

**RECENT ARIZONA
DEVELOPMENTS IN
ESTATE PLANNING AND
ADMINISTRATION**

ACTEC WESTERN REGIONAL MEETING

**Saturday, August 31, 2013
Ritz Carlton
Half Moon Bay, California**

**By John C. Vryhof
Snell & Wilmer, L.L.P.
One Arizona Center
400 E. Van Buren, 19th Floor
Phoenix, Arizona 85004-2202
Phone: (602) 382-6333
E-mail: jvryhof@swlaw.com**

**LEGISLATIVE DEVELOPMENTS—BILLS PASSED BY ARIZONA LEGISLATURE
AND SIGNED BY GOVERNOR BREWER**

1. Senate Bill 1175 amending A.R.S. § 46-456:
 - a. This bill amends the Arizona vulnerable adult and financial exploitation statutes, already some of the toughest in the U.S. in that the court may award actual damages plus an additional two times damages for financial exploitation.
 - b. The statute now comprehensively forfeits an exploiter's interest in any "governing instrument" which includes a deed, will, trust insurance or annuity policy, POD account, retirement account and is expanded to include "a family limited partnership" and an "estate planning document" of any kind.
 - c. A beneficiary of the vulnerable adult in a governing instrument is now considered a person in a "position of trust and confidence."
 - d. Court may approve transactions that are "for the benefit of the vulnerable adult." This now will include transactions "consistent with the clearly stated wishes of the vulnerable adult . . . while the vulnerable adult was of sound mind."
2. Senate Bill 1341, amending A.R.S. § 46-451, allows transfers of assets between a vulnerable adult and a spouse or disabled child where the purpose is eligibility for public benefits.
3. Senate Bill 1232 amends various trusts and estates provisions:
 - a. An amendment to A.R.S. § 14-2905 is yet more rule against perpetuities tinkering.
 - (1) Recall the Delaware Tax Trap immortalized by Jonathan Blattmachr and Jeffrey Pennell: the DTT is triggered under IRC Section 2041(a)(3) when a power of appointment is exercised by creating another power which can be validly exercised to create an interest which postpones vesting "for a period ascertainable without regard to the date of the creation of the first power."
 - (2) The change is designed to avoid unintentional triggering of the Delaware Tax Trap by making an interest (or power) created by the exercise of a power of appointment relate back to the date of the power's creation rather than its exercise (unless the exerciser provides it is the date of exercise).

- (3) This seems to give Arizona the best of both worlds—allow the DTT to work its magic but make it hard to trigger accidentally.
 - (4) This actually will come in handy for those bypass trusts for which we want a basis step-up (adjustment) such that they can be made includible in the gross estate by triggering the DTT.
 - (5) But the technique is so mind-numbingly technical that few lawyers, not to mention judges, will ever figure it out.
- b. A.R.S. § 14-3971 is amended to increase the small estate affidavit limit for personal property from \$50,000 to \$75,000, and for real property from \$75,000 to \$100,000.
 - c. Overactive judges are reined in by changes to A.R.S. § 14-10111. The changes allow a petition to the court to approve a nonjudicial settlement agreement to ask for approval but without running the risk the court will rule the agreement ineffective, which the court is now precluded from doing.
 - d. A.R.S. § 14-10505 provides that on the lapse, release or waiver of a power of withdrawal over a trust, the holder is not treated as the settlor of the trust.
 - (1) While a minor revision made to the statute appears to be completely unnecessary, it does highlight the potent planning potential of the statute.
 - (2) This statute actually allows a lapsed power of withdrawal to provide the best of both post-ATRA worlds: estate tax inclusion resulting in basis step-up (adjustment) but yet grantor trust treatment (and creditor protection) in the meantime.
 - e. A change to A.R.S. § 14-10814 purports to goof-proof documents by providing that a settlor who is a trustee can't make distributions to a beneficiary which aren't based on an ascertainable standard.
 - (1) There is already a provision which provides a default ascertainable standard for a trustee who is also a beneficiary for self-distributions.
 - (2) The changed provision purportedly avoids inclusion under IRC § 2036(a)(2) where case law and IRS rulings allow for an ascertainable standard in this situation.
 - f. The scope of a trust protector is expanded under an amendment to A.R.S. § 14-10818.

- (1) A trust protector is now anyone called a trust protector.
 - (2) Specifically sanctioned powers are to remove and appoint a trustee, modify or amend the trust instrument, increase, decrease modify or restrict the interests of any beneficiary, modify the terms of a power of appointment and change applicable law.
 - (3) The amendment allows virtually any power to be conferred.
 - (4) Query, does this make the trust protector a fiduciary when the statute specifies not?
- g. Exempt property from creditors now includes a Section 529 College Savings Plan under a modified A.R.S. § 33-1126.
4. Senate Bill 1233 creates a new A.R.S. § 29-732.01 which allows for ownership of LLC interests as joint tenancy with right of survivorship or as community property with right of survivorship.
 5. House Bill 2308 allows the probate court to order fingerprinting and criminal background checks for guardians and conservators.

