

ENROLLED ACT NO. 53, HOUSE OF REPRESENTATIVES

SIXTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING  
2023 GENERAL SESSION

AN ACT relating to trusts; amending default and mandatory rules for trusts; amending provisions related to the duty of loyalty of trustees; amending who can modify or terminate a trust as specified; amending applicability of provisions as specified; amending definitions; 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)(xxxii), (xxxv)(B)(I) through (IV), 4-10-105(b)(xiii), 4-10-302, 4-10-411(b), 4-10-412(c), (f) and by creating a new subsection (g), 4-10-506 by creating a new subsection (g), 4-10-704(c) by creating a new paragraph (ii) and by renumbering (ii) and (iii) as (iii) as (iv), 4-10-718 by creating a new subsection (g) and 4-10-813 by creating a new subsection (e) are amended to read:

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

(a) As used in this act:

(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. A holder of a power of appointment shall not be deemed a fiduciary unless otherwise provided for in the trust instrument;

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

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

ENROLLED ACT NO. 53, HOUSE OF REPRESENTATIVES

SIXTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING  
2023 GENERAL SESSION

(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;

(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.

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

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

(xiii) Subject to W.S. 4-10-718, 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.

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

The holder of a ~~general testamentary~~ power of appointment may represent and bind persons whose interests, as

ENROLLED ACT NO. 53, HOUSE OF REPRESENTATIVES

SIXTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING  
2023 GENERAL SESSION

permissible appointees, takers in default, or otherwise, are subject to the power.

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

(b) A proceeding to approve or disapprove a proposed modification or termination under W.S. 4-10-412 through 4-10-417, or trust combination or division under W.S. 4-10-418, may be commenced by the settlor, a trustee or beneficiary, ~~and a proceeding to approve or disapprove a proposed modification or termination under W.S. 4-10-412 may be commenced by the settlor.~~ The settlor of a charitable trust may maintain a proceeding to modify the trust under W.S. 4-10-414.

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

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

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

ENROLLED ACT NO. 53, HOUSE OF REPRESENTATIVES

SIXTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING  
2023 GENERAL SESSION

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

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

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

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

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

**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:

(ii) By a person appointed by the trust settlor, if the settlor may make the appointment without disqualifying the trust for a federal income, estate, gift

ENROLLED ACT NO. 53, HOUSE OF REPRESENTATIVES

SIXTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING  
2023 GENERAL SESSION

or generation-skipping transfer tax benefit claimed for the trust;

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

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

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

(g) Notwithstanding the other provisions of this section, a trust instrument may provide that one (1) or more trust protectors or trust advisors with the power to direct, consent to or disapprove of the actual or proposed distribution decisions of a trustee or other fiduciary are not acting in a fiduciary capacity, in which case the trustee or other fiduciary shall not be treated as an excluded fiduciary with respect to the direction, consent or disapproval by the trust protector or trust advisor.

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

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

ORIGINAL HOUSE  
BILL NO. HB0101

ENGROSSED

ENROLLED ACT NO. 53, HOUSE OF REPRESENTATIVES

SIXTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING  
2023 GENERAL SESSION

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

(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