

**First Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 07-0701.01 Richard Sweetman

SENATE BILL 07-150

SENATE SPONSORSHIP

Mitchell S., Gordon, and McElhany

HOUSE SPONSORSHIP

Hodge, Balmer, and Marshall

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING PROTECTING THE INTENTIONS OF PERSONS WHO CREATE**
102 **TRUSTS IN COLORADO.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Adds statutory provisions relating to the administration of mandatory, support, discretionary, and special needs trusts. Limits the ability of creditors to attach distributions from first-party special needs trusts. Preserves common law doctrines regarding trust planning.

1 *Be it enacted by the General Assembly of the State of Colorado:*

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

1 **SECTION 1.** Article 16 of title 15, Colorado Revised Statutes, is
2 amended BY THE ADDITION OF A NEW PART to read:

3 PART 5
4 MANDATORY, SUPPORT, DISCRETIONARY,
5 AND SPECIAL NEEDS TRUSTS

6 **15-16-501. Legislative declaration.** (1) THE GENERAL
7 ASSEMBLY HEREBY FINDS AND DECLARES THAT, BY RETAINING,
8 IMPROVING, AND PROTECTING MANDATORY, SUPPORT, AND
9 DISCRETIONARY TRUSTS, AS WELL AS SPECIAL NEEDS TRUSTS, WHICH
10 PERMIT A FAMILY TO EXPRESS ONGOING PERSONAL CONCERN AND PROVIDE
11 SUPPLEMENTAL SUPPORT FOR A PERSON WITH DISABILITIES, THE STATE
12 CAN:

13 (a) BOLSTER THE ABILITY OF FAMILIES TO HELP THEIR RELATIVES
14 ACCESS SERVICES, MAINTAIN A BETTER QUALITY OF LIFE, AND IN SOME
15 CASES, REMAIN IN A COMMUNITY AND CONTINUE TO ENJOY THE
16 ATTENDANT SOCIETAL AND FINANCIAL BENEFITS THEREOF;

17 (b) PROTECT FIRST-PARTY SPECIAL NEEDS TRUSTS FROM THE
18 CLAIMS OF A CREDITOR DURING THE BENEFICIARY'S LIFE, THEREBY:

19 (I) ENSURING THAT THE REMAINING FUNDS WILL BE AVAILABLE TO
20 REIMBURSE THE STATE FOR MEDICAID COSTS;

21 (II) FACILITATING FUTURE CARE PLANNING EFFORTS FOR DISABLED
22 INDIVIDUALS THROUGHOUT THE STATE; AND

23 (III) ENSURING THAT THE WISHES OF PERSONS WHO CREATE
24 TRUSTS ARE RESPECTED.

25 (2) THE GENERAL ASSEMBLY FURTHER FINDS THAT, BY CODIFYING
26 COLORADO COMMON LAW CONCERNING THE ADMINISTRATION OF
27 IRREVOCABLE TRUSTS, IT CAN ENSURE THAT MORE COLORADANS WILL

1 KEEP TRUSTS IN COLORADO RATHER THAN LEAVE COLORADO TO FIND A
2 STATE WITH MORE FAVORABLE TRUST LAWS. THE RETENTION OF
3 COLORADO TRUST BUSINESS ENSURES THAT MORE COLORADANS WILL
4 CONTINUE TO FUND IRREVOCABLE LIFE INSURANCE TRUSTS WITH
5 COLORADO-ISSUED INSURANCE PRODUCTS. AS A RESULT, THE STATE WILL
6 RETAIN THE INCOME TAX DERIVED FROM THE SALE OF THESE LIFE
7 INSURANCE PRODUCTS AS WELL AS THE INCOME TAX REVENUE FROM MANY
8 COLORADO TRUSTS.

9 (3) THE GENERAL ASSEMBLY, THEREFORE:

10 (a) HEREBY EXPRESSES ITS DISAPPROVAL OF THE PROVISIONS OF
11 ARTICLES 50, 56, 58, 59, AND 60 OF THE OFFICIAL PUBLICATION OF THE
12 "RESTATEMENT OF TRUSTS (THIRD)" AND THE PROVISIONS OF ARTICLE 5
13 AND SECTION 814 (a) OF THE UNIFORM TRUST CODE FOR THE PURPOSE OF
14 RESOLVING DISPUTES INVOLVING IRREVOCABLE TRUSTS; AND

15 (b) FINDS THAT THE ADOPTION OF THE FOLLOWING STATUTORY
16 PROVISIONS FOR THE ADMINISTRATION OF MANDATORY, SUPPORT,
17 DISCRETIONARY, AND SPECIAL NEEDS TRUSTS IS IN THE BEST INTERESTS OF
18 THE STATE OF COLORADO AND ITS CITIZENS.