CASE LAW DEVELOPMENTS

1. In re Estate of Kirkes, 295 P.3d 432, 655 Ariz. Adv. Rep.22 (March 1, 2013)
 - a. Community property states are split on how to divide non-probate assets at death.
 - b. “Item theory” states, like California, restrict transfers of community property to one-half of the interest in each asset and divide the community based on the value of each major asset.
 - c. “Aggregate theory” states, like Arizona per A.R.S. § 25-318, view community property as a whole when dividing at the death of a spouse.
 - d. Arizona courts have previously approved the designation of a non-spouse beneficiary of a life insurance policy paid for with community funds so long as the surviving spouse received at least one-half of the total value of the community overall.
 - e. Arizona Supreme Court found same rule applies to retirement accounts (consisting of an IRA) in this case.
 - f. Court qualified its result, saying “Although equitable considerations may occasionally warrant a different outcome,” in this case “other circumstances do not make the distribution fraudulent or unjust.”
2. In re Estate of Riley, 295 P.3d 428, 655 Ariz. Adv. Rep. 16 (March 1, 2013)
 - a. A.R.S. § 14-3952(1) requires that a settlement agreement “shall be executed by all competent persons . . . having beneficial interests or having claims which will or may be affected by the compromise.”
 - b. When a settlement agreement impacts all of the beneficiaries’ interests in the estate, it must be executed by all of the beneficiaries before the superior court may approve it.
 - c. However, the Arizona Supreme Court found that the failure to secure the signatures of all beneficiaries does not void the settlement agreement for all purposes.
 - d. Rather, the failure to comply with the statute means only that the agreement is not binding on all beneficiaries.
3. Stewart v. Stewart, 230 Ariz. 480, 286 P.3d 1089 (Ct. App. 2012)
 - a. Arizona Court of Appeals ruled an *in terrorem* clause which purports to disinherit any beneficiary who contests, or “cooperates or aids” any beneficiary in contesting any part of the testamentary instruments is not

facially invalid under either A.R.S. § 14-2517 or public policy.

- b. A.R.S. § 14-2517 states that an *in terrorem* clause in a will is unenforceable “if probable cause exists” to contest the will.
- c. The *in terrorem* clause in question is subject to this probable cause standard but is not invalid per se.
- d. The Court also said the clause was only enforceable if a beneficiary were to “urge or *voluntarily* aid a party to contest testamentary documents.” This apparently distinguishes from cooperating with discovery including appearing at depositions.

State of Arizona
Senate
Fifty-first Legislature
First Regular Session
2013

CHAPTER 67
SENATE BILL 1175

AN ACT

AMENDING SECTION 46-456, ARIZONA REVISED STATUTES; RELATING TO ADULT
PROTECTIVE SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 46-456, Arizona Revised Statutes, is amended to
3 read:
4 46-456. Duty to a vulnerable adult; financial exploitation;
5 civil penalties; exceptions; definitions
6 A. A person who is in a position of trust and confidence to a
7 vulnerable adult shall use the vulnerable adult's assets solely for the
8 benefit of the vulnerable adult and not for the benefit of the person who is
9 in the position of trust and confidence to the vulnerable adult or the
10 person's relatives unless either of the following applies:
11 1. The superior court gives prior approval of the transaction ON A
12 FINDING THAT THE TRANSACTION IS FOR THE BENEFIT OF THE VULNERABLE ADULT.
13 2. The transaction is specifically authorized in a valid durable power
14 of attorney that is executed by the vulnerable adult as the principal or in a
15 valid trust instrument that is executed by the vulnerable adult as a settlor.
16 B. A person who violates subsection A of this section or section
17 13-1802, subsection B shall be subject to actual damages and reasonable costs
18 and attorney fees in a civil action brought by or on behalf of a vulnerable
19 adult and the court may award additional damages for IN an amount up to two
20 times the amount of the actual damages.
21 C. In addition to the damages prescribed in subsection B of this
22 section, the court may:
23 1. Order a person who violates subsection A of this section or section
24 13-1802, subsection B to forfeit all or a portion of the person's:
25 (a) INTEREST IN ANY GOVERNING INSTRUMENT.
26 (b) Benefits under title 14, chapter 2 with respect to the estate of
27 the vulnerable adult, including an intestate share, an elective share, an
28 omitted spouse's share, an omitted child's share, a homestead allowance, any
29 exempt property and a family allowance. If the vulnerable adult died
30 intestate, the vulnerable adult's intestate estate passes as if the person
31 who violated subsection A of this section or section 13-1802, subsection B
32 disclaimed that person's intestate share to the extent the court orders that
33 person to forfeit all or a portion of the person's benefits under title 14,
34 chapter 2.
35 2. Revoke, in whole or in part, any revocable:
36 (a) Disposition or appointment of property that is made in a governing
37 instrument by the vulnerable adult to the person who violates subsection A of
38 this section or section 13-1802, subsection B.
39 (b) Provision by the vulnerable adult that is contained in a governing
40 instrument that confers a general or nongeneral power of appointment on the
41 person who violates subsection A of this section or section 13-1802,
42 subsection B.
43 (c) Nomination or appointment by the vulnerable adult that is
44 contained in a governing instrument that nominates or appoints the person who
45 violates subsection A of this section or section 13-1802, subsection B to

1 serve in any fiduciary or representative capacity, including serving as a
2 personal representative, executor, guardian, conservator, trustee or agent.

