

State of Arkansas
82nd General Assembly
Regular Session, 1999

As Engrossed: H3/3/99

A Bill

HOUSE BILL 1172

By: Representative Courtway

For An Act To Be Entitled

"THE FAMILY AND CREDITOR RIGHTS IN REVOCABLE TRUSTS
ACT. "

Subtitle

"THE FAMILY AND CREDITOR RIGHTS IN
REVOCABLE TRUSTS ACT. "

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

SECTION 1. Definitions. As used in this act:

(1) "Adverse pecuniary interest" shall have the same meaning as the term "adverse party" in §672(a) of the Internal Revenue Code of 1986, as amended;

(2) "Grantor" means a person dying resident of the State of Arkansas, having in effect a revocable trust at his or her death;

(3) "Revocable transfer" means a transfer of property by a grantor who reserves the power or right, either alone or with the consent of someone not having an adverse pecuniary interest, to revoke the transfer;

(4) "Trust property" means property transferred to a trust by a grantor who reserved the power or right, either alone or with the consent of someone not having an adverse pecuniary interest, to revoke the transfer.

SECTION 2. Revocable Transfers - Trust Property.

For purposes of this act, a revocable transfer shall be deemed a transfer effective at the death of the grantor. A revocable transfer shall be deemed a part of the decedent's trust property for purposes of this act if the decedent died without exercising the power of revocation. Nothing in this act

1 shall be construed to apply to proceeds of life insurance, or to distributions
2 from any pension, profit sharing or stock bonus plan qualified under §401 of
3 the Internal Revenue Code of 1986 as amended (hereinafter IRC) or under an
4 Individual Retirement Account described in IRC §408 payable as the result of
5 the death of the decedent.

6
7 SECTION 3. Family Rights.

8 The rights of the surviving spouse, children, or issue of the decedent
9 under other laws of this State, including but not limited to Arkansas Code
10 §§28-39-401 through 407, shall extend to the trust property, except that as to
11 grantors dying before the effective date of this act, any revocable transfer
12 made by a grantor before marriage to such surviving spouse shall not confer
13 any rights upon the surviving spouse which he or she does not have under other
14 laws of this State. Any revocable transfer is excluded from the trust
15 property as it applies to the surviving spouse's right of election under this
16 act, if the revocable transfer is made with the written consent of, or joinder
17 in conveyance by, the surviving spouse.

18
19 SECTION 4. Spousal Election.

20 (a) Delivery of Notice. Within one (1) month after the death of the
21 grantor, the trustee or successor trustee of a revocable transfer in trust
22 shall deliver a notice to the grantor's surviving spouse at the spouse's last
23 known mailing address, in the manner described in §4(c) hereof, in which shall
24 be stated the time within which a written election must be delivered to the
25 trustee by or on behalf of the surviving spouse in order for such spouse to
26 take against the provisions of such revocable trust.

27 (b) Spouse's Time Limitation for Delivering Election. The election by
28 a surviving spouse to take against a revocable transfer may be made at any
29 time within one (1) month after the expiration of the time limited for filing
30 of claims against a revocable transfer.

31 (c) Method of Delivery of Spouse's Election. The election shall be
32 delivered in person or by any form of mail addressed to the trustee with a
33 return receipt requested and delivery restricted to the addressee or agent of
34 the addressee. If delivery is by mail, delivery shall be complete upon
35 deposit of the election, enclosed in a postpaid, properly addressed wrapper,
36 in a post office or official depository under the care and custody of the

1 United States Postal Service.

2 (d) Form of the Election. The election to take against the revocable
3 transfer shall be in writing, signed and acknowledged by the surviving spouse,
4 by an attorney in fact acting under a durable power of attorney with general
5 or specific powers authorizing such act, or by the guardian of his or her
6 estate and shall be delivered to the trustee of the revocable transfer. The
7 election shall be in substantially the following form:

8
9 "I, _____, surviving spouse of _____,
10 deceased, hereby renounce and disclaim any and all benefits under the
11 revocable trust of _____, and elect to take property and
12 benefits which, because of this election, will accrue under Arkansas Code 28-
13 39-401 through 28-39-407.

14
15 DATED: _____

16
17 SIGNED: _____

18 (ACKNOWLEDGMENT)"
19

20 SECTION 5. Creditor's Rights in Revocable Transfers.

21 (a) Unsatisfied Claims of Estate of Decedent. The personal
22 representative of the estate of a decedent described in §2 of this act shall
23 recover on behalf of any creditor of the decedent whose claim has been timely
24 filed and allowed, so much of the trust property as necessary to satisfy the
25 claim of such creditor whose claim was not paid because of insufficient assets
26 of the probate estate to pay the claim. Costs and expenses of trust
27 administration, including but not limited to trustee compensation and
28 reasonable attorneys' fees incurred by the trustee, shall be paid by the
29 trustee before and in preference to the expenses of the administration of the
30 decedent's estate and enforceable and timely filed claims of the decedent's
31 creditors.