19 **15-16-502. Definitions.** AS USED IN THIS PART 5, UNLESS THE
20 CONTEXT OTHERWISE REQUIRES:

21 (1) "BENEFICIAL INTEREST" MEANS A DISTRIBUTION INTEREST OR
22 A REMAINDER INTEREST. A "BENEFICIAL INTEREST" DOES NOT MEAN A
23 POWER OF APPOINTMENT OR A POWER RESERVED BY A SETTLOR.

24 (2) "BENEFICIARY" MEANS A PERSON WHO HAS A PRESENT OR
25 FUTURE BENEFICIAL INTEREST IN A TRUST, WHICH INTEREST MAY BE
26 VESTED OR CONTINGENT. THE HOLDER OF A POWER OF APPOINTMENT IS
27 NOT A BENEFICIARY.

1 (3) "CHILD SUPPORT CLAIMANT" MEANS A BENEFICIARY'S CHILD
2 WHO HAS A JUDGMENT OR COURT ORDER AGAINST THE BENEFICIARY FOR
3 SUPPORT. FOR THE PURPOSES OF THIS PART 5, "CHILD SUPPORT CLAIMANT"
4 INCLUDES ANY PERSON FOR WHOM A JUDGMENT OR COURT ORDER FOR
5 CHILD SUPPORT HAS BEEN ENTERED IN ANY JURISDICTION.

6 (4) "CURRENT DISTRIBUTION INTEREST" MEANS A DISTRIBUTION
7 INTEREST FOR WHICH A BENEFICIARY IS AN ELIGIBLE DISTRIBUTE OR A
8 PERMISSIBLE DISTRIBUTE OF TRUST INCOME OR PRINCIPAL UPON THE
9 DATE A TRUSTEE CHOOSES TO MAKE A DISTRIBUTION.

10 (5) "DISCRETIONARY INTEREST" MEANS ANY INTEREST WHEREBY
11 A TRUSTEE HAS DISCRETION TO MAKE OR WITHHOLD A DISTRIBUTION. A
12 "DISCRETIONARY INTEREST" INCLUDES AN INTEREST CREATED BY
13 PERMISSIVE LANGUAGE, SUCH AS "MAY MAKE DISTRIBUTIONS", OR AN
14 INTEREST CREATED BY MANDATORY LANGUAGE THAT IS INCONSISTENT
15 WITH THE SETTLOR'S INTENT TO CREATE A DISCRETIONARY INTEREST IN A
16 TRUST, SUCH AS "THE TRUSTEE SHALL MAKE DISTRIBUTIONS IN THE
17 TRUSTEE'S SOLE AND ABSOLUTE DISCRETION".

18 (6) "DISTRIBUTION INTEREST" MEANS A BENEFICIARY'S RIGHT TO
19 OR EXPECTANCY OF A DISTRIBUTION, SUBJECT TO THE APPROPRIATE
20 STANDARD OF JUDICIAL REVIEW. A "DISTRIBUTION INTEREST" MAY BE A
21 MANDATORY INTEREST, A SUPPORT INTEREST, A DISCRETIONARY INTEREST,
22 OR A COMBINATION OF THESE INTERESTS. A "DISTRIBUTION INTEREST"
23 MAY BE A CURRENT DISTRIBUTION INTEREST OR A FUTURE DISTRIBUTION
24 INTEREST.

25 (7) "FUTURE DISTRIBUTION INTEREST" MEANS A DISTRIBUTION
26 INTEREST OTHER THAN A CURRENT DISTRIBUTION INTEREST.

27 (8) "MANDATORY INTEREST" MEANS A DISTRIBUTION INTEREST

1 WHEREBY A TRUSTEE HAS NO DISCRETION IN DETERMINING WHETHER A
2 DISTRIBUTION SHALL BE MADE OR THE AMOUNT OR TIMING OF THE
3 DISTRIBUTION.

4 (9) "POWER OF APPOINTMENT" MEANS AN INTER VIVOS OR
5 TESTAMENTARY POWER TO DIRECT THE DISPOSITION OF TRUST PROPERTY,
6 OTHER THAN A DISTRIBUTION DECISION MADE BY A TRUSTEE TO
7 DISTRIBUTE TRUST PROPERTY TO A BENEFICIARY. A "POWER OF
8 APPOINTMENT" MAY BE HELD BY A DONEE BUT NOT BY A SETTLOR.

