

## CHAPTER 170

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**PROBATE, TRUSTS, AND FIDUCIARIES**

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SENATE BILL 21-162

BY SENATOR(S) Gardner, Cooke, Holbert, Kolker, Liston, Woodward, Garcia;  
also REPRESENTATIVE(S) Snyder and Soper, Bird, Exum, Ricks, Williams.**AN ACT****CONCERNING SPENDTHRIFT PROVISIONS IN TRUSTS PURSUANT TO THE "COLORADO UNIFORM TRUST CODE".***Be it enacted by the General Assembly of the State of Colorado:***SECTION 1.** In Colorado Revised Statutes, **add** part 5 to article 5 of title 15 as follows:**PART 5  
CREDITOR'S CLAIMS -  
SPENDTHRIFT AND DISCRETIONARY TRUSTS**

**15-5-501. Rights of beneficiary's creditor or assignee.** EXCEPT AS PROVIDED IN SECTION 15-5-504, TO THE EXTENT A BENEFICIARY'S INTEREST IS NOT SUBJECT TO A SPENDTHRIFT PROVISION, THE COURT MAY AUTHORIZE A CREDITOR OR ASSIGNEE OF THE BENEFICIARY TO ATTACH PRESENT OR FUTURE DISTRIBUTIONS TO OR FOR THE BENEFIT OF THE BENEFICIARY. THE COURT MAY LIMIT THE AWARD TO SUCH RELIEF AS IS APPROPRIATE UNDER THE CIRCUMSTANCES. NOTHING IN THIS PART 5 MODIFIES OTHER COLORADO LAW GOVERNING LIMITATIONS ON THE AMOUNTS THAT MAY BE APPLIED TO THE SATISFACTION OF A CREDITOR'S CLAIM, OR THE PROCEDURES BY WHICH A CREDITOR MAY ATTEMPT TO SATISFY A CLAIM.

**15-5-502. Spendthrift provision.** (1) A SPENDTHRIFT PROVISION IS VALID ONLY IF IT RESTRAINS BOTH VOLUNTARY AND INVOLUNTARY TRANSFER OF A BENEFICIARY'S INTEREST.

(2) A TERM OF A TRUST PROVIDING THAT THE INTEREST OF A BENEFICIARY IS HELD SUBJECT TO A "SPENDTHRIFT TRUST", OR WORDS OF SIMILAR IMPORT, IS SUFFICIENT TO RESTRAIN BOTH VOLUNTARY AND INVOLUNTARY TRANSFER OF THE

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*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

## BENEFICIARY'S INTEREST.

(3) A BENEFICIARY MAY NOT TRANSFER AN INTEREST IN A TRUST IN VIOLATION OF A VALID SPENDTHRIFT PROVISION AND, EXCEPT AS OTHERWISE PROVIDED IN THIS PART 5, A CREDITOR OR ASSIGNEE OF THE BENEFICIARY MAY NOT REACH THE INTEREST OR A DISTRIBUTION BY THE TRUSTEE BEFORE ITS RECEIPT BY THE BENEFICIARY.

(4) A TRUSTEE OF A TRUST THAT IS SUBJECT TO A SPENDTHRIFT PROVISION MAY MAKE A DISTRIBUTION THAT IS REQUIRED OR AUTHORIZED BY THE TERMS OF THE TRUST BY APPLYING THE DISTRIBUTION FOR THE BENEFICIARY'S BENEFIT. A CREDITOR OR ASSIGNEE OF THE BENEFICIARY MAY NOT REACH A DISTRIBUTION THAT IS APPLIED FOR THE BENEFICIARY'S BENEFIT, AND NO TRUSTEE IS LIABLE TO ANY CREDITOR OF A BENEFICIARY FOR MAKING SUCH A DISTRIBUTION.

(5) REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY THAT IS OWNED BY THE TRUST BUT THAT IS MADE AVAILABLE FOR A BENEFICIARY'S USE OR OCCUPANCY IN ACCORDANCE WITH THE TRUSTEE'S AUTHORITY UNDER THE TERMS OF THE TRUST IS NOT CONSIDERED TO HAVE BEEN DISTRIBUTED BY THE TRUSTEE OR RECEIVED BY THE BENEFICIARY FOR PURPOSES OF ALLOWING A CREDITOR OR ASSIGNEE OF THE BENEFICIARY TO REACH THE PROPERTY.

