all gains, appreciation and income thereon  
21 which:

22

1 (i) Are the subject of a qualified transfer; and

2

3 (ii) Are acquired with the proceeds of property  
4 of a qualified transfer.

5

6 (b) Qualified trust property is subject to W.S. 4-10-  
7 514 through 4-10-524.

8

9 **4-10-512. Qualified transfers; exception.**

10

11 (a) Except as otherwise provided in this section,  
12 "qualified transfer" means a transfer, conveyance or  
13 assignment of property, by or from a settlor, with or  
14 without consideration, to a qualified trustee, under a  
15 trust instrument which meets the requirements of W.S. 4-10-  
16 510. "Qualified transfer" also includes:

17

18 (i) A change in the legal ownership of property  
19 occurring upon the substitution of a qualified trustee for  
20 another or the addition of one (1) or more qualified  
21 trustees, or

22



1           (ii) The exercise of a power so as to cause a  
2 transfer of property to a qualified trustee.

3

4           (b) A qualified transfer shall require an affidavit  
5 from the settlor making the transfer to the trustee of the  
6 qualified spendthrift trust in the form provided in W.S. 4-  
7 10-524, except that no affidavit shall be required for a  
8 transfer under W.S. 4-10-516.

9

10          (c) The term "qualified transfer" does not include  
11 the release or relinquishment of an interest in property  
12 that previously was the subject of a qualified transfer.

13

14           **4-10-513. Other qualified transfers.**

15

16          (a) In the case of a transfer to more than one (1)  
17 trustee, the transfer will be a qualified transfer if at  
18 least one (1) of the trustees is a qualified trustee.

19

20          (b) A transfer by a trustee that is not a qualified  
21 trustee to a trustee that is a qualified trustee shall be

1 treated as a qualified transfer so long as the recipient  
2 trustee is the trustee under a qualified spendthrift trust.

3

4 **4-10-514. Action brought pursuant to provisions of**  
5 **Uniform Fraudulent Transfers Act.**

6

7 Except as provided in W.S. 4-10-519, no action of any kind,  
8 including an action to enforce a judgment entered by a  
9 court or other body having adjudicative authority, may be  
10 brought at law or in equity for an attachment or other  
11 provisional remedy against qualified trust property or to  
12 set aside a qualified transfer unless the action is brought  
13 pursuant to the provisions of the Uniform Fraudulent  
14 Transfers Act.

15

16 **4-10-515. Creditor's claim; extinguishment;**  
17 **exceptions; burden of proof.**

18

19 (a) A creditor's claim against a qualified transfer  
20 under W.S. 4-10-514 is extinguished unless:

21

1           (i) The creditor's claim arose before the  
2 qualified transfer, and the action is brought within two  
3 (2) years of the qualified transfer or six (6) months after  
4 the creditor discovers or should have discovered the  
5 qualified transfer, whichever is later; or

6

7           (ii) The creditor's claim arose concurrent with,  
8 or subsequent to, the qualified transfer and the action is  
9 brought within two (2) years of the qualified transfer.

10

11           (b) In any action described in W.S. 4-10-514, the  
12 burden to prove the matter by clear and convincing evidence  
13 is upon the creditor.

14

15           **4-10-516 Transfer by a trustee; time of transfer.**

16

17           (a) A qualified transfer by a trustee of a qualified  
18 spendthrift trust to a qualified trustee of another  
19 qualified spendthrift trust shall relate back to the date  
20 of the original qualified transfer.

21

1           (b) A transfer of trust property from the trustee of  
2 a trust created in another jurisdiction, which provides  
3 creditor protection to the settlor similar to that provided  
4 in this article, to a trustee of a qualified spendthrift  
5 trust shall relate back to the date of the original  
6 transfer to the trust created in the other jurisdiction.

7

8           **4-10-517. Election to become a qualified spendthrift**  
9 **trust by existing trust.**

10

11           (a) The settlor, trustee or trust protector of an  
12 existing irrevocable trust may elect in writing to treat  
13 the trust as a qualified spendthrift trust under this  
14 article, and the protection accorded under this article  
15 shall relate back to the date of the election subject to  
16 W.S. 4-10-515, if:

17

18           (i) The trust is modified non-judicially under  
19 W.S. 4-10-111 to conform to the provisions of W.S. 4-10-510  
20 within one (1) year after the election; or

21

1           (ii) A petition is filed under W.S. 4-10-412 to  
2 conform to the provisions of W.S. 4-10-510 within thirty  
3 (30) days of the election.

