

SHORT TITLE: Trusts; increasing certain trust income amount exempt from creditors of beneficiary; effective date.

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

SENATE BILL NO. 608

By: Smith

AS INTRODUCED

An Act relating to trusts; amending 60 O.S. 1991, Section 175.25, which relates to alienability of interests in trusts and rights of creditors; clarifying references; increasing amount of trust income exempt from creditors of beneficiary and not alienable by the beneficiary; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 60 O.S. 1991, Section 175.25, is amended to read as follows:

Section 175.25 A. Any instrument creating a trust may provide by specific words that the interest of any beneficiary in the income of the trust shall not be subject to voluntary or involuntary alienation by such beneficiary. Subject to the following provisions of this section, a direction to this effect shall be valid and enforceable.

~~A.~~ B. Notwithstanding a provision in the terms of a trust restraining the alienation of the interest of a beneficiary, such interest shall be entitled to be reached in the satisfaction of claims to the following extent:

1. All income due or to accrue in the future to the beneficiary shall be subject to enforceable claims under the laws of this state for 7:

- ~~(a)~~ a. support of a husband, wife, or child of the beneficiary,
- ~~(b)~~ b. necessary services rendered or necessary supplies furnished to the beneficiary, or
- ~~(c)~~ c. a judgment based on any such claim under subparagraph (a) a or (b) b; and

2. In all cases not mentioned in ~~preceding~~ paragraph 1 of this subsection 1 herein, all income due or to accrue in the future to the beneficiary in excess of ~~Five Thousand Dollars (\$5,000.00)~~ Fifty Thousand Dollars (\$50,000.00) per ~~annum based upon~~ calendar year ~~of the trust~~, shall be subject to garnishment by creditors of the beneficiary and shall be fully alienable by the beneficiary.

~~B.~~ C. Where two or more creditors undertake to reach the interest of any beneficiary of a trust, pursuant to the provisions of this section, they shall be subject to priority of payment in the order of the service of a notice of garnishment on the trustee. The pendency of any attachment or garnishment shall not prevent the filing of a further attachment or garnishment by the same or any other creditor.

~~C.~~ D. Where the beneficiary of any spendthrift trust is also the beneficiary under any other spendthrift trust created or administered either within or without this state, the aggregate income payable under all such trusts to the beneficiary shall be considered together for the purpose of determining the rights of creditors and assignees under this section.

~~D.~~ E. The right of any beneficiary of a trust to receive the principal of the trust or any part of it, presently or in the future, shall not be alienable and shall not be subject to the claims of his creditors.

~~E.~~ F. Where the interest of the beneficiary of a trust is subject to the exercise of discretion by the trustee or by another, the provisions of this act as to the rights of creditors and

assignees shall apply with respect to any sums which the trustee or such other person determines shall be paid to or for the beneficiary.

~~F.~~ G. A trust in which the interest of the beneficiary is subject to restraints on alienation as provided in this act may be called a "spendthrift trust" and a direction in any instrument creating a trust that the interest of any beneficiary shall be held on or subject to a spendthrift trust shall be sufficient to restrain the alienation of such interest to the extent provided in this act.

~~G.~~ H. Nothing in this act shall authorize a person to create a spendthrift trust or other inalienable interest for his own benefit. The interest of the trustor as a beneficiary of any trust shall be freely alienable and subject to the claims of his creditors.

~~H.~~ I. The provisions of this section may be enforced only by an action in a court of competent jurisdiction and the obligor beneficiary shall be a party defendant in such action. The trustee shall not be required to recognize any of the obligations provided for in this section or to withhold any income from the beneficiary until said trustee has been served with summons or garnishment summons. Such action shall be governed by the rules of civil procedure under the laws of ~~Oklahoma~~ this state.

SECTION 2. This act shall become effective September 1, 1994.

44-2-1545

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