**15-5-503. Exceptions to spendthrift provision - definitions.** (1) IN THIS SECTION:

(a) "CHILD" INCLUDES ANY PERSON OR ENTITY WHO CAN ENFORCE A CHILD SUPPORT ORDER IN THIS OR ANOTHER STATE.

(b) "CHILD SUPPORT ORDER" MEANS ANY ADMINISTRATIVE OR COURT ORDER REQUIRING THE PAYMENT OF CHILD SUPPORT, CHILD SUPPORT ARREARS, CHILD SUPPORT DEBT, RETROACTIVE SUPPORT, OR MEDICAL SUPPORT. IF A CHILD SUPPORT ORDER IS COMBINED WITH AN ORDER FOR SPOUSAL MAINTENANCE OR SUPPORT, THE TERM "CHILD SUPPORT ORDER" SHALL NOT INCLUDE ANY PORTION OF THE ORDER FOR SPOUSAL MAINTENANCE OR SUPPORT.

(2) A SPENDTHRIFT PROVISION IS UNENFORCEABLE AGAINST:

(a) A CHILD WHO IS AN OBLIGEE PURSUANT TO A CHILD SUPPORT ORDER FOR WHICH THE BENEFICIARY IS THE OBLIGOR; AND

(b) A JUDGMENT CREDITOR WHO HAS PROVIDED ESSENTIAL SERVICES FOR THE PROTECTION OF A BENEFICIARY'S INTEREST IN THE TRUST.

(2.5) SUBSECTION (2) OF THIS SECTION DOES NOT APPLY TO A SPECIAL NEEDS TRUST, SUPPLEMENTAL NEEDS TRUST, OR SIMILAR TRUST ESTABLISHED FOR A PERSON IF ITS APPLICATION COULD INVALIDATE SUCH A TRUST'S EXEMPTION FROM CONSIDERATION AS A COUNTABLE RESOURCE FOR MEDICAID OR SUPPLEMENTAL SECURITY INCOME PURPOSES OR IF ITS APPLICATION HAS THE EFFECT OR POTENTIAL EFFECT OF RENDERING THE PERSON INELIGIBLE FOR ANY PROGRAM OF PUBLIC BENEFIT, INCLUDING, BUT NOT LIMITED TO, MEDICAID AND SUPPLEMENTAL SECURITY INCOME.

(3) THE ONLY REMEDY OF A CLAIMANT AGAINST WHOM A SPENDTHRIFT PROVISION CANNOT BE ENFORCED IS TO OBTAIN FROM A COURT AN ORDER ATTACHING PRESENT OR FUTURE DISTRIBUTIONS TO OR FOR THE BENEFIT OF THE BENEFICIARY. THE COURT MAY LIMIT THE AWARD TO SUCH RELIEF AS IS APPROPRIATE UNDER THE CIRCUMSTANCES.

**15-5-504. Discretionary trusts - effect of standard - definitions.** (1) IN THIS SECTION:

(a) "CHILD" INCLUDES ANY PERSON OR ENTITY WHO CAN ENFORCE A CHILD SUPPORT ORDER IN THIS OR ANOTHER STATE.

(b) "CHILD SUPPORT ORDER" MEANS ANY ADMINISTRATIVE OR COURT ORDER REQUIRING THE PAYMENT OF CHILD SUPPORT, CHILD SUPPORT ARREARS, CHILD SUPPORT DEBT, RETROACTIVE SUPPORT, OR MEDICAL SUPPORT. IF A CHILD SUPPORT ORDER IS COMBINED WITH AN ORDER FOR SPOUSAL MAINTENANCE OR SUPPORT, THE TERM "CHILD SUPPORT ORDER" SHALL NOT INCLUDE ANY PORTION OF THE ORDER FOR SPOUSAL MAINTENANCE OR SUPPORT.

