

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

State of Arkansas
94th General Assembly
Regular Session, 2023

A Bill

HOUSE BILL 1019

By: Representative Maddox

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING THE CREATION OF A SPENDTHRIFT TRUST; TO CREATE THE ARKANSAS SPENDTHRIFT TRUST ACT; TO AMEND THE UNIFORM STATUTORY RULE AGAINST PERPETUITIES; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING THE CREATION OF A SPENDTHRIFT TRUST; TO CREATE THE ARKANSAS SPENDTHRIFT TRUST ACT; AND TO AMEND THE UNIFORM STATUTORY RULE AGAINST PERPETUITIES.

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

SECTION 1. Arkansas Code Title 18, Chapter 3 is amended to read as follows:

18-3-101. Statutory rule against perpetuities.

~~(a) A nonvested property interest is invalid unless:~~

~~(1) when the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive;~~
~~or~~

~~(2) the interest either vests or terminates within 90 years after its creation.~~

~~(b) A general power of appointment not presently exercisable because of a condition precedent is invalid unless:~~

~~(1) when the power is created, the condition precedent is certain to be satisfied or becomes impossible to satisfy no later than 21~~



~~years after the death of an individual then alive; or~~

~~(2) the condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.~~

~~(c) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:~~

~~(1) when the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive; or~~

~~(2) the power is irrevocably exercised or otherwise terminates within 90 years after its creation.~~

~~(d) In determining whether a nonvested property interest or a power of appointment is valid under subdivision (a)(1), (b)(1), or (c)(1) of this section, the possibility that a child will be born to an individual after the individual's death is disregarded.~~

~~(e) If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument (i) seeks to disallow the vesting or termination of any interest or trust beyond, (ii) seeks to postpone the vesting or termination of any interest or trust until, or (iii) seeks to operate in effect in any similar fashion upon, the later of (A) the expiration of a period of time not exceeding 21 years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement or (B) the expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement, that language is inoperative to the extent it produces a period of time that exceeds 21 years after the death of the survivor of the specified lives~~

The common law rule against perpetuities is not in force in this state.

18-3-102. ~~When nonvested property interest or power of appointment created~~ Limitation on suspension of absolute power of alienation.

~~(a) Except as provided in subsections (b) and (c) of this section and in § 18-3-105(a), the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.~~

~~(b) For purposes of this chapter, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of (i) a nonvested property interest or (ii) a property~~

~~interest subject to a power of appointment described in § 18-3-101(b) or § 18-3-101(c), the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.~~

~~(c) For purposes of this chapter, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.~~

~~(d) For purposes of this chapter, if a nongeneral power of appointment or a general testamentary power of appointment is used to create another nongeneral power of appointment or general testamentary power of appointment, the nonvested property interest or power of appointment created through the exercise of the other nongeneral power of appointment or general testamentary power of appointment is considered to have been created at the same time the first nongeneral power of appointment or general testamentary power of appointment was created.~~

The absolute power of alienation may not be suspended by any limitation or condition for a longer period than during the continuance of the lives of persons in being plus a period of thirty (30) years at the creation of the limitation or condition.

18-3-103. Reformation Permitted suspension of absolute power of alienation.

~~Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the 90 years allowed by § 18-3-101(a)(2), § 18-3-101(b)(2), or § 18-3-101(c)(2) if:~~

~~(1) a nonvested property interest or a power of appointment becomes invalid under § 18-3-101;~~

~~(2) a class gift is not but might become invalid under § 18-3-101 and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or~~

~~(3) a nonvested property interest that is not validated by § 18-3-101(a)(1) can vest but not within 90 years after its creation~~

(a) Every future interest is void which suspends the absolute power of alienation for a longer period than prescribed in § 18-3-103.

(b) A power of alienation is suspended when there are no persons in being to whom an absolute interest in possession can be conveyed.

~~18-3-104. Exclusions from statutory rule against perpetuities~~
Suspension of term of years ownership.

