

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

A Bill

HOUSE BILL 1019

5 By: Representative Maddox
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE LAW CONCERNING THE CREATION OF A
9 SPENDTHRIFT TRUST; TO CREATE THE ARKANSAS SPENDTHRIFT
10 TRUST ACT; TO AMEND THE UNIFORM STATUTORY RULE
11 AGAINST PERPETUITIES; AND FOR OTHER PURPOSES.
12
13

Subtitle

14 TO AMEND THE LAW CONCERNING THE CREATION
15 OF A SPENDTHRIFT TRUST; TO CREATE THE
16 ARKANSAS SPENDTHRIFT TRUST ACT; AND TO
17 AMEND THE UNIFORM STATUTORY RULE AGAINST
18 PERPETUITIES.
19
20
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

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

26 18-3-101. Statutory rule against perpetuities.

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

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

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

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

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



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

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

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

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

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

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

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

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

28
 29 18-3-102. ~~When nonvested property interest or power of appointment~~
 30 ~~created~~ Limitation on suspension of absolute power of alienation.

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

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

1 ~~interest subject to a power of appointment described in § 18-3-101(b) or §~~
 2 ~~18-3-101(c), the nonvested property interest or power of appointment is~~
 3 ~~created when the power to become the unqualified beneficial owner terminates.~~

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

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

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

21
 22 18-3-103. Reformation Permitted suspension of absolute power of
 23 alienation.

24 ~~Upon the petition of an interested person, a court shall reform a~~
 25 ~~disposition in the manner that most closely approximates the transferor's~~
 26 ~~manifested plan of distribution and is within the 90 years allowed by § 18-3-~~
 27 ~~101(a)(2), § 18-3-101(b)(2), or § 18-3-101(c)(2) if:~~

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

30 ~~(2) a class gift is not but might become invalid under § 18-3-~~
 31 ~~101 and the time has arrived when the share of any class member is to take~~
 32 ~~effect in possession or enjoyment; or~~

33 ~~(3) a nonvested property interest that is not validated by § 18-~~
 34 ~~3-101(a)(1) can vest but not within 90 years after its creation~~

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

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

3
4 ~~18-3-104. Exclusions from statutory rule against perpetuities~~
5 Suspension of term of years ownership.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24
 25 18-3-105. ~~Prospective application~~ Suspension of power to alienate
 26 subject of trust.

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

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

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

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

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

12
13 ~~18-3-106. Short title~~ Computation of period for interest or trust
14 created under power of appointment.

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

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

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

22
23 ~~18-3-107. Uniformity of application and construction~~ Final
24 distribution of trust assets.

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

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

35
36 ~~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

1 this section has powers that include without limitation:

2 (A) Maintaining trust records;

3 (B) Preparing income tax returns for the trust; and

4 (B) Administering all or part of the trust in this state.

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

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

9 (2) Trust company that:

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

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

14 (3) Bank that:

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

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

19 (C) Possesses and exercises trust powers.

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

23
 24 28-72-703. Definitions.

25 As used in this subchapter:

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

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

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

35 (4) "Settlor" means:

36 (A) The person who creates a spendthrift trust as

1 described in the trust instrument; or

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

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

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

12
 13 28-72-704. Creation.

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

17 (1) A person other than the settlor;

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

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

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

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

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

26 (1) May prevent a distribution from the trust;

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

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

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

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

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

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

8 (5) May receive income or principal from a grantor retained
9 annuity trust paying out a qualified annuity interest within the meaning of
10 26 C.F.R. § 25.2702-3(b) or a grantor retained unitrust paying out a
11 qualified unitrust interest within the meaning of 26 C.F.R. § 25.2702-3(c);

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

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

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

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

24 (1) Remove and replace a trustee;

25 (2) Direct trust investments; and

26 (3) Execute other trust management powers.

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

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

31
32 28-72-705. Settlor - powers.

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

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

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

2
3 28-72-706. Beneficiaries.

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

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

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

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

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

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

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

22 (C) Taxes on the interest of the beneficiary.

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

25 (1) Character;

26 (2) Capacity; or

27 (3) Competency;

28
29 28-72-707. Discretion of trustee.

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

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

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

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

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

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

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

13
 14 28-72-708. Restraints on alienation.

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

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

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

27 (1) By acceleration or anticipation;

28 (2) To an assignee of the beneficiary; or

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

32 (A) Judgment;

33 (B) Execution;

34 (C) Attachment;

35 (D) Garnishment;

36 (E) Bankruptcy; or

1 (F) Contract, tort, or duty.

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

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

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

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

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

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

13
14 28-72-709. Legal estate of beneficiary in corpus.

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

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

22
23 28-72-710. Perpetuities.