9 (10) "REMAINDER INTEREST" MEANS A FUTURE INTEREST
10 WHEREBY A TRUST BENEFICIARY WILL RECEIVE TRUST PROPERTY
11 OUTRIGHT.

12 (11) "RESERVED POWER" MEANS A POWER HELD BY A SETTLOR.

13 (12) "SETTLOR" MEANS A PERSON, INCLUDING A TESTATOR, WHO
14 CREATES A TRUST. A PERSON WHO DOES NOT CONTRIBUTE PROPERTY TO
15 A TRUST IS NOT A SETTLOR OF THE TRUST.

16 (13) "SPECIAL NEEDS TRUST" MEANS A DISCRETIONARY TRUST
17 WHEREBY A SETTLOR OF THE TRUST MAY LIMIT DISTRIBUTIONS OR PROVIDE
18 GUIDELINES FOR THE SPECIAL NEEDS, NONSUPPORT NEEDS, OR
19 SUPPLEMENTAL NEEDS OF A BENEFICIARY. A "SPECIAL NEEDS TRUST"
20 INCLUDES, BUT IS NOT LIMITED TO, A TRUST THAT IS AUTHORIZED BY
21 SECTION 15-14-412.7, 15-14-412.8, OR 15-14-412.9.

22 (14) "SPENDTHRIFT PROVISION" MEANS A TERM CONTAINED IN A
23 TRUST THAT RESTRAINS BOTH VOLUNTARY AND INVOLUNTARY TRANSFERS
24 OF A BENEFICIARY'S INTEREST.

25 (15) "SUPPORT INTEREST" MEANS AN INTEREST THAT IS NOT A
26 MANDATORY INTEREST OR A DISCRETIONARY INTEREST. A "SUPPORT
27 INTEREST" SHALL INCLUDE LANGUAGE SUCH AS "SHALL MAKE

1 DISTRIBUTIONS" AND BE ASSOCIATED WITH AN ASCERTAINABLE STANDARD
2 RELATING TO THE HEALTH, EDUCATION, SUPPORT, OR MAINTENANCE OF
3 THE DECEDENT, AS INTERPRETED BY COLORADO LAW.

4 (16) "TRUST" MEANS AN IRREVOCABLE TRUST.

5 (17) "TRUST DOCUMENT" MEANS A DOCUMENT EXECUTED BY THE
6 SETTLOR OF A TRUST, WHICH DOCUMENT CONTAINS THE MANIFESTATION
7 OF THE SETTLOR'S INTENT REGARDING THE TRUST'S PROVISIONS.

8 (18) "TRUST PROPERTY" MEANS PRINCIPAL, ACCRUED INCOME, AND
9 UNDISTRIBUTED INCOME WITHIN A TRUST.

10 **15-16-503. Applicability limited to irrevocable trusts.** THE
11 PROVISIONS OF THIS PART 5 SHALL APPLY ONLY TO IRREVOCABLE TRUSTS
12 AND SHALL NOT APPLY TO REVOCABLE, CONSTRUCTIVE, OR RESULTING
13 TRUSTS.

14 **15-16-504. Retention of common law doctrines.** (1) THE
15 DISTINCTION IN COLORADO STATUTORY AND COMMON LAW BETWEEN A
16 DISCRETIONARY INTEREST AND A SUPPORT INTEREST SHALL BE
17 MAINTAINED.

18 (2) THE COMMON LAW DOCTRINE PROHIBITING A CREDITOR FROM
19 ACQUIRING RIGHTS TO DISTRIBUTIONS FROM A TRUST, WHICH RIGHTS ARE
20 SUPERIOR TO THE RIGHTS OF A BENEFICIARY OF A TRUST, SHALL BE
21 MAINTAINED.

22 **15-16-505. General provisions applying to trusts.**

23 (1) REGARDLESS OF WHETHER A TRUST INCLUDES A SPENDTHRIFT
24 PROVISION, THE FOLLOWING PROVISIONS SHALL APPLY TO A TRUST:

25 (a) THE JUDICIAL SALE OF BENEFICIAL INTERESTS AND POWERS IS
26 PROHIBITED. A COURT MAY NOT SELL A DISTRIBUTION INTEREST,
27 REMAINDER INTEREST, POWER OF APPOINTMENT, OR RESERVED POWER.