(2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS SECTION, WHETHER OR NOT A TRUST CONTAINS A SPENDTHRIFT PROVISION, A CREDITOR OF A BENEFICIARY MAY NOT COMPEL A DISTRIBUTION THAT IS SUBJECT TO THE TRUSTEE'S DISCRETION, EVEN IF:

(a) THE DISCRETION IS EXPRESSED IN THE FORM OF A STANDARD OF DISTRIBUTION; OR

(b) THE TRUSTEE HAS ABUSED THE DISCRETION.

(3) TO THE EXTENT A TRUSTEE HAS NOT COMPLIED WITH A STANDARD OF DISTRIBUTION OR HAS ABUSED A DISCRETION:

(a) A DISTRIBUTION MAY BE ORDERED BY THE COURT TO SATISFY A CHILD SUPPORT ORDER TO WHICH THE BENEFICIARY IS AN OBLIGEE; AND

(b) THE COURT SHALL DIRECT THE TRUSTEE TO PAY TO THE CHILD SUCH AMOUNT AS IS EQUITABLE UNDER THE CIRCUMSTANCES BUT NOT MORE THAN THE AMOUNT THE TRUSTEE WOULD HAVE BEEN REQUIRED TO DISTRIBUTE TO OR FOR THE BENEFIT OF THE BENEFICIARY HAD THE TRUSTEE COMPLIED WITH THE STANDARD OR NOT ABUSED THE DISCRETION.

(3.5) SUBSECTION (3) OF THIS SECTION DOES NOT APPLY TO A SPECIAL NEEDS TRUST, SUPPLEMENTAL NEEDS TRUST, OR SIMILAR TRUST ESTABLISHED FOR A PERSON IF ITS APPLICATION COULD INVALIDATE SUCH A TRUST'S EXEMPTION FROM CONSIDERATION AS A COUNTABLE RESOURCE FOR MEDICAID OR SUPPLEMENTAL SECURITY INCOME PURPOSES OR IF ITS APPLICATION HAS THE EFFECT OR POTENTIAL EFFECT OF RENDERING SUCH PERSON INELIGIBLE FOR ANY PROGRAM OF PUBLIC BENEFIT, INCLUDING, BUT NOT LIMITED TO, MEDICAID AND SUPPLEMENTAL SECURITY INCOME.

(4) THIS SECTION DOES NOT LIMIT THE RIGHT OF A BENEFICIARY TO MAINTAIN A

JUDICIAL PROCEEDING AGAINST A TRUSTEE FOR AN ABUSE OF DISCRETION OR FAILURE TO COMPLY WITH A STANDARD FOR DISTRIBUTION.

(5) IF THE TRUSTEE'S OR COTRUSTEE'S DISCRETION TO MAKE DISTRIBUTIONS FOR THE TRUSTEE'S OR COTRUSTEE'S OWN BENEFIT IS LIMITED BY AN ASCERTAINABLE STANDARD, A CREDITOR MAY NOT REACH OR COMPEL DISTRIBUTION OF THE BENEFICIAL INTEREST EXCEPT TO THE EXTENT THE INTEREST WOULD BE SUBJECT TO THE CREDITOR'S CLAIM WERE THE BENEFICIARY NOT ACTING AS TRUSTEE OR COTRUSTEE.

**15-5-505. Creditor's claim against a settlor.** (1) WHETHER OR NOT THE TERMS OF A TRUST CONTAIN A SPENDTHRIFT PROVISION, THE FOLLOWING RULES APPLY:

(a) DURING THE LIFETIME OF THE SETTLOR, THE PROPERTY OF A REVOCABLE TRUST IS SUBJECT TO CLAIMS OF THE SETTLOR'S CREDITORS.

(b) WITH RESPECT TO AN IRREVOCABLE TRUST, A CREDITOR OR ASSIGNEE OF THE SETTLOR MAY REACH THE MAXIMUM AMOUNT THAT CAN BE DISTRIBUTED TO OR FOR THE SETTLOR'S BENEFIT. IF A TRUST HAS MORE THAN ONE SETTLOR, THE AMOUNT THE CREDITOR OR ASSIGNEE OF A PARTICULAR SETTLOR MAY REACH MAY NOT EXCEED THE SETTLOR'S INTEREST IN THE PORTION OF THE TRUST ATTRIBUTABLE TO THAT SETTLOR'S CONTRIBUTION.

