

HOUSE BILL NO. HB0069

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

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

15

1 **Section 1.** W.S. 4-10-505 and 4-10-509 through
2 4-10-523 are created to read:

3

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

5

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

14

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

19

20 (ii) In the order of distribution, the court
21 shall direct the trustee to pay to or for the benefit of
22 the child that portion of the trust income or principal or
23 both as is equitable under the circumstances, but not more
24 than the amount the trustee would have been required to

1 distribute to or for the benefit of the beneficiary had the
2 trustee complied with the standard of distribution.

3

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

12

13 (c) This section shall not limit the right of a
14 beneficiary to maintain a judicial proceeding against a
15 trustee for a failure to comply with a standard for
16 distributions to the beneficiary.

17

18 **4-10-509. Personal obligations of trustee.**

19

20 Trust property is not subject to the personal obligations
21 of the trustee, even if the trustee becomes insolvent or
22 bankrupt.

23

24 **4-10-510. Creation of qualified spendthrift trust.**

1

2 (a) A settlor may create a qualified spendthrift
3 trust with a trust instrument appointing a qualified
4 trustee for qualified trust property, which instrument:

5

6 (i) States that the trust is a qualified
7 spendthrift trust under this section;

8

9 (ii) Expressly incorporates the law of this
10 state to govern the validity, construction and
11 administration of the trust;

12

13 (iii) Provides that the interest of the settlor
14 in the trust income or principal, or both, is held subject
15 to a spendthrift provision under W.S. 4-10-502 and such
16 provision of the trust instrument shall be deemed to be a
17 restriction on the transfer of the settlor's beneficial
18 interest in the trust that is enforceable under applicable
19 nonbankruptcy law within the meaning of Section 541(c)(2)
20 of the Bankruptcy Code;

21

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

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

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

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

(D) The settlor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust as those terms are defined in Section 664 of the Internal Revenue Code;

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

1 (F) The settlor's potential or actual
2 receipt or use of principal when a qualified trustee,
3 including a trustee acting at the direction of a trust
4 advisor other than the settlor, makes such distribution or
5 grants such use in the trustee's sole discretion or
6 pursuant to an ascertainable standard contained in the
7 trust instrument;

8

9 (G) The settlor's right to add or remove a
10 trustee, trust protector or trust advisor and to appoint a
11 new trustee, trust protector or trust advisor, other than
12 the settlor;

13

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

18

19 (J) A trust protector as provided in W.S.
20 4-10-710 has the power to add beneficiaries to the trust
21 who are not the trust protector, the estate of the trust
22 protector, the creditors of the trust protector or the
23 heirs of the trust protector;

24

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

4

5 **4-10-511. Qualified trust property.**

6

7 (a) Qualified trust property includes real property,
8 personal property and interests in real or personal
9 property and all gains, appreciation and income thereon
10 which:

11

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

13

14 (ii) Are acquired with the proceeds of property
15 of a qualified transfer.

16

17 (b) Qualified trust property is subject to W.S.
18 4-10-514 through 4-10-523.

19

20 **4-10-512. Qualified transfers; exception.**

21

22 (a) Except as otherwise provided in this section,
23 "qualified transfer" means a transfer, conveyance or
24 assignment of property, by or from a settlor, with or

1 without consideration, to a qualified trustee, under a
2 trust instrument which meets the requirements of W.S.
3 4-10-510. "Qualified transfer" also includes:

4

5 (i) A change in the legal ownership of property
6 occurring upon the substitution of a qualified trustee for
7 another or the addition of one (1) or more qualified
8 trustees; or

9

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

12

13 (b) A qualified transfer shall require an affidavit
14 from the settlor making the transfer to the trustee of the
15 qualified spendthrift trust in the form provided in W.S.
16 4-10-523, except that no affidavit shall be required for a
17 transfer under W.S. 4-10-515.

