

1 **DOMESTIC ASSET PROTECTION TRUST AMENDMENTS**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: V. Lowry Snow**

5 Senate Sponsor: _____

6

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions related to domestic asset protection trusts.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ delineates provisions regarding real property transferred to the trust;
- 14 ▶ clarifies a settlor-trustee's role in determining discretionary distributions;
- 15 ▶ makes clarifying changes to claims for relief for fraudulent transfers; and
- 16 ▶ makes technical changes.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 **AMENDS:**

23 **25-6-14**, as repealed and reenacted by Laws of Utah 2013, Chapter 284

24 **59-10-202**, as last amended by Laws of Utah 2010, Chapter 6

25 **75-7-816**, as enacted by Laws of Utah 2004, Chapter 89

26

27 *Be it enacted by the Legislature of the state of Utah:*



28 Section 1. Section **25-6-14** is amended to read:

29 **25-6-14. Asset Protection Trust.**

30 (1) As used in this section:

31 (a) "Creditor" means:

32 (i) a creditor or other claimant of the settlor existing when the trust is created; or

33 (ii) a person who subsequently becomes a creditor, including, whether or not reduced
34 to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed,
35 undisputed, legal, equitable, secured, or unsecured:

36 (A) one holding or seeking to enforce a judgment entered by a court or other body
37 having adjudicative authority; or

38 (B) one with a right to payment.

39 (b) "Insolvent" has the same meaning as in Section [25-6-3](#).

40 ~~(b)~~ (c) "Property" means real property, tangible or intangible personal property, and
41 interests in real property or tangible or intangible personal property.

42 ~~(c)~~ (d) "Settlor" means a person who transfers property in trust.

43 ~~(d)~~ (e) "Transfer" means any form of transfer of property, including gratuitous
44 transfers, whether by deed, conveyance, or assignment.

45 ~~(e)~~ (f) "Trust" has the same meaning as in Section [75-1-201](#).

46 (2) "Paid and delivered" to the settlor, as beneficiary, does not include the settlor's use
47 or occupancy of real property or tangible or intangible personal property owned by the trust if
48 the use or occupancy is in accordance with the trustee's discretionary authority under the trust
49 instrument.

50 (3) If the settlor of an irrevocable trust is also a beneficiary of the trust, and if the
51 requirements of Subsection (5) are satisfied, a creditor of the settlor may not:

52 (a) satisfy a claim or liability of the settlor in either law or equity out of the settlor's
53 transfer to the trust or the settlor's beneficial interest in the trust;

54 (b) force or require the trustee to make a distribution to the settlor, as beneficiary; or

55 (c) require the trustee to pay any distribution directly to the creditor, or otherwise
56 attach the distribution before it has been paid or delivered by the trustee to the settlor, as
57 beneficiary.

58 (4) (a) Notwithstanding Subsection (3), nothing in this section prohibits a creditor from

59 satisfying a claim or liability from the distribution once it has been paid or delivered by the
60 trustee to the settlor, as beneficiary.

61 (b) Notwithstanding Subsection (3), nothing in this section may be construed to nullify
62 or impair any security interest that was granted by the settlor with respect to property
63 transferred to the trust.

64 (c) If property contributed to the trust is conveyed to the settlor or to another
65 beneficiary only for the purpose of obtaining a loan secured by a mortgage or deed of trust on
66 the property and is then reconveyed to the trust, the conveyance is disregarded and the
67 reconveyance relates back to the date the property was initially contributed to the trust. The
68 mortgage or deed of trust on the property shall be enforceable against the trust.

69 (5) In order for Subsection (3) to apply, the conditions in this Subsection (5) shall be
70 satisfied. Where this Subsection (5) requires that a provision be included in the trust
71 instrument, no particular language need be used in the trust instrument if the meaning of the
72 trust provision otherwise complies with this Subsection (5). An agreement or understanding,
73 expressed or implied, between the settlor and the trustee that attempts to grant or permit the
74 retention by the settlor of greater rights or authority than is stated in the trust instrument is
75 void.

76 (a) The trust instrument shall provide that the trust is governed by Utah law and [is
77 ~~established pursuant to~~] this section.

78 (b) The trust instrument shall require that at all times at least one trustee shall be a
79 Utah resident or Utah trust company, as the term "trust company" is defined in Section 7-5-1.

80 (c) The trust instrument shall provide that neither the interest of the settlor, as
81 beneficiary, nor the income or principal of the trust may be voluntarily or involuntarily
82 transferred by the settlor, as beneficiary. The provision shall be considered to be a restriction
83 on the transfer of the settlor's beneficial interest in the trust that is enforceable under applicable
84 nonbankruptcy law within the meaning of [Section] 11 U.S.C. Sec. 541(c)(2) of the Bankruptcy
85 Code.

86 (d) The settlor may not have the ability under the trust instrument to revoke, amend, or
87 terminate all or any part of the trust, or to withdraw property from the trust, without the consent
88 of a person who has a substantial beneficial interest in the trust, which interest would be
89 adversely affected by the exercise of the power held by the settlor.

90 (e) The trust instrument may not provide for any mandatory distributions of either
91 income or principal to the settlor, as beneficiary, except as provided in Subsection (7)(f).

92 ~~[(f) The settlor may not benefit from, direct a distribution of, or use trust property~~
93 ~~except as stated in the trust instrument. An agreement or understanding, express or implied,~~
94 ~~between the settlor and the trustee that attempts to grant or permit the retention of greater rights~~
95 ~~or authority than is stated in the trust instrument is void.]~~

96 [(g)] (f) The trust instrument shall require that, at least 30 days before [making] paying
97 or delivering any distribution to the settlor, as beneficiary, the trustee notify in writing every
98 person who has a child support judgment or child support order against the settlor. The trust
99 instrument shall require that the notice state the date the distribution will be [made] paid and
100 delivered and the amount of the distribution.

101 [~~(h)~~] (g) At the time that the settlor transfers any assets to the trust, the settlor may not
102 be in default of making a payment due under any child support judgment or order.

103 [~~(i)~~] (h) A transfer of assets to the trust may not render the settlor insolvent.

104 [(j)] (i) At the time the settlor transfers any assets to the trust, the settlor may not intend
105 to hinder, delay, or defraud a known creditor by transferring the assets to the trust. A settlor's
106 expressed intention to protect trust assets from the settlor's potential future creditors is not
107 evidence of an intent to hinder, delay, or defraud a known creditor.

108 [~~(k)~~ At the time that the settlor transfers any assets to the trust, the settlor may not be
109 ~~contemplating filing for relief under the provisions of the Bankruptcy Code.]~~

110 [(l)] (j) Assets transferred to the trust may not be derived from [unlawful] criminal
111 activities.

112 [(m)] (k) At the time the settlor transfers any assets to the trust, the settlor shall sign a
113 sworn affidavit stating that:

114 (i) the settlor has full right, title, and authority to transfer the assets to the trust;

115 (ii) the transfer of the assets to the trust will not render the settlor insolvent;

116 (iii) the settlor does not intend to hinder, delay, or defraud a known creditor by
117 transferring the assets to the trust;

118 (iv) there are no pending or threatened court actions against the settlor, except for those
119 court actions identified by the settlor on an attachment to the affidavit;

120 (v) the settlor is not involved in any administrative proceedings that would reasonably

121 be expected to have a material adverse financial effect on the settlor, except those
122 administrative proceedings identified on an attachment to the affidavit;

123 (vi) at the time of the transfer of the assets to the trust, the settlor is not in default of a
124 child support obligation;

125 (vii) the settlor does not contemplate filing for relief under the provisions of [~~the~~
126 ~~Bankruptcy Code~~] 11 U.S.C. Sec. 101, et seq.; and

127 (viii) the assets being transferred to the trust were not derived from [~~unlawful~~] criminal
128 activities.

