

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 21-0201.01 Conrad Imel x2313

SENATE BILL 21-162

SENATE SPONSORSHIP

Gardner,

HOUSE SPONSORSHIP

Snyder and Soper,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING SPENDTHRIFT PROVISIONS IN TRUSTS PURSUANT TO THE**
102 **"COLORADO UNIFORM TRUST CODE".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Colorado Commission on Uniform State Laws. In 2018, the general assembly enacted portions of the Uniform Trust Code (UTC) as the Colorado Uniform Trust Code. Part 5 of the UTC, which relates to spendthrift provisions in trusts, was not included in the 2018 act. A spendthrift provision in a trust prevents both voluntary and involuntary transfer of a trust beneficiary's interest.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

1 SIMILAR IMPORT, IS SUFFICIENT TO RESTRAIN BOTH VOLUNTARY AND
2 INVOLUNTARY TRANSFER OF THE BENEFICIARY'S INTEREST.

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

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

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

22 **15-5-503. Exceptions to spendthrift provision - definitions.**

23 (1) IN THIS SECTION:

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

26 (b) "CHILD SUPPORT ORDER" MEANS ANY ADMINISTRATIVE OR
27 COURT ORDER REQUIRING THE PAYMENT OF CHILD SUPPORT, CHILD

1 SUPPORT ARREARS, CHILD SUPPORT DEBT, RETROACTIVE SUPPORT, OR
2 MEDICAL SUPPORT. IF A CHILD SUPPORT ORDER IS COMBINED WITH AN
3 ORDER FOR SPOUSAL MAINTENANCE OR SUPPORT, THE TERM "CHILD
4 SUPPORT ORDER" SHALL NOT INCLUDE ANY PORTION OF THE ORDER FOR
5 SPOUSAL MAINTENANCE OR SUPPORT.

6 (2) A SPENDTHRIFT PROVISION IS UNENFORCEABLE AGAINST:

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

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

12 (2.5) SUBSECTION (2) OF THIS SECTION DOES NOT APPLY TO A
13 SPECIAL NEEDS TRUST, SUPPLEMENTAL NEEDS TRUST, OR SIMILAR TRUST
14 ESTABLISHED FOR A PERSON IF ITS APPLICATION COULD INVALIDATE SUCH
15 A TRUST'S EXEMPTION FROM CONSIDERATION AS A COUNTABLE RESOURCE
16 FOR MEDICAID OR SUPPLEMENTAL SECURITY INCOME PURPOSES OR IF ITS
17 APPLICATION HAS THE EFFECT OR POTENTIAL EFFECT OF RENDERING THE
18 PERSON INELIGIBLE FOR ANY PROGRAM OF PUBLIC BENEFIT, INCLUDING,
19 BUT NOT LIMITED TO, MEDICAID AND SUPPLEMENTAL SECURITY INCOME.

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

25 **15-5-504. Discretionary trusts - effect of standard - definitions.**

26 (1) IN THIS SECTION:

27 (a) "CHILD" INCLUDES ANY PERSON OR ENTITY WHO CAN ENFORCE

1 A CHILD SUPPORT ORDER IN THIS OR ANOTHER STATE.

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

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

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

15 (b) THE TRUSTEE HAS ABUSED THE DISCRETION.

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

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

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

26 (3.5) SUBSECTION (3) OF THIS SECTION DOES NOT APPLY TO A
27 SPECIAL NEEDS TRUST, SUPPLEMENTAL NEEDS TRUST, OR SIMILAR TRUST

1 ESTABLISHED FOR A PERSON IF ITS APPLICATION COULD INVALIDATE SUCH
2 A TRUST'S EXEMPTION FROM CONSIDERATION AS A COUNTABLE RESOURCE
3 FOR MEDICAID OR SUPPLEMENTAL SECURITY INCOME PURPOSES OR IF ITS
4 APPLICATION HAS THE EFFECT OR POTENTIAL EFFECT OF RENDERING SUCH
5 PERSON INELIGIBLE FOR ANY PROGRAM OF PUBLIC BENEFIT, INCLUDING,
6 BUT NOT LIMITED TO, MEDICAID AND SUPPLEMENTAL SECURITY INCOME.

7 (4) THIS SECTION DOES NOT LIMIT THE RIGHT OF A BENEFICIARY TO
8 MAINTAIN A JUDICIAL PROCEEDING AGAINST A TRUSTEE FOR AN ABUSE OF
9 DISCRETION OR FAILURE TO COMPLY WITH A STANDARD FOR DISTRIBUTION.

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

16 **15-5-505. Creditor's claim against a settlor.** (1) WHETHER OR
17 NOT THE TERMS OF A TRUST CONTAIN A SPENDTHRIFT PROVISION, THE
18 FOLLOWING RULES APPLY:

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

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

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

4 (1.5) (a) FOR THE PURPOSES OF SUBSECTION (1)(b) OF THIS
5 SECTION, NONE OF THE FOLLOWING SHALL BE CONSIDERED AN AMOUNT
6 THAT CAN BE DISTRIBUTED TO OR FOR THE BENEFIT OF THE SETTLOR:

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

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

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

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

5 (2) (RESERVED)

6 **15-5-506. Overdue distribution - definition.** (1) IN THIS
7 SECTION, "MANDATORY DISTRIBUTION" MEANS A DISTRIBUTION OF INCOME
8 OR PRINCIPAL WHICH THE TRUSTEE IS REQUIRED TO MAKE TO A
9 BENEFICIARY UNDER THE TERMS OF THE TRUST, INCLUDING A
10 DISTRIBUTION UPON TERMINATION OF THE TRUST. THE TERM DOES NOT
11 INCLUDE A DISTRIBUTION SUBJECT TO THE EXERCISE OF THE TRUSTEE'S
12 DISCRETION, EVEN IF THE DISCRETION IS EXPRESSED IN THE FORM OF A
13 STANDARD OF DISTRIBUTION, OR THE TERMS OF THE TRUST AUTHORIZING
14 A DISTRIBUTION COUPLE LANGUAGE OF DISCRETION WITH LANGUAGE OF
15 DIRECTION.

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

22 **15-5-507. Personal obligations of trustee.** TRUST PROPERTY IS
23 NOT SUBJECT TO PERSONAL OBLIGATIONS OF THE TRUSTEE, EVEN IF THE
24 TRUSTEE BECOMES INSOLVENT OR BANKRUPT.

25 **15-5-508. Application of part.** (1) THIS PART 5 APPLIES TO ALL
26 TRUSTS CREATED BEFORE, ON, OR AFTER JULY 1, 2022.

27 (2) THIS PART 5 APPLIES TO ALL JUDICIAL PROCEEDINGS

1 CONCERNING TRUSTS COMMENCED ON OR AFTER JULY 1, 2022.

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

9 (4) ANY RULE OF CONSTRUCTION OR PRESUMPTION PROVIDED IN
10 THIS PART 5 APPLIES TO TRUST INSTRUMENTS EXECUTED BEFORE JULY 1,
11 2022, UNLESS THERE IS A CLEAR INDICATION OF A CONTRARY INTENT IN
12 THE TERMS OF THE TRUST.

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

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

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

22 **15-5-105. Default and mandatory rules.** (2) Subject to sections
23 15-16-809, 15-16-810, and 15-16-811, the terms of a trust prevail over
24 any provision of this code except:

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

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

3 **15-5-816. Specific powers of trustee.** (1) Without limiting the
4 authority conferred by section 15-5-815, and in addition to the powers
5 conferred pursuant to the "Colorado Fiduciaries' Powers Act", part 8 of
6 article 1 of this title 15, a trustee may:

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

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

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

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