18

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

22

23 **4-10-513. Other qualified transfers.**

24

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

4

5 (b) A transfer by a trustee that is not a qualified
6 trustee to a trustee that is a qualified trustee shall be
7 treated as a qualified transfer so long as the recipient
8 trustee is the trustee under a qualified spendthrift trust.

9

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

12

13 Except as provided in W.S. 4-10-518, no action of any kind,
14 including an action to enforce a judgment entered by a
15 court or other body having adjudicative authority, may be
16 brought at law or in equity for an attachment or other
17 provisional remedy against qualified trust property or to
18 set aside a qualified transfer unless the action is brought
19 pursuant to the provisions of the Uniform Fraudulent
20 Transfers Act.

21

22 **4-10-515. Transfer by a trustee; time of transfer.**

23

1 (a) A qualified transfer by a trustee of a qualified
2 spendthrift trust to a qualified trustee of another
3 qualified spendthrift trust shall relate back to the date
4 of the original qualified transfer.

5

6 (b) A transfer of trust property from the trustee of
7 a trust created in another jurisdiction, which provides
8 creditor protection to the settlor similar to that provided
9 in this article, to a trustee of a qualified spendthrift
10 trust shall relate back to the date of the original
11 transfer to the trust created in the other jurisdiction.

12

13 **4-10-516. Election to become a qualified spendthrift**
14 **trust by existing trust.**

15

16 (a) The settlor, trustee or trust protector of an
17 existing irrevocable trust may elect in writing to treat
18 the trust as a qualified spendthrift trust under this
19 article, and the protection accorded under this article
20 shall relate back to the date of the election subject to
21 extinguishment of a creditor's claim with respect to a
22 prior qualified transfer utilizing the procedures provided
23 in W.S. 4-10-514, if:

24

1 (i) The trust is modified nonjudicially under
2 W.S. 4-10-111 to conform to the provisions of W.S. 4-10-510
3 within one (1) year after the election; or

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

8

9 **4-10-517. Rights of creditors or others with respect**
10 **to qualified spendthrift trust.**

11

12 Notwithstanding any law to the contrary, a creditor or
13 assignee of a settlor of a qualified spendthrift trust, or
14 an agent of a creditor or settlor, has only such rights
15 with respect to the qualified trust property as are
16 provided in W.S. 4-10-514 through 4-10-523 and no creditor,
17 assignee or agent may have any claim or cause of action
18 against the trustee, trust protector, trust advisor or
19 other fiduciary of the trust, or against any person
20 involved in the counseling, drafting, administration,
21 preparation, execution or funding of the trust.

22

23 **4-10-518. Actions prohibited if action by creditor**
24 **would be barred.**

1

2 Notwithstanding any other provision of law, no judgment or
3 order upon an action to enforce a judgment, or for relief
4 for conspiracy to commit a fraudulent conveyance, aiding
5 and abetting a fraudulent conveyance or participation in
6 the trust transaction, may be entered by a court or other
7 body having adjudicative authority, or may be brought at
8 law or in equity against the trustee, trust protector,
9 trust advisor or other fiduciary of a qualified spendthrift
10 trust, or against any person involved in the counseling,
11 drafting, preparation, administration, execution or funding
12 of the trust, if, as of the date the action is brought, an
13 action by a creditor or assignee with respect to the trust
14 would be barred under W.S. 4-10-517.

15

16 **4-10-519. Multiple qualified transfers in same trust**
17 **instrument.**

18

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

21

22 (i) The making of a subsequent qualified
23 transfer shall be disregarded in determining whether a
24 creditor's claim with respect to a prior qualified transfer

1 is extinguished utilizing the procedures provided in W.S.
2 4-10-514; 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 **4-10-520. Limitations on qualified trust property.**

12

13 (a) The provisions of W.S. 4-10-510 through 4-10-523,
14 do not apply in any respect to:

15

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

19

20 (ii) Qualified trust property that is listed
21 upon an application or financial statement used to obtain
22 or maintain credit other than for the benefit of the
23 qualified spendthrift trust; or

