

DOMESTIC ASSET PROTECTION TRUST AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Earl D. Tanner

Senate Sponsor: _____

LONG TITLE

General Description:

This bill creates a new Asset Protection Trust framework.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates a new type of asset protection trust;
- ▶ requires the asset protection trust to be registered with the Division of Corporations;
- ▶ allows the trust to be revocable or irrevocable;
- ▶ allows trusts created under the current asset protection trust statute to register and back-date the assets; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

75-2-205, as last amended by Laws of Utah 2003, Second Special Session, Chapter 3

75-7-107, as renumbered and amended by Laws of Utah 2004, Chapter 89

75-7-301, as repealed and reenacted by Laws of Utah 2004, Chapter 89



28 [75-7-501](#), as repealed and reenacted by Laws of Utah 2004, Chapter 89

29 [75-7-505](#), as enacted by Laws of Utah 2004, Chapter 89

30 [75-7-816](#), as enacted by Laws of Utah 2004, Chapter 89

31 ENACTS:

32 [25-7-101](#), Utah Code Annotated 1953

33 [25-7-102](#), Utah Code Annotated 1953

34 [25-7-103](#), Utah Code Annotated 1953

35 [25-7-104](#), Utah Code Annotated 1953

36 [25-7-105](#), Utah Code Annotated 1953

37 [25-7-106](#), Utah Code Annotated 1953

38 [25-7-107](#), Utah Code Annotated 1953

39 [25-7-108](#), Utah Code Annotated 1953

40 [25-7-109](#), Utah Code Annotated 1953

41 [25-7-110](#), Utah Code Annotated 1953

42 [25-7-111](#), Utah Code Annotated 1953

43 REPEALS:

44 [25-6-14](#), as repealed and reenacted by Laws of Utah 2013, Chapter 284



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

47 Section 1. Section [25-7-101](#) is enacted to read:

48 **CHAPTER 7. UTAH ASSET PROTECTION TRUST ACT**

49 **25-7-101. Title.**

50 This chapter is known as the "Utah Asset Protection Trust Act."

51 Section 2. Section [25-7-102](#) is enacted to read:

52 **25-7-102. Definitions.**

53 As used in this chapter:

54 (1) (a) "Asset Protection Trust" means any trust, whether or not administered in Utah,

55 which is registered in accordance with this chapter:

56 (i) in which the settlor is an actual or potential beneficiary; and

57 (ii) which claims a creditor of that settlor may not reach any of its assets that would be

58 available to that creditor under Section [75-7-505](#).

59 (b) A trust whose assets consist solely of assets which are exempt from the settlor's
60 creditors under Title 78B, Chapter 5, Part 5, Utah Exemptions Act, is not an asset protection
61 trust.

62 (2) "Beneficiary" means a person who has a present interest or, under the terms of the
63 trust, may have a future beneficial interest in a trust, vested or contingent.

64 (3) "Creditor" means a person:

65 (a) whose claim against the settlor arises before the trust is created; or

66 (b) who subsequently becomes a creditor of the settlor, whether or not the claim is
67 reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed,
68 undisputed, legal, equitable, secured, or unsecured.

69 (4) "Insured or bonded claims" means claims for which the settlor is required by law to
70 be insured or bonded but only to the extent of the required insurance or bond.

71 (5) "Property" means real property, personal property, and interests in real or personal
72 property.

73 (6) "Settlor" means a person who creates a trust and a person who contributes to a trust.

74 (7) "Social welfare program" means any state or federal entitlement program providing
75 benefits to the settlor, the settlor's spouse or dependants including without limitation Medicaid,
76 unemployment, and disability programs.

77 (8) "Trust" means the same as that term is defined in Section [75-1-201](#).

78 Section 3. Section **25-7-103** is enacted to read:

79 **25-7-103. Date of contribution -- Source of expenditure and distribution.**

80 For purposes of this chapter:

81 (1) Unless otherwise provided, the date of a contribution to a registered trust is the date
82 it is received by the trust.

83 (2) When a trust is registered, all of the trust assets at the time of registration are
84 considered to be contributed at the time of registration.

85 (3) When a registered settlor is added to a registered trust, all of the trust assets at the
86 time of the addition are considered to be contributed to the trust at the time of the addition.

87 (4) There is a rebuttable presumption that the expenditures and distributions of a
88 registered trust are made from the most recent contributions to the trust and the proceeds from
89 those contributions.