129 (6) Failure to satisfy the requirements of Subsection (5) shall result in the
130 consequences described in this Subsection (6).

131 (a) If any requirement of Subsections (5)(a) through [~~(g)~~] (f) is not satisfied, none of
132 the property held in the trust will at any time have the benefit of the protections described in
133 Subsection (3).

134 (b) If the trustee does not send the notice required under Subsection (5)[~~(g)~~](f), the
135 court may authorize any person with a child support judgment or child support order against
136 the settlor to whom notice was not sent to attach the distribution or future distributions, but the
137 person may not:

138 (i) satisfy a claim or liability in either law or equity out of the settlor's transfer to the
139 trust or the settlor's beneficial interest in the trust; or

140 (ii) force or require the trustee to make a distribution to the settlor, as beneficiary. No
141 creditor of the settlor other than a person who has a child support judgment or child support
142 order against the settlor shall have a right to relief under this Subsection (6) as a result of the
143 trustee's failure to provide the notice required under Subsection (5)(f).

144 (c) If the requirement set forth in Subsection (5)(g) is not satisfied, the property
145 transferred to the trust that does not satisfy the requirement may not have the benefit of the
146 protections described in Subsection (3) with respect to any person with a child support order or
147 child support judgment against the settlor.

148 [~~(e)~~] (d) If any requirement set forth in Subsections (5)(h) through [~~(m)~~] (k) is not
149 satisfied, the property transferred to the trust that does not satisfy the requirement may not have
150 the benefit of the protections described in Subsection (3). Any claim that Subsection (5)(h) or
151 Subsection (5)(i) is not satisfied shall be established by clear and convincing evidence.

152 (7) ~~[The provisions of Subsection (3) may apply to a trust even if]~~ The following
153 provisions will not disqualify a trust from the protections described in Subsection (3) if the
154 requirements of this section are otherwise satisfied:

155 (a) the settlor serves as a cotrustee or as an advisor to the trustee, provided that ~~[the~~
156 ~~settlor may not participate in the]~~ any determination as to whether a discretionary distribution
157 will be made[;] to the settlor shall be made only by trustees other than the settlor. The settlor
158 may not be considered to be involved in the determination as to whether a discretionary
159 distribution was made to the settlor solely because the settlor:

160 (i) requested the distribution from the trust;

161 (ii) consulted with the trustees regarding the distribution;

162 (iii) exercised a right to consent to or veto the distribution pursuant to a power
163 described in Subsection (7)(d); or

164 (iv) signed documentation in a trustee's capacity as a cotrustee implementing the
165 distribution, so long as the other trustees independently authorized the distribution in their
166 discretion;

167 (b) the settlor has the authority under the terms of the trust instrument to appoint
168 nonsubordinate advisors or trust protectors who can remove and appoint trustees and who can
169 direct, consent to, or disapprove distributions;

170 (c) the settlor has the power under the terms of the trust instrument to serve as an
171 investment director or to appoint an investment director under Section [75-7-906](#);

172 (d) the trust instrument gives the settlor the power to consent to or veto a distribution
173 from the trust;

174 (e) the trust instrument gives the settlor an inter vivos or a testamentary nongeneral
175 power of appointment or similar power;

176 (f) the trust instrument gives the settlor the right to receive the following types of
177 distributions:

178 (i) income, principal, or both in the discretion of a person, including a trustee, other
179 than the settlor;

180 (ii) principal, subject to an ascertainable standard set forth in the trust;

181 (iii) income or principal from a charitable remainder annuity trust or charitable
182 remainder unitrust, as defined in 26 U.S.C. 664;

183 (iv) a percentage of the value of the trust each year as determined under the trust
184 instrument, but not exceeding the amount that may be defined as income under 26 U.S.C.
185 643(b);