24

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

5

6 **4-10-521. Avoidance of qualified transfer.**

7

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

15

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

20

21 (A) The qualified trustee has a first and
22 paramount lien against the property that is the subject of
23 the qualified transfer in an amount equal to the entire
24 cost, including attorney's fees, court costs, penalties,

1 fines, fees and other amounts paid or payable, which were
2 properly incurred by the qualified trustee in the defense
3 of the action or proceedings to avoid the qualified
4 transfer. It shall be presumed that the qualified trustee
5 did not act in bad faith merely by accepting the property;
6 and

7
8 (B) The qualified transfer is avoided
9 subject to the proper fees, costs, preexisting rights,
10 claims and interests of the qualified trustee, and of any
11 predecessor trustee that has not acted in bad faith.

12
13 (ii) If the court is satisfied that a
14 beneficiary of a qualified spendthrift trust has not acted
15 in bad faith, the avoidance of the qualified transfer is
16 subject to the right of the beneficiary to retain any
17 distribution made upon the exercise of a trust power or
18 discretion vested in the qualified trustee of the trust,
19 which power or discretion was properly exercised prior to
20 the creditor's commencement of an action to avoid the
21 qualified transfer. It shall be presumed that the
22 beneficiary, including a beneficiary who is also a settlor
23 of a qualified spendthrift trust, did not act in bad faith

1 merely by creating the trust or by accepting a distribution
2 made in accordance with the terms of the trust.

3

4 (b) A creditor shall have the burden of proving by
5 clear and convincing evidence that a trustee or beneficiary
6 of a qualified spendthrift trust acted in bad faith under
7 paragraph (a)(i) or (ii) of this section, except that, in
8 the case of a beneficiary who is also a settlor, the burden
9 on the creditor shall be to prove by a preponderance of the
10 evidence that the settlor or beneficiary acted in bad
11 faith.

12

13 **4-10-522. Limitation or termination of authority of**
14 **trustee upon court decision not to apply Wyoming law.**

15

16 If, in any action brought against a trustee of a qualified
17 spendthrift trust, a court takes any action whereby the
18 court declines to apply the law of this state in
19 determining the validity, construction or administration of
20 the trust, or the effect of a spendthrift provision
21 thereof, the trustee may immediately resign without the
22 further order of any court, and cease in all respects to be
23 trustee of the trust. In the event that the trustee does
24 resign and no provision for a successor trustee exists in

1 the trust instrument, the qualified beneficiaries may then
2 petition a Wyoming district court with appropriate
3 jurisdiction to appoint a successor trustee who shall
4 succeed as trustee upon such terms and conditions as the
5 district court determines to be consistent with the
6 purposes of the trust and this act. Upon the trustee's
7 ceasing to be trustee, the trustee shall have no power or
8 authority other than to convey the trust property to the
9 successor trustee named in the trust instrument or
10 appointed by the district court.

11

12 **4-10-523. Qualified transfer affidavit.**

13

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

16

17 (i) The settlor has full right, title and
18 authority to transfer the property to the qualified
19 spendthrift trust;

20

21 (ii) The transfer of the property to the
22 qualified spendthrift trust will not render the settlor
23 insolvent;

24

1 (iii) The settlor does not intend to defraud any
2 creditors by transferring the property to the qualified
3 spendthrift trust;

4

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

8

9 (v) The settlor is not involved in any
10 administrative proceedings, except for those administrative
11 proceedings identified in the affidavit;

12

13 (vi) At the time of the transfer of the property
14 to the qualified spendthrift trust, the settlor is not in
15 default of a child support obligation by more than thirty
16 (30) days;

17

18 (vii) The settlor does not contemplate the
19 filing for relief under the provisions of the federal
20 Bankruptcy Code; and

21

22 (viii) The property transferred to the qualified
23 spendthrift trust was not derived from any unlawful
24 activities.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

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

4-10-103. Definitions.