90 Section 4. Section **25-7-104** is enacted to read:

91 **25-7-104. Rights of settlor's creditors.**

92 (1) A creditor of a settlor of a registered trust has the same rights against the trust and
93 its assets that the creditor would have against an unregistered trust, except as set forth in this
94 chapter.

95 (2) A registered trust may assert exemptions as set forth in this chapter against the
96 collection of the trust's obligations to pay creditors of the registered settlors of the trust. The
97 exemptions may only be asserted to prevent the taking of:

98 (a) contributions to the trust which were made at least four years prior to the date the
99 creditor's claim was first presented to the trust; and

100 (b) proceeds traceable to contributions described in Subsection (2)(a).

101 (3) The exemptions set forth in this chapter may not be asserted against the following
102 claims against a registered settlor:

103 (a) a secured claim but only to the extent of the security held by the trust;

104 (b) child support and alimony obligations;

105 (c) property division under domestic orders;

106 (d) damages caused by the intentional torts of the settlor;

107 (e) court ordered fines, penalties, and criminal restitution;

108 (f) taxes and associated interest and penalties;

109 (g) reimbursement of social welfare programs; and

110 (h) insured or bonded claims.

111 (4) Exemptions set forth in this chapter may not be asserted by a registered trust if any
112 registered settlor is a settlor and beneficiary of any other asset protection trust.

113 Section 5. Section **25-7-105** is enacted to read:

114 **25-7-105. Exemptions.**

115 (1) A trust registered under this chapter may assert both of the following exemptions
116 against a claim by a creditor of a registered settlor as set forth in Section [25-7-104](#):

117 (a) The Median Exemption is an amount equal to the sum of the median value of a
118 Utah owner occupied housing unit and the median Utah household income as determined in the
119 most recent American Community Survey conducted by the United States Census Bureau.

120 (b) The 50% Exemption is determined on a claim by claim basis and is an amount

121 equal to the sum of the following reduced by the Median Exemption:

122 (i) the amount available under an insurance policy of which the settlor is an insured to
123 satisfy the creditor's claim against the settlor;

124 (ii) the amount available from surety bonds, property bonds, cash deposited with the
125 court, or any other security approved by the court to satisfy the creditor's claim against the
126 settlor; and

127 (iii) the amount paid to the creditor on the claim by or for the settlor after the claim is
128 presented to the trust.

129 (2) No exemption is available to the trust against the creditors of a registered settlor
130 after the death of that settlor.

131 (3) For purposes of determining these exemptions and the value of trust assets:

132 (a) a Utah primary residence occupied by a settlor shall be valued at its most recent
133 assessed value for property tax, less encumbrances;

134 (b) value for good will may not be given in determining the value of a privately held
135 business; and

136 (c) partial interests in assets that are not publicly traded securities shall be valued as a
137 portion of the whole without discount.

138 (4) The burden shall be on the trust to prove by a preponderance of the evidence that
139 exemptions prevent the taking of a trust asset.

140 Section 6. Section **25-7-106** is enacted to read:

141 **25-7-106. Utah Exemptions Act.**

142 The assets of a registered trust that are available to the settlor are owned by the settlor
143 for purposes of Title 78B, Chapter 5, Part 5, Utah Exemptions Act. The settlor or the trust may
144 assert the settlor's exemption rights against a claim of the settlor's creditor.

145 Section 7. Section **25-7-107** is enacted to read:

146 **25-7-107. Liens and security interests.**

147 (1) Liens and security interests which have attached to an asset before it is transferred
148 to a registered trust continue as liens upon and security interests in that asset.

149 (2) A judgment against a registered trust for claims against the registered settlor does
150 not create a lien or security interest in any asset of the trust. Writs of replevin, attachment,
151 garnishment, and execution may be issued against a registered trust to satisfy a judgment.

152 (3) No interest of a registered settlor as beneficiary of a registered trust is subject to
153 voluntary or involuntary transfer even if the registered settlor is the trustee or cotrustee of the
154 registered trust.

155 Section 8. Section **25-7-108** is enacted to read:

156 **25-7-108. Trust registration.**

157 (1) Any trust may be registered under this chapter.

158 (2) To be registered, a trust shall record all of the following information with the
159 Division of Corporations:

160 (a) the name of the trust, which shall end with the phrase "Asset Protection Trust";

161 (b) the names and addresses of all settlors of the trust whose creditors may be barred
162 from trust assets by the exemptions in this chapter;

163 (c) the names and addresses of all trustees; and

164 (d) the name and a Utah address of a current agent for service of process on the trust.