1 (b) TRUST PROPERTY IS NOT SUBJECT TO PERSONAL OBLIGATIONS
2 OF A TRUSTEE OF THE TRUST, REGARDLESS OF WHETHER THE TRUSTEE
3 BECOMES INSOLVENT OR BANKRUPT.

4 (c) THE PROVISIONS OF THIS PART 5 PROVIDE THE SOLE AND
5 EXCLUSIVE REMEDIES AVAILABLE TO A CREDITOR OR OTHER
6 NONBENEFICIARY WITH A CLAIM REGARDING A BENEFICIARY'S INTEREST
7 IN A TRUST.

8 (d) NOTWITHSTANDING THE PROVISIONS IN PARAGRAPH (c) OF THIS
9 SUBSECTION (1), THE PROVISIONS OF THIS PART 5 SHALL NOT AFFECT THE
10 RIGHTS OF A CREDITOR OR OTHER PARTY TO BRING AN ACTION AGAINST A
11 TRUSTEE, WHICH ACTION ALLEGES A FRAUDULENT CONVEYANCE BY THE
12 TRUSTEE.

13 **15-16-506. Control and dominion issues.** (1) A CREDITOR MAY
14 NOT ATTACH THE POWER OF A PERSON TO REMOVE AND REPLACE A
15 TRUSTEE.

16 (2) A CREDITOR MAY NOT EXERCISE, NOR MAY A COURT DIRECT A
17 PERSON TO EXERCISE, AN INTEREST OF A BENEFICIARY OR ANOTHER
18 PERSON WHO HOLDS AN UNCONDITIONAL OR CONDITIONAL POWER TO
19 REMOVE OR REPLACE A TRUSTEE.

20 (3) A CREDITOR MAY NOT ATTACH AN INTEREST OF A BENEFICIARY
21 NOR OTHERWISE COMPEL A DISTRIBUTION BECAUSE THE BENEFICIARY IS,
22 AT ANY TIME, SERVING AS A TRUSTEE OR CO-TRUSTEE.

23 (4) IN THE EVENT THAT A PARTY RAISES THE ISSUE OF A SETTLOR'S
24 OR BENEFICIARY'S INFLUENCE OVER A TRUST AS A BASIS FOR INVADING OR
25 INVALIDATING A TRUST, THE FOLLOWING CONDITIONS SHALL NOT
26 CONSTITUTE IMPROPER DOMINION AND CONTROL:

27 (a) A BENEFICIARY SERVES AS A TRUSTEE OR CO-TRUSTEE;

1 (b) A SETTLOR OR BENEFICIARY HOLDS AN UNRESTRICTED POWER
2 TO REMOVE OR REPLACE A TRUSTEE;

3 (c) A SETTLOR OR BENEFICIARY IS A TRUST ADMINISTRATOR, A
4 GENERAL PARTNER OF A PARTNERSHIP, A MANAGER OF A LIMITED
5 LIABILITY COMPANY, AN OFFICER OF A CORPORATION, OR ANY OTHER
6 MANAGERIAL OFFICER OF ANY OTHER TYPE OF ENTITY, AND PART OR ALL
7 OF THE TRUST PROPERLY CONSISTS OF AN INTEREST IN SUCH PARTNERSHIP,
8 LIMITED LIABILITY COMPANY, CORPORATION, OR ENTITY;

9 (d) A PERSON WHO IS RELATED TO A SETTLOR OR A BENEFICIARY
10 BY MARRIAGE, BLOOD, OR ADOPTION IS APPOINTED AS A TRUSTEE;

11 (e) A PERSON WHO IS NOT A RELATED OR SUBORDINATE PARTY
12 WITHIN THE MEANING OF SECTION 672 (c) OF THE INTERNAL REVENUE
13 CODE, WHICH INCLUDES BUT IS NOT LIMITED TO THE SETTLOR'S OR
14 BENEFICIARY'S ACCOUNTANT, ATTORNEY, FINANCIAL ADVISOR, BUSINESS
15 ASSOCIATE, FRIEND, OR ANY OTHER PERSON WHO SERVES IN A FINANCIAL
16 ADVISORY CAPACITY, IS APPOINTED AS A TRUSTEE;

17 (f) A POWER OF APPOINTMENT IS HELD BY A BENEFICIARY; OR

18 (g) A RESERVED POWER, OTHER THAN A POWER TO WITHDRAW
19 TRUST PROPERTY FOR THE BENEFIT OF THE SETTLOR, THE SETTLOR'S
20 CREDITORS, THE SETTLOR'S ESTATE, OR THE CREDITORS OF THE SETTLOR'S
21 ESTATE, IS HELD BY THE SETTLOR.