4

5           **4-10-518. Rights of creditors or others with**  
6 **respect to qualified spendthrift trust.**

7

8 Notwithstanding any law to the contrary, a creditor or  
9 assignee of a settlor of a qualified spendthrift trust, or  
10 an agent of a creditor or settlor, has only such rights  
11 with respect to the qualified trust property as are  
12 provided in W.S. 4-10-514 through 4-10-524 and no creditor,  
13 assignee or agent may have any claim or cause of action  
14 against the trustee, trust protector, trust advisor or  
15 other fiduciary of the trust, or against any person  
16 involved in the counseling, drafting, administration,  
17 preparation, execution or funding of the trust.

18

19           **4-10-519. Actions prohibited if action by creditor**  
20 **would be barred.**

21

1 Notwithstanding any other provision of law, no judgment or  
2 order upon an action to enforce a judgment, or for relief  
3 for conspiracy to commit a fraudulent conveyance, aiding  
4 and abetting a fraudulent conveyance or participation in  
5 the trust transaction, may be entered by a court or other  
6 body having adjudicative authority, or may be brought at  
7 law or in equity against the trustee, trust protector,  
8 trust advisor or other fiduciary of a qualified spendthrift  
9 trust, or against any person involved in the counseling,  
10 drafting, preparation, administration, execution or funding  
11 of the trust, if, as of the date the action is brought, an  
12 action by a creditor or assignee with respect to the trust  
13 would be barred under W.S. 4-10-518.

14

15 **4-10-520. Multiple qualified transfers in same trust**  
16 **instrument.**

17

18 (a) If more than one (1) qualified transfer is made  
19 to the same qualified spendthrift trust:

20

21 (i) The making of a subsequent qualified  
22 transfer shall be disregarded in determining whether a

1 creditor's claim with respect to a prior qualified transfer  
2 is extinguished as provided in W.S. 4-10-515; and

3

4 (ii) Any distribution to a beneficiary other  
5 than the settlor shall be deemed to have been made from the  
6 qualified trust property attributable to the earliest  
7 qualified transfer to the trust, unless a creditor of the  
8 settlor is able to prove by clear and convincing evidence  
9 otherwise.

10

11 **4-10-521. Limitations on qualified trust**  
12 **property.**

13

14 (a) The provisions of W.S. 4-10-510 through 4-10-524,  
15 do not apply in any respect to:

16

17 (i) Any person to whom a settlor is indebted on  
18 account of an agreement or order of court for the payment  
19 of support in favor of the settlor's children;

20

21 (ii) Qualified trust property that is listed  
22 upon an application or financial statement used to obtain

1 or maintain credit other than for the benefit of the  
2 qualified spendthrift trust; or

3

4 (iii) Property of a qualified spendthrift trust  
5 that was transferred to the trust by a settlor who received  
6 the property by a fraudulent transfer as defined by the  
7 Wyoming Fraudulent Transfers Act.

8

9 **4-10-522. Avoidance of qualified transfer.**

10

11 (a) A qualified transfer to a qualified spendthrift  
12 trust is avoided only to the extent necessary to satisfy  
13 the settlor's debt to the creditor at whose instance the  
14 qualified transfer had been avoided, together with costs,  
15 including attorney's fees if otherwise authorized, as the  
16 court may allow. If any qualified transfer is avoided as  
17 provided in this section, then:

18

19 (i) If the court is satisfied that a qualified  
20 trustee has not acted in bad faith in accepting or  
21 administering the property that is the subject of the  
22 qualified transfer:



1

2           (A) The qualified trustee has a first and  
3 paramount lien against the property that is the subject of  
4 the qualified transfer in an amount equal to the entire  
5 cost, including attorney's fees, court costs, penalties,  
6 fines, fees and other amounts paid or payable, which were  
7 properly incurred by the qualified trustee in the defense  
8 of the action or proceedings to avoid the qualified  
9 transfer. It shall be presumed that the qualified trustee  
10 did not act in bad faith merely by accepting the property;  
11 and

12

13           (B) The qualified transfer is avoided  
14 subject to the proper fees, costs, preexisting rights,  
15 claims and interests of the qualified trustee, and of any  
16 predecessor trustee that has not acted in bad faith; and

