



Sen. William R. Haine

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09500SB2725sam002

LRB095 05934 AJ0 49059 a

1 AMENDMENT TO SENATE BILL 2725

2 AMENDMENT NO. _____. Amend Senate Bill 2725 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Trusts and Trustees Act is amended by
5 adding Section 5.4 as follows:

6 (760 ILCS 5/5.4 new)

7 Sec. 5.4. Spendthrift trusts.

8 (a) For trusts created on or after the effective date of
9 this amendatory Act of the 95th General Assembly, a settlor who
10 in writing irrevocably transfers property in any manner to a
11 trust having at least one trustee as defined in subsection (b)
12 of this Section may, subject to the limitations in subsection
13 (c) of this Section, provide that the income or principal
14 interest of the settlor as beneficiary may not be either
15 voluntarily or involuntarily transferred before payment or
16 delivery to the settlor as beneficiary by the trustee. This

1 Section shall be considered to be a restriction on the transfer
2 of the settlor's beneficial interest in the trust that is
3 enforceable under applicable nonbankruptcy law within the
4 meaning of Section 541(c)(2) of the Bankruptcy Code or any
5 successor provision.

6 (b) (1) If the settlor is a beneficiary of the trust, at
7 least one trustee of a trust described in this Section must be
8 a corporate fiduciary authorized by the laws of this State to
9 act as a trustee and whose activities are subject to
10 supervision by the Director of the Division of Banking of this
11 State, the Office of the Comptroller of the Currency, or the
12 Office of Thrift Supervision, or any successor thereto; and

13 (2) maintains or arranges for custody in this State of
14 some or all of the property that is the subject of the
15 trust described in this Section, maintains records for the
16 trust on an exclusive or nonexclusive basis, prepares or
17 arranges for the preparation of fiduciary income tax
18 returns for the trust, or otherwise materially
19 participates in the administration of the trust.

20 (c) (1) Except as provided in this subsection, if a trust
21 has a restriction as provided in subsection (a) of this
22 Section, a creditor or other claimant of the settlor may not
23 satisfy a claim, or liability on a claim, in either law or
24 equity, out of the settlor's transfer or the settlor's
25 beneficial interest in the trust. For purposes of this Section,
26 a creditor includes one holding or seeking to enforce a

1 judgment entered by a court or other body having adjudicative
2 authority as well as one with a right to payment, whether or
3 not reduced to judgment, liquidated, unliquidated, fixed,
4 contingent, matured, unmatured, disputed, undisputed, legal,
5 equitable, secured, or unsecured.

6 (2) A trust described in this Section does not prevent
7 a creditor or person described in this subsection (c) from
8 satisfying a claim or liability out of the settlor's
9 beneficial interest in or transfer into trust if:

10 (i) the claim is a judgment, order, decree, or
11 other legally enforceable decision or ruling resulting
12 from a judicial, arbitration, mediation, or
13 administrative proceeding commenced prior to or within
14 3 years after the trust is created;

15 (ii) the settlor's transfer into trust is made with
16 actual intent to hinder, delay, or defraud that
17 creditor or claimant;

18 (iii) the trust provides that the settlor may
19 revoke or terminate all or part of the trust;

20 (iv) the claim is for a payment owed by the settlor
21 under a child support judgment or order;

22 (v) the claim is by a spouse or former spouse of
23 the settlor on account of an agreement or court order
24 for the payment of support or maintenance or for a
25 division or distribution of property;

26 (vi) the claim is a tax or other amount owed by the

1 settlor to any governmental entity;

2 (vii) the claim is by a governmental entity for
3 recovery of public assistance received by the settlor
4 from the governmental entity;

5 (viii) the transfer is made when the settlor is
6 insolvent or the transfer renders the settlor
7 insolvent;

8 (ix) the claim is a judgment, award, order,
9 sentence, fine, penalty, or other determination of
10 liability of the settlor for conduct of the settlor
11 constituting fraud, intentional infliction of harm, or
12 a crime; or

13 (x) the settlor transferred assets into the trust
14 that: (1) were listed in a written representation of
15 the settlor's assets given to a claimant to induce the
16 claimant to enter into a transaction or agreement with
17 the settlor; or (2) were transferred from the settlor's
18 control in breach of any written agreement, covenant,
19 or security interest between the settlor and the
20 claimant.

21 (d) The statute of limitations for actions to satisfy a
22 claim or liability out of the settlor's beneficial interest in
23 or transfer into trust under this Section is the statute of
24 limitations applicable to the underlying action.

25 (e) The satisfaction of a claim under this Section is
26 limited to that part of the trust or transfer to which it

1 applies.

2 (f) For purposes of this Section, a trust is not revoked or
3 terminated by:

4 (i) a power to veto a distribution from the trust;

5 (ii) a testamentary special power of appointment or
6 similar power;

7 (iii) the right to receive a distribution of income,
8 principal, or both in the discretion of another, including
9 a trustee other than the settlor;

10 (iv) an interest in a charitable remainder unitrust or
11 charitable remainder annuity trust as defined in Internal
12 Revenue Code Section 664 or any successor provision;

13 (v) a right to receive principal subject to an
14 ascertainable standard set forth in the trust; or

15 (vi) the power to appoint a nonsubordinate adviser or
16 trust protector who can remove and appoint trustees, who
17 can direct, consent to, or disapprove distributions, or who
18 is an investment adviser or has the power to appoint an
19 investment adviser or investment director pursuant to the
20 laws of this State.

21 (g) The courts of this State shall have exclusive
22 jurisdiction over any action brought under this Section."