22 **15-16-507. Spendthrift provisions.** (1) A SPENDTHRIFT
23 PROVISION IN A TRUST DOCUMENT IS VALID ONLY IF IT RESTRAINS BOTH
24 THE VOLUNTARY AND INVOLUNTARY TRANSFER OF A BENEFICIARY'S
25 INTEREST.

26 (2) IF A TRUST DOCUMENT PROVIDES THAT THE INTEREST OF A
27 BENEFICIARY IS HELD "SUBJECT TO A SPENDTHRIFT PROVISION" OR

1 CONTAINS WORDS OF SIMILAR EFFECT, THIS PROVISION SHALL RESTRAIN
2 BOTH THE VOLUNTARY AND INVOLUNTARY TRANSFER OF THE
3 BENEFICIARY'S INTEREST.

4 (3) EXCEPT AS DESCRIBED IN SECTION 15-16-514, A SPENDTHRIFT
5 PROVISION IN A TRUST DOCUMENT SHALL PROTECT ALL BENEFICIAL
6 INTERESTS IN A TRUST.

7 (4) THE APPLICABILITY OF A SPENDTHRIFT PROVISION TO A
8 CLASSIFICATION OF A DISTRIBUTION INTEREST SHALL BE GOVERNED BY
9 THE PROVISIONS OF SECTIONS 15-16-509, 15-16-510, AND 15-16-511.

10 (5) A POWER OF APPOINTMENT IN ANY TRUST IS PERSONAL IN
11 NATURE AND CANNOT BE ATTACHED OR FORCED TO BE EXERCISED BY A
12 CREDITOR OR A COURT REGARDLESS OF THE PRESENCE OR ABSENCE OF A
13 SPENDTHRIFT PROVISION. A POWER OF APPOINTMENT IS NOT A PROPERTY
14 INTEREST.

15 (6) A SETTLOR'S RESERVED POWER IS NOT PROTECTED BY A
16 SPENDTHRIFT PROVISION. IF A RESERVED POWER DOES NOT CONSTITUTE
17 A POWER OF THE SETTLOR TO WITHDRAW INCOME OR PRINCIPAL FROM THE
18 TRUST, THE HOLDER OF THE RESERVED POWER MAY EXERCISE THE POWER
19 IN HIS OR HER SOLE AND ABSOLUTE DISCRETION, WHICH DISCRETION A
20 COURT MAY NOT ENCUMBER.

21 **15-16-508. Classification of distribution interests.** (1) A
22 DISTRIBUTION INTEREST IN A TRUST SHALL BE CLASSIFIED AS A
23 MANDATORY INTEREST, A SUPPORT INTEREST, OR A DISCRETIONARY
24 INTEREST.

25 (2) A BENEFICIARY MAY CONCURRENTLY HOLD A MANDATORY
26 INTEREST, SUPPORT INTEREST, OR DISCRETIONARY INTEREST. TO THE
27 EXTENT THAT A TRUST CONTAINS A MANDATORY INTEREST, SUPPORT

1 INTEREST, OR DISCRETIONARY INTEREST, THE TRUST SHALL BE TREATED
2 AS FOLLOWS:

3 (a) A CURRENT DISTRIBUTION INTEREST SHALL BE A MANDATORY
4 INTEREST ONLY TO THE EXTENT OF THE LANGUAGE OF THE TRUST
5 DOCUMENT;

6 (b) A CURRENT DISTRIBUTION INTEREST SHALL BE A SUPPORT
7 INTEREST ONLY TO THE EXTENT OF THE LANGUAGE OF THE TRUST
8 DOCUMENT; AND

9 (c) THE REMAINING CURRENT DISTRIBUTION INTEREST SHALL BE
10 HELD AS A DISCRETIONARY TRUST.

11 (3) IN THE ABSENCE OF CLEAR AND CONVINCING EVIDENCE TO THE
12 CONTRARY, CERTAIN LANGUAGE SHALL BE DEEMED TO HAVE BEEN
13 INTENDED BY A SETTLOR TO CREATE CERTAIN BENEFICIAL INTERESTS, AS
14 FOLLOWS:

15 (a) EXAMPLES OF LANGUAGE THAT SHALL CREATE A MANDATORY
16 INTEREST INCLUDE THE FOLLOWING:

17 (I) "ALL INCOME SHALL BE DISTRIBUTED TO MY SPOUSE"; OR

18 (II) "ONE HUNDRED THOUSAND DOLLARS PER YEAR SHALL BE
19 DISTRIBUTED TO MY CHILD".

