HOUSE BILL NO. HB0139

Uniform Trust Code.

Sponsored by: Representative(s) Brown, Krone, Greear, Lubnau and Throne and Senator(s) Esquibel, F., Nicholas, P. and Perkins

A BILL

for

AN ACT relating to the Uniform Trust Code; providing for insurable interests of trustees; providing a definition; permitting spouses to transfer property held in tenancy by entirety to a trust without losing creditor claim protections; clarifying that no common law rule limiting the duration of noncharitable purpose trusts is in force in this state; limiting creditor access to trust property if the transfer to an irrevocable trust does not violate fraudulent transfers laws; providing that retaining power to pay certain taxes does not disqualify a qualified spend thrift trust; providing for a standard of clear and convincing evidence of fraudulent transfers to a qualified spendthrift trust; limiting effect of child support orders on assets in a qualified spendthrift trust; clarifying protection of financial institution creditors with respect to trust assets listed in an application for credit;

providing for premortem validation of a trust; providing for distribution of trust assets as specified; and providing for an effective date.

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

Section 1. W.S. 4-10-112 is created to read:

4-10-112. Insurable interest of trustee.

(a) A trustee of a trust has an insurable interest in the life of an individual insured under a life insurance policy that is owned by the trustee of the trust acting in a fiduciary capacity or that designates the trust itself as the owner if, on the date the policy is issued:

(i) The insured is:

(A) A settlor of the trust; or

(B) An individual in whom a settlor of the trust has, or would have had, if living at the time the policy was issued, an insurable interest; and

(ii) The life insurance proceeds are primarily for the benefit of one (1) or more trust beneficiaries that have:

(A) An insurable interest in the life of the insured; or

(B) A substantial interest engendered by love and affection in the continuation of the life of the insured and, if not already included under subparagraph (A) of this paragraph, who are:

(I) Kindred of the insured having a possibility of being distributees of the insured's estate if the insured dies intestate pursuant to W.S. 2-4-101; or

(II) Stepchildren of the insured.

(b) This section applies to any trust existing before, on or after July 1, 2013, regardless of the effective date of the governing instrument under which the trust was created, but only as to a life insurance policy that is in force and for which an insured is alive on or after July 1, 2013.

(c) As used in this section, "settlor" means a person who executes a trust instrument. The term includes a person for which a fiduciary or agent is acting.

Section 2. W.S. 4-10-103(a)(xv), 4-10-402 by creating a new subsection (c), 4-10-410(a) by creating a new paragraph (iv), 4-10-506(a)(ii), by creating a new subsection (c) and by renumbering (c) through (e) as (d) through (f), 4-10-510(a)(iv) by creating new subparagraphs (O) and (P), 4-10-517, 4-10-520(a)(i) and (ii), 4-10-521(b), 4-10-604(a)(intro), by creating new subsections (b) through (d), by amending and renumbering (b) as (e) and by renumbering (c) as (f) and 4-10-816(a)(xxvi), (xxvii) and by creating a new paragraph (xxviii) are amended to read:

4-10-103. Definitions.

(a) As used in this act:

(xv) "Qualified beneficiary" means:

(A) A beneficiary who is currently entitled to mandatory distributions of income or principal from the trust or has a vested remainder interest in the residuary of the trust which is not subject to divestment; ~~, provided, however,~~

(B) If a trust has no qualified beneficiary~~,~~ under subparagraph (A) of this paragraph, "qualified beneficiary" shall mean a beneficiary having a vested remainder interest in the residuary of the trust whose interest is subject to divestment only as a result of the beneficiary's death;

(C) If a trust has no qualified beneficiary under subparagraph (A) or (B) of this paragraph, "qualified beneficiary" shall mean a beneficiary currently eligible to receive discretionary distributions of income or principal from the trust, who has received one (1) or more distributions during the beneficiary's lifetime;

(D) If a trust has no qualified beneficiary under subparagraph (A), (B) or (C) of this paragraph, "qualified beneficiary" shall mean a beneficiary currently eligible to receive discretionary distributions of income or principal from the trust;

(E) The department of health is a qualified beneficiary as the vested remainder beneficiary of trusts established pursuant to W.S. 42-2-403(f)(i), (ii) and (iii) and 42 U.S.C. 1396p(d)(4)(A), (B) and (C).~~;~~

4-10-402. Title of trust property.

(c) Any property of a husband and wife that is held by them as tenants by the entireties pursuant to W.S. 34-1-140 and conveyed to their joint revocable or irrevocable trusts, or to their separate revocable or irrevocable trusts, shall have the same immunity from the claims of their separate creditors as it would if it had remained held by the entireties, so long as:

(i) They are both living and remain as husband and wife;

(ii) The property continues to be held in the trust or trusts for their benefit; and

(iii) The trust instrument, deed or other instrument of conveyance transferring the property to the trust or trusts provides that this subsection shall apply to the property and any proceeds resulting from the sale or disposition thereof.

(d) After the death of the first of the husband and wife to die, all property held in trust that was immune from the claims of the decedent's separate creditors under subsection (c) of this section immediately prior to the decedent's death shall continue to have the same immunity from the claims of the decedent's separate creditors as would have existed if the husband and wife had continued to hold the property conveyed in trust, or its proceeds, as tenants by the entirety.

4-10-410. Noncharitable trust without ascertainable beneficiary.

(a) Except as otherwise provided in W.S. 4-10-409 or by another statute, the following rules apply:

(iv) No common law rule limiting the duration of noncharitable purpose trusts is in force in this state.

4-10-506. Creditor's claim against settlor.

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

(ii) Except for discretionary trusts created in accordance with W.S. 4-10-504(f)~~, with respect to~~ <u>or irrevocable trusts providing that the trustee may only make discretionary distributions to the settlor, a creditor or assignee of the settlor of</u> an irrevocable trust without a spendthrift provision~~, a creditor or assignee of the settlor~~ may 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 attach shall not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

<u>(c) With respect to irrevocable trusts providing that the trustee may only make discretionary distributions to the settlor, a creditor or assignee of the right of a settlor are limited by W.S. 4-10-504(b) if the transfer of property to the trust by the settlor was not in violation</u>

of the Uniform Fraudulent Transfers Act and the trustee is a regulated financial institution qualified trustee.

~~(c)~~(d) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the portion of a trust that was revocable at the settlor's death, and the property subject thereto, is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains to the extent the settlor's probate estate is inadequate to satisfy those claims, costs of administration and expenses.

~~(d)~~(e) For purposes of this section, the holder of an unexercised power of withdrawal or power of appointment over trust property shall not be treated as a settlor of the trust regardless of whether the power remains exercisable or has lapsed.

~~(e)~~(f) For purposes of this section, a person who created a trust for his or her spouse under section 2523(e) of the Internal Revenue Code, or for which the election in section 2523(f) of the Internal Revenue Code was made, shall not be treated as a settlor of the trust, as of and after the death of his or her spouse.

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

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

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

(O) The transferor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes due on income of the trust if such potential or actual receipt of income or principal is pursuant to a provision in the trust instrument that expressly provides for the payment of such taxes and if such potential or actual receipt of income or principal would be the result of a qualified trustee's acting:

(I) In the qualified trustee's discretion or pursuant to a mandatory direction in the trust instrument; or

(II) At the direction of an advisor described in subparagraph (F) of this paragraph and who is acting in the advisor's discretion.

(P) The ability, whether pursuant to discretion, direction or the settlor's exercise of a testamentary power of appointment, of a qualified trustee to pay, after the death of the transferor, all or any part of the debts of the transferor outstanding at the time of the transferor's death, the expenses of administering the transferor's estate, or any estate or inheritance tax imposed on or with respect to the transferor's estate.

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

Notwithstanding any law to the contrary, a creditor or assignee of a settlor of a qualified spendthrift trust, or an agent of a creditor or settlor, has only such rights with respect to the qualified trust property as are provided in W.S. 4-10-514 through 4-10-523 and no creditor, assignee or agent may have any claim or cause of action against the trustee, trust protector, trust advisor or other fiduciary of the trust, or against any person involved in the counseling, drafting, administration, preparation, execution or funding of the trust unless the creditor, assignee or agent can prove by clear and convincing evidence that the transfer of property to the trust was a fraudulent transfer pursuant to the provisions of the Uniform Fraudulent Transfers Act. In the absence of clear and convincing proof, the property transferred is not subject to the claims of the creditor, assignee or agent. Proof by one (1) creditor, assignee or agent that a transfer of property to a qualified spendthrift trust was fraudulent or wrongful does not constitute proof as to any other creditor, assignee or agent and proof of a fraudulent or wrongful transfer of property as to one (1) creditor, assignee or agent shall not invalidate any other qualified transfer of property.

4-10-520. Limitations on qualified trust property.

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

(i) Any person to whom a settlor is indebted on account of an agreement or order of court for the payment of support in favor of the settlor's children if, at the time of transfer of assets to the qualified spendthrift trust, the settlor is in default by thirty (30) or more days of making a payment pursuant to the agreement or order;

(ii) ~~Qualified trust property that is listed upon an~~ A financial institution with which the settlor has listed qualified trust property on the financial institution's application or financial statement used to obtain or maintain credit from the financial institution other than for the benefit of the qualified spendthrift trust; or

4-10-521. Avoidance of qualified transfer.

(b) A creditor shall have the burden of proving by clear and convincing evidence that a trustee or beneficiary of a qualified spendthrift trust acted in bad faith under paragraph (a)(i) or (ii) of this section.~~, except that, in the case of a beneficiary who is also a settlor, the burden~~

~~on the creditor shall be to prove by a preponderance of the evidence that the settlor or beneficiary acted in bad faith.~~

4-10-604. Limitation on action contesting validity of revocable trust; distribution of trust property.

(a) Subject to the rights of persons dealing with a fiduciary as provided in W.S. 4-10-1013, a person may commence a judicial proceeding to contest the validity of a trust that ~~was revocable at the settlor's death~~ is revocable during the settlor's life or an amendment thereto within the earlier of:

(b) No trustee shall have any liability under the governing instrument or to any third party or otherwise for failure to provide written notice pursuant to paragraph (a)(ii) of this section.

(c) For purposes of paragraph (a)(ii) of this section, notice shall have been given when received by the person to whom the notice was given. Absent evidence to the contrary, it shall be presumed that delivery to the last known address of that person constitutes receipt by that person.

(d) A person failing to commence a judicial proceeding to contest the validity of a trust within the times provided in this section is forever prohibited from commencing any judicial proceeding contesting the validity of the trust.

~~(b)~~ (e) Upon the death of the settlor of a trust that was revocable ~~at the settlor's death~~ during the settlor's life, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:

(i) The trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(ii) A potential contestant has notified the trustee in writing of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within sixty (60) days after the contestant sent the notification.

~~(e)~~(f) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.

4-10-816. Specific powers of trustee.

(a) Without limiting the authority conferred by W.S. 4-10-815, a trustee may:

(xxvi) Purchase and pay from trust principal the premiums on life insurance;~~ and~~

(xxvii) On termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it;~~.~~ and

(xxviii) On distribution of trust income or principal pursuant to authority in the trust instrument to make discretionary distributions to a trust beneficiary, whether or not such discretionary distributions are pursuant to an ascertainable standard, make distributions of all or any portion of trust income or principal in further trust.

Section 3. This act is effective July 1, 2013.

(END)