

ORIGINAL HOUSE
BILL NO. HB0104

ENROLLED ACT NO. 42, HOUSE OF REPRESENTATIVES

SIXTY-SIXTH LEGISLATURE OF THE STATE OF WYOMING
2021 GENERAL SESSION

AN ACT relating to trusts; amending default and mandatory rules for trusts; providing for the enforcement of foreign judgments as specified; making conforming amendments; amending provisions related to the duty of loyalty of trustees; specifying applicability of the act to existing trust relationships and the principal places of administration; amending requirements for directed trusts; and providing for an effective date.

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

Section 1. W.S. 4-10-507.1 is created to read:

4-10-507.1. Enforcement of foreign judgments; liability for compliance.

(a) Notwithstanding any other provision of law, no judgment, decree or order of a court of the United States, a court of another state or any other court other than a Wyoming court shall be enforced against the property of any trust governed by the laws of this state unless a court of competent jurisdiction in Wyoming determines that the time, manner and mechanism for enforcing the judgment, decree or order is consistent with the restrictions and limitations imposed under this article for the enforcement of the claims of any creditor and is consistent with the terms of the trust.

(b) A trustee, trust protector, trust advisor or other fiduciary of a trust, whether acting in a fiduciary capacity or not, shall not be liable for failing to comply with any judgment, decree or order of a court of the United States, a court of another state or any other court other than a Wyoming court that the trustee, trust protector or trust advisor believes in good faith to be inconsistent

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with the restrictions and limitations imposed under the terms of the trust or by this act.

Section 2. W.S. 4-10-105(b)(iii), (xi) and by creating a new paragraph (xiii), 4-10-107(c)(i), (ii) and by creating a new paragraph (iii), 4-10-108 by creating a new subsection (f), 4-10-718(a) through (c), 4-10-802(a), 4-10-814 by creating a new subsection (f) and 4-10-1103(a)(intro), (iii), (iv) and by creating a new subsection (e) are amended to read:

4-10-105. Default and mandatory rules.

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

(iii) The requirement that a trust and ~~its~~the terms of that trust be for the benefit of its beneficiaries as their interests are defined under the terms of that trust, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;

(xi) The power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice;~~and~~

(xiii) Trust protectors as provided under W.S. 4-10-710 and trust advisors as provided under W.S. 4-10-712 shall be a fiduciary as to the powers, duties and discretions granted to the trust protector or trust advisor if the trustee is an excluded fiduciary as to the powers, duties and discretions granted to the trust protector or the trust advisor.

4-10-107. Governing law.

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(c) If the law of this state governs the meaning and effect of the terms of a trust in accordance with paragraph (a)(i) or subsection (b) of this section, the trust and any transfer of property by a settlor to the trust, or any disposition made subject to the terms of the trust, shall not be void, voidable, set aside or deemed defective in any manner for any reason including:

(i) That the law of a foreign jurisdiction prohibits or does not recognize the ~~concept of a trust; or~~

(ii) That the trust, transfer of property by a settlor to the trust, or disposition made subject to the terms of the trust avoids or defeats any forced heirship or legitime right, claim or interest under the law of a foreign jurisdiction; ~~or~~

(iii) That the law or public policy of a foreign jurisdiction does not recognize or limits the validity or enforceability of any or all of the terms of the trust if the terms are valid and enforceable under the laws and public policy of this state.

4-10-108. Principal place of administration; governing law for administering trusts.

(f) The laws of this state shall govern the administration of any trust:

(i) For which the principal place of administration of the trust is Wyoming;

(ii) Whose principal place of administration has been changed to Wyoming;

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(iii) Of which a trustee's principal place of business is located in, or a trustee is a resident of, Wyoming, provided that a majority of the trustees select the laws of this state to govern the administration of the trust through a signed, written instrument, unless the terms of the trust:

(A) Specify that the law of the principal place of administration, which is a jurisdiction other than Wyoming, governs the administration of the trust;

(B) Expressly prohibit a change in the choice of law for the administration of the trust; and

(C) Expressly state that a change in the choice of law for the administration of the trust is prohibited, even if a trustee from another jurisdiction becomes a trustee of the trust.

4-10-718. Directed trusts.

(a) If a trust instrument provides that a—the fiduciary duties of a trustee or other fiduciary are to be performed by a trust protector or a trust advisor or that a trustee or other fiduciary is to follow the direction of a trust protector or a trust ~~adviser~~ advisor with respect to the performance of fiduciary duties and the trustee or other fiduciary acts in accordance with such direction, the trustee or other fiduciary shall be treated as an excluded fiduciary under the provisions of W.S. 4-10-715 and 4-10-717 with respect to the fiduciary duties performed by or directed by the trust protector or trust advisor and the trust protector or trust advisor performing or directing

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the fiduciary duties and shall become the fiduciary in place of the excluded fiduciary.

(b) Where one (1) or more persons are given authority by a trust instrument or court order ~~to either appoint a trust protector or~~ to direct, consent to or disapprove a fiduciary's actual or proposed distribution decisions or other noninvestment decisions of the fiduciary, the persons ~~or the persons appointed by them~~ given the authority shall be considered to be trust protectors under W.S. 4-10-103(a)(xxiii) and where one (1) or more persons are given the authority to appoint a trust protector, the appointed persons shall be considered to be trust protectors under W.S. 4-10-103(a)(xxiii).

(c) Where one (1) or more persons are given authority by a trust instrument or court order ~~to either appoint a trust advisor or~~ to direct, consent to or disapprove a fiduciary's actual or proposed investment decisions, the persons ~~or the persons appointed by them~~ given the authority shall be considered to be trust advisors under W.S. 4-10-103(a)(xxii) and where one (1) or more persons are given the authority to appoint a trust advisor, the appointed persons shall be considered to be trust advisors under W.S. 4-10-103(a)(xxii).

4-10-802. Duty of loyalty.

(a) A trustee shall administer the trust solely in the interests of the beneficiaries as their interests are defined under the terms of the trust.

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

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(f) Except as otherwise provided in the terms of a trust, the trustee shall not consider the assets or resources of a beneficiary in determining whether to make a distribution of trust income or principal.

4-10-1103. Application to existing relationships.

(a) Except as otherwise provided in this act and subsections (c) ~~and (d)~~ through (e) of this section, on July 1, 2003:

(iii) Any rule of administration, construction or presumption provided in this act shall not apply to trust instruments executed before July 1, 2003, unless subsection (c) ~~, or (d)~~ or (e) of this section is applicable;

(iv) An action taken before July 1, 2003, is not affected by this act and any review of actions taken before July 1, 2003 by a trustee or other person shall be reviewed under the law and standards applicable at the time the action was taken unless subsection (c) ~~, or (d)~~ or (e) of this ~~act~~ section is applicable.

(e) This act shall apply to a trust created before July 1, 2003 if the principal place of administration of the trust is changed from a jurisdiction other than Wyoming to Wyoming on or after July 1, 2003 or if on or after July 1, 2003, a person whose principal place of business is located in, or who is a resident of, Wyoming becomes a trustee of the trust or a trustee moves the trustee's principal place of business to, or becomes a resident of, Wyoming.

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Section 3. This act is effective July 1, 2021.

(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