(c) AFTER THE DEATH OF A SETTLOR, THE PROPERTY OF A TRUST THAT WAS REVOCABLE AT THE SETTLOR'S DEATH IS SUBJECT TO CLAIMS AND ALLOWANCES AS PROVIDED IN SECTION 15-15-103.

(1.5)(a) FOR THE PURPOSES OF SUBSECTION (1)(b) OF THIS SECTION, NONE OF THE FOLLOWING SHALL BE CONSIDERED AN AMOUNT THAT CAN BE DISTRIBUTED TO OR FOR THE BENEFIT OF THE SETTLOR:

(I) TRUST PROPERTY THAT COULD BE, BUT HAS NOT YET BEEN, DISTRIBUTED TO OR FOR THE BENEFIT OF THE SETTLOR ONLY AS A RESULT OF THE EXERCISE OF A POWER OF APPOINTMENT HELD IN A NONFIDUCIARY CAPACITY BY ANY PERSON OTHER THAN THE SETTLOR;

(II) TRUST PROPERTY THAT COULD BE, BUT HAS NOT YET BEEN, DISTRIBUTED TO OR FOR THE BENEFIT OF THE SETTLOR OF A TRUST PURSUANT TO THE POWER OF THE TRUSTEE TO MAKE DISTRIBUTIONS OR PURSUANT TO THE POWER OF ANOTHER IN A FIDUCIARY CAPACITY TO DIRECT DISTRIBUTIONS, IF AND TO THE EXTENT THAT THE DISTRIBUTIONS COULD BE MADE FROM TRUST PROPERTY THE VALUE OF WHICH WAS INCLUDED IN THE GROSSESTATE OF THE SETTLOR'S SPOUSE FOR FEDERAL ESTATE TAX PURPOSES UNDER SECTION 2041 OR SECTION 2044 OF THE "INTERNAL REVENUE CODE OF 1986", AS AMENDED, OR THAT WAS TREATED AS A TRANSFER BY THE SETTLOR'S SPOUSE UNDER SECTION 2514 OR SECTION 2519 OF THE "INTERNAL REVENUE CODE OF 1986", AS AMENDED; AND

(III) TRUST PROPERTY THAT, PURSUANT TO THE EXERCISE OF A DISCRETIONARY POWER BY A PERSON OTHER THAN THE SETTLOR, COULD BE PAID TO A TAXING AUTHORITY OR TO REIMBURSE THE SETTLOR FOR ANY INCOME TAX ON TRUST INCOME OR PRINCIPAL THAT IS PAYABLE BY THE SETTLOR UNDER THE LAW IMPOSING THE

TAX.

(b) SUBSECTION (1)(b) OF THIS SECTION DOES NOT APPLY TO AN IRREVOCABLE SPECIAL NEEDS TRUST ESTABLISHED FOR A DISABLED PERSON AS DESCRIBED IN 42 U.S.C. SEC. 1396p (d)(4) OR SIMILAR FEDERAL LAW GOVERNING THE TRANSFER TO SUCH A TRUST.

(2) (RESERVED)

**15-5-506. Overdue distribution - definition.** (1) IN THIS SECTION, "MANDATORY DISTRIBUTION" MEANS A DISTRIBUTION OF INCOME OR PRINCIPAL WHICH THE TRUSTEE IS REQUIRED TO MAKE TO A BENEFICIARY UNDER THE TERMS OF THE TRUST, INCLUDING A DISTRIBUTION UPON TERMINATION OF THE TRUST. THE TERM DOES NOT INCLUDE A DISTRIBUTION SUBJECT TO THE EXERCISE OF THE TRUSTEE'S DISCRETION, EVEN IF THE DISCRETION IS EXPRESSED IN THE FORM OF A STANDARD OF DISTRIBUTION, OR THE TERMS OF THE TRUST AUTHORIZING A DISTRIBUTION COUPLE LANGUAGE OF DISCRETION WITH LANGUAGE OF DIRECTION.