3 3. Sever the interests of the vulnerable adult and the person who
4 violates subsection A of this section or section 13-1802, subsection B in any
5 property that is held by them at the time of the violation as joint tenants
6 with the right of survivorship or as community property with the right of
7 survivorship, and transform the interests of the vulnerable adult and the
8 person who violated subsection A of this section or section 13-1802,
9 subsection B into tenancies in common. To the extent that the person who
10 violated subsection A of this section or section 13-1802, subsection B did
11 not provide adequate consideration for the jointly held interest, the court
12 may cause the person's interest in the subject property to be forfeited in
13 whole or in part.

14 D. A revocation or a severance under subsection C, paragraph 2 or 3 of
15 this section does not affect any third party interest in property that was
16 acquired for value and in good faith reliance on apparent title by
17 survivorship in the person who violated subsection A of this section or
18 section 13-1802, subsection B unless a writing declaring the severance has
19 been noted, registered, filed or recorded in records that are appropriate to
20 the kind and location of the property and that are relied on as evidence of
21 ownership in the ordinary course of transactions involving that property.

22 E. If the court imposes a revocation under subsection C, paragraph 2
23 of this section, provisions of the governing instrument shall be given effect
24 as if the person who violated subsection A of this section or section
25 13-1802, subsection B disclaimed all provisions revoked by the court or, in
26 the case of a revocation of a nomination in a fiduciary or representative
27 capacity, the person who violated subsection A of this section or section
28 13-1802, subsection B predeceased the decedent.

29 F. Section 46-455, subsections F, G, H, I, K, L, M and P also apply to
30 civil violations of this section.

31 G. The vulnerable adult or the duly appointed conservator or personal
32 representative of the vulnerable adult's estate has priority to, and may
33 file, a civil action under this section. If an action is not filed by the
34 vulnerable adult or the duly appointed conservator or personal representative
35 of the vulnerable adult's estate, any other interested person, as defined in
36 section 14-1201, may petition the court for leave to file an action on behalf
37 of the vulnerable adult or the vulnerable adult's estate. Notice of the
38 hearing on the petition shall comply with section 14-1401.

39 H. Subsections A, B, C, D, E and F of this section do not apply to an
40 agent who is acting within the scope of the person's duties as, or on behalf
41 of, any of the following:

42 1. A bank, financial institution or escrow agent licensed or certified
43 pursuant to title 6.

1 2. A securities dealer or salesman registered pursuant to title 44,
2 chapter 12, article 9.
3 3. An insurer, including a title insurer, authorized and regulated
4 pursuant to title 20.
5 4. A health care institution licensed pursuant to title 36, chapter 4
6 that provides services to the vulnerable adult.
7 I. A CIVIL ACTION BROUGHT BY A PERSON IN A POSITION OF TRUST AND
8 CONFIDENCE AGAINST A VULNERABLE ADULT REGARDING A GOVERNING INSTRUMENT
9 ESTABLISHED BY THE VULNERABLE ADULT IS PRESUMED NOT TO BE FOR THE BENEFIT OF
10 THE VULNERABLE ADULT UNLESS IT IS SHOWN OTHERWISE BY CLEAR AND CONVINCING
11 EVIDENCE.
12 J. For the purposes of this section:
13 1. "Asset" includes all forms of personal and real property.
14 2. "Disposition or appointment of property" includes a transfer of an
15 item of property or any other benefit of a beneficiary designated in a
16 governing instrument.
17 3. "FOR THE BENEFIT OF THE VULNERABLE ADULT" INCLUDES ANY ACT THAT IS
18 CONSISTENT WITH THE CLEARLY STATED WISHES OF THE VULNERABLE ADULT FOUND BY
19 THE COURT TO BE MADE WITHOUT COERCION AND WHILE THE VULNERABLE ADULT WAS OF
20 SOUND MIND.
21 ~~3-~~ 4. "Governing instrument" means a deed, a will, a trust, a
22 custodianship, an insurance or annuity policy, an account with pay on death
23 designation, a security registered in beneficiary form, a pension, a profit
24 sharing, retirement or similar benefit plan, A FAMILY LIMITED PARTNERSHIP, an
25 instrument creating or exercising a power of appointment, a power of
26 attorney, AN ESTATE PLANNING DOCUMENT or a dispositive, appointive or
27 nominative instrument of any similar type.
28 ~~4-~~ 5. "Position of trust and confidence" means that a person is any
29 of the following:
30 (a) A person who has assumed a duty to provide care to the vulnerable
31 adult.
32 (b) A joint tenant or a tenant in common with a vulnerable adult.
33 (c) A person who is in a fiduciary relationship with a vulnerable
34 adult including a de facto guardian or de facto conservator.
35 (d) A person who is in a confidential relationship with the vulnerable
36 adult. The issue of whether a confidential relationship exists shall be an
37 issue of fact to be decided by the court based on the totality of the
38 circumstances.
39 (e) A BENEFICIARY OF THE VULNERABLE ADULT IN A GOVERNING INSTRUMENT.
40 ~~5-~~ 6. "Revocable" means a disposition, appointment, provision or
41 nomination under which the vulnerable adult, at the time of or immediately
42 before death, was alone empowered, by law or under the governing instrument,
43 to cancel the designation in favor of the person who violated subsection A of
44 this section or section 13-1802, subsection B, whether or not the vulnerable
45 adult was then empowered to designate the vulnerable adult in place of the

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1 person who violated subsection A of this section or section 13-1802,
2 subsection B or the vulnerable adult then had capacity to exercise the power.

