

SB179 INTRODUCED



1 SB179
2 ARLXBQS-1
3 By Senator Barfoot
4 RFD: Judiciary
5 First Read: 20-Jan-26



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4 SYNOPSIS:

5 Under the Alabama Uniform Trust Code, creditors
6 of a person who creates an irrevocable trust may
7 recover more than would be allowed under the Alabama
8 Qualified Dispositions in Trust Act.

9 Existing law also provides that upon release of
10 a power of withdrawal, the holder of the power is
11 treated as the creator of the trust if the released
12 property value exceeds federal safe harbor amounts
13 under the Internal Revenue Code.

14 This bill would amend the Alabama Uniform Trust
15 Code to make creditor claims subject to the same limits
16 as those in the Alabama Qualified Dispositions in Trust
17 Act and would set limits on when a trust beneficiary or
18 holder of a withdrawal power is considered the creator
19 of the trust.

20 This bill would provide that the trustee has the
21 right to reimburse the trust's creator for trust income
22 taxes paid or payable without the payment being subject
23 to the claims of the creditors of the trust's creator.

24 This bill would also make nonsubstantive,
25 technical revisions to update the existing code
26 language to current style.

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A BILL

31 TO BE ENTITLED

AN ACT

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34 Relating to trusts; to amend Section 19-3B-505, Code of
35 Alabama 1975, to limit creditor claims to conform to the
36 Alabama Qualified Dispositions in Trust Act; to limit when a
37 holder of a withdrawal power is considered a settlor; to amend
38 Section 19-3B-816, Code of Alabama 1975, to allow a trustee to
39 reimburse a settlor for income taxes paid or payable without
40 such amount being subject to the claims of the settlor's
41 creditors; and to make nonsubstantive, technical revisions to
42 update the existing code language to current style.

43 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

44 Section 1. Sections 19-3B-505 and 19-3B-816, Code of
45 Alabama 1975, are amended to read as follows:

46 "§19-3B-505

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

52 (2) ~~With~~ Except as provided in Chapter 3E, with respect
53 to an irrevocable trust, a creditor or assignee of the settlor
54 may reach the maximum amount that can be distributed to or for
55 the settlor's benefit. If a trust has more than one settlor,
56 then the amount the creditor or assignee of a particular



57 settlor may reach may not exceed the settlor's interest in the
58 portion of the trust attributable to that settlor's
59 contribution.

60 (3) After the death of a settlor, and subject to the
61 settlor's right to direct the source from which liabilities
62 will be paid, the property of a trust that was revocable
63 immediately prior to the settlor's death is subject to claims
64 of the settlor's creditors, costs of ~~administration of~~
65 administering the settlor's estate, the expenses of the
66 settlor's funeral and disposal of remains, ~~and the~~ homestead
67 allowance, exempt property and family allowance to a
68 surviving spouse and children to the extent the settlor's
69 probate estate is inadequate to satisfy those claims, costs,
70 expenses, and homestead allowance, exempt property and family
71 allowance.

72 (b) With respect to claims, expenses, and taxes in
73 connection with the settlement of a trust that was revocable
74 at the settlor's death:

75 (1) Any claim of a creditor which would be barred
76 against the fiduciary of a decedent's estate, the estate of
77 the decedent, or any creditor or beneficiary of the decedent's
78 estate ~~or~~ shall be barred against the trustee, the trust
79 property, and the creditors and beneficiaries of the trust ~~or~~;

80 (2) A trustee at any time may give notice to any person
81 the trustee has reason to believe may have a claim against the
82 settlor at death. The notice shall contain the name and
83 address of the trustee to whom the claim must be presented. If
84 the person fails to present the claim in writing within 90



85 days from the date of the notice, ~~then~~ the person shall be
86 forever barred from asserting or recovering on the claim from
87 the trustee, the trust property, and the creditors and
88 beneficiaries of the trust. Any person who presents a claim on
89 or before the date specified in the notice may not later
90 increase the claim following the expiration of the 90-day
91 period~~;~~

92 (3) If a claim is not presented in writing to the
93 personal representative of the settlor's estate or to the
94 trustee: (i) within six months from the date of the
95 appointment of the initial personal representative of the
96 settlor's estate, or (ii) if no personal representative is
97 appointed within six months from the settlor's date of death
98 and a claim is not presented in writing to the trustee within
99 six months from the settlor's date of death, then no trustee
100 shall be chargeable for any assets that the trustee may pay or
101 distribute in good faith in satisfaction of any lawful claims,
102 expenses, or taxes or to any beneficiary before the claim was
103 presented. A payment or distribution of assets by a trustee
104 shall be deemed to have been made in good faith unless the
105 creditor can prove that the trustee had actual knowledge of
106 the claim at the time of the payment or distribution. The
107 six-month period shall not be interrupted or affected by the
108 death, resignation, or removal of a trustee, except that the
109 time during which there is no trustee in office shall not be
110 counted as part of the period~~;~~ and

111 (4) The provisions of Section 43-2-371 dealing with
112 regarding the priority of payment of claims, expenses, and



113 taxes from the probate estate of a decedent shall apply to a
114 revocable trust to the extent the assets of the decedent's
115 probate estate are inadequate.

116 (c) For purposes of this section:

117 (1) ~~During~~ During the period the power may be
118 exercised, the holder of a power of withdrawal is treated in
119 the same manner as the settlor of a revocable trust to the
120 extent of the property subject to the power; ~~and~~

121 ~~(2) upon the lapse, release, or waiver of the power,~~
122 ~~the holder is treated as the settlor of the trust only to the~~
123 ~~extent the value of the property affected by the lapse,~~
124 ~~release, or waiver exceeds the greater of the amount specified~~
125 ~~in Section 2041(b)(2), 2503(b), or 2514(e) of the Internal~~
126 ~~Revenue Code of 1986, in each case as in effect on January 1,~~
127 ~~2007, or as later amended.~~

128 (2) A beneficiary of an irrevocable trust who holds a
129 power of withdrawal is not a settlor of the trust upon the
130 lapse of the power;

131 (3) The power of a trustee of an irrevocable trust,
132 whether arising under the trust agreement or any other
133 provision of the law, to make a distribution to or for the
134 benefit of a settlor for the purpose of satisfying or
135 reimbursing, in whole or in part, the settlor for income taxes
136 paid or payable on all or any portion of the trust principal
137 and income that are includable in the settlor's personal
138 income under applicable law, as well as distributions made by
139 the trustee pursuant to such authority, shall not be
140 considered an amount that may be distributed to or for the



141 benefit of the settlor; and

142 (4) A person, including, but not limited to, a previous
143 settlor of the trust, who becomes a beneficiary of a trust due
144 to the exercise of a power of appointment by someone other
145 than that person, shall not be considered a settlor of the
146 trust."

147 "§19-3B-816

148 (a) Without limiting the authority ~~conferred~~ granted by
149 Section 19-3B-815, a trustee may:

150 (1) ~~collect~~ Collect trust property and accept or reject
151 additions to the trust property from a settlor or any other
152 person, including, but not ~~being~~ limited to, the authority to
153 receive, collect, hold, and retain common or preferred stock
154 or other interests in the trustee or any related party;

155 (2) ~~acquire~~ Acquire or sell property, for cash or on
156 credit, at public or private sale;

157 (3) ~~exchange~~ Exchange, partition, or otherwise change
158 the character of trust property;

159 (4) ~~deposit~~ Deposit trust money in an account in a
160 regulated financial ~~service~~ service institution;

161 (5) ~~borrow~~ Borrow money, with or without security, and
162 mortgage or pledge trust property for a period within or
163 extending beyond the duration of the trust;

164 (6) ~~with~~ With respect to an interest in a
165 proprietorship, partnership, limited liability company,
166 business trust, corporation, or other form of business or
167 enterprise, continue the business or other enterprise and take
168 any action that may be taken by shareholders, members, or



169 property owners, including merging, dissolving, or otherwise
170 changing the form of business organization or contributing
171 additional capital;

172 (7) ~~with~~ With respect to stocks or other securities,
173 exercise the rights of an absolute owner, including the right
174 to:

175 ~~(A) vote~~ a. Vote, or give proxies to vote, with or
176 without power of substitution, or enter into or continue a
177 voting trust agreement;

178 ~~(B) hold~~ b. Hold a security in the name of a nominee or
179 in other form without disclosure of the trust so that title
180 may pass by delivery;

181 ~~(C) pay~~ c. Pay calls, assessments, and other sums
182 chargeable or accruing against the securities, and sell or
183 exercise stock subscription or conversion rights; and

184 ~~(D) deposit~~ d. Deposit the securities with a ~~depositary~~
185 depository or other regulated financial ~~service~~ service
186 institution;

187 (8) ~~with~~ With respect to an interest in real property,
188 construct, or make ordinary or extraordinary repairs to,
189 alterations to, or improvements in, buildings or other
190 structures; demolish improvements; raze existing or erect
191 new party walls or buildings; subdivide or develop land;
192 dedicate land to public use or grant public or private
193 easements; and make or vacate plats and adjust boundaries;

194 (9) ~~enter~~ Enter into a lease for any purpose as lessor
195 or lessee, including a lease or other arrangement for
196 exploration and removal of natural resources, with or without



197 the option to purchase or renew, for a period within or
198 extending beyond the duration of the trust;

199 (10) ~~grant~~ Grant an option ~~involving~~ for a sale, lease,
200 or other disposition of trust property or acquire an option
201 ~~for the acquisition of~~ to purchase property, including an
202 option exercisable beyond the ~~duration of the trust~~ trust's
203 duration, and exercise ~~an option so acquired~~ any such option;

204 (11) ~~insure~~ Insure the property of the trust against
205 damage or loss and insure the trustee, the trustee's agents,
206 and beneficiaries against liability arising from the
207 administration of the trust;

208 (12) ~~abandon~~ Abandon or decline to administer property
209 of no value or of insufficient value to justify its collection
210 or continued administration;

211 (13) ~~with~~ With respect to environmental law, exercise
212 those powers granted a fiduciary by applicable law;

213 (14) ~~pay~~ Pay or contest any claim, settle a claim by or
214 against the trust, and release, in whole or in part, a claim
215 belonging to the trust;

216 (15) ~~pay~~ Pay taxes, assessments, compensation of the
217 trustee and of employees and agents of the trust, and other
218 expenses incurred in the administration of the trust;

219 (16) ~~exercise~~ Exercise elections with respect to
220 federal, state, and local taxes;

221 (17) ~~select~~ Select a mode of payment under any employee
222 benefit or retirement plan, annuity, or life insurance payable
223 to the trustee, exercise rights thereunder, including ~~exercise~~
224 ~~of~~ exercising the right to indemnification for expenses and



225 against liabilities, and take appropriate action to collect
226 the proceeds;

227 (18) ~~make~~ Make loans out of trust property, including
228 loans to a beneficiary on terms and conditions the trustee
229 considers to be fair and reasonable under the circumstances,
230 and ~~the trustee has place~~ a lien on future distributions for
231 repayment of those loans;

232 (19) ~~pledge~~ Pledge trust property to guarantee loans
233 made by others to the beneficiary;

234 (20) ~~appoint~~ Appoint a trustee to act in another
235 jurisdiction with respect to trust property located in the
236 other jurisdiction, confer upon the appointed trustee all of
237 the powers and duties of the appointing trustee, require that
238 the appointed trustee furnish security, and remove any trustee
239 so appointed;

240 (21) ~~(A)~~ pay a. Pay an amount distributable to a
241 beneficiary who is under a legal disability or who the trustee
242 reasonably believes is incapacitated, by paying it directly to
243 the beneficiary or applying it for the beneficiary's benefit,
244 or by:

245 1. ~~paying~~ Paying it to the beneficiary's conservator
246 or, if the beneficiary does not have a conservator, the
247 beneficiary's guardian;

248 2. ~~paying~~ Paying it to the beneficiary's custodian
249 under the Uniform Transfers to Minors Act or custodial trustee
250 under the Uniform Custodial Trust Act, and, for that purpose,
251 creating a custodianship or custodial trust;

252 3. ~~if~~ If the trustee does not know of a conservator,



253 guardian, custodian, or custodial trustee, paying it to an
254 adult relative or other person having legal or physical care
255 or custody of the beneficiary, to be expended on the
256 beneficiary's behalf; or—

257 4. ~~managing~~ Managing it as a separate fund on the
258 beneficiary's behalf, subject to the beneficiary's continuing
259 right to withdraw the distribution.

260 ~~(B) the~~ b. The trustee shall not be ~~under any duty to~~
261 ~~see to~~ responsible for ensuring the application of the
262 payment made pursuant to ~~subparagraphs 1. to 4. above, so made~~
263 this subdivision if the trustee acted as a prudent person in
264 the selection of the person, including the minor or
265 incompetent, to whom the payments were made; and the receipt
266 of the ~~person funds~~ shall be full acquittance to the trustee~~;~~

267 (22) ~~on~~ On distribution of trust property or the
268 division or termination of a trust, make distributions in
269 divided or undivided interests, allocate particular assets in
270 proportionate or disproportionate shares, value the trust
271 property for those purposes, and adjust for resulting
272 differences in valuation;

273 (23) ~~resolve~~ Resolve a dispute concerning the
274 interpretation of the trust or its administration by
275 mediation, arbitration, or other procedure for alternative
276 dispute resolution and~~to~~ employ counsel, expert witnesses, or
277 other agents;

278 (24) ~~prosecute~~ Prosecute or defend an action, claim, or
279 judicial proceeding in any jurisdiction to protect trust
280 property and the trustee in the performance of the trustee's



281 duties and ~~to~~ employ counsel, expert witnesses, or other
282 agents;

283 (25) ~~sign~~ Sign and deliver contracts and other
284 instruments that are useful to achieve or facilitate the
285 exercise of the trustee's powers;

286 (26) ~~on~~ On termination of the trust, exercise the
287 powers appropriate to wind up the administration of the trust
288 and distribute the trust property to the persons entitled to
289 it;

290 (27) ~~create~~ Create or join in the creation of a joint
291 venture, partnership, limited liability company, business
292 trust, corporation, or other form of business or enterprise,
293 continue the business or other enterprise and take any action
294 that may be taken by shareholders, members, or property
295 owners, including merging, dissolving, or otherwise changing
296 the form of business organization or contributing additional
297 capital;

298 (28) ~~employ~~ Employ and compensate persons deemed by the
299 trustee ~~needful~~ necessary to advise or assist in the proper
300 management and administration of the trust, including, but not
301 limited to, agents, auditors, including public accountants,
302 certified public accountants or internal auditors, brokers,
303 attorneys-at-law, attorneys-in-fact, investment bankers,
304 investment advisors, rental agents, realtors, appraisers, and
305 tax specialists, including any related party, so long as the
306 relationship and the fees charged are reasonable and disclosed
307 in ~~any~~ a reasonable manner to the current beneficiaries; and
308 ~~to~~ do so without liability for any neglect, omission,



309 misconduct, or default of the agent or representative,
310 provided the trustee acted as a prudent person in selecting
311 and monitoring the agent or representative. ~~For purposes of~~
312 ~~the immediately preceding sentence, compensation~~ Compensation
313 charged by or paid to an affiliated business entity shall be
314 presumed to be reasonable if the compensation is consistent
315 with the published fee schedule maintained by the affiliated
316 business entity in the ordinary course of business;

317 (29) ~~pay~~ Pay ~~any and~~ all expenses reasonably necessary
318 for the administration of the trust including interest, taxes,
319 insurance premiums, assessments, agents' fees or compensation,
320 trustees' fees or compensation, including additional fees for
321 extraordinary services and fees to related parties, and other
322 expenses incurred in the collection, care, administration, and
323 protection of the trust estate; and

324 (30) ~~in~~ In addition to the investments authorized by
325 the document or any provision of law for the investment of
326 funds held by a trustee, ~~the trustee may~~ invest in and hold:
327 (i) interests, however evidenced, in any common trust fund or
328 other collective investment fund maintained by any national or
329 state chartered bank or trust company having trust powers; or
330 (ii) securities of or other interests in any open-end or
331 closed-end management type investment company or investment
332 trust so long as the portfolio of such common trust fund,
333 collective investment fund, or investment company or
334 investment trust consists of investments authorized with
335 respect to the trustee.

336 (b) Without limiting the authority granted by Section



337 19-3B-815, a trustee, who is neither related or subordinated
338 within the meaning of 26 U.S.C. §672(c), in the trustee's sole
339 discretion, may distribute to or for the benefit of the
340 settlor or other person treated as owner under the Internal
341 Revenue Code, all or any portion of the trust for the purpose
342 of satisfying or reimbursing, in whole or in part, the settlor
343 or such other person for the amount of any income taxes paid
344 or payable on all or any portion of the trust principal and
345 income which are includable in the settlor's or such other
346 person's personal income under applicable law.

347 **~~(b)~~(c)** Nothing contained in this section, insofar as
348 ~~such~~ authorization that may be prohibited by the Constitution
349 of Alabama of ~~1901~~ 2022, shall authorize the investment of
350 trust assets in the stock of any private corporation."

351 Section 2. This act shall become effective on October
352 1, 2026, and apply to all trusts in accordance with Section
353 19-3B-1204.