32 (b) Notice to Creditors.

33 (1) Any trustee of a trust with trust property may publish, in a
34 newspaper of general circulation in the county of the decedent's last
35 residence, a notice of the existence of the trust and requiring all persons
36 having claims against the decedent or his estate to present them, properly

1 verified, to the trustee within the times required by Arkansas Code §28-40-
2 111. Failure to present a claim to the trustee within such times shall result
3 in its being forever barred and precluded from any interest in the trust
4 property distributed to the beneficiaries of the trust and from any claim
5 against the trustee.

6 (2) The notice shall state the name and mailing address of the
7 trustee.

8 (3) Within one (1) month after the first publication of the
9 notice, a copy of the notice shall also be served upon each heir and devisee
10 whose name and address is known and upon all unpaid creditors whose names,
11 status as creditors, and addresses are known to or reasonably ascertainable by
12 the trustee, in accordance with Arkansas Code §28-1-112(b)(1), (2), or (3).
13 If, thereafter, the names and addresses of any such creditors are ascertained,
14 a copy of the notice shall be promptly served upon them. The burden of proof
15 on any issue as to whether a creditor was known to or reasonably ascertainable
16 by the trustee shall be upon the creditor claiming entitlement to such actual
17 notice.

18 (c) Form of Notice.

19 (1) If the trustee elects to publish a notice as described in
20 §5(b) of this act, the notice shall be published once each week for two (2)
21 consecutive weeks in substantially the following form:

22
23 "NOTICE TO CREDITORS

24
25 OF _____, DECEASED

26
27 LAST KNOWN ADDRESS: _____

28
29 DATE OF DEATH: _____

30
31 Notice is hereby given to all creditors and contingent creditors of the
32 above-named decedent that they must present their written claims to the
33 undersigned trustee within three (3) months after the date of first
34 publication of this notice or be forever barred; except that claims for injury
35 or death caused by negligence of the decedent shall be filed within six (6)
36 months after the date of first publication of this notice or be forever

1 barred.

2 The undersigned, _____, is acting as trustee under a
3 trust, the terms of which provide that the debts of the decedent may be paid
4 by the trustee upon receipt of proper proof thereof.

5 The mailing address of the trustee is:

6 _____

7
8 This notice was first published the ____ day of

9 _____.

10
11 (SIGNATURE OF TRUSTEE)"

12
13 (2) Alternatively, a combination notice may be jointly published
14 by the personal representative of the grantor's estate and the trustee, as the
15 trustee and the personal representative may elect.

16 (d) Method of Delivery of Claim. The claim shall be delivered in
17 person or by any form of mail addressed to the trustee with a return receipt
18 requested and delivery restricted to the addressee or the agent of the
19 addressee. If delivery is by mail, a delivery shall be complete upon deposit
20 of the claim, enclosed in a postpaid, properly addressed wrapper, in a post
21 office or official depository under the care and custody of the United States
22 Postal Service.

23 (e) Apportionment. Unless a grantor makes a provision by his or her
24 will, or designates the funds or property passing under a trust described in
25 §2 of this act to be so used, the expenses of the administration of the
26 grantor's estate and enforceable and approved claims of the grantor's
27 creditors to be paid in accordance with this Section shall be paid from the
28 trust property in the following order:

29 (1) Property of the residue of the trust remaining after all
30 distributions which are to be satisfied by reference to a specific property or
31 type of property, fund, sum or statutory amount;

32 (2) Property which is not to be distributed out of specified or
33 identified property or a specified or identified item of property;

34 (3) Property which is to be distributed out of specified or
35 identified property or a specified or identified item of property.

36 (f) Liability. A trustee is not individually liable to any person for

1 giving notice under this act, regardless of whether it is later determined
2 that such notice was not required by this act. The giving of notice in
3 accordance with this act shall not be construed as admitting the validity or
4 enforceability of a claim. If a trustee in good faith fails to give notice
5 described by this act, the trustee is not liable to a beneficiary or any other
6 person, firm, corporation, or other legal entity for the failure to give
7 notice. If a trustee fails to give notice as described in this act, any claims
8 of creditors against the trust property shall be governed by any other laws in
9 effect in this state (including, but not limited to, applicable statute of
10 limitations) applicable to such creditor claims.

11
12 SECTION 6. Nothing in this act shall be interpreted or construed to
13 require the probate under Title 28 of the Arkansas Code of any trust property
14 by a trustee or any other person.

15
16 SECTION 7. All provisions of this act of a general and permanent nature
17 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
18 Revision Commission shall incorporate the same in the Code.

19
20 SECTION 8. If any provision of this act or the application thereof to
21 any person or circumstance is held invalid, such invalidity shall not affect
22 other provisions or applications of the act which can be given effect without
23 the invalid provision or application, and to this end the provisions of this
24 act are declared to be severable.

25
26 SECTION 9. All laws and parts of laws in conflict with this act are
27 hereby repealed.

28 /s/ Courtway