20 (b) EXAMPLES OF LANGUAGE THAT SHALL CREATE A SUPPORT
21 INTEREST INCLUDE THE FOLLOWING: "THE TRUSTEE SHALL MAKE
22 DISTRIBUTIONS FOR HEALTH, EDUCATION, MAINTENANCE, AND SUPPORT".

23 (c) EXAMPLES OF LANGUAGE THAT SHALL CREATE A
24 DISCRETIONARY INTEREST INCLUDE THE FOLLOWING:

25 (I) "THE TRUSTEE MAY, IN THE TRUSTEE'S SOLE AND ABSOLUTE
26 DISCRETION, MAKE DISTRIBUTIONS FOR HEALTH, EDUCATION,
27 MAINTENANCE, AND SUPPORT";

1 (II) "THE TRUSTEE SHALL, IN THE TRUSTEE'S SOLE AND ABSOLUTE
2 DISCRETION, MAKE DISTRIBUTIONS FOR HEALTH, EDUCATION,
3 MAINTENANCE, AND SUPPORT";

4 (III) "THE TRUSTEE MAY MAKE DISTRIBUTIONS FOR HEALTH,
5 EDUCATION, MAINTENANCE, AND SUPPORT";

6 (IV) "THE TRUSTEE SHALL MAKE DISTRIBUTIONS FOR HEALTH,
7 EDUCATION, MAINTENANCE, AND SUPPORT. THE TRUSTEE MAY EXCLUDE
8 ANY OF THE BENEFICIARIES OR MAY MAKE UNEQUAL DISTRIBUTIONS
9 AMONG THEM"; OR

10 (V) "THE TRUSTEE MAY MAKE DISTRIBUTIONS FOR HEALTH,
11 EDUCATION, MAINTENANCE, SUPPORT, COMFORT, AND GENERAL
12 WELFARE".

13 **15-16-509. Mandatory interests.** (1) THE FOLLOWING
14 PROVISIONS SHALL APPLY ONLY TO MANDATORY INTERESTS:

15 (a) IF A TRUST DOCUMENT CONTAINS A SPENDTHRIFT PROVISION,
16 A CREDITOR MAY NOT ATTACH PRESENT AND FUTURE MANDATORY
17 DISTRIBUTIONS FROM THE TRUST. A CREDITOR SHALL WAIT UNTIL A
18 DISTRIBUTION IS RECEIVED BY A BENEFICIARY BEFORE THE CREDITOR MAY
19 ATTACH THE DISTRIBUTION. NOTWITHSTANDING ANY PROVISION IN THIS
20 SECTION TO THE CONTRARY, A CHILD SUPPORT CLAIMANT MAY, SUBJECT
21 TO THE PROVISIONS IN SECTION 15-16-111, ATTACH PRESENT AND FUTURE
22 DISTRIBUTIONS AT THE TRUST LEVEL FOR UNPAID CHILD SUPPORT UNTIL
23 THE UNPAID AMOUNT IS PAID IN FULL.

24 (b) IF A TRUST DOES NOT CONTAIN A SPENDTHRIFT PROVISION, A
25 CREDITOR MAY, SUBJECT TO THE PROVISIONS IN SECTION 15-16-111,
26 ATTACH PRESENT AND FUTURE MANDATORY DISTRIBUTIONS FROM THE
27 TRUST AT THE TRUST LEVEL.

1 (c) A BENEFICIARY HOLDING A MANDATORY DISTRIBUTION
2 INTEREST MAY ENFORCE SUCH INTEREST. A COURT MAY REVIEW A
3 TRUSTEE'S DISTRIBUTION DISCRETION IF THE TRUSTEE ACTS
4 UNREASONABLY.

5 **15-16-510. Support interests.** (1) THE FOLLOWING PROVISIONS
6 SHALL APPLY ONLY TO SUPPORT INTERESTS:

7 (a) IF A SUPPORT INTEREST IS PROTECTED BY A SPENDTHRIFT
8 PROVISION, A CREDITOR, EXCEPT FOR A CHILD SUPPORT CLAIMANT, SHALL
9 WAIT UNTIL A DISTRIBUTION IS RECEIVED BY A BENEFICIARY BEFORE THE
10 CREDITOR MAY ATTACH THE DISTRIBUTION.