~~Section 18-3-101 does not apply to:~~

~~(1) a nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of (i) a premarital or postmarital agreement, (ii) a separation or divorce settlement, (iii) a spouse's election, (iv) a similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties, (v) a contract to make or not to revoke a will or trust, (vi) a contract to exercise or not to exercise a power of appointment, (vii) a transfer in satisfaction of a duty of support, or (viii) a reciprocal transfer;~~

~~(2) a fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;~~

~~(3) a power to appoint a fiduciary;~~

~~(4) a discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;~~

~~(5) a nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;~~

~~(6) a nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an~~

~~election of a participant or a beneficiary or spouse;~~

~~(7) a property interest, power of appointment, or arrangement that was not subject to the common law rule against perpetuities or is excluded by another statute of this State; or~~

~~(8)(A) a nonvested property interest or power of appointment provided in a trust created or administered in this state so long as the trust:~~

~~(i) has one (1) or more trustees who are able to convey an absolute fee in possession of land, or full ownership of personal property;~~

~~(ii) has one (1) or more trustees with express or implied power to sell the trust assets; or~~

~~(iii) vests in one (1) or more persons in being the unlimited power to terminate the trust.~~

~~(B) if the power of alienation is suspended during the life of the trust, the rule against perpetuities under § 18-3-101 will begin to run from the date of suspension.~~

~~(C) the exception created in this subdivision (8) applies to a trust created in Arkansas on or after August 1, 2017 and to any other trust whose principal place of administration is transferred to Arkansas on or after August 1, 2017, regardless of when the trust was created~~

The absolute ownership of a term of years cannot be suspended for a longer period than the absolute power of alienation can be suspended in respect to a fee.

18-3-105. Prospective application Suspension of power to alienate subject of trust.

~~(a) Except as extended by subsection (b) of this section, this chapter applies to a nonvested property interest or a power of appointment that is created on or after March 9, 2007. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.~~

~~(b) If a nonvested property interest or a power of appointment was created before March 9, 2007, and is determined in a judicial proceeding, commenced on or after March 9, 2007, to violate this State's rule against perpetuities as that rule existed before March 9, 2007, a court upon the~~

~~petition of an interested person may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created~~

The suspension of all power to alienate the subject of a trust is a suspension of the power of alienation.

(b) However, there is no suspension of the power of alienation by a trust or by equitable interests under a trust if the trustee has the power to sell, either expressed or implied, or if there is an unlimited power to terminate in one (1) or more persons in being.

~~18-3-106. Short title~~ Computation of period for interest or trust created under power of appointment.

~~This chapter may be cited as the Uniform Statutory Rule Against Perpetuities~~ If a future interest or trust is created by the exercise of a power of appointment, the permissible period is computed from the time the power is:

(1) Exercised, if the power is a general power including without limitation a testamentary general power; or

(2) Created if the power is not a general power.

~~18-3-107. Uniformity of application and construction~~ Final distribution of trust assets.

~~This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it~~

If at the expiration of the period in which an instrument or a provision of the instrument created by a trust or other legal relationship is not to be rendered invalid by this chapter, measured by actual events rather than possible events, any of the assets which have not by the terms of the instrument become distributable or vested shall then be distributed as the court having jurisdiction directs, giving effect to the general intent of the creator of the trust or other instrument.

~~18-3-109. Superecession of common law~~ Transfers exempt from chapter.

~~This chapter supersedes the rule of the common law known as the rule against perpetuities~~

This chapter does not limit any of the following:

- (1) Transfers, outright or in trust, for charitable purposes;
- (2) Transfers to charitable corporations;
- (3) Transfers to a cemetery corporation, society or association;

or

(4) Employees' trusts created as part of a pension, retirement, insurance, savings, stock bonus, profit sharing, or similar plan established by an employer for the benefit of employees eligible to participate.

18-3-110. Instruments

If an action or proceeding has not been instituted by July 1, 2024, to declare void an instrument which existed before July 1, 2023, then the instrument shall be interpreted under this chapter.

SECTION 2. Arkansas Code Title 28, Chapter 72, is amended to add an additional subchapter to read as follows:

Subchapter 7 – Arkansas Spendthrift Trust Act

28-72-701. Title.

This subchapter shall be known and may be cited as the "Arkansas Spendthrift Trust Act".

28-72-702. Applicability.

(a) Unless the writing expressly states to the contrary, this subchapter governs the construction, operation and enforcement of a spendthrift trust in this state whether the spendthrift trust is created inside or outside this state if:

(1) All or part of the land, rents, issues, or profits affected are in this state;

(2) All or part of the personal property and other produce of the personal property are in this state;

(3) The declared domicile of the creator of a spendthrift trust affecting personal property is in this state; or

(4) At least one (1) trustee qualified under subsection (b) of

this section has powers that include without limitation:

- (A) Maintaining trust records;
- (B) Preparing income tax returns for the trust; and
- (B) Administering all or part of the trust in this state.