165 (3) Registered settlors:

166 (a) shall be natural persons over the age of 18;

167 (b) are persons registered with the trust under Subsection (2)(b); and

168 (c) enjoy the protections of this chapter to the extent of their contributions to the trust.

169 Section 9. Section **25-7-109** is enacted to read:

170 **25-7-109. Trust registry.**

171 (1) Trusts registered in accordance with this chapter shall be listed on a public registry
172 created by the Division of Corporations.

173 (2) The registry shall be capable of reporting the date and information in the initial
174 registration and the date and substance of each subsequent amendment to a trust registration.

175 Section 10. Section **25-7-110** is enacted to read:

176 **25-7-110. Fees.**

177 Unless otherwise provided by statute, the Division of Corporations shall collect fees for
178 its services in amounts determined by the Department of Commerce in accordance with the
179 provisions of Section [63J-1-504](#).

180 Section 11. Section **25-7-111** is enacted to read:

181 **25-7-111. Provisions for trusts created under former Section [25-6-14](#).**

182 Asset protection trusts created under former Section [25-6-14](#) may date contributions to

183 the trust, for the purposes of this chapter, four years prior to the date of registration if the trust
184 is registered under the provisions of this chapter before January 1, 2017.

185 Section 12. Section **75-2-205** is amended to read:

186 **75-2-205. Decedent's nonprobate transfers to others.**

187 Unless excluded under Section **75-2-208**, the value of the augmented estate includes the
188 value of the decedent's nonprobate transfers to others, not included under Section **75-2-204**, of
189 any of the types described in this section, in the amount provided respectively for each type of
190 transfer:

191 (1) Property owned or owned in substance by the decedent immediately before death
192 that passed outside probate at the decedent's death. Property included under this category
193 consists of the property described in this Subsection (1).

194 (a) (i) Property over which the decedent alone, immediately before death, held a
195 presently exercisable general power of appointment.

196 (ii) The amount included is the value of the property subject to the power, to the extent
197 the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise,
198 to or for the benefit of any person other than the decedent's estate or surviving spouse.

199 (b) (i) The decedent's fractional interest in property held by the decedent in joint
200 tenancy with the right of survivorship.

201 (ii) The amount included is the value of the decedent's fractional interest, to the extent
202 the fractional interest passed by right of survivorship at the decedent's death to a surviving joint
203 tenant other than the decedent's surviving spouse.

204 (c) (i) The decedent's ownership interest in property or accounts held in POD, TOD, or
205 co-ownership registration with the right of survivorship.

206 (ii) The amount included is the value of the decedent's ownership interest, to the extent
207 the decedent's ownership interest passed at the decedent's death to or for the benefit of any
208 person other than the decedent's estate or surviving spouse.

209 (d) (i) Proceeds of insurance, including accidental death benefits, on the life of the
210 decedent, if the decedent owned the insurance policy immediately before death or if and to the
211 extent the decedent alone and immediately before death held a presently exercisable general
212 power of appointment over the policy or its proceeds.

213 (ii) The amount included:

214 (A) is the value of the proceeds, to the extent they were payable at the decedent's death
215 to or for the benefit of any person other than the decedent's estate or surviving spouse; and

216 (B) may not exceed the greater of the cash surrender value of the policy immediately
217 prior to the death of the decedent or the amount of premiums paid on the policy during the
218 decedent's life.

219 (2) Property transferred in any of the forms described in this Subsection (2) by the
220 decedent during marriage:

221 (a) (i) Any irrevocable transfer in which the decedent retained the right to the
222 possession or enjoyment of, or to the income from, the property if and to the extent the
223 decedent's right terminated at or continued beyond the decedent's death.

224 (ii) ~~[An irrevocable transfer in trust which includes a restriction on transfer of the~~
225 ~~decedent's interest as settlor and beneficiary as described in Section 25-6-14.~~ (iii)] The amount
226 included is the value of the fraction of the property to which the right or restriction related, to
227 the extent the fraction of the property passed outside probate to or for the benefit of any person
228 other than the decedent's estate or surviving spouse.

229 (b) (i) Any transfer in which the decedent created a power over income or property,
230 exercisable by the decedent alone or in conjunction with any other person, or exercisable by a
231 nonadverse party, to or for the benefit of the decedent, creditors of the decedent, the decedent's
232 estate, or creditors of the decedent's estate.

