

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
90th General Assembly  
Regular Session, 2015

# A Bill

SENATE BILL 260

By: Senator J. Hutchinson

## For An Act To Be Entitled

AN ACT TO PROTECT THE INTERESTS OF TRUST SETTLORS  
FROM FEDERAL TAXATION; AND FOR OTHER PURPOSES.

### Subtitle

TO PROTECT THE INTERESTS OF TRUST  
SETTLORS FROM FEDERAL TAXATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 28-73-505 is amended to read as follows:  
28-73-505. Creditor's claim against settlor.

(a) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

(1) during the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors. If a trust has more than one (1) settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution; and

(2) with respect to an irrevocable trust, a creditor or assignee of the settlor may reach 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 not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(b) For purposes of this section:

(1) during the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a



revocable trust to the extent of the property subject to the power; and

~~(2) upon~~ on the lapse, release, or waiver of ~~the a~~ a power, ~~the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in Section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986 or Section 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on January 1, 2005~~ of withdrawal, the holder of a power of withdrawal is not, by reason of any such power of withdrawal, treated as the settlor of the trust.

(c)(1) Subject to § 4-59-204, for the purposes of this section, property contributed to the following trusts is not deemed to have been contributed by the settlor, and a person who would otherwise be treated as a settlor or a deemed settlor of the following trusts shall not be treated as a settlor:

(A) an irrevocable trust that is treated as qualified terminable interest property under section 2523(f) of the Internal Revenue Code of 1986 as in effect on January 1, 2015, if the settlor is a beneficiary of the trust after the death of the settlor's spouse;

(B) an irrevocable trust that is treated as a general power of appointment trust under section 2523(e) of the Internal Revenue Code of 1986 as in effect on January 1, 2015, if the settlor is a beneficiary of the trust after the death of the settlor's spouse; and

(C) an irrevocable trust for the benefit of a person to the extent that the property of the trust was subject to a general power of appointment in another person.

(2) For purposes of this subsection (c), a person is a beneficiary whether named under the initial trust instrument or through the exercise of a limited or general power of appointment by that person's spouse or by another person.

(3) For purposes of subdivision (c)(1)(C) of this section, a general power of appointment means a power of appointment exercisable in favor of the holder of the power, the estate of the holder of the power, a creditor of the holder of the power, or a creditor of the estate of the holder of the power.