186 (v) the transferor's potential or actual use of real property held under a qualified
187 personal residence trust, or potential or actual possession of a qualified annuity interest, within
188 the meaning of 26 U.S.C. 2702 and the accompanying regulations; [~~and~~]

189 (vi) income or principal from a grantor retained annuity trust or grantor retained
190 unitrust that is allowed under 26 U.S.C. Sec. 2702; [~~or~~] and

191 (vii) income from the trust intended to qualify for the federal estate tax or gift tax
192 marital deduction under 26 U.S.C. Sec. 2056(b)(7) or 26 U.S.C. Sec. 2523(f);

193 (g) the trust instrument authorizes the settlor to use real or personal property owned by
194 the trust[-];

195 (h) (i) the settlor gives a personal guarantee with respect to any debt or obligation
196 secured by property that is held in the trust and the settlor directly or indirectly pays or makes
197 payments on the debt or obligation; or

198 (ii) the settlor directly pays property taxes, casualty and liability insurance premiums,
199 maintenance expenses, homeowners association dues, or other similar expenses with respect to
200 property held in the trust; or

201 (i) the settlor pays income tax with respect to items of income attributed to that portion
202 of the trust of which the settlor is considered to be the owner under 26 U.S.C. Sec. 671 through
203 678, which payments may not constitute additional transfers to the trust for purposes of this
204 section.

205 (8) If a trust instrument contains the provisions described in Subsections (5)(a) through
206 (g), the transfer restrictions prevent a creditor or other person from asserting any cause of
207 action or claim for relief against a trustee of the trust or against others involved in the
208 counseling, drafting, preparation, execution, or funding of the trust for conspiracy to commit
209 fraudulent conveyance or transfer, aiding and abetting a fraudulent conveyance or transfer,
210 participation in the trust transaction, or similar cause of action or claim for relief. For purposes
211 of this subsection, counseling, drafting, preparation, execution, or funding of the trust includes
212 the preparation and funding of a limited partnership, a limited liability company, or other entity
213 if interests in the entity are subsequently transferred to the trust. The creditor and other person

214 prevented from asserting a cause of action or claim for relief may assert a cause of action
215 against, and are limited to recourse against, only:

216 (a) the trust and the trust assets; and
217 (b) the settlor, to the extent otherwise allowed in this section.

218 (9) ~~[A cause of action or claim for relief regarding a fraudulent transfer of a settlor's~~
219 ~~assets under Subsection (5)(j) is extinguished unless the action under Subsection (5)(j) is~~
220 ~~brought by a creditor of the settlor who was a creditor of the settlor before the assets referred to~~
221 ~~in Subsection (5)(j) were transferred to the trust and the action under Subsection (5)(j) is~~
222 ~~brought within the earlier of]~~ The exclusive remedy for a claim that Subsection (5)(h) or
223 Subsection (5)(i) was not satisfied with respect to the transfer of assets to a trust created under
224 this section shall be a claim under Subsection 26-6-5(1)(a) or 25-6-6(1), as applicable. No
225 other cause of action or claim for relief under Sections 25-6-1 through 25-6-13 shall apply to
226 the transfer of a settlor's assets to a trust created under this section. Notwithstanding any other
227 provisions of Sections 25-6-1 through 25-6-13 to the contrary, any permissible cause of action
228 or claim for relief for a fraudulent transfer of settlor's assets to a trust created under this section
229 is extinguished unless the action is brought by a creditor of the settlor who was a creditor of the
230 settlor before the assets in question were transferred to the trust and the action is brought within
231 the earlier of:

232 (a) the later of:
233 (i) two years after the transfer is made; or
234 (ii) one year after the transfer is or reasonably could have been discovered by the
235 creditor if the creditor:

236 (A) can demonstrate, by ~~[a preponderance of the]~~ clear and convincing evidence, that
237 the creditor asserted a specific claim against the settlor before the transfer; or
238 (B) files another action, other than an action ~~[under Subsection (5)(j)]~~ alleging a
239 fraudulent transfer, against the settlor that asserts a claim based on an act or omission of the
240 settlor that occurred before the transfer, and the action described in this Subsection (9) is filed
241 within two years after the transfer~~[-];~~ or