17

18           (ii) If the court is satisfied that a  
19 beneficiary of a qualified spendthrift trust has not acted  
20 in bad faith, the avoidance of the qualified transfer is  
21 subject to the right of the beneficiary to retain any  
22 distribution made upon the exercise of a trust power or  
23 discretion vested in the qualified trustee of the trust,

1 which power or discretion was properly exercised prior to  
2 the creditor's commencement of an action to avoid the  
3 qualified transfer. It shall be presumed that the  
4 beneficiary, including a beneficiary who is also a settlor  
5 of a qualified spendthrift trust, did not act in bad faith  
6 merely by creating the trust or by accepting a distribution  
7 made in accordance with the terms of the trust.

8

9 (iii) A creditor shall have the burden of  
10 proving by clear and convincing evidence that a trustee or  
11 beneficiary of a qualified spendthrift trust acted in bad  
12 faith under paragraph (i) or (ii) of this subsection,  
13 except that, in the case of a beneficiary who is also a  
14 settlor, the burden on the creditor shall be to prove by a  
15 preponderance of the evidence that the settlor or  
16 beneficiary acted in bad faith.

17

18 **4-10-523. Limitation or termination of authority of**  
19 **trustee upon court decision not to apply Wyoming law.**

20

21 If, in any action brought against a trustee of a qualified  
22 spendthrift trust, a court takes any action whereby the  
23 court declines to apply the law of this state in

1 determining the validity, construction or administration of  
2 the trust, or the effect of a spendthrift provision  
3 thereof, the trustee may immediately resign without the  
4 further order of any court, and cease in all respects to be  
5 trustee of the trust. In the event that the trustee does  
6 resign and no provision for a successor trustee exists in  
7 the trust instrument, the qualified beneficiaries may then  
8 petition a Wyoming district court with appropriate  
9 jurisdiction to appoint a successor trustee who shall  
10 succeed as trustee upon such terms and conditions as the  
11 district court determines to be consistent with the  
12 purposes of the trust and this act. Upon the trustee's  
13 ceasing to be trustee, the trustee shall have no power or  
14 authority other than to convey the trust property to the  
15 successor trustee named in the trust instrument or  
16 appointed by the district court.

17

18 **4-10-524. Qualified transfer affidavit.**

19

20 (a) A qualified transfer affidavit shall be in  
21 writing, sworn to by the settlor, and shall state that:

22

1           (i) The settlor has full right, title and  
2 authority to transfer the property to the qualified  
3 spendthrift trust;

4

5           (ii) The transfer of the property to the  
6 qualified spendthrift trust will not render the settlor  
7 insolvent;

8

9           (iii) The settlor does not intend to defraud any  
10 creditors by transferring the property to the qualified  
11 spendthrift trust;

12

13           (iv) The settlor does not have any pending or  
14 threatened court actions against him, except for those  
15 court actions identified in the affidavit;

16

17           (v) The settlor is not involved in any  
18 administrative proceedings, except for those administrative  
19 proceedings identified in the affidavit;

20

21           (vi) At the time of the transfer of the property  
22 to the qualified spendthrift trust, the settlor is not in

1 default of a child support obligation by more than thirty  
2 (30) days;

3

4 (vii) The settlor does not contemplate the  
5 filing for relief under the provisions of the federal  
6 Bankruptcy Code; and

7

8 (viii) The property transferred to the qualified  
9 spendthrift trust was not derived from any unlawful  
10 activities.

11

12 **Section 2.** W.S. 4-10-103(a)(ii)(B), (xv), (xviii),  
13 (xix), (xxii) and by creating new paragraphs (xxix) through  
14 (xxxvii), 4-10-106, 4-10-107(a)(ii), 4-10-111(a), (d)(vi)  
15 and by creating a new paragraph (vii), 4-10-201(c),  
16 4-10-202(a) and (c), 4-10-203(a), 4-10-412(a), 4-10-501,  
17 4-10-502(c), 4-10-503(b), 4-10-504(b)(intro), (i) and (d),  
18 4-10-704(c)(intro), by creating a new subsection (e), and  
19 by renumbering (e) as (f), 4-10-710(a)(x) and (xi),  
20 4-10-712(a)(iv), 4-10-808(b), 4-10-814(c), 4-10-1014(a)(iv)  
21 and (b) and 4-10-1101 are amended to read:

22

1           **4-10-103. Definitions.**

2

3           (a) As used in this act:

4

5                   (ii) "Beneficiary" means a person that:

6

7                           (B) In a capacity other than that of  
8 trustee or trust protector, holds a power of appointment  
9 over trust property.