3 Sec. 2. Applicability

4 Section 46-546, Arizona Revised Statutes, as amended by this act,
5 applies to any governing instrument of a vulnerable adult regardless of
6 whether it was executed before the effective date of this act.

APPROVED BY THE GOVERNOR APRIL 5, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 5, 2013.

State of Arizona
Senate
Fifty-first Legislature
First Regular Session
2013

CHAPTER 185
SENATE BILL 1341

AN ACT

AMENDING SECTIONS 46-451 AND 46-456, ARIZONA REVISED STATUTES; RELATING TO
ADULT PROTECTIVE SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 46-451, Arizona Revised Statutes, is amended to
3 read:
4 46-451. Definitions; program goals
5 A. In this chapter, unless the context otherwise requires:
6 1. "Abuse" means:
7 (a) Intentional infliction of physical harm.
8 (b) Injury caused by negligent acts or omissions.
9 (c) Unreasonable confinement.
10 (d) Sexual abuse or sexual assault.
11 2. "De facto conservator" means any person who takes possession of the
12 estate of a vulnerable adult, without right or lawful authority. A de facto
13 conservator is subject to all of the responsibilities that attach to a
14 legally appointed conservator or trustee.
15 3. "De facto guardian" means any person who takes possession of the
16 person of a vulnerable adult, without right or lawful authority. A de facto
17 guardian is subject to all of the responsibilities that attach to a legally
18 appointed guardian.
19 4. "Exploitation" means the illegal or improper use of a vulnerable
20 adult or his resources for another's profit or advantage.
21 5. "Informed consent" means any of the following:
22 (a) A written expression by the person that the person fully
23 understands the potential risks and benefits of the withdrawal of food,
24 water, medication, medical services, shelter, cooling, heating or other
25 services necessary to maintain minimum physical or mental health and that the
26 person desires that the services be withdrawn. A WRITTEN EXPRESSION IS VALID
27 ONLY IF THE PERSON IS OF SOUND MIND AND IF THE CONSENT IS WITNESSED BY AT
28 LEAST TWO INDIVIDUALS WHO DO NOT BENEFIT BY THE WITHDRAWAL OF SERVICES.
29 (b) Consent to withdraw food, water, medication, medical services,
30 shelter, cooling, heating or other services necessary to maintain minimum
31 physical or mental health as permitted by an order of a court of competent
32 jurisdiction.
33 (c) A declaration made pursuant to title 36, chapter 32.
34 (d) Consent by another person under a durable power of attorney
35 relating to health care services to withdraw food, water, medication, medical
36 services, shelter, cooling, heating or other services necessary to maintain
37 minimum physical or mental health.
38 6. "Neglect" means a pattern of conduct without the person's informed
39 consent resulting in deprivation of food, water, medication, medical
40 services, shelter, cooling, heating or other services necessary to maintain
41 minimum physical or mental health.
42 7. "Protective services" means a program of identifiable and
43 specialized social services that may offer social services appropriate to
44 resolve problems of abuse, exploitation or neglect of a vulnerable adult.

1 8. "Protective services worker" means a person who has been selected
2 by and trained under the requirements prescribed by the department to provide
3 protective services.

4 9. "Vulnerable adult" means an individual who is eighteen years of age
5 or older and who is unable to protect himself from abuse, neglect or
6 exploitation by others because of a physical or mental impairment.
7 Vulnerable adult includes an incapacitated person as defined in section
8 14-5101.

9 B. Protective services programs shall seek to maintain the adult in
10 his familiar environment by strengthening his capacity for self-maintenance
11 or by providing supportive services.

12 C. Nothing in this section shall be construed to mean that an adult is
13 abused, neglected or in need of protective services for the sole reason that
14 he relies on treatment from a recognized religious method of healing in lieu
15 of medical treatment.

16 ~~D. A written expression pursuant to subsection A, paragraph 6,
17 subdivision (a) of this section is valid only if the person is of sound mind
18 when the consent is made and if the consent is witnessed by at least two
19 individuals who do not benefit by the withdrawal of services.~~

20 D. FOR THE PURPOSES OF THIS SECTION, A PERSON IS NOT EXPLOITED BY A
21 TRANSFER OF ASSETS IF THE TRANSFER IS TO OBTAIN OR MAINTAIN ELIGIBILITY FOR
22 BENEFITS UNDER TITLE 36, CHAPTER 29 OR BENEFITS FOR SUPPLEMENTAL SECURITY
23 INCOME, MEDICARE OR VETERANS' ADMINISTRATION PROGRAMS AND THE TRANSFER OF
24 ASSETS IS BETWEEN THE PERSON AND ANY OF THE FOLLOWING:

- 25 1. THE PERSON'S SPOUSE.
26 2. THE PERSON'S DISABLED CHILD.
27 3. A TRUST FOR THE BENEFIT OF THE PERSON'S SPOUSE OR DISABLED CHILD.
28 E. A TRANSFER OF ASSETS FOR THE PURPOSE OF OBTAINING OR MAINTAINING
29 ELIGIBILITY FOR BENEFITS UNDER TITLE 36, CHAPTER 29 SHALL COMPLY WITH 42
30 UNITED STATES CODE SECTION 1396p AND SECTIONS 36-2934 AND 36-2934.01.