242 (b) (i) with respect to a creditor known to the settlor, 120 days after the date on which
243 notice of the transfer is mailed to the creditor, which notice shall state the name of the settlor,
244 ~~[and]~~ the address of the settlor or the settlor's representative, the name and address of the

245 trustee or the trustee's representative, and also describe the assets that were transferred, but
246 does not need to state the value of those assets if the assets are other than cash, and which shall
247 inform the creditor that he is required to [~~present his claim to both the settlor and the trustee~~]
248 bring an action or claim for relief within 120 days from the mailing of the notice or be forever
249 barred; or

250 (ii) with respect to a creditor not known to the settlor, 120 days after the date on which
251 notice of the transfer is first published in a newspaper of general circulation in the county in
252 which the settlor then resides or is published on a public legal notice website as required by
253 Section 45-1-101, which notice shall state the name [~~and~~] of the settlor, the address of the
254 settlor or the settlor's representative, the name and address of the trustee or the trustee's
255 representative, and also describe the assets that were transferred, but does not need to state the
256 value of those assets [~~if the assets are other than cash~~].

257 (10) The notice required [~~in~~] by Subsection (9)(b) shall be published in accordance
258 with the provisions of Section 45-1-101 for three consecutive weeks and inform creditors that
259 they are required to [~~present claims~~] bring an action or claim for relief within 120 days from
260 the first publication of the notice or be forever barred. Failure to give notice as required by
261 Subsection (9)(b) to one creditor may not prevent the shortening of the limitations period under
262 Subsection (9)(b) with respect to any creditor to whom such notice was properly given, whether
263 by mail or publication.

264 (11) (a) With respect to a trust governed by this section, the rights of the creditors of
265 nonsettlor beneficiaries shall be governed by the provisions of Title 75, Chapter 7, Utah
266 Uniform Trust Code. With respect to an irrevocable trust of which the settlor is a beneficiary
267 that is not governed by this section, the rights of the creditors of the settlor shall be governed
268 by the provisions of Section 75-7-505.

269 (b) To the extent the provisions in this section conflict with the provisions of Sections
270 25-6-1 through 25-6-13, the provisions of this section take precedence.

271 [~~(H)~~] (12) (a) A trust is subject to this section if it is governed by Utah law, as
272 provided in Section 75-7-107, and if it otherwise meets the requirements of this section.

273 (b) A court of this state has exclusive jurisdiction over an action or claim for relief that
274 is based on a transfer of property to a trust that is the subject of this section.

275 (13) Nothing in this section may be construed to alter any rights that may have vested

276 or been created prior to May 14, 2013.

277 Section 2. Section **59-10-202** is amended to read:

278 **59-10-202. Additions to and subtractions from unadjusted income of a resident or**
279 **nonresident estate or trust.**

280 (1) There shall be added to unadjusted income of a resident or nonresident estate or
281 trust:

282 (a) a lump sum distribution allowable as a deduction under Section 402(d)(3), Internal
283 Revenue Code, to the extent deductible under Section 62(a)(8), Internal Revenue Code, in
284 determining adjusted gross income;

285 (b) except as provided in Subsection (3), for bonds, notes, and other evidences of
286 indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other
287 evidences of indebtedness issued by one or more of the following entities:

288 (i) a state other than this state;

289 (ii) the District of Columbia;

290 (iii) a political subdivision of a state other than this state; or

291 (iv) an agency or instrumentality of an entity described in Subsections (1)(b)(i) through
292 (iii);

293 (c) any portion of federal taxable income for a taxable year if that federal taxable
294 income is derived from stock:

295 (i) in an S corporation; and

296 (ii) that is held by an electing small business trust;