(a) As used in this act:

(ii) "Beneficiary" means a person that:

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

1 (xv) "Qualified beneficiary" means a beneficiary
2 who is currently entitled to distributions of income or
3 principal from the trust or has a vested remainder interest
4 in the residuary of the trust which is not subject to
5 divestment, provided, however, if a trust has no qualified
6 beneficiary, "qualified beneficiary" shall mean a
7 beneficiary currently eligible to receive distributions of
8 income or principal from the trust;

9
10 (xviii) "Settlor" means a person, including a
11 testator, grantor or trust maker, who creates, transfers or
12 contributes property to, a trust. If more than one (1)
13 person creates, or transfers or contributes property to, a
14 trust, each person is a settlor of the portion of the trust
15 property attributable to that person's ~~contribution~~
16 contributions or transfers, except to the extent another
17 person has the power to revoke ~~or withdraw~~ that portion;

18
19 (xix) "Spendthrift provision" means a term of a
20 trust which restrains ~~both~~ either a voluntary ~~and~~ or an
21 involuntary transfer, or both, of a beneficiary's interest
22 and shall not include or prevent a disclaimer of an
23 interest of a beneficiary;

24

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

5
6 (xxix) "Discretionary distribution" means a
7 distribution which the trustee is not directed to make, but
8 is permitted to make in the trustee's discretion. For
9 example, the language in a trust instrument providing for a
10 discretionary distribution may contain the words "may" or
11 "in the trustee's discretion". The language providing for
12 a discretionary distribution may include a standard of
13 distribution or other guidance as long as the language or
14 other guidance does not require the trustee to make a
15 distribution in accordance with the standard or guidance;

16
17 (xxx) "Discretionary trust" means a trust in
18 which the trustee is not directed to make any
19 distributions, but is permitted to make discretionary
20 distributions;

21
22 (xxxi) "Mandatory distribution" means a
23 distribution which a trustee is required to make under the
24 trust instrument and the trustee has no discretion in

1 determining whether the distribution shall be made. Trust
2 instrument language providing for a mandatory distribution
3 may include a standard of distribution accompanied by a
4 direction requiring the trustee to make the distribution in
5 accordance with the standard. For example, trust instrument
6 language providing for a mandatory distribution may contain
7 the words "shall" or "must" or "directed";

8
9 (xxxii) "Power of appointment" means an inter
10 vivos or testamentary power to direct the disposition of
11 trust property, other than a distribution decision by a
12 trustee to a beneficiary;

13
14 (xxxiii) "Qualified spendthrift trust" means a
15 trust established in accordance with W.S. 4-10-510 et seq.;

16
17 (xxxiv) "Qualified transfer" means as defined in
18 W.S. 4-10-512;

19
20 (xxxv) "Qualified trustee" as used in article 5
21 of this act means:

22
23 (A) A natural person who is a resident of
24 this state; or

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

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

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

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

(III) Prepares or arranges for the preparation of fiduciary income tax returns for the qualified spendthrift trust; or

(IV) Otherwise materially participates in the administration of the qualified spendthrift trust.

(C) Neither the settlor, nor any other natural person who is a nonresident of this state, nor an entity that is not authorized by the law of this state to

1 act as a trustee or is not a regulated financial
2 institution, may serve as a qualified trustee.

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

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

13
14 **4-10-106. Common law of trusts; principles of equity.**

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

21
22 **4-10-107. Governing law.**

23

1 (a) The meaning and effect of the terms of a trust
2 are determined by:

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

13
14 **4-10-111. Nonjudicial settlement agreements.**

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

23

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~~

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
23 **4-10-202. Jurisdiction over fiduciary and**
24 **beneficiary.**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

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

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

4-10-203. Subject matter jurisdiction.

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

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

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

17

18 **4-10-501. Rights of beneficiary's creditor or**
19 **assignee.**

20

21 To the extent a beneficiary's interest in trust income or
22 principal, or both, is not ~~protected by~~ subject to a
23 spendthrift provision or the exercise of the trustee's
24 discretion, the court may authorize an assignee or a

1 judgment creditor ~~or assignee~~ of the beneficiary to ~~reach~~
2 ~~the beneficiary's interest by attachment of present or~~
3 ~~future~~ attach distributions ~~to, or for the benefit of,~~
4 trust income or principal, or both, when the distributions
5 are received by the beneficiary or by ~~other means.~~ The
6 court may limit the award to such relief as is appropriate
7 ~~under the circumstances~~ a third party for the benefit of
8 the beneficiary.