31 Sec. 2. Section 46-456, Arizona Revised Statutes, is amended to read:
32 46-456. Duty to a vulnerable adult; financial exploitation;
33 civil penalties; exceptions; definitions

34 A. A person who is in a position of trust and confidence to a
35 vulnerable adult shall use the vulnerable adult's assets solely for the
36 benefit of the vulnerable adult and not for the benefit of the person who is
37 in the position of trust and confidence to the vulnerable adult or the
38 person's relatives unless either ANY of the following applies:

- 39 1. The superior court gives prior approval of the transaction.
40 2. The transaction is specifically authorized in a valid durable power
41 of attorney that is executed by the vulnerable adult as the principal or in a
42 valid trust instrument that is executed by the vulnerable adult as a settlor.
43 3. THE TRANSACTION IS REQUIRED IN ORDER TO OBTAIN OR MAINTAIN
44 ELIGIBILITY FOR SERVICES UNDER TITLE 36, CHAPTER 29.

45 4. THE PERSON IN THE POSITION OF TRUST AND CONFIDENCE TO THE
46 VULNERABLE ADULT IS THE VULNERABLE ADULT'S SPOUSE AND THE TRANSACTION

1 FURTHERS THE INTEREST OF THE MARITAL COMMUNITY, INCLUDING APPLYING FOR
2 BENEFITS PURSUANT TO TITLE 36, CHAPTER 29 OR BENEFITS FOR SUPPLEMENTAL
3 SECURITY INCOME, MEDICARE OR VETERANS' ADMINISTRATION PROGRAMS.

4 B. A person who violates subsection A of this section or section
5 13-1802, subsection B shall be subject to actual damages and reasonable costs
6 and attorney fees in a civil action brought by or on behalf of a vulnerable
7 adult and the court may award additional damages ~~for~~ IN an amount up to two
8 times the amount of the actual damages.

9 C. In addition to the damages prescribed in subsection B of this
10 section, the court may:

11 1. Order a person who violates subsection A of this section or section
12 13-1802, subsection B to forfeit all or a portion of the person's benefits
13 under title 14, chapter 2 with respect to the estate of the vulnerable adult,
14 including an intestate share, an elective share, an omitted spouse's share,
15 an omitted child's share, a homestead allowance, any exempt property and a
16 family allowance. If the vulnerable adult died intestate, the vulnerable
17 adult's intestate estate passes as if the person who violated subsection A of
18 this section or section 13-1802, subsection B disclaimed that person's
19 intestate share to the extent the court orders that person to forfeit all or
20 a portion of the person's benefits under title 14, chapter 2.

21 2. Revoke, in whole or in part, any revocable:

22 (a) Disposition or appointment of property that is made in a governing
23 instrument by the vulnerable adult to the person who violates subsection A of
24 this section or section 13-1802, subsection B.

25 (b) Provision by the vulnerable adult that is contained in a governing
26 instrument that confers a general or nongeneral power of appointment on the
27 person who violates subsection A of this section or section 13-1802,
28 subsection B.

29 (c) Nomination or appointment by the vulnerable adult that is
30 contained in a governing instrument that nominates or appoints the person who
31 violates subsection A of this section or section 13-1802, subsection B to
32 serve in any fiduciary or representative capacity, including serving as a
33 personal representative, executor, guardian, conservator, trustee or agent.

34 3. Sever the interests of the vulnerable adult and the person who
35 violates subsection A of this section or section 13-1802, subsection B in any
36 property that is held by them at the time of the violation as joint tenants
37 with the right of survivorship or as community property with the right of
38 survivorship, and transform the interests of the vulnerable adult and the
39 person who violated subsection A of this section or section 13-1802,
40 subsection B into tenancies in common. To the extent that the person who
41 violated subsection A of this section or section 13-1802, subsection B did
42 not provide adequate consideration for the jointly held interest, the court
43 may cause the person's interest in the subject property to be forfeited in
44 whole or in part.

45 D. A revocation or a severance under subsection C, paragraph 2 or 3 of
46 this section does not affect any third party interest in property that was

1 acquired for value and in good faith reliance on apparent title by
2 survivorship in the person who violated subsection A of this section or
3 section 13-1802, subsection B unless a writing declaring the severance has
4 been noted, registered, filed or recorded in records that are appropriate to
5 the kind and location of the property and that are relied on as evidence of
6 ownership in the ordinary course of transactions involving that property.

7 E. If the court imposes a revocation under subsection C, paragraph 2
8 of this section, provisions of the governing instrument shall be given effect
9 as if the person who violated subsection A of this section or section
10 13-1802, subsection B disclaimed all provisions revoked by the court or, in
11 the case of a revocation of a nomination in a fiduciary or representative
12 capacity, the person who violated subsection A of this section or section
13 13-1802, subsection B predeceased the decedent.

14 F. Section 46-455, subsections F, G, H, I, K, L, M and P also apply to
15 civil violations of this section.

16 G. The vulnerable adult or the duly appointed conservator or personal
17 representative of the vulnerable adult's estate has priority to, and may
18 file, a civil action under this section. If an action is not filed by the
19 vulnerable adult or the duly appointed conservator or personal representative
20 of the vulnerable adult's estate, any other interested person, as defined in
21 section 14-1201, may petition the court for leave to file an action on behalf
22 of the vulnerable adult or the vulnerable adult's estate. Notice of the
23 hearing on the petition shall comply with section 14-1401.