233 (ii) The amount included with respect to a power over property is the value of the
234 property subject to the power, and the amount included with respect to a power over income is
235 the value of the property that produces or produced the income, to the extent the power in
236 either case was exercisable at the decedent's death to or for the benefit of any person other than
237 the decedent's surviving spouse or to the extent the property passed at the decedent's death, by
238 exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than
239 the decedent's estate or surviving spouse.

240 (iii) If the power is a power over both income and property and Subsection (2)(b)(ii)
241 produces different amounts, the amount included is the greater amount.

242 (3) Property that passed during marriage and during the two-year period next preceding
243 the decedent's death as a result of a transfer by the decedent if the transfer was of any of the
244 types described in this Subsection (3).

245 (a) (i) Any property that passed as a result of the termination of a right or interest in, or
246 power over, property that would have been included in the augmented estate under Subsection
247 (1)(a), (b), or (c), or under Subsection (2), if the right, interest, or power had not terminated
248 until the decedent's death.

249 (ii) The amount included is the value of the property that would have been included
250 under Subsection (1)(a), (b), (c), or Subsection (2) if the property were valued at the time the
251 right, interest, or power terminated, and is included only to the extent the property passed upon
252 termination to or for the benefit of any person other than the decedent or the decedent's estate,
253 spouse, or surviving spouse.

254 (iii) (A) As used in this Subsection (3)(a), "termination," with respect to a right or
255 interest in property, occurs when the right or interest terminated by the terms of the governing
256 instrument or the decedent transferred or relinquished the right or interest, and, with respect to
257 a power over property, occurs when the power terminated by exercise, release, lapse, default, or
258 otherwise.

259 (B) With respect to a power described in Subsection (1)(a), "termination" occurs when
260 the power terminated by exercise or release, but not otherwise.

261 (b) (i) Any transfer of or relating to an insurance policy on the life of the decedent if
262 the proceeds would have been included in the augmented estate under Subsection (1)(d) had
263 the transfer not occurred.

264 (ii) The amount included:

265 (A) is the value of the insurance proceeds to the extent the proceeds were payable at
266 the decedent's death to or for the benefit of any person other than the decedent's estate or
267 surviving spouse; and

268 (B) may not exceed the greater of the cash surrender value of the policy immediately
269 prior to the death of the decedent or the amount of premiums paid on the policy during the
270 decedent's life.

271 (c) (i) Any transfer of property, to the extent not otherwise included in the augmented
272 estate, made to or for the benefit of a person other than the decedent's surviving spouse.

273 (ii) The amount included is the value of the transferred property to the extent the
274 aggregate transfers to any one donee in either of the two years exceeded \$10,000.

275 Section 13. Section **75-7-107** is amended to read:

276 **75-7-107. Governing law.**

277 (1) For purposes of this section:

278 (a) "Foreign trust" means a trust that is created in another state or country and valid in
279 the state or country in which the trust is created.

280 (b) "State law provision" means a provision that the laws of a named state govern the
281 validity, construction, and administration of a trust.

282 (2) If a trust has a state law provision specifying this state, the validity, construction,
283 and administration of the trust are to be governed by the laws of this state if any administration
284 of the trust is done in this state.

285 (3) For all trusts created on or after December 31, 2003, if a trust does not have a state
286 law provision, the validity, construction, and administration of the trust are to be governed by
287 the laws of this state if the trust is administered in this state.

288 (4) A trust shall be considered to be administered in this state if:

289 (a) the trust states that this state is the place of administration, and any administration
290 of the trust is done in this state; or

291 (b) the place of business where the fiduciary transacts a major portion of its
292 administration of the trust is in this state.

293 [~~(5) If a foreign trust is administered in this state as provided in this section, the~~
294 ~~following provisions are effective and enforceable under the laws of this state:]~~

295 [~~(a) a provision in the trust that restricts the transfer of trust assets in a manner similar~~
296 ~~to Section 25-6-14;]~~

297 [~~(b) a provision that allows the trust to be perpetual; or]~~

298 [~~(c) a provision that is not expressly prohibited by the law of this state.]~~

299 [(6)] (5) A foreign trust that moves its administration to this state is valid whether or
300 not the trust complied with the laws of this state at the time of the trust's creation or after the
301 trust's creation.