(b) If the settlor is a beneficiary of the trust, at least one (1) trustee of a spendthrift trust shall be a:

(1) Natural person who resides and has his or her domicile in this state;

(2) Trust company that:

(A) Is organized under federal law or under the laws of this state or another state; and

(B) Maintains an office in this state for the transaction of business; or

(3) Bank that:

(A) Is organized under federal law or under the laws of this state or another state;

(B) Maintains an office in this state for the transaction of business; and

(C) Possesses and exercises trust powers.

(c) As used in this section, "trust company" does not include a foreign independent trust company authorized to engage only in the solicitation of trust company business in this state.

28-72-703. Definitions.

As used in this subchapter:

(1) "Adviser" means a person, including without limitation an accountant, attorney, or investment adviser, who gives advice concerning or who was involved in the creation of, transfer of property to, or administration of the spendthrift trust or who participated in the preparation of accountings, tax returns, or other reports related to the spendthrift trust;

(2) "Creditor" means a person or entity who has a claim;

(3) "Remainder beneficiary" means a person entitled to receive trust principal when trust income interest ends;

(4) "Settlor" means:

(A) The person who creates a spendthrift trust as

described in the trust instrument; or

(B) A person who contributes assets to the spendthrift trust as to the assets he or she contributed to the spendthrift trust except to the extent of consideration received for the assets contributed by that person;

(5) "Spendthrift trust" means trust in which by the terms of the trust a valid restraint on the voluntary and involuntary transfer of the interest of the beneficiary is imposed;

(6) "Writing" as used in this subchapter, unless the context otherwise requires, when the term is used in reference to a will, trust, or instrument.

28-72-704. Creation.

(a) A person competent by law to execute a will or deed may by an executed writing create a spendthrift trust in real, personal, or mixed property for the benefit of:

(1) A person other than the settlor;

(2) The settlor if the writing is irrevocable and does not:

(A) Require that any part of the income or principal of the trust be distributed to the settlor; and

(B) Hinder, delay, or defraud known creditors; or

(3) Both the settlor and another person if the writing meets the requirements of subdivision (a)(2) of this section.

(b) A writing meets the requirements of subdivision (a)(2) of this section even if under the terms of the writing the settlor:

(1) May prevent a distribution from the trust;

(2) Holds a special lifetime or testamentary power of appointment that cannot be exercised in favor of the settlor, the settlor's estate, a creditor of the settlor, or a creditor of the settlor's estate;

(3) Is a beneficiary of a trust that qualifies as a charitable remainder trust under 26 U.S.C § 664 even if the settlor has the right to release the settlor's retained interest in the charitable remainder trust, in whole or in part, in favor of one (1) or more of the remainder beneficiaries of the charitable remainder trust;

(4) May receive a percentage of the value of the trust each year as specified in the trust instrument of the initial value of the trust assets

or the value of the trust assets determined from time to time under the trust instrument, but not exceeding:

(A) The amount that may be defined as income under 26 U.S.C. § 643(b); or

(B) With respect to benefits from any qualified retirement plan or eligible deferred compensation plan, the minimum required distribution as defined in 26 U.S.C. § 4974(b);

(5) May receive income or principal from a grantor retained annuity trust paying out a qualified annuity interest within the meaning of 26 C.F.R. § 25.2702-3(b) or a grantor retained unitrust paying out a qualified unitrust interest within the meaning of 26 C.F.R. § 25.2702-3(c);

(6) May use real property held under a qualified personal residence trust as described in 26 C.F.R. § 25.2702-5(c), or the settlor may possess a qualified annuity interest within the meaning of the term as described in 26 C.F.R. § 25.2702-3(b);

(7) May receive income or principal from the trust but only subject to the discretion of another person; or

(8) May use real or personal property owned by the trust.

(c) Except for the power of the settlor to make distributions to himself or herself without the consent of another person, this section does not prohibit the settlor of a spendthrift trust from holding other powers under the spendthrift trust, whether or not the settlor is a cotrustee, including without limitation the power to:

(1) Remove and replace a trustee;

(2) Direct trust investments; and

(3) Execute other trust management powers.