24 H. Subsections A, B, C, D, E and F of this section do not apply to an
25 agent who is acting within the scope of the person's duties as, or on behalf
26 of, any of the following:

27 1. A bank, financial institution or escrow agent licensed or certified
28 pursuant to title 6.

29 2. A securities dealer or salesman registered pursuant to title 44,
30 chapter 12, article 9.

31 3. An insurer, including a title insurer, authorized and regulated
32 pursuant to title 20.

33 4. A health care institution licensed pursuant to title 36, chapter 4
34 that provides services to the vulnerable adult.

35 I. For the purposes of this section:

36 1. "Asset" includes all forms of personal and real property.

37 2. "Disposition or appointment of property" includes a transfer of an
38 item of property or any other benefit of a beneficiary designated in a
39 governing instrument.

40 3. "Governing instrument" means a deed, a will, a trust, a
41 custodianship, an insurance or annuity policy, an account with pay on death
42 designation, a security registered in beneficiary form, a pension, a profit
43 sharing, retirement or similar benefit plan, an instrument creating or
44 exercising a power of appointment, a power of attorney or a dispositive,
45 appointive or nominative instrument of any similar type.

1 4. "Position of trust and confidence" means that a person is any of
2 the following:

3 (a) A person who has assumed a duty to provide care to the vulnerable
4 adult.

5 (b) A joint tenant or a tenant in common with a vulnerable adult.

6 (c) A person who is in a fiduciary relationship with a vulnerable
7 adult including a de facto guardian or de facto conservator.

8 (d) A person who is in a confidential relationship with the vulnerable
9 adult. The issue of whether a confidential relationship exists shall be an
10 issue of fact to be decided by the court based on the totality of the
11 circumstances.

12 5. "Revocable" means a disposition, appointment, provision or
13 nomination under which the vulnerable adult, at the time of or immediately
14 before death, was alone empowered, by law or under the governing instrument,
15 to cancel the designation in favor of the person who violated subsection A of
16 this section or section 13-1802, subsection B, whether or not the vulnerable
17 adult was then empowered to designate the vulnerable adult in place of the
18 person who violated subsection A of this section or section 13-1802,
19 subsection B or the vulnerable adult then had capacity to exercise the power.

20 Sec. 3. Legislative intent

21 The legislature intends by this act only to clarify existing law as
22 enacted by the legislature and interpreted by the courts.

APPROVED BY THE GOVERNOR MAY 2, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 2, 2013.

Senate Engrossed

State of Arizona
Senate
Fifty-first Legislature
First Regular Session
2013

CHAPTER 112
SENATE BILL 1232

AN ACT

AMENDING SECTIONS 14-2902, 14-2905, 14-3971, 14-10002, 14-10111, 14-10504,
14-10505, 14-10506, 14-10814, 14-10818 AND 33-1126, ARIZONA REVISED STATUTES;
RELATING TO TRUSTS AND ESTATES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 14-2902, Arizona Revised Statutes, is amended to
3 read:
4 14-2902. Nonvested property interest or power of appointment:
5 creation
6 A. Except as provided in subsections B and C of this section and
7 section 14-2905, subsection A- C, the time of creation of a nonvested
8 property interest or a power of appointment is determined under general
9 principles of property law.
10 B. If there is a person who alone can exercise a power created by a
11 governing instrument to become the unqualified beneficial owner of a
12 nonvested property interest or a property interest subject to a power of
13 appointment described in section 14-2901, subsection B or C, the nonvested
14 property interest or power of appointment is created when that person's power
15 to become the unqualified beneficial owner terminates. A joint power with
16 respect to community property or to marital property held by a married couple
17 is a power exercisable by one person alone.
18 C. A nonvested property interest or a power of appointment arising
19 from a transfer of property to a previously funded trust or any other
20 existing property arrangement is created when the nonvested property interest
21 or power of appointment in the original contribution was created.
22 Sec. 2. Section 14-2905, Arizona Revised Statutes, is amended to read:
23 14-2905. Nonvested property interest or power of appointment:
24 creation; effective date; judicial reformation
25 A. Except as otherwise provided, this article applies to a nonvested
26 property interest or a power of appointment that is created on or after
27 December 31, 1994.
28 B. If a nonvested property interest or a power of appointment is
29 determined in a judicial proceeding to violate this state's rule against
30 perpetuities as that rule existed when the nonvested property interest or
31 power of appointment was created, a court on the petition of an interested
32 person may reform the disposition in the manner that most closely
33 approximates the transferor's manifested plan of distribution and that is
34 within the limits of the requirements of section 14-2901.
35 C. For THE purposes of this article, IF THE PERSON WHO EXERCISES A
36 POWER OF APPOINTMENT SO PROVIDES IN THE EXERCISE, a nonvested property
37 interest or a power of appointment created by the exercise of a power of
38 appointment is created when the power is irrevocably exercised or when a
39 revocable exercise becomes irrevocable.
40 Sec. 3. Section 14-3971, Arizona Revised Statutes, is amended to read:
41 14-3971. Collection of personal property by affidavit:
42 ownership of vehicles; affidavit of succession to
43 real property
44 A. At any time after the death of a decedent, any employer owing
45 wages, salary or other compensation for personal services of the decedent
46 shall pay to the surviving spouse of the decedent the amount owing, not in
47 excess of five thousand dollars, on being presented an affidavit made by or

1 on behalf of the spouse stating that the affiant is the surviving spouse of
2 the decedent, or is authorized to act on behalf of the spouse, and that no
3 application or petition for the appointment of a personal representative is
4 pending or has been granted in this state or, if granted, the personal
5 representative has been discharged or more than one year has elapsed since a
6 closing statement has been filed.

