

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

A Bill

SENATE BILL 260

5 By: Senator J. Hutchinson
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For An Act To Be Entitled

8 AN ACT TO PROTECT THE INTERESTS OF TRUST SETTLORS
9 FROM FEDERAL TAXATION; AND FOR OTHER PURPOSES.
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Subtitle

11 TO PROTECT THE INTERESTS OF TRUST
12 SETTLORS FROM FEDERAL TAXATION.
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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19 SECTION 1. Arkansas Code § 28-73-505 is amended to read as follows:
20 28-73-505. Creditor's claim against settlor.

21 (a) Whether or not the terms of a trust contain a spendthrift
22 provision, the following rules apply:

23 (1) during the lifetime of the settlor, the property of a
24 revocable trust is subject to claims of the settlor's creditors. If a trust
25 has more than one (1) settlor, the amount the creditor or assignee of a
26 particular settlor may reach may not exceed the settlor's interest in the
27 portion of the trust attributable to that settlor's contribution; and

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

34 (b) For purposes of this section:

35 (1) during the period the power may be exercised, the holder of
36 a power of withdrawal is treated in the same manner as the settlor of a



1 revocable trust to the extent of the property subject to the power; and

2 (2) ~~upon~~ on the lapse, release, or waiver of ~~the a~~ power, ~~the~~
3 ~~holder is treated as the settlor of the trust only to the extent the value of~~
4 ~~the property affected by the lapse, release, or waiver exceeds the greater of~~
5 ~~the amount specified in Section 2041(b)(2) or 2514(e) of the Internal Revenue~~
6 ~~Code of 1986 or Section 2503(b) of the Internal Revenue Code of 1986, in each~~
7 ~~case as in effect on January 1, 2005~~ of withdrawal, the holder of a power of
8 withdrawal is not, by reason of any such power of withdrawal, treated as the
9 settlor of the trust.

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

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

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

23 (C) an irrevocable trust for the benefit of a person to
24 the extent that the property of the trust was subject to a general power of
25 appointment in another person.

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

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

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