10

11                   (xv) "Qualified beneficiary" means a beneficiary  
12 who is currently entitled to distributions of income or  
13 principal from the trust or has a vested remainder interest  
14 in the residuary of the trust which is not subject to  
15 divestment, provided, however, if a trust has no qualified  
16 beneficiary, "qualified beneficiary" shall mean a  
17 beneficiary currently eligible to receive distributions of  
18 income or principal from the trust;

19

20                   (xviii) "Settlor" means a person, including a  
21 testator, grantor or trust maker, who creates, transfers or  
22 contributes property to, a trust. If more than one (1)

1 person creates, or transfers or contributes property to, a  
2 trust, each person is a settlor of the portion of the trust  
3 property attributable to that person's ~~contribution~~  
4 contributions or transfers, except to the extent another  
5 person has the power to revoke ~~or withdraw~~ that portion;

6

7 (xix) "Spendthrift provision" means a term of a  
8 trust which restrains ~~both~~ either a voluntary ~~and or an~~  
9 involuntary transfer, or both, of a beneficiary's interest  
10 and shall not include or prevent a disclaimer of an  
11 interest of a beneficiary;

12

13 (xxii) "Trust advisor" means the settlor of a  
14 trust instrument or ~~other parties~~ another person whose  
15 appointment is provided in the trust instrument and whose  
16 powers are defined in W.S. 4-10-712;

17

18 (xxix) "Discretionary distribution" means a  
19 distribution which the trustee is not directed to make, but  
20 is permitted to make in the trustee's discretion. For  
21 example, the language in a trust instrument providing for a  
22 discretionary distribution may contain the words "may" or  
23 "in the trustee's discretion". The language providing for

1 a discretionary distribution may include a standard of  
2 distribution or other guidance as long as the language or  
3 other guidance does not require the trustee to make a  
4 distribution in accordance with the standard or guidance;

5  
6 (xxx) "Discretionary trust" means a trust in  
7 which the trustee is not directed to make any  
8 distributions, but is permitted to make discretionary  
9 distributions;

10  
11 (xxxi) "Mandatory distribution" means a  
12 distribution which a trustee is required to make under the  
13 trust instrument and the trustee has no discretion in  
14 determining whether the distribution shall be made. Trust  
15 instrument language providing for a mandatory distribution  
16 may include a standard of distribution accompanied by a  
17 direction requiring the trustee to make the distribution in  
18 accordance with the standard. For example, trust  
19 instrument language providing for a mandatory distribution  
20 may contain the words "shall" or "must" or "directed";

21  
22 (xxxii) "Power of appointment" means an inter-  
23 vivos or testamentary power to direct the disposition of



1 trust property, other than a distribution decision by a  
2 trustee to a beneficiary;

3

4 (xxxiii) "Qualified spendthrift trust" means a  
5 trust established in accordance with W.S. 4-10-510 et seq.;

6

7 (xxxiv) "Qualified transfer" means as defined in  
8 W.S. 4-10-512;

9

10 (xxxv) "Qualified trustee" as used in article 5  
11 of this act means:

12

13 (A) A natural person who is a resident of  
14 this state; or

15

16 (B) A person authorized by the law of this  
17 state to act as a trustee or a regulated financial  
18 institution which:

19

1                   (I) Maintains or arranges for custody  
2 in this state of some or all of the qualified trust  
3 property;

4

5                   (II) Maintains records for the  
6 qualified spendthrift trust on an exclusive or nonexclusive  
7 basis;

8

9                   (III) Prepares or arranges for the  
10 preparation of fiduciary income tax returns for the  
11 qualified spendthrift trust, or

12

13                   (IV) Otherwise materially participates  
14 in the administration of the qualified spendthrift trust;

15

16                   (C) Neither the settlor, nor any other  
17 natural person who is a nonresident of this state, nor an  
18 entity that is not authorized by the law of this state to  
19 act as a trustee or is not a regulated financial  
20 institution, may serve as a qualified trustee.

