

ENROLLED ACT NO. 80, HOUSE OF REPRESENTATIVES

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2007 GENERAL SESSION

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

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

Section 1. W.S. 4-10-505 and 4-10-510 through 4-10-523 are created to read:

4-10-505. Standards of distribution.

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

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

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

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

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

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:

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

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

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

(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:

(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;

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

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

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

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

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

4-10-511. Qualified trust property.

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

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

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

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

4-10-512. Qualified transfers; exception.

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

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

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

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

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

4-10-513. Other qualified transfers.

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

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

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

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

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

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

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

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

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

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

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

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.

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

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

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

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

(i) The making of a subsequent qualified transfer shall be disregarded in determining whether a creditor's claim with respect to a prior qualified transfer is extinguished utilizing the procedures provided in W.S. 4-10-514; and

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

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

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(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;

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

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

4-10-521. Avoidance of qualified transfer.

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

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

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

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

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

(ii) If the court is satisfied that a beneficiary of a qualified spendthrift trust has not acted in bad faith, the avoidance of the qualified transfer is subject to the right of the beneficiary to retain any distribution made upon the exercise of a trust power or discretion vested in the qualified trustee of the trust, which power or discretion was properly exercised prior to the creditor's commencement of an action to avoid the qualified transfer. It shall be presumed that the beneficiary, including a beneficiary who is also a settlor of a qualified spendthrift trust, did not act in bad faith merely by creating the trust or by accepting a distribution made in accordance with the terms of the trust.

(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.

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

If, in any action brought against a trustee of a qualified spendthrift trust, a court takes any action whereby the court declines to apply the law of this state in determining the validity, construction or administration of the trust, or the effect of a spendthrift provision thereof, the trustee may immediately resign without the further order of any court, and cease in all respects to be trustee of the trust. In the event that the trustee does resign and no provision for a successor trustee exists in the trust instrument, the qualified beneficiaries may then petition a Wyoming district court with appropriate jurisdiction to appoint a successor trustee who shall succeed as trustee upon such terms and conditions as the district court determines to be consistent with the purposes of the trust and this act. Upon the trustee's ceasing to be trustee, the trustee shall have no power or authority other than to convey the trust property to the successor trustee named in the trust instrument or appointed by the district court.

4-10-523. Qualified transfer affidavit.

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

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

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

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

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

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

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

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

(viii) The property transferred to the qualified spendthrift trust was not derived from any unlawful activities; and

(ix) The settlor has and shall maintain personal liability insurance of at least one million dollars (\$1,000,000.00) or shall provide coverage equal to the fair market value of the settlor's total qualified transfers to qualified spendthrift trusts, whichever is less. This affidavit requirement shall not apply to a qualified transfer to a trust created by a court order under W.S. 3-3-607.

Section 2. W.S. 4-10-103(a)(ii)(B), (xv), (xviii), (xix), (xxii) and by creating new paragraphs (xxix) through

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(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), (vii), (b) and (d) 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.

(xv) "Qualified beneficiary" means a beneficiary who is currently entitled to 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, if a trust has no qualified beneficiary, "qualified beneficiary" shall mean a beneficiary currently eligible to receive distributions of income or principal from the trust;

(xviii) "Settlor" means a person, including a testator, grantor or trust maker, who creates, transfers or contributes property to, a trust. If more than one (1) person creates, or transfers or contributes property to, a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution

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contributions or transfers, except to the extent another person has the power to revoke ~~or withdraw~~ that portion;

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

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

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

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

(xxxi) "Mandatory distribution" means a distribution which a trustee is required to make under the trust instrument and the trustee has no discretion in determining whether the distribution shall be made. Trust instrument language providing for a mandatory distribution may include a standard of distribution accompanied by a

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direction requiring the trustee to make the distribution in accordance with the standard. For example, trust instrument language providing for a mandatory distribution may contain the words "shall" or "must" or "directed";

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

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

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

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

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

(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;

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

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

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

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

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

4-10-107. Governing law.

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

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

4-10-111. Nonjudicial settlement agreements.

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

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

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

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

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

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

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

4-10-202. Jurisdiction over fiduciary and beneficiary.

(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.

(a) If upon petition the court finds that the settlor and all qualified beneficiaries consent to the modification or termination of a noncharitable irrevocable trust, the

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court may enter an order approving the modification or termination, even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a modification or termination of a trust may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust or, if no agent is so authorized, then by the settlor's conservator or guardian. Exercise of the settlor's power to consent by an agent, conservator or guardian shall be in each case with the approval of the court upon a finding by the court that such action is not inconsistent with the settlor's purpose or intent.

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

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

4-10-502. Spendthrift provision.

(c) Other than by valid disclaimer under W.S. 2-1-401, a beneficiary may not transfer an interest in a trust in violation of a ~~valid~~ spendthrift provision and, ~~except as otherwise provided in this article,~~ a creditor or

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assignee of the beneficiary may not reach the interest or attach a distribution by the trustee ~~before its receipt~~ unless and until it is received by the beneficiary.

4-10-503. Exceptions to spendthrift provision.

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

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

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

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

(d) This section shall not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion. ~~or failure to comply with a standard for distribution~~ However, a creditor or assignee of a beneficiary may not maintain, or compel the

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beneficiary to maintain, a proceeding on behalf of the beneficiary or the creditor or assignee.

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

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

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

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

4-10-710. Trust protector.

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

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

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

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

4-10-712. Trust advisor.

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

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

4-10-808. Powers to direct.

(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power. ~~unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would~~

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~~constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.~~

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

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

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

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

(iv) The pertinent powers of the trustee;

(vii) The trust's taxpayer identification number (optional); and

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

(d) A certification or affidavit of trust need not contain the dispositive terms of a trust or the trust's taxpayer identification number.

4-10-1101. Uniformity of application and construction.

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

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

~~4-10-505~~ 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:

(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.

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~~(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 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 ~~and statutory allowances as provided in W.S. 2-5-101 and 2-5-103 to a surviving spouse and children~~ to the extent the settlor's probate estate is inadequate to satisfy those claims, costs of administration, and expenses, ~~and allowances as provided in W.S. 2-5-101 and 2-5-103.~~

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

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

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

~~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:

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(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;

(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.**

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

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

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

Section 4. W.S. 4-10-508 is renumbered as 4-10-509.

Section 5. W.S. 4-10-502(a), 4-10-504(a), (c) and (e), 4-10-603(c) and 4-10-814(a) are repealed.

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Section 6. This act is effective July 1, 2007.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk