

SB179 INTRODUCED



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



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

TO BE ENTITLED

AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§19-3B-505

(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.

(2) ~~With~~ Except as provided in Chapter 3E, 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 settlor, then the amount the creditor or assignee of a particular



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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, ~~shall~~ shall be barred against the trustee, the trust
79 property, and the creditors and beneficiaries of the trust ~~;~~ ;

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



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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



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

(c) For purposes of this section:

(1) ~~during~~ 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 the lapse, release, or waiver of the 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), 2503(b), or 2514(e) of the Internal Revenue Code of 1986, in each case as in effect on January 1, 2007, or as later amended.~~

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

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



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benefit of the settlor; and

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

"§19-3B-816

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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



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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,



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

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

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

(b) Without limiting the authority granted by Section



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

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

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