21

1           (xxxvi) "Qualified trust property" means the  
2 property of a qualified spendthrift trust as defined in  
3 W.S. 4-10-511;

4  
5           (xxxvii) "Standard of distribution" means  
6 language in a trust instrument providing guidance or  
7 direction to a trustee regarding distributions of income or  
8 principal. Standards of distribution are not limited to  
9 ascertainable standards.

10  
11           **4-10-106. Common law of trusts; principles of equity.**

12  
13           The common law of trusts and principles of equity  
14 supplement this act, except to the extent modified by this  
15 act or another statute of this state. When interpreting  
16 article 5 of this act, the court shall first use the law of  
17 this state, then general common law.

18  
19           **4-10-107. Governing law.**

20  
21           (a) The meaning and effect of the terms of a trust  
22 are determined by:

1

2 (ii) In the absence of a controlling designation  
3 in the terms of the trust, the law of the jurisdiction  
4 having the most significant relationship to the matter at  
5 issue. In determining the most significant relationship,  
6 the principal place of administration as defined in W.S. 4-  
7 10-108 shall be the most heavily weighted factor and the  
8 location of trust property shall be the second most  
9 significant factor. The least significant factors shall be  
10 where the beneficiaries or settlor are domiciled.

11

12 **4-10-111. Nonjudicial settlement agreements.**

13

14 (a) For purposes of this section, "interested  
15 persons" means ~~persons whose consent would be required in~~  
16 ~~order~~ non-charitable beneficiaries eligible to ~~achieve a~~  
17 ~~binding settlement if~~ receive current distributions from  
18 the ~~settlement is to be approved by trust,~~ the ~~court~~  
19 settlor, if living, the trustee and trust protector, if  
20 any.

21

1 (d) Matters that may be resolved by a nonjudicial  
2 settlement agreement include:

3

4 (v) Transfer of a trust's principal place of  
5 administration; ~~and~~

6

7 (vi) Liability of a trustee for an action  
8 relating to the trust; ~~and~~ and

9

10 (vii) An election to treat the trust as a  
11 qualified spendthrift trust under article 5 of this act and  
12 modification of the trust to comply with W.S. 4-10-510.

13

14 **4-10-201. Role of court in administration of trust.**

15

16 (c) A judicial proceeding involving a trust may  
17 relate to any matter involving the trust's administration,  
18 including a request for instructions, an action to declare  
19 rights, ~~or~~ to appoint a trust protector or to determine the  
20 qualification of a trust as a qualified spendthrift trust  
21 under article 5 of this act.

22

1           **4-10-202. Jurisdiction over fiduciary and**  
2 **beneficiary.**

3  
4           (a) By ~~accepting the trusteeship~~ becoming a fiduciary  
5 of a trust having its principal place of administration in  
6 this state or by moving the principal place of  
7 administration to this state, ~~the trustee submits~~ all trust  
8 fiduciaries submit personally to the jurisdiction of the  
9 courts of this state regarding any matter involving the  
10 trust.

11  
12           (c) This section does not preclude other methods of  
13 obtaining jurisdiction over a ~~trustee~~ fiduciary or a,  
14 beneficiary or other person receiving property from the  
15 trust.

16  
17           **4-10-203. Subject matter jurisdiction.**

18  
19           (a) The district court has exclusive jurisdiction of  
20 proceedings in this state brought by a trustee, trust  
21 protector, trust advisor or beneficiary concerning the  
22 administration of a trust.

1

2           **4-10-412.           Modification    or    termination    of**  
3 **noncharitable irrevocable trust by consent.**

4

5           (a)   If upon petition the court finds that the settlor  
6 and all qualified beneficiaries consent to the modification  
7 or termination of a noncharitable irrevocable trust, the  
8 court may enter an order approving the modification or  
9 termination, even if the modification or termination is  
10 inconsistent with a material purpose of the trust. A  
11 settlor's power to consent to a modification or termination  
12 of a trust may be exercised by an agent under a power of  
13 attorney only to the extent expressly authorized by the  
14 power of attorney or the terms of the trust or, if no agent  
15 is so authorized, then by the settlor's conservator or  
16 guardian. Exercise of the settlor's power to consent by an  
17 agent, conservator or guardian shall be in each case with  
18 the approval of the court upon a finding by the court that  
19 such action is not inconsistent with the settlor's purpose  
20 or intent.