297 (d) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan,
298 from the account of a resident or nonresident estate or trust that is an account owner as defined
299 in Section [53B-8a-102](#), for the taxable year for which the amount is withdrawn, if that amount
300 withdrawn from the account of the resident or nonresident estate or trust that is the account
301 owner:

302 (i) is not expended for:

303 (A) higher education costs as defined in Section [53B-8a-102](#); or

304 (B) a payment or distribution that qualifies as an exception to the additional tax for
305 distributions not used for educational expenses provided in Sections 529(c) and 530(d),
306 Internal Revenue Code; and

307 (ii) is:

308 (A) subtracted by the resident or nonresident estate or trust:

309 (I) that is the account owner; and

310 (II) on the resident or nonresident estate's or trust's return filed under this chapter for a

311 taxable year beginning on or before December 31, 2007; or

312 (B) used as the basis for the resident or nonresident estate or trust that is the account

313 owner to claim a tax credit under Section 59-10-1017; and

314 (e) any fiduciary adjustments required by Section 59-10-210.

315 (2) There shall be subtracted from unadjusted income of a resident or nonresident

316 estate or trust:

317 (a) the interest or a dividend on obligations or securities of the United States and its

318 possessions or of any authority, commission, or instrumentality of the United States, to the

319 extent that interest or dividend is included in gross income for federal income tax purposes for

320 the taxable year but exempt from state income taxes under the laws of the United States, but

321 the amount subtracted under this Subsection (2) shall be reduced by any interest on

322 indebtedness incurred or continued to purchase or carry the obligations or securities described

323 in this Subsection (2), and by any expenses incurred in the production of interest or dividend

324 income described in this Subsection (2) to the extent that such expenses, including amortizable

325 bond premiums, are deductible in determining federal taxable income;

326 (b) income of an irrevocable resident trust if:

327 (i) the income would not be treated as state taxable income derived from Utah sources

328 under Section 59-10-204 if received by a nonresident trust;

329 (ii) the trust first became a resident trust on or after January 1, 2004;

330 (iii) no assets of the trust were held, at any time after January 1, 2003, in another

331 resident irrevocable trust created by the same settlor or the spouse of the same settlor;

332 [~~(iv) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d);~~]

333 [~~(v)~~] (iv) the amount subtracted under this Subsection (2)(b) is reduced to the extent

334 the settlor or any other person is treated as an owner of any portion of the trust under Subtitle

335 A, Subchapter J, Subpart E of the Internal Revenue Code; and

336 [~~(vi)~~] (v) the amount subtracted under this Subsection (2)(b) is reduced by any interest

337 on indebtedness incurred or continued to purchase or carry the assets generating the income

338 described in this Subsection (2)(b), and by any expenses incurred in the production of income
339 described in this Subsection (2)(b), to the extent that those expenses, including amortizable
340 bond premiums, are deductible in determining federal taxable income;

341 (c) if the conditions of Subsection (4)(a) are met, the amount of income of a resident or
342 nonresident estate or trust derived from a deceased Ute tribal member:

343 (i) during a time period that the Ute tribal member resided on homesteaded land
344 diminished from the Uintah and Ouray Reservation; and

345 (ii) from a source within the Uintah and Ouray Reservation;

346 (d) any amount:

347 (i) received by a resident or nonresident estate or trust;

348 (ii) that constitutes a refund of taxes imposed by:

349 (A) a state; or

350 (B) the District of Columbia; and

351 (iii) to the extent that amount is included in total income on that resident or nonresident
352 estate's or trust's federal tax return for estates and trusts for that taxable year;

353 (e) the amount of a railroad retirement benefit:

354 (i) paid:

355 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et
356 seq.;

357 (B) to a resident or nonresident estate or trust derived from a deceased resident or
358 nonresident individual; and

359 (C) for the taxable year; and

360 (ii) to the extent that railroad retirement benefit is included in total income on that
361 resident or nonresident estate's or trust's federal tax return for estates and trusts;

362 (f) an amount:

363 (i) received by a resident or nonresident estate or trust if that amount is derived from a
364 deceased enrolled member of an American Indian tribe; and

365 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
366 part on that amount in accordance with:

367 (A) federal law;

368 (B) a treaty; or

- 369 (C) a final decision issued by a court of competent jurisdiction;
- 370 (g) the amount that a qualified nongrantor charitable lead trust deducts under Section
371 642(c), Internal Revenue Code, as a charitable contribution deduction, as allowed on the
372 qualified nongrantor charitable lead trust's federal income tax return for estates and trusts for
373 the taxable year; and
- 374 (h) any fiduciary adjustments required by Section 59-10-210.
- 375 (3) Notwithstanding Subsection (1)(b), interest from bonds, notes, and other evidences
376 of indebtedness issued by an entity described in Subsections (1)(b)(i) through (iv) may not be
377 added to unadjusted income of a resident or nonresident estate or trust if, as annually
378 determined by the commission:
- 379 (a) for an entity described in Subsection (1)(b)(i) or (ii), the entity and all of the
380 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on
381 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or
- 382 (b) for an entity described in Subsection (1)(b)(iii) or (iv), the following do not impose
383 a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of
384 this state:
- 385 (i) the entity; or
- 386 (ii) (A) the state in which the entity is located; or
- 387 (B) the District of Columbia, if the entity is located within the District of Columbia.
- 388 (4) (a) A subtraction for an amount described in Subsection (2)(c) is allowed only if:
- 389 (i) the income is derived from a deceased Ute tribal member; and
- 390 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
391 requirements of this Subsection (4).
- 392 (b) The agreement described in Subsection (4)(a):
- 393 (i) may not:
- 394 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;
- 395 (B) provide a subtraction under this section greater than or different from the
396 subtraction described in Subsection (2)(c); or
- 397 (C) affect the power of the state to establish rates of taxation; and
- 398 (ii) shall:
- 399 (A) provide for the implementation of the subtraction described in Subsection (2)(c);

400 (B) be in writing;
401 (C) be signed by:
402 (I) the governor; and
403 (II) the chair of the Business Committee of the Ute tribe;
404 (D) be conditioned on obtaining any approval required by federal law; and
405 (E) state the effective date of the agreement.
406 (c) (i) The governor shall report to the commission by no later than February 1 of each
407 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is
408 in effect.
409 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the
410 subtraction permitted under Subsection (2)(c) is not allowed for taxable years beginning on or
411 after the January 1 following the termination of the agreement.
412 (d) For purposes of Subsection (2)(c) and in accordance with Title 63G, Chapter 3,
413 Utah Administrative Rulemaking Act, the commission may make rules:
414 (i) for determining whether income is derived from a source within the Uintah and
415 Ouray Reservation; and
416 (ii) that are substantially similar to how adjusted gross income derived from Utah
417 sources is determined under Section [59-10-117](#).
418 Section 3. Section **75-7-816** is amended to read:
419 **75-7-816. Recitals when title to real property is in trust -- Failure.**
420 (1) When title to real property is granted to a person as trustee, the terms of the trust
421 may be given either:
422 (a) in the deed of transfer; or
423 (b) in an instrument signed by the grantor and recorded in the same office as the grant
424 to the trustee.
425 (2) If the terms of the trust are not made public as required in Subsection (1), a
426 conveyance from the trustee is absolute in favor of purchasers for value who take the property
427 without notice of the terms of the trust.
428 (3) The terms of the trust recited in the deed of transfer or the instrument recorded
429 under Subsection (1)(b) shall include:
430 (a) the name of the trustee;

431 (b) the address of the trustee; and

432 (c) the name and date of the trust.

433 [~~(4) Any real property titled in a trust which has a restriction on transfer described in~~

434 Section ~~25-6-14~~ shall include in the title the words "asset protection trust."]

Legislative Review Note
as of 1-30-14 3:58 PM

Office of Legislative Research and General Counsel