(d)(1) The creation of a spendthrift trust does not require specific language.

(2) A spendthrift trust is created if by the terms of the writing the settlor manifests an intention to create a spendthrift trust.

28-72-705. Settlor - powers.

(a) The settlor of a spendthrift has the powers and rights conferred to the settlor by the trust instrument.

(b) An agreement or understanding express or implied between the settlor and the trustee that attempts to grant or permit the retention of

greater rights or authority than is stated in the trust instrument is void.

28-72-706. Beneficiaries.

(a) The beneficiary of a spendthrift trust shall be named or clearly referred to in the writing.

(b) A spouse, former spouse, child, or dependent of the settlor shall not be a beneficiary of the spendthrift trust unless named or clearly referred to as a beneficiary in the writing.

(c) The provision for the beneficiary in a spendthrift trust shall:

(1) Be for the support, education, maintenance and benefit of the beneficiary and without reference to or limitation by the beneficiary's needs, station in life, or mode of life, or the needs of any other person, whether depended upon the beneficiary or not; and

(2) Extend to all of the income from the trust estate devoted for that purpose by the creator of the spendthrift trust, without exception or deduction other than for:

(A) Costs or fees regularly earned paid or incurred by the trustee for administration of or protection of the trust estate;

(B) Taxes on the costs or fees regularly earned paid or incurred by the trustee for administration of or protection of the trust estate; or

(C) Taxes on the interest of the beneficiary.

(d) The existence of a spendthrift trust does not depend on the beneficiary's:

(1) Character;

(2) Capacity; or

(3) Competency;

28-72-707. Discretion of trustee.

(a) The trustee's discretionary power is absolute whether a valid provision for the accumulation of trust income is made or not and whether the provision relates to the trust income from real or personal property in all cases where the creator of a spendthrift trust:

(1) Indicates the sum to be applied for or paid to the beneficiary or makes the application or payment of sums or further sums for or to the beneficiary discretionary with the trustee;

(2) Makes the amount of trust income to be applied for or paid to the beneficiary discretionary with the trustee; or

(3) Gives the trustee discretion to pay all or any part of the trust income to any one (1) or more of the beneficiaries.

(b) The discretion of a trustee under subsection (a) of this section shall not be interfered with for any consideration of the needs, station in life, or mode of life of the beneficiary, or for uncertainty, or any pretext.

(c) A spendthrift trust is not invalidated by giving a trustee the discretion granted under subsection (a) of this section.

(d) The trustee of a spendthrift trust is required to disregard and defeat every assignment or other act, voluntary or involuntary, that is attempted contrary to the provisions of this subchapter.

28-72-708. Restraints on alienation.

(a)(1) A spendthrift trust restrains and prohibits the assignment, alienation, acceleration, or anticipation of any interest of the beneficiary under the spendthrift trust by the voluntary or involuntary act of the beneficiary, by operation of law, or any other circumstance.

(2) The trust estate, corpus, or capital of a spendthrift trust shall not be assigned, aliened, diminished, or impaired by any alienation, transfer, or seizure so as to cut off or diminish the payments, rents, profits, earnings, or income of the trust estate that would otherwise be currently available for the benefit of the beneficiary.

(b) A mandatory or discretionary payment by the trustee to the beneficiary shall be made only to or for the benefit of the beneficiary and not:

(1) By acceleration or anticipation;

(2) To an assignee of the beneficiary; or

(3) Upon an order, written or oral, given by the beneficiary whether the assignment or order is a voluntary contractual act of the beneficiary or is through any legal process, including without limitation:

(A) Judgment;

(B) Execution;

(C) Attachment;

(D) Garnishment;

(E) Bankruptcy; or

(F) Contract, tort, or duty.

(c)(1) The beneficiary shall not have the power or capacity to make any disposition of the trust income:

(A) By his or her order, voluntary or involuntary; or

(B) Upon the order or direction of any court or courts, whether of bankruptcy or otherwise.

(2) The interest of the beneficiary shall not be:

(A) Subject to any process of attachment issued against the beneficiary; or

(B) Taken in execution under any form of legal process directed against the beneficiary or against the trustee, or trust estate, or any part of the income of the trust estate.