21

22           **4-10-501.   Rights    of    beneficiary's    creditor    or**  
23 **assignee.**

1

2 To the extent a beneficiary's interest in trust income or  
3 principal, or both, is not ~~protected by~~ subject to a  
4 spendthrift provision or the exercise of the trustee's  
5 discretion, the court may authorize an assignee or a  
6 judgment creditor ~~or assignee~~ of the beneficiary to ~~reach~~  
7 ~~the beneficiary's interest by attachment of present or~~  
8 ~~future~~ attach distributions ~~to, or for the benefit of,~~  
9 trust income or principal, or both, when the distributions  
10 are received by the beneficiary or by ~~other means.~~ The  
11 ~~court may limit the award to such relief as is appropriate~~  
12 ~~under the circumstances~~ a third party for the benefit of  
13 the beneficiary.

14

15 **4-10-502. Spendthrift provision.**

16

17 (c) Other than by valid disclaimer under W.S.  
18 2-1-401, a beneficiary may not transfer an interest in a  
19 trust in violation of a ~~valid~~ spendthrift provision and,  
20 ~~except as otherwise provided in this article,~~ a creditor or  
21 assignee of the beneficiary may not reach the interest or  
22 attach a distribution by the trustee ~~before its receipt~~  
23 unless and until it is received by the beneficiary.



1

2           **4-10-503. Exceptions to spendthrift provision.**

3

4           (b) Even if a trust contains a spendthrift provision,  
5 a beneficiary's child, who has a judgment or court order  
6 against the beneficiary for support or maintenance, ~~or a~~  
7 ~~judgment creditor who has provided services for the~~  
8 ~~protection of a beneficiary's interest in the trust,~~ may  
9 obtain from a court an order attaching present or future  
10 distributions to, or for the benefit of, the beneficiary.

11

12           **4-10-504. Discretionary trusts; effect of standard.**

13

14           (b) ~~Except as otherwise provided in subsection (c) of~~  
15 ~~this section,~~ Whether or not a trust contains a spendthrift  
16 provision, a creditor or assignee of a trust beneficiary  
17 may not attach the interest of the beneficiary or ~~compel a~~  
18 ~~distribution that is subject to the trustee's discretion~~  
19 the trustee to distribute any income or principal, or both,  
20 from a trust when the terms of the trust provide that the  
21 trustee may only make discretionary distributions, even if:

22



1           **4-10-704. Vacancy in trusteeship; appointment of**  
2 **successor.**

3

4           (c) A vacancy in a trusteeship of a noncharitable  
5 trust, except a qualified spendthrift trust, that is  
6 required to be filled shall be filled in the following  
7 order of priority:

8

9           (e) If a vacancy occurs in a trusteeship of a  
10 qualified spendthrift trust, or if the only remaining  
11 qualified trustee of the trust ceases to meet the  
12 requirements of a qualified trustee, a successor trustee  
13 shall be chosen which meets the requirements of W.S. 4-10-  
14 103(a) (xxxv) .

15

16           ~~(e)~~ (f) Whether or not a vacancy in a trusteeship  
17 exists or is required to be filled, the court may appoint  
18 an additional trustee or special fiduciary whenever the  
19 court considers the appointment necessary for the  
20 administration of the trust.

21

22           **4-10-710. Trust protector.**

1

2 (a) The powers and discretions of a trust protector  
3 shall be provided in the trust instrument or may be  
4 established or modified by a judicial order, and may, in  
5 the best interests of the trust, be exercised or not  
6 exercised. The powers and discretions may include, but are  
7 not limited to the following:

8

9 (x) To direct, consent or disapprove a trustee's  
10 or cotrustee's action or inaction in making distributions  
11 to beneficiaries; ~~and~~

12

13 (xi) To increase or decrease any interest of the  
14 beneficiaries to the trust, to grant a power of appointment  
15 to one (1) or more trust beneficiaries or to terminate or  
16 amend any power of appointment granted by the trust;  
17 however, a modification, amendment or grant of a power of  
18 appointment may not grant a beneficial interest to any  
19 person or class of persons not specifically provided for  
20 under the trust instrument or to the trust protector, the  
21 trust protector's estate or for the benefit of the  
22 creditors of the trust protector; ~~and~~ and

23

1                   (xii) To elect for the trust to become a  
2 qualified spendthrift trust under W.S. 4-10-517.

