

ORIGINAL HOUSE
BILL NO. HB0056

ENROLLED ACT NO. 26, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2019 GENERAL SESSION

AN ACT relating to the Uniform Trust Code; eliminating claims of forced heirship and legitime; providing a definition of legitime; clarifying discretionary distribution standards for a trustee; specifying review of discretionary powers of a trustee; and providing for an effective date.

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

Section 1. W.S. 4-10-103(a) by creating a new paragraph (xxxviii), 4-10-107 by creating a new subsection (c), 4-10-504(b) and (g), 4-10-505(b) and by creating a new subsection (d), 4-10-506(a)(ii) and (c)(intro), 4-10-517 and 4-10-814 by creating a new subsection (e) are amended to read:

4-10-103. Definitions.

(a) As used in this act:

(xxxviii) "Legitime" means that portion of a testator's free movable property that the testator's children are legally entitled to regardless of the terms of the will or trust.

4-10-107. Governing law.

(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

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(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.

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

(b) When the terms of the trust provide that the trustee may only make discretionary distributions to a beneficiary, whether or not the trust contains a spendthrift provision, a creditor or assignee of the trust beneficiary, including a creditor bringing a claim for forced heirship or legitime, may not compel the trustee to distribute any income or principal, or both, from the trust or reach or attach the interest of the beneficiary unless and until a trust distribution is received by the beneficiary, even if:

(g) Terms of a trust providing a trustee may make discretionary distributions to a beneficiary, whether or not the discretionary distributions are pursuant to a standard of distribution, shall not create ~~no~~any property interest in the beneficiary or any enforceable right to a distribution for the beneficiary.

4-10-505. Standards of distribution.

(b) Except as provided in subsection (a) of this section, a creditor or assignee of a beneficiary, including a creditor bringing any claim for forced heirship or legitime, 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

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by a standard of distribution, even when the beneficiary is also a trustee or cotrustee of the trust.

(d) Except as otherwise provided in the terms of the 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.

4-10-506. 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) or irrevocable trusts providing that the trustee may only make discretionary distributions to the settlor, a creditor or assignee of the settlor of an irrevocable trust without a spendthrift provision, other than a creditor bringing any claim for forced heirship or legitime, 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.

(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, including a creditor bringing any claim for forced heirship or legitime, are limited by W.S. 4-10-504(b) if:

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

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(a) 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 those 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.

(b) A creditor or assignee of a settlor of a trust or a beneficiary of a qualified spendthrift trust shall have no right to raise a claim for forced heirship or legitime. No creditor, assignee or agent shall have any claim or cause of action for forced heirship or legitime against the trustee, trust protector, trust advisor or other fiduciary of the qualified spendthrift trust or against any person involved in the counseling, drafting, administration, preparation, execution or funding of the trust. Any property transferred to the qualified spendthrift trust is not subject to the claims of a creditor, assignee or agent for forced heirship or legitime.

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

(e) A court may review a trustee's exercise of discretion concerning a discretionary distribution only if the trustee acts dishonestly, with improper motive or fails to use judgment.

Section 2. This act is effective July 1, 2019.

(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