28-72-709. Legal estate of beneficiary in corpus.

(a) A beneficiary of a spendthrift trust shall not have a legal estate in the capital, principal, or corpus of the trust estate unless under the terms of the spendthrift trust the beneficiary or a person deriving title from the beneficiary is entitled to have the title conveyed or transferred to him or her immediately or after a term of years or after a life in being.

(b) The income of the corpus of the trust estate shall not be paid to the beneficiary or any other beneficiary in the meantime.

28-72-710. Perpetuities.

(a) A spendthrift trust may not continue for a period longer than that allowed under § 18-3-101 et seq.

(b)(1) The free alienation of the legal estate by the trustee may not be suspended for a period exceeding the limit prescribed in any constitutional or statutory prohibition against perpetuities existing in this state or in the state where the lands affected by the trust are situate.

(2) However, a contingent remainder in fee may be created on a prior remainder in fee to take effect if the persons to whom the first remainder is limited die under the age of twenty-one (21) years, or upon any other contingency by which the estate of those persons may be determined before they attain that age.

28-72-711. Accumulation of income.

(a) An accumulation of the income of trust property may be directed in the will or other writing creating a spendthrift trust for the benefit of one (1) or more beneficiaries, to commence within the time permitted for the vesting of future interests, not to extend beyond the period limiting the time within which the absolute power of alienation of property may be suspended.

(b) If the direction is for a longer term than is permitted by law, it is void only as to the excess time, whether the direction is separable from the other clauses in the spendthrift trust or not, and in such cases or invalidity the trust income may be paid and distributed to the next succeeding beneficiary in interest.

28-72-712. Settlor may make different provisions.

The principles stated in §§ 28-72-701 - 28-72-711 shall not prevent the settlor of a spendthrift trust, by will or other writing, from making other or different provisions, provided he or she uses express, specific language to that end.

28-72-713. Transfer of property to trust.

(a) A claimant may not bring an action with respect to a transfer of property to a spendthrift trust if the person:

(1) Is a creditor when the transfer of property is made unless the action is commenced within:

(A) Two (2) years after the transfer of property is made;

or

(B) Six (6) months after the person discovers or reasonably should have discovered the transfer or property, whichever is later; or

(2) Becomes a creditor after the transfer of property is made, unless the action is commenced within two (2) years after the transfer of property is made.

(b) A claimant discovers a transfer of property under subsection (a) of this section at the time a public record is made of the transfer of property, including without limitation at the time:

(1) The conveyance of real property is recorded in the office of the county recorder of the county in which the property is located; or

(2) A financing statement is filed under the Uniform Commercial Code, § 4-1-101 et seq.

(c)(1) A creditor may not bring an action with respect to a transfer of property to a spendthrift trust unless a creditor can prove by clear and convincing evidence that the transfer of property:

(A) Was a fraudulent transfer under the Uniform Voidable Transactions Act, § 4-59-201 et seq.; or

(B) Violates a legal obligation owed to the creditor under a contract or a valid court order that is legally enforceable by that creditor.

(2) In the absence of clear and convincing evidence, the property transferred is not subject to the claims of the creditor.

(3) Clear and convincing evidence by one (1) creditor that a transfer of property was fraudulent or wrongful does not constitute clear and convincing evidence as to any other creditor and clear and convincing evidence of a fraudulent or wrongful transfer of property as to one (1) creditor shall not invalidate any other transfer of property.

(d)(1) If property transferred to a spendthrift trust is conveyed to the settlor or to a beneficiary for the purpose of obtaining a loan secured by a mortgage or deed of trust on the property and then reconveyed to the spendthrift trust for the purpose of bringing an action under subsection (a) of this section, the transfer is disregarded and the reconveyance relates back to the date the property was originally transferred to the spendthrift trust.

(2) The mortgage or deed of trust on the property shall be enforceable against the spendthrift trust.

(e) A person may not bring a claim against an adviser to the settlor or trustee of a spendthrift trust unless the person can show by clear and convincing evidence that the adviser acted in violation of the laws of this state, knowingly and in bad faith, and the adviser's actions directly caused the damages suffered by the person.

(f)(1) A person other than a beneficiary or settlor may not bring a claim against a trustee of a spendthrift trust unless the person can show by clear and convincing evidence that the trustee acted in violation of the laws of this state, knowingly and in bad faith, and the trustee's actions directly caused the damages suffered by the person.