3  
4                   **4-10-712. Trust advisor.**

5  
6                   (a) The powers and discretions of a trust advisor  
7 shall be provided in the trust instrument and may, in the  
8 best interests of the trust, be exercised or not exercised  
9 in the sole and absolute discretion of the trust advisor  
10 and shall be binding on all other persons. Such powers and  
11 discretions may include, but are not limited to the  
12 following:

13  
14                   (iv) To direct the acquisition, ~~disposition~~  
15 transfer or retention of any trust investment; and

16  
17                   **4-10-808. Powers to direct.**

18  
19                   (b) If the terms of a trust confer upon a person  
20 other than the settlor of a revocable trust power to direct  
21 certain actions of the trustee, the trustee shall act in  
22 accordance with an exercise of the power. ~~unless the~~

1 ~~attempted exercise is manifestly contrary to the terms of~~  
2 ~~the trust or the trustee knows the attempted exercise would~~  
3 ~~constitute a serious breach of a fiduciary duty that the~~  
4 ~~person holding the power owes to the beneficiaries of the~~  
5 ~~trust.~~

6  
7 **4-10-814. Discretionary powers; tax savings.**

8  
9 (c) A power, ~~whose~~the exercise of which is limited  
10 or prohibited by subsection (b) of this section may be  
11 exercised by a majority of the remaining trustees whose  
12 exercise of the power is not so limited or prohibited. If  
13 the power of all trustees is so limited or prohibited, the  
14 ~~court~~trustee may appoint a special fiduciary with  
15 authority to exercise the power.

16  
17 **Staff Comment**

18 **WEPAC recommends amending the preceding section by deleting the text of subsection (a) and**  
19 **replacing it with the text of subsection (b) and renumbering and amending subsections (c) and (d) as (b)**  
20 **and (c), which requires conforming amendments to subsection (b) through (d). A cleaner and less**  
21 **confusing process would be to repeal subsection (a) and make the substantive change to subsection (c), as**  
22 **requested by WEPAC. That would eliminate the need for the conforming amendments to subsections**  
23 **(b), (c) and (d).**

24  
25 **4-10-1014. Certification or affidavit of trust.**

1

2 (a) Instead of furnishing a copy of the trust  
3 instrument to a person other than a beneficiary, the  
4 trustee may furnish to the person a certification or  
5 affidavit of trust containing the following information:

6

7 (iv) The pertinent powers of the trustee;

8

9 (b) A certification or affidavit of trust ~~may~~ shall  
10 be signed or otherwise authenticated by any trustee.

11

12 **4-10-1101. Uniformity of application and**  
13 **construction.**

14

15 In applying and construing this act, consideration shall be  
16 given to the need to promote uniformity of the law with  
17 respect to its subject matter among states that enact it.

18 With respect to article 5 of this act, a court shall not  
19 give consideration to cases from jurisdictions that have  
20 adopted some version of the Uniform Trust Code, but have  
21 not modified article 5 of the Uniform Trust Code in a  
22 manner similar to article 5 of this act.

1

2       **Section 3.** W.S. 4-10-505 through 4-10-507 are amended  
3 and renumbered as 4-10-506 through 4-10-508 to read:

4

5       ~~4-10-505~~4-10-506. **Creditor's claim against settlor.**

6

7       (a) Whether or not the terms of a trust contain a  
8 spendthrift provision, the following rules apply:

9

10           (i) During the lifetime of the settlor, the  
11 property of a revocable trust contributed by the settlor,  
12 and all income and appreciation thereon and proceeds  
13 thereof, is subject to claims of the settlor's creditors;

14

15           (ii) With respect to an irrevocable trust  
16 without a spendthrift provision, a creditor or assignee of  
17 the settlor may ~~reach~~attach the maximum amount that can be  
18 distributed to or for the settlor's benefit. If a trust has  
19 more than one (1) settlor, the amount the creditor or  
20 assignee of a particular settlor may ~~reach may~~attach shall  
21 not exceed the settlor's interest in the portion of the  
22 trust attributable to that settlor's contribution.†



1

2 (b) With respect to an irrevocable trust with a  
3 spendthrift provision, a creditor or assignee of the right  
4 of a settlor are limited by the provisions of W.S. 4-10-510  
5 et seq.