9
10 **4-10-502. Spendthrift provision.**

11
12 (c) Other than by valid disclaimer under W.S.
13 2-1-401, a beneficiary may not transfer an interest in a
14 trust in violation of a ~~valid~~ spendthrift provision and,
15 ~~except as otherwise provided in this article,~~ a creditor or
16 assignee of the beneficiary may not reach the interest or
17 attach a distribution by the trustee ~~before its receipt~~
18 unless and until it is received by the beneficiary.

19
20 **4-10-503. Exceptions to spendthrift provision.**

21
22 (b) Even if a trust contains a spendthrift provision,
23 a ~~beneficiary's child,~~ person who has a judgment or court
24 order against the beneficiary for child support or

1 maintenance, ~~or a judgment creditor who has provided~~
2 ~~services for the protection of a beneficiary's interest in~~
3 ~~the trust,~~ may obtain from a court an order attaching
4 present or future distributions to, or for the benefit of,
5 the beneficiary.

6
7 **4-10-504. Discretionary trusts; effect of standard.**

8
9 (b) ~~Except as otherwise provided in subsection (c) of~~
10 ~~this section,~~ Whether or not a trust contains a spendthrift
11 provision, a creditor or assignee of a trust beneficiary
12 may not attach the interest of the beneficiary or compel a
13 ~~distribution that is subject to the trustee's discretion~~
14 the trustee to distribute any income or principal, or both,
15 from a trust when the terms of the trust provide that the
16 trustee may only make discretionary distributions, even if:

17
18 (i) The trustee has discretion ~~is expressed to~~
19 make distributions for purposes stated in ~~the form of a~~
20 standard of distribution; or

21
22 (d) This section shall not limit the right of a
23 beneficiary to maintain a judicial proceeding against a
24 trustee for an abuse of discretion. ~~or failure to comply~~

1 ~~with a standard for distribution~~ However, a creditor or
2 assignee of a beneficiary may not maintain, or compel the
3 beneficiary to maintain, a proceeding on behalf of the
4 beneficiary or the creditor or assignee.

5

6 **4-10-704. Vacancy in trusteeship; appointment of**
7 **successor.**

8

9 (c) A vacancy in a trusteeship of a noncharitable
10 trust, except a qualified spendthrift trust, that is
11 required to be filled shall be filled in the following
12 order of priority:

13

14 (e) If a vacancy occurs in a trusteeship of a
15 qualified spendthrift trust, or if the only remaining
16 qualified trustee of the trust ceases to meet the
17 requirements of a qualified trustee, a successor trustee
18 shall be chosen which meets the requirements of W.S.
19 4-10-103(a)(xxxv).

20

21 ~~(e)~~ (f) Whether or not a vacancy in a trusteeship
22 exists or is required to be filled, the court may appoint
23 an additional trustee or special fiduciary whenever the

1 court considers the appointment necessary for the
2 administration of the trust.

3

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

5

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

12

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

16

17 (xi) To increase or decrease any interest of the
18 beneficiaries to the trust, to grant a power of appointment
19 to one (1) or more trust beneficiaries or to terminate or
20 amend any power of appointment granted by the trust;
21 however, a modification, amendment or grant of a power of
22 appointment may not grant a beneficial interest to any
23 person or class of persons not specifically provided for
24 under the trust instrument or to the trust protector, the

1 trust protector's estate or for the benefit of the
2 creditors of the trust protector; and

3

4 (xii) To elect for the trust to become a
5 qualified spendthrift trust under W.S. 4-10-516.