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

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

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

35
36 28-72-711. Accumulation of income.

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

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

12
13 28-72-712. Settlor may make different provisions.

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

18
19 28-72-713. Transfer of property to trust.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28
29 28-72-714. Trust administered under laws of another state or foreign
30 jurisdiction.

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

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

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

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

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

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

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

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

18
 19 SECTION 3. Arkansas Code Title 28, Chapter 73, Subchapter 5, is
 20 repealed.

21 ~~28-73-501. Rights of beneficiary's creditor or assignee.~~
 22 ~~To the extent a beneficiary's interest is not protected by a~~
 23 ~~spendthrift provision, a court may authorize a creditor or assignee of the~~
 24 ~~beneficiary to reach the beneficiary's interest by attachment of present or~~
 25 ~~future distributions to or for the benefit of the beneficiary or other means.~~
 26 ~~The court may limit the award to such relief as is appropriate under the~~
 27 ~~circumstances.~~

28
 29 ~~28-73-502. Spendthrift provision.~~

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

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

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

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

5
6 ~~28-73-504. Discretionary trusts—Effect of standard.~~

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

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

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

13 ~~(b) This section does not limit the right of a beneficiary to maintain~~
14 ~~a judicial proceeding against a trustee for an abuse of discretion or failure~~
15 ~~to comply with a standard for distribution. Under § 28-73-814(a), a trustee~~
16 ~~must always exercise a discretionary power in good faith and with regard to~~
17 ~~the purposes of the trust and the interests of the beneficiaries.~~

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

22
23 ~~28-73-505. Creditor's claim against settlor.~~

24 ~~(a) Whether or not the terms of a trust contain a spendthrift~~
25 ~~provision, the following rules apply:~~

26 ~~(1) During the lifetime of the settlor, the property of a~~
27 ~~revocable trust is subject to claims of the settlor's creditors. If a trust~~
28 ~~has more than one (1) settlor, the amount the creditor or assignee of a~~
29 ~~particular settlor may reach may not exceed the settlor's interest in the~~
30 ~~portion of the trust attributable to that settlor's contribution.~~

31 ~~(2) With respect to an irrevocable trust, a creditor or assignee~~
32 ~~of the settlor may reach the maximum amount that can be distributed to or for~~
33 ~~the settlor's benefit. If a trust has more than one (1) settlor, the amount~~
34 ~~the creditor or assignee of a particular settlor may reach may not exceed the~~
35 ~~settlor's interest in the portion of the trust attributable to that settlor's~~
36 ~~contribution.~~

1 ~~(b) For purposes of this section:~~

2 ~~(1) During the period the power may be exercised, the holder of~~
3 ~~a power of withdrawal is treated in the same manner as the settlor of a~~
4 ~~revocable trust to the extent of the property subject to the power.~~

5 ~~(2) On the lapse, release, or waiver of a power of withdrawal,~~
6 ~~the holder of a power of withdrawal is not, by reason of any such power of~~
7 ~~withdrawal, treated as the settlor of the trust.~~

8 ~~(c)(1) Subject to § 4-59-204, for the purposes of this section,~~
9 ~~property contributed to the following trusts is not deemed to have been~~
10 ~~contributed by the settlor, and a person who would otherwise be treated as a~~
11 ~~settlor or a deemed settlor of the following trusts shall not be treated as a~~
12 ~~settlor:~~

13 ~~(A) an irrevocable trust that is treated as qualified~~
14 ~~terminable interest property under section 2523(f) of the Internal Revenue~~
15 ~~Code of 1986 as in effect on January 1, 2015, if the settlor is a beneficiary~~
16 ~~of the trust after the death of the settlor's spouse;~~

17 ~~(B) an irrevocable trust that is treated as a general~~
18 ~~power of appointment trust under section 2523(e) of the Internal Revenue Code~~
19 ~~of 1986 as in effect on January 1, 2015, if the settlor is a beneficiary of~~
20 ~~the trust after the death of the settlor's spouse;~~

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

24 ~~(2) For purposes of this subsection (c), a person is a~~
25 ~~beneficiary whether named under the initial trust instrument or through the~~
26 ~~exercise of a limited or general power of appointment by that person's spouse~~
27 ~~or by another person.~~

28 ~~(3) For purposes of subdivision (c)(1)(C) of this section, a~~
29 ~~general power of appointment means a power of appointment exercisable in~~
30 ~~favor of the holder of the power, the estate of the holder of the power, a~~
31 ~~creditor of the holder of the power, or a creditor of the estate of the~~
32 ~~holder of the power.~~

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

36

1 ~~28-73-506.—Overdue distribution.~~

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

7
8 ~~28-73-507.—Personal obligations of trustee.~~

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

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36