6

7 ~~(iii)~~ (c) After the death of a settlor, and subject to  
8 the settlor's right to direct the source from which  
9 liabilities will be paid, the ~~property~~ portion of a trust  
10 that was revocable at the settlor's death, and the property  
11 subject thereto, is subject to claims of the settlor's  
12 creditors, costs of administration of the settlor's estate,  
13 the expenses of the settlor's funeral and disposal of  
14 remains ~~and statutory allowances as provided in W.S.~~  
15 ~~2-5-101 and 2-5-103 to a surviving spouse and children to~~  
16 the extent the settlor's probate estate is inadequate to  
17 satisfy those claims, costs of administration, ~~and~~  
18 expenses. ~~and allowances as provided in W.S. 2-5-101 and~~  
19 ~~2-5-103.~~

20

21 ~~(b)~~ (d) For purposes of this section, ~~,~~ ÷

22

1           ~~(i) During the period the power may be~~  
2 ~~exercised,~~ The holder of a ~~an unexercised~~ power of  
3 ~~withdrawal is or power of appointment over trust property~~  
4 ~~shall not be treated ~~in the same manner as the a~~ settlor of~~  
5 ~~a revocable trust to the extent of the property subject to~~  
6 ~~trust regardless of whether the power; ~~and~~ remains~~  
7 ~~exercisable or has lapsed.~~

8  
9           ~~4-10-506~~4-10-507. **Limitation on action by creditors.**

10  
11           (a) Subject to the rights of persons dealing with a  
12 fiduciary as provided in W.S. 4-10-1013, a creditor may  
13 file a claim against the assets of the trust or commence a  
14 judicial proceeding to contest the validity of a trust that  
15 was revocable at the settlor's death within the earlier of:

16  
17           (i) Two (2) years after the settlor's death;

18  
19           (ii) One hundred twenty (120) days after a  
20 notice of the intent of the trustee to have the property of  
21 the settlor distributed as permitted under the terms of the  
22 trust has been published once per week for two (2)

1 consecutive weeks in a newspaper of general circulation in  
2 the county or counties where venue of the trust is properly  
3 established as provided in W.S. 4-10-204; or

4

5 (iii) One hundred twenty (120) days after known  
6 creditors have been mailed notice, by certified mail return  
7 receipt requested. The notice shall inform the creditor:

8

9 (A) Of the trust's existence;

10

11 (B) Of the trustee's name and address;

12

13 (C) That the creditor shall make all claims  
14 in writing to the trustee within ~~thirty (30)~~ one hundred  
15 twenty (120) days of the date of mailing of the notice; and

16

17 (D) That time allowed for commencing a  
18 proceeding to contest the validity of a trust or of the  
19 proposed distribution of the trustee is one hundred twenty  
20 (120) days from the date of mailing of the notice.

21

1 (b) A creditor failing to file his claim or to  
2 commence a judicial proceeding to contest the validity of a  
3 trust within the times provided is forever prohibited from  
4 making any claim against the assets of the settlor's trust  
5 or commencing any judicial proceeding against the settlor  
6 or the assets of the settlor's trust.

7

8 ~~4-10-507~~4-10-508. **Overdue mandatory distribution.**

9

10 (a) In this section, "mandatory distribution" means a  
11 distribution of income or principal which the trustee is  
12 required to make to a beneficiary under the terms of the  
13 trust, including a distribution on termination of the  
14 trust. The term does not include a discretionary  
15 distribution under W.S. 4-10-504.

16

17 ~~(b) Whether or not a~~ If the trust ~~contains~~ includes a  
18 spendthrift provision, a creditor or assignee of a  
19 beneficiary may ~~reach~~ not compel a mandatory distribution  
20 ~~of income or principal, including~~ or attach a mandatory  
21 distribution ~~upon termination of the trust, if the trustee~~  
22 ~~has not made the distribution to~~ until it is received by

1 the beneficiary. ~~within a reasonable time after the~~  
2 ~~mandated distribution date.~~

3

4 (c) If a trust providing for a mandatory distribution  
5 does not include a spendthrift provision, a creditor or  
6 assignee of a beneficiary may compel the trustee to make  
7 the mandatory distribution to the beneficiary where the  
8 distribution was not made within a reasonable time.

9

10 **Section 4.** W.S. 4-10-502(a), 4-10-504(a), (c) and  
11 (e), 4-10-603(c) and 4-10-814(a) are repealed.

12

13 **Section 5.** This act is effective July 1, 2007.

14

15

(END)

16