302 [(7)] (6) Unless otherwise designated in the trust instrument, a trust is administered in
303 this state if it meets the requirements of Subsection (4).

304 Section 14. Section **75-7-301** is amended to read:

305 **75-7-301. Basic effect.**

306 (1) Notice to a person who may represent and bind another person under this part has

307 the same effect as if notice were given directly to the other person.

308 (2) The consent of a person who may represent and bind another person under this part
309 is binding on the person represented unless the person represented objects to the representation
310 before the consent would otherwise have become effective.

311 (3) Except as otherwise provided in [~~Sections~~] Section 75-7-411 [~~and 25-6-14~~], a
312 person who under this part may represent a settlor who lacks capacity may receive notice and
313 give a binding consent on the settlor's behalf.

314 Section 15. Section **75-7-501** is amended to read:

315 **75-7-501. Rights of beneficiary's creditor or assignee.**

316 To the extent a beneficiary's interest is not protected by a spendthrift provision or
317 [~~Section 25-6-14~~] Title 25, Chapter 7, Utah Asset Protection Trust Act, the court may authorize
318 a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of
319 present or future distributions to or for the benefit of the beneficiary or other means. The court
320 may limit the award to relief as is appropriate under the circumstances.

321 Section 16. Section **75-7-505** is amended to read:

322 **75-7-505. Creditor's claim against settlor.**

323 (1) Whether or not the terms of a trust contain a spendthrift provision, the following
324 rules apply:

325 (a) During the lifetime of the settlor, the property of a revocable trust is subject to the
326 claims of the settlor's creditors. If a trust has more than one settlor, the amount the creditor or
327 assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of
328 the trust attributable to that settlor's contribution.

329 (b) (i) With respect to an irrevocable trust [~~other than an irrevocable trust that meets~~
330 ~~the requirements of Section 25-6-14~~], a creditor or assignee of the settlor may reach the
331 maximum amount that can be distributed to or for the settlor's benefit. If the trust has more
332 than one settlor, the amount the creditor or assignee of a particular settlor may reach may not
333 exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

334 (ii) If marital property has been contributed to the trust, property in the trust equal to
335 the value of the marital property and its proceeds is subject to division by a court in a
336 separation or divorce proceeding.

337 (c) After the death of a settlor, and subject to the settlor's right to direct the source from

338 which liabilities will be paid, the property of a trust that was revocable at the settlor's death, but
339 not property received by the trust as a result of the death of the settlor which is otherwise
340 exempt from the claims of the settlor's creditors, is subject to claims of the settlor's creditors,
341 costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal
342 of remains, and statutory allowances to a surviving spouse and children to the extent the
343 settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

344 (2) For purposes of this section:

345 (a) during the period the power may be exercised, the holder of a power of withdrawal
346 is treated in the same manner as the settlor of a revocable trust to the extent of the property
347 subject to the power; and

348 (b) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of
349 the trust only to the extent the value of the property affected by the lapse, release, or waiver
350 exceeds the greater of the amount specified in Subsection 2041(b)(2), 2514(e), or Section
351 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on May 1, 2004.

352 Section 17. Section **75-7-816** is amended to read:

353 **75-7-816. Recitals when title to real property is in trust -- Failure.**

354 (1) When title to real property is granted to a person as trustee, the terms of the trust
355 may be given either:

356 (a) in the deed of transfer; or

357 (b) in an instrument signed by the grantor and recorded in the same office as the grant
358 to the trustee.

359 (2) If the terms of the trust are not made public as required in Subsection (1), a
360 conveyance from the trustee is absolute in favor of purchasers for value who take the property
361 without notice of the terms of the trust.

362 (3) The terms of the trust recited in the deed of transfer or the instrument recorded
363 under Subsection (1)(b) shall include:

364 (a) the name of the trustee;

365 (b) the address of the trustee; and

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

367 (4) Any real property titled in a trust which [~~has a restriction on transfer described in~~
368 ~~Section 25-6-14~~] is registered in accordance with the Utah Asset Protection Trust Act, shall

369 include in the title the words "Asset Protection Trust."

370 Section 18. **Repealer.**

371 This bill repeals:

372 Section **25-6-14, Asset Protection Trust.**

373 Section 19. **Effective date.**

374 This bill takes effect on January 1, 2016.

Legislative Review Note
as of 2-11-15 9:43 AM

Office of Legislative Research and General Counsel