7 B. Thirty days after the death of a decedent, any person indebted to
8 the decedent or having possession of tangible personal property or an
9 instrument evidencing a debt, obligation, stock or chose in action belonging
10 to the decedent shall make payment of the indebtedness or deliver the
11 tangible personal property or an instrument evidencing a debt, obligation,
12 stock or chose in action to a person claiming to be the successor of the
13 decedent upon being presented an affidavit made by or on behalf of the
14 successor and stating that all of the following are true:

- 15 1. Thirty days have elapsed since the death of the decedent.
- 16 2. Either:

17 (a) An application or petition for the appointment of a personal
18 representative is not pending and a personal representative has not been
19 appointed in any jurisdiction and the value of all personal property in the
20 decedent's estate, wherever located, less liens and encumbrances, does not
21 exceed ~~fifty~~ SEVENTY-FIVE thousand dollars as valued as of the date of death.

22 (b) The personal representative has been discharged or more than one
23 year has elapsed since a closing statement has been filed and the value of
24 all personal property in the decedent's estate, wherever located, less liens
25 and encumbrances, does not exceed ~~fifty~~ SEVENTY-FIVE thousand dollars as
26 valued as of the date of the affidavit.

27 3. The claiming successor is entitled to payment or delivery of the
28 property.

29 C. A transfer agent of any security shall change the registered
30 ownership on the books of a corporation from the decedent to the successor or
31 successors on presentation of an affidavit pursuant to subsection B of this
32 section.

33 D. The motor vehicle division shall transfer title of a motor vehicle
34 from the decedent to the successor or successors on presentation of an
35 affidavit as provided in subsection B of this section and on payment of the
36 necessary fees.

37 E. No sooner than six months after the death of a decedent, a person
38 or persons claiming as successor or successors to the decedent's interest in
39 real property, including any debt secured by a lien on real property, may
40 file in the court in the county in which the decedent was domiciled at the
41 time of death, or if the decedent was not domiciled in this state then in any
42 county in which real property of the decedent is located, an affidavit
43 describing the real property and the interest of the decedent in that
44 property and stating that all of the following are true and material and
45 acknowledging that any false statement in the affidavit may subject the
46 person or persons to penalties relating to perjury and subornation of
47 perjury:

- 1 1. Either:
2 (a) An application or petition for the appointment of a personal
3 representative is not pending and a personal representative has not been
4 appointed in any jurisdiction and the value of all real property in the
5 decedent's estate located in this state, less liens and encumbrances against
6 the real property, does not exceed ~~seventy-five~~ ONE HUNDRED thousand dollars
7 as valued at the date of death. The value of the decedent's interest in that
8 real property shall be determined from the full cash value of the property as
9 shown on the assessment rolls for the year in which the decedent died, except
10 that in the case of a debt secured by a lien on real property the value shall
11 be determined by the unpaid principal balance due on the debt as of the date
12 of death.
13 (b) The personal representative has been discharged or more than one
14 year has elapsed since a closing statement has been filed and the value of
15 all real property in the decedent's estate, wherever located, less liens and
16 encumbrances, does not exceed ~~seventy-five~~ ONE HUNDRED thousand dollars as
17 valued as of the date of the affidavit. The value of the decedent's interest
18 in that real property is determined from the full cash value of the property
19 as shown on the assessment rolls for the year in which the affidavit is
20 given, except that if a debt is secured by a lien on real property, the value
21 is determined by the unpaid principal balance due on the debt as of the date
22 of the affidavit.
23 2. Six months have elapsed since the death of the decedent as shown in
24 a certified copy of the decedent's death certificate attached to the
25 affidavit.
26 3. Funeral expenses, expenses of last illness, and all unsecured
27 debts of the decedent have been paid.
28 4. The person or persons signing the affidavit are entitled to the
29 real property by reason of the allowance in lieu of homestead, exempt
30 property or family allowance, by intestate succession as the sole heir or
31 heirs, or by devise under a valid last will of the decedent, the original of
32 which is attached to the affidavit or has been probated.
33 5. No other person has a right to the interest of the decedent in the
34 described property.
35 6. No federal estate tax is due on the decedent's estate.
36 F. The normal filing fee shall be charged for the filing of an
37 affidavit under subsection E of this section unless waived by the court as
38 provided by section 12-301 or 12-302. On receipt of the affidavit and after
39 determining that the affidavit is complete, the registrar shall ~~cause to be~~
40 ~~issued~~ ISSUE a certified copy of the affidavit without attachments, and the
41 copy shall be recorded in the office of the recorder in the county where the
42 real property is located.
43 G. This section does not limit the rights of heirs and devisees under
44 section 14-3901.
45 Sec. 4. Section 14-10002, Arizona Revised Statutes, is amended to
46 read:
47 14-10002. Definitions

- 1 In this chapter, unless the context otherwise requires:
2 1. "Disclaimant" means the person to whom a disclaimed interest or
3 power would have passed had the disclaimer not been made.
4 2. "Disclaimed interest" means the interest that would have passed to
5 the disclaimant had the disclaimer not been made.
6 3. "Disclaimer" means the refusal to accept an interest in or power
7 over property.

8 4. "FIDUCIARY" MEANS A PERSONAL REPRESENTATIVE, A TRUSTEE, AN AGENT
9 ACTING UNDER A POWER OF ATTORNEY OR ANY OTHER PERSON WHO IS AUTHORIZED TO ACT
10 AS A FIDUCIARY WITH RESPECT TO THE PROPERTY OF ANOTHER PERSON.

11 ~~4~~ 5. "Jointly held property" means property held in the name of two
12 or more persons under an arrangement in which all holders have concurrent
13 interests and under which the last surviving holder is entitled to the whole
14 of the property.

15 Sec. 5. Section 14-10111, Arizona Revised Statutes, is amended to
16 read:

17 14-10111. Nonjudicial settlement agreements; definition

18 A. Except as otherwise provided in subsection B of this section, and
19 except for modification or termination of a trust as otherwise permitted
20 pursuant to the trust instrument, interested persons may enter into a binding
21 nonjudicial settlement agreement with respect to any matter involving a
22 trust.

23 B. A nonjudicial settlement agreement is valid only to the extent it
24 does not violate a material purpose of the trust and includes terms and
25 conditions that could be properly approved by the court under this chapter or
26 other applicable law.

27 C. Matters that may be resolved by a nonjudicial settlement agreement
28 include:

- 29 1. The interpretation or construction of the terms of the trust.
30 2. The approval of a trustee's report or accounting.
31 3. Direction to a trustee to refrain from performing a particular act
32 or the grant to a trustee of any necessary or desirable power.
33 4. The resignation or appointment of a trustee and the determination
34 of a trustee's compensation.

35 5. The transfer of a trust's principal place of administration.

36 6. The liability of a trustee for an action relating to the trust.

37 D. BEFORE OR AFTER THE PARTIES ENTER INTO A NONJUDICIAL SETTLEMENT
38 AGREEMENT, any interested person may request the court to approve a
39 nonjudicial settlement agreement to determine whether the representation as
40 provided in article 3 of this chapter was adequate and to determine whether
41 the agreement contains terms and conditions the court could have properly
42 approved.

43 E. UNLESS THE INTERESTED PERSON, PURSUANT TO SUBSECTION D OF THIS
44 SECTION, ASKS THE COURT TO RULE WITHOUT REGARD TO THIS SUBSECTION, THE COURT
45 MAY EITHER APPROVE THE AGREEMENT OR DECLINE TO APPROVE THE AGREEMENT, BUT MAY
46 NOT DISAPPROVE OR DENY THE EFFECTIVENESS OF THE AGREEMENT. IF THE COURT DOES
47 NOT APPROVE THE AGREEMENT PURSUANT TO THIS SUBSECTION, THE FAILURE TO APPROVE

1 IS NOT ANY PREJUDICE AGAINST THE EFFECTIVENESS OF THE AGREEMENT AND IS NOT A
2 FINAL JUDGMENT OR JUDICIAL PRECEDENT WITH RESPECT TO THE AGREEMENT OR
3 SUBSEQUENT AGREEMENTS PURSUANT TO THE SECTION.

4 E. F. For the purposes of this section, "interested person" has the
5 same meaning prescribed in section 14-1201.

6 Sec. 6. Section 14-10504, Arizona Revised Statutes, is amended to
7 read:

8 14-10504. Discretionary trusts; effect of standard; definition

9 A. Except as provided in subsection B of this section, whether or not
10 a trust contains a spendthrift provision, a creditor of a beneficiary may not
11 compel a distribution that is subject to the trustee's discretion, even if
12 either:

13 1. The discretion is expressed in the form of a standard of
14 distribution.

15 2. The trustee has not complied with the applicable standard of
16 distribution or has abused the discretion regarding distributions.

17 B. To the extent a trustee has not complied with the applicable
18 standard of distribution or has abused the discretion regarding
19 distributions:

20 1. Except as provided in section 14-10503, a distribution may be
21 ordered by the court to satisfy a judgment or court order against the
22 beneficiary for support or maintenance of the beneficiary's child.

23 2. The court shall direct the trustee to pay to the child an amount as
24 is equitable under the circumstances but not more than the amount the trustee
25 would have been required to distribute to or for the benefit of the
26 beneficiary had the trustee complied with the standard or not abused the
27 discretion.

28 C. This section does not limit the right of a beneficiary to maintain
29 a judicial proceeding against a trustee for an abuse of discretion or failure
30 to comply with a standard for distribution, provided that this right may not
31 be exercised by a creditor of the beneficiary or to the extent that any
32 creditor of the beneficiary takes through the name or rights of the
33 beneficiary.

34 D. Whether or not a trust contains a spendthrift provision:

35 1. A creditor of a trust beneficiary may not compel a distribution
36 from insurance proceeds payable to the trustee as beneficiary to the extent
37 state law exempts ~~such~~ THE insurance proceeds from creditors' claims if it
38 had been paid directly to the trust beneficiary.

39 2. To the extent that under Arizona law life insurance proceeds,
40 policy cash surrender values or other distributions or payments are exempt
41 from attachment or garnishment by, execution on or otherwise the reach of
42 creditors, if the death benefit is payable to an individual beneficiary, the
43 life insurance proceeds