6

7 **4-10-712. Trust advisor.**

8

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

16

17 (iv) To direct the acquisition, disposition
18 transfer or retention of any trust investment; and

19

20 **4-10-808. Powers to direct.**

21

22 (b) If the terms of a trust confer upon a person
23 other than the settlor of a revocable trust power to direct
24 certain actions of the trustee, the trustee shall act in

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

7

8 **4-10-814. Discretionary powers; tax savings.**

9

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

17

18 **4-10-1014. Certification or affidavit of trust.**

19

20 (a) Instead of furnishing a copy of the trust
21 instrument to a person other than a beneficiary, the
22 trustee may furnish to the person a certification or
23 affidavit of trust containing the following information:

24

1 (iv) The pertinent powers of the trustee;

2

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

5

6 **4-10-1101. Uniformity of application and**
7 **construction.**

8

9 In applying and construing this act, consideration shall be
10 given to the need to promote uniformity of the law with
11 respect to its subject matter among states that enact it.
12 With respect to article 5 of this act, a court shall not
13 give consideration to cases from jurisdictions that have
14 adopted some version of the Uniform Trust Code, but have
15 not modified article 5 of the Uniform Trust Code in a
16 manner similar to article 5 of this act.

17

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

20

21 ~~4-10-505~~ 4-10-506. **Creditor's claim against settlor.**

22

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

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

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

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

~~(iii)~~ (c) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the ~~property~~ portion of a trust that was revocable at the settlor's death, and the property

1 subject thereto, is subject to claims of the settlor's
2 creditors, costs of administration of the settlor's estate,
3 the expenses of the settlor's funeral and disposal of
4 remains ~~and statutory allowances as provided in W.S.~~
5 ~~2-5-101 and 2-5-103 to a surviving spouse and children~~ to
6 the extent the settlor's probate estate is inadequate to
7 satisfy those claims, costs of administration, and
8 expenses, ~~and allowances as provided in W.S. 2-5-101 and~~
9 ~~2-5-103.~~

10

11 ~~(b)~~ (d) For purposes of this section, ~~+~~

12

13 ~~(i) During the period the power may be~~
14 ~~exercised,~~ the holder of ~~a~~ an unexercised power of
15 withdrawal ~~is~~ or power of appointment over trust property
16 shall not be treated ~~in the same manner as the~~ a settlor of
17 ~~a revocable trust to the extent of the property subject to~~
18 trust regardless of whether the power, ~~and~~ remains
19 exercisable or has lapsed.

20

21 ~~(ii) Upon the lapse, release or waiver of the~~
22 ~~power, the holder is no longer treated as the settlor of~~
23 ~~the trust with respect to the property affected by the~~
24 ~~lapse, release or waiver.~~

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

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

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

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

(ii) One hundred twenty (120) days after a notice of the intent of the trustee to have the property of the settlor distributed as permitted under the terms of the trust has been published once per week for two (2) consecutive weeks in a newspaper of general circulation in the county or counties where venue of the trust is properly established as provided in W.S. 4-10-204; or

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

(A) Of the trust's existence;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

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

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

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

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

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

(a) In this section, "mandatory distribution" means a distribution of income or principal which the trustee is required to make to a beneficiary under the terms of the

1 trust, including a distribution on termination of the
2 trust. The term does not include a discretionary
3 distribution under W.S. 4-10-504.

4
5 (b) Whether or not a ~~If the~~ trust ~~contains~~ includes a
6 spendthrift provision, a creditor or assignee of a
7 beneficiary may ~~reach~~ not compel a mandatory distribution
8 ~~of income or principal, including~~ or attach a mandatory
9 distribution ~~upon termination of the trust, if the trustee~~
10 ~~has not made the distribution to~~ until it is received by
11 the beneficiary. ~~within a reasonable time after the~~
12 ~~mandated distribution date.~~

13
14 (c) If a trust providing for a mandatory distribution
15 does not include a spendthrift provision, a creditor or
16 assignee of a beneficiary may compel the trustee to make
17 the mandatory distribution to the beneficiary where the
18 distribution was not made within a reasonable time.

19

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

3

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

5

6

(END)