11 (b) SUBJECT TO PROTECTIVE AND RESTRICTIVE LANGUAGE IN
12 SECTION 15-16-111, THE SOLE AND EXCLUSIVE REMEDY OF A CHILD
13 SUPPORT CLAIMANT IS THE ATTACHMENT OF THE SUPPORT INTEREST AT
14 THE TRUST LEVEL UNTIL THE UNPAID AMOUNT IS PAID IN FULL. THE COURT
15 MAY LIMIT THE AMOUNT SUBJECT TO ATTACHMENT AS APPROPRIATE
16 UNDER THE CIRCUMSTANCES TO PROVIDE FOR THE NEEDS OF THE
17 BENEFICIARY AND ANY PERSON WHO IS DEPENDENT UPON THE
18 BENEFICIARY.

19 (c) IF A TRUST DOES NOT CONTAIN A SPENDTHRIFT PROVISION, A
20 CREDITOR MAY, SUBJECT TO PROTECTIVE AND RESTRICTIVE LANGUAGE IN
21 SECTION 15-16-111, ATTACH PRESENT AND FUTURE SUPPORT
22 DISTRIBUTIONS FROM THE TRUST AT THE TRUST LEVEL.

23 (d) THE FACT THAT A COURT WOULD HAVE EXERCISED THE
24 DISTRIBUTION POWER UNDER A SUPPORT INTEREST DIFFERENTLY THAN THE
25 TRUSTEE IS NOT SUFFICIENT REASON FOR JUDICIAL OR OTHER
26 INTERFERENCE WITH THE EXERCISE OF THE DISTRIBUTION POWER BY THE
27 TRUSTEE. HOWEVER, A COURT MAY REVIEW A TRUSTEE'S DISTRIBUTION

1 DISCRETION IF THE TRUSTEE ACTS UNREASONABLY.

2 **15-16-511. Discretionary interests.** (1) THE FOLLOWING
3 PROVISIONS SHALL APPLY ONLY TO DISCRETIONARY INTERESTS:

4 (a) A DISCRETIONARY INTEREST IS NEITHER A PROPERTY INTEREST
5 NOR AN ENFORCEABLE RIGHT TO A DISTRIBUTION. A DISCRETIONARY
6 INTEREST IS A MERE EXPECTANCY OF A DISTRIBUTION. NOTWITHSTANDING
7 ANYTHING IN THIS SECTION TO THE CONTRARY, A BENEFICIARY HOLDING
8 A DISCRETIONARY INTEREST HAS AN EQUITABLE INTEREST SUFFICIENT TO
9 BRING AN ACTION AGAINST THE TRUSTEES SUBJECT TO THE JUDICIAL
10 REVIEW STANDARD DESCRIBED IN PARAGRAPH (f) OF THIS SUBSECTION (1).

11 (b) A SPENDTHRIFT PROVISION PROVIDES PROTECTION IN ADDITION
12 TO THE NATURE OF A DISCRETIONARY INTEREST.

13 (c) REGARDLESS OF WHETHER A TRUST CONTAINS A SPENDTHRIFT
14 PROVISION, A CREDITOR MAY NOT ATTACH A DISCRETIONARY INTEREST,
15 REQUIRE THE TRUSTEE TO EXERCISE THE TRUSTEE'S DISCRETION TO MAKE
16 A DISTRIBUTION, OR CAUSE A COURT TO JUDICIALLY SELL A
17 DISCRETIONARY INTEREST. REGARDLESS OF WHETHER A DISCRETIONARY
18 INTEREST CONTAINS A SPENDTHRIFT PROVISION, ALL CREDITORS,
19 INCLUDING A CHILD SUPPORT CLAIMANT, SHALL WAIT UNTIL A
20 DISCRETIONARY DISTRIBUTION IS RECEIVED BY THE BENEFICIARY BEFORE
21 THE CREDITOR MAY ATTACH THE DISTRIBUTION.