(2) WHETHER OR NOT A TRUST CONTAINS A SPENDTHRIFT PROVISION, A CREDITOR OR ASSIGNEE OF A BENEFICIARY MAY REACH A MANDATORY DISTRIBUTION OF INCOME OR PRINCIPAL, INCLUDING A DISTRIBUTION UPON TERMINATION OF THE TRUST, IF THE TRUSTEE HAS NOT MADE THE DISTRIBUTION TO THE BENEFICIARY WITHIN A REASONABLE TIME AFTER THE DESIGNATED DISTRIBUTION DATE.

**15-5-507. Personal obligations of trustee.** TRUST PROPERTY IS NOT SUBJECT TO PERSONAL OBLIGATIONS OF THE TRUSTEE, EVEN IF THE TRUSTEE BECOMES INSOLVENT OR BANKRUPT.

**15-5-508. Application of part.** (1) THIS PART 5 APPLIES TO ALL TRUSTS CREATED BEFORE, ON, OR AFTER JULY 1, 2022.

(2) THIS PART 5 APPLIES TO ALL JUDICIAL PROCEEDINGS CONCERNING TRUSTS COMMENCED ON OR AFTER JULY 1, 2022.

(3) THIS PART 5 APPLIES TO JUDICIAL PROCEEDINGS CONCERNING TRUSTS COMMENCED BEFORE JULY 1, 2022, UNLESS THE COURT FINDS THAT APPLICATION OF A PARTICULAR PROVISION OF THIS PART 5 WOULD SUBSTANTIALLY INTERFERE WITH THE EFFECTIVE CONDUCT OF THE JUDICIAL PROCEEDINGS OR PREJUDICE THE RIGHTS OF THE PARTIES, IN WHICH CASE THE PARTICULAR PROVISION OF THIS PART 5 DOES NOT APPLY AND THE SUPERSEDED LAW APPLIES.

(4) ANY RULE OF CONSTRUCTION OR PRESUMPTION PROVIDED IN THIS PART 5 APPLIES TO TRUST INSTRUMENTS EXECUTED BEFORE JULY 1, 2022, UNLESS THERE IS A CLEAR INDICATION OF A CONTRARY INTENT IN THE TERMS OF THE TRUST.

(5) AN ACT DONE BEFORE JULY 1, 2022, IS NOT AFFECTED BY THIS PART 5.

(6) IF A RIGHT AFFECTED BY THIS PART 5 IS ACQUIRED, EXTINGUISHED, OR BARRED UPON THE EXPIRATION OF A PRESCRIBED PERIOD THAT HAS COMMENCED TO RUN PURSUANT TO ANY OTHER STATUTE BEFORE JULY 1, 2022, THEN THE PERIOD PRESCRIBED BY THAT STATUTE CONTINUES TO APPLY TO THE RIGHT.

**SECTION 2.** In Colorado Revised Statutes, 15-5-105, **add** (2)(e) as follows:

**15-5-105. Default and mandatory rules.** (2) Subject to sections 15-16-809, 15-16-810, and 15-16-811, the terms of a trust prevail over any provision of this code except:

(e) THE EFFECT OF A SPENDTHRIFT PROVISION AND THE RIGHTS OF CERTAIN CREDITORS AND ASSIGNEES TO REACH A TRUST AS PROVIDED IN PART 5 OF THIS ARTICLE 5;

**SECTION 3.** In Colorado Revised Statutes, 15-5-816, **amend** (1)(u) introductory portion as follows:

**15-5-816. Specific powers of trustee.** (1) Without limiting the authority conferred by section 15-5-815, and in addition to the powers conferred pursuant to the "Colorado Fiduciaries' Powers Act", part 8 of article 1 of this title 15, a trustee may:

(u) Pay an amount distributable to a beneficiary BY PAYING IT DIRECTLY TO THE BENEFICIARY OR APPLYING IT FOR THE BENEFICIARY'S BENEFIT AND, IN THE CASE OF A BENEFICIARY who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit or by:

**SECTION 4.** In Colorado Revised Statutes, 15-5-1404, **amend** (1) introductory portion as follows:

**15-5-1404. Application to existing relationships.** (1) Except as otherwise provided in this article 5, INCLUDING SECTION 15-5-508, on January 1, 2019:

**SECTION 5. Act subject to petition - effective date.** This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 21, 2021