(2) As used in this subsection, "trustee" includes a cotrustee, if any, and a predecessor trustee.

(g) If more than one (1) transfer of property is made to a spendthrift trust:

(1) The subsequent transfer of property to the spendthrift trust shall be disregarded for the purpose of determining whether a person may bring an action under subsection (a) of this section with respect to a prior transfer of property to the spendthrift trust; and

(2) Any distribution to a beneficiary from the spendthrift trust is considered to have been made from the most recent transfer of property made to the spendthrift trust.

(h) Notwithstanding any other provision of law, no action of any kind, including without limitation an action to enforce a judgment entered by a court or other body having adjudicative authority, may be brought at law or in equity against the trustee of a spendthrift trust if, as of the date the action is brought, an action by a creditor with respect to a transfer of property to the spendthrift trust would be prohibited under this section.

(i) For purposes of this section, if a trustee exercises his or her discretion or authority to distribute income or principal from the spendthrift trust to or for a beneficiary of the spendthrift trust, by appointing the property of the original spendthrift trust in favor of a second spendthrift trust for the benefit of one (1) or more of the beneficiaries under the Trustee Division of Trusts Act, § 28-69-701, the time of the transfer shall have occurred on the date the settlor of the original spendthrift trust transferred assets into the original spendthrift trust, regardless of the fact that the property of the original spendthrift trust may have been transferred to a second spendthrift trust.

28-72-714. Trust administered under laws of another state or foreign jurisdiction.

(a) A trust administered under the laws of another state or under the laws of a foreign jurisdiction is a spendthrift trust under this subchapter if:

(1) The trustee of the trust complies with any requirements set forth in the trust instrument and any requirements of the laws of the state or jurisdiction from which the trust is being transferred;

(2) The trustee or other person having the power to transfer the domicile of the trust declares the intent to transfer domicile of the trust in writing;

(3) The writing declaring the intent to transfer the domicile of the trust is delivered to the trustee, if it is executed by a person other than the trustee; and

(4) All requirements of this chapter are satisfied simultaneously with or immediately after the change of domicile.

(b) For purposes of § 28-72-713, if the domicile of an existing trust is transferred from another state or from a foreign jurisdiction to this state and the laws of the other state or jurisdiction are similar to the provisions of this subchapter, the transfer of the trust has occurred:

(1) On the date on which the settlor of the trust transferred assets into the trust if the applicable law of the trust has at all times been substantially similar to the provisions of this subchapter; or

(2) On the earliest date on which the applicable laws of the trust were substantially similar to the provisions of this subchapter.

SECTION 3. Arkansas Code Title 28, Chapter 73, Subchapter 5, is repealed.

~~28-73-501. Rights of beneficiary's creditor or assignee.~~

~~To the extent a beneficiary's interest is not protected by a spendthrift provision, a court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances.~~

~~28-73-502. Spendthrift provision.~~

~~(a) A spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest.~~

~~(b) A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust", or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.~~

~~(c) A beneficiary may not transfer an interest in a trust in violation~~

~~of a valid spendthrift provision and, except as otherwise provided in this subchapter, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.~~

~~28-73-504. Discretionary trusts—Effect of standard.~~

~~(a) Whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:~~

~~(1) the discretion is expressed in the form of a standard of distribution; or~~

~~(2) the trustee has abused the discretion.~~

~~(b) This section does 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. Under § 28-73-814(a), a trustee must always exercise a discretionary power in good faith and with regard to the purposes of the trust and the interests of the beneficiaries.~~

~~(c) A creditor may not reach the interest of a beneficiary who is also a trustee or cotrustee, or otherwise compel a distribution, if the trustee's discretion to make distributions for the trustee's own benefit is limited by an ascertainable standard.~~

~~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.~~

~~(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.~~

~~(2) On the lapse, release, or waiver of a power 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;~~

~~(C) an irrevocable trust for the benefit of a person to the extent that the property of the trust was subject to a limited power of appointment or 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.~~

~~(4) As used in subdivision (c)(1)(C) of this section, "limited power of appointment" means a power of appointment that is not a general power of appointment.~~

~~28-73-506.—Overdue distribution.~~

~~Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.~~

~~28-73-507.—Personal obligations of trustee.~~

~~Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.~~