22 (d) REGARDLESS OF WHETHER A BENEFICIARY HAS ANY
23 OUTSTANDING CREDITOR, A TRUSTEE MAY MAKE, IN LIEU OF
24 DISTRIBUTIONS TO A BENEFICIARY, DISTRIBUTIONS ON BEHALF OF SUCH
25 BENEFICIARY, AND A TRUSTEE MAY EXHAUST THE INCOME AND PRINCIPAL
26 OF THE TRUST FOR THE BENEFIT OF THE BENEFICIARY. A TRUSTEE SHALL
27 NOT BE LIABLE TO ANY CREDITOR OR BENEFICIARY FOR MAKING

1 DISTRIBUTIONS FOR THE BENEFIT OF A BENEFICIARY.

2 (e) A CREDITOR, INCLUDING A CHILD SUPPORT CLAIMANT, OF A
3 BENEFICIARY HAS NO RIGHT TO JUDICIAL REVIEW AND MAY NOT COMPEL
4 A DISTRIBUTION THAT IS SUBJECT TO THE TRUSTEE'S DISCRETION, NOR MAY
5 A COURT ORDER, ON BEHALF OF ANY CREDITOR, A DISTRIBUTION THAT IS
6 SUBJECT TO THE TRUSTEE'S DISCRETION.

7 (f) A COURT MAY REVIEW A TRUSTEE'S DISTRIBUTION DISCRETION
8 ONLY IF IT IS PROVEN BY CLEAR AND CONVINCING EVIDENCE THAT THE
9 TRUSTEE ACTED DISHONESTLY, ACTED WITH AN IMPROPER MOTIVE, OR
10 FAILED TO ACT. UNLESS A TRUSTEE IS SHOWN TO HAVE ACTED
11 DISHONESTLY, ACTED WITH AN IMPROPER MOTIVE, OR FAILED TO ACT,
12 THERE SHALL BE NO STANDARD OF REASONABLENESS APPLIED FOR THE
13 PURPOSE OF REVIEWING A TRUSTEE'S DISTRIBUTION DISCRETION.

14 **15-16-512. Protective or restrictive distribution language.** A
15 TRUSTEE MAY MAKE DISTRIBUTIONS ONLY FOR THE PURPOSES DESIGNATED
16 BY THE SETTLOR. A CREDITOR, INCLUDING A CHILD SUPPORT CLAIMANT,
17 MAY NOT ATTACH PRESENT OR FUTURE DISTRIBUTIONS IF THE CREDITOR'S
18 CLAIM DOES NOT SATISFY THE DESCRIPTION OF THE DISTRIBUTION
19 INTEREST IN THE TRUST DOCUMENT. A MANDATORY OR SUPPORT
20 DISTRIBUTION INTEREST THAT CONTAINS WORDS OF "SUPPORT" OR
21 "MAINTENANCE" OF A BENEFICIARY ALSO INCLUDES THE SUPPORT AND
22 MAINTENANCE OF A BENEFICIARY'S MINOR CHILD.

23 **15-16-513. Self-settled irrevocable trusts.** EXCEPT AS PROVIDED
24 IN SECTION 15-16-514, A CREDITOR OR AN ASSIGNEE OF A SETTLOR MAY
25 ATTACH THE MAXIMUM AMOUNT THAT CAN BE DISTRIBUTED TO THE
26 SETTLOR OR FOR THE SETTLOR'S BENEFIT. IF A TRUST HAS MORE THAN ONE
27 SETTLOR, THE AMOUNT THAT THE CREDITOR OR ASSIGNEE OF A

1 PARTICULAR SETTLOR MAY ATTACH MAY NOT EXCEED THE SETTLOR'S
2 INTEREST IN THE TRUST ATTRIBUTABLE TO THAT SETTLOR'S
3 CONTRIBUTION.

4 **15-16-514. Special needs trust referred by statute.** A CREDITOR
5 MAY NOT ATTACH A SETTLOR'S INTEREST IN A TRUST AUTHORIZED BY
6 SECTION 15-14-412.7, 15-14-412.8, OR 15-14-412.9; EXCEPT THAT THE
7 PROHIBITION DESCRIBED IN THIS SECTION SHALL NOT APPLY TO AN
8 INTEREST OF THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCE.

9 **SECTION 2. Effective date - applicability.** (1) This act shall
10 take effect at 12:01 a.m. on the day following the expiration of the
11 ninety-day period after final adjournment of the general assembly that is
12 allowed for submitting a referendum petition pursuant to article V,
13 section 1 (3) of the state constitution, (August 8, 2007, if adjournment
14 sine die is on May 9, 2007); except that, if a referendum petition is filed
15 against this act or an item, section, or part of this act within such period,
16 then the act, item, section, or part, if approved by the people, shall take
17 effect on the date of the official declaration of the vote thereon by
18 proclamation of the governor.

19 (2) The provisions of this act shall apply to irrevocable trusts
20 created on or after the applicable effective date of this act.