

HOUSE BILL NO. HB0101

Uniform trust code-amendments.

Sponsored by: Representative(s) Crago, Lawley, Oakley,
Olsen and Stith and Senator(s) Nethercott

A BILL

for

1 AN ACT relating to trusts; amending default and mandatory
2 rules for trusts; amending provisions related to the duty
3 of loyalty of trustees; amending who can modify or
4 terminate a trust as specified; amending applicability of
5 provisions as specified; amending definitions; and
6 providing for an effective date.

7

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

9

10 **Section 1.** W.S. 4-10-103(a)(xxxii), (xxxv)(B)(I)
11 through (IV), 4-10-105(b)(xiii), 4-10-302, 4-10-411(b),
12 4-10-412(c), (f) and by creating a new subsection (g),
13 4-10-506 by creating a new subsection (g), 4-10-704(c) by
14 creating a new paragraph (ii) and by renumbering (ii) and
15 (iii) as (iii) as (iv), 4-10-718 by creating a new

1 subsection (g) and 4-10-813 by creating a new subsection
2 (e) are amended to read:

3

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

5

6 (a) As used in this act:

7

8 (xxxii) "Power of appointment" means an inter
9 vivos or testamentary power to direct the disposition of
10 trust property, other than a distribution decision by a
11 trustee to a beneficiary. A holder of a power of
12 appointment shall not be deemed a fiduciary unless
13 otherwise provided for in the trust instrument;

14

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

17

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

21

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 **4-10-105. Default and mandatory rules.**

17

18 (b) The terms of a trust shall prevail over any
19 provision of this act except:

20

21 (xiii) Subject to W.S. 4-10-718, trust
22 protectors as provided under W.S. 4-10-710 and trust
23 advisors as provided under W.S. 4-10-712 shall be a

1 fiduciary as to the powers, duties and discretions granted
2 to the trust protector or trust advisor if the trustee is
3 an excluded fiduciary as to the powers, duties and
4 discretions granted to the trust protector or the trust
5 advisor.

6

7 **4-10-302. Representation by holder of a power of**
8 **appointment.**

9

10 The holder of a ~~general testamentary~~ power of appointment
11 may represent and bind persons whose interests, as
12 permissible appointees, takers in default, or otherwise,
13 are subject to the power.

14

15 **4-10-411. Modification or termination of trust;**
16 **proceedings for approval or disapproval.**

17

18 (b) A proceeding to approve or disapprove a proposed
19 modification or termination under W.S. 4-10-412 through
20 4-10-417, or trust combination or division under W.S.
21 4-10-418, may be commenced by the settlor, a trustee or
22 beneficiary, ~~and a proceeding to approve or disapprove a~~
23 ~~proposed modification or termination under W.S. 4-10-412~~

1 ~~may be commenced by the settlor.~~ The settlor of a
2 charitable trust may maintain a proceeding to modify the
3 trust under W.S. 4-10-414.

4

5 **4-10-412. Modification or termination of**
6 **noncharitable irrevocable trust by consent.**

7

8 (c) ~~A~~ If the settlor is deceased, a noncharitable
9 irrevocable trust may be terminated upon consent of the
10 trustee and all of the qualified beneficiaries if the court
11 concludes that continuance of the trust is not necessary to
12 achieve any material purpose of the trust. A noncharitable
13 irrevocable trust may be modified upon consent of the
14 trustee and all of the qualified beneficiaries if the court
15 concludes that modification is not inconsistent with a
16 material purpose of the trust.

17

18 (f) If not all of the qualified beneficiaries consent
19 to a proposed modification or termination of the trust
20 under subsection (a), (b) or (c) of this section, the
21 modification or termination may be approved by the court if
22 the court is satisfied that:

23

1 (i) If all of the qualified beneficiaries had
2 consented, the trust could have been modified or terminated
3 under this section; and

4

5 (ii) The interests of a qualified beneficiary
6 who does not consent will be adequately protected.

7

8 (g) A trustee consenting in good faith to the
9 modification or termination of a trust under subsection (c)
10 of this section shall be protected from liability for
11 providing the consent.

12

13 **4-10-506. Creditor's claim against settlor.**

14

15 (g) For purposes of this section, a person who
16 created an irrevocable trust for another person that was a
17 completed gift to the other person under section 2511 of
18 the United States Internal Revenue Code for which the tax
19 under section 2501 of the Internal Revenue Code would be
20 applicable shall not be treated as a settlor of the trust
21 as of and after the death of the person for whom the trust
22 was created.

23

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 (ii) By a person appointed by the trust settlor,
10 if the settlor may make the appointment without
11 disqualifying the trust for a federal income, estate, gift
12 or generation-skipping transfer tax benefit claimed for the
13 trust;

14
15 ~~(ii)~~(iii) By a person appointed by unanimous
16 agreement of the qualified beneficiaries; or

17
18 ~~(iii)~~(iv) By a person appointed by the court.

19
20 **4-10-718. Directed trusts.**

21
22 (g) Notwithstanding the other provisions of this
23 section, a trust instrument may provide that one (1) or

1 more trust protectors or trust advisors with the power to
2 direct, consent to or disapprove of the actual or proposed
3 decisions of a trustee or other fiduciary are not acting in
4 a fiduciary capacity, in which case the trustee or other
5 fiduciary shall not be treated as an excluded fiduciary
6 with respect to the direction, consent or disapproval by
7 the trust protector or trust advisor.

8
9 **4-10-813. Duty to inform and report.**

10
11 (e) The trustee of an irrevocable trust that was
12 created before July 1, 2003 or which became irrevocable
13 before July 1, 2003 may elect not to comply with
14 subsections (b) and (c) of this section.

15
16 **Section 2.** This act is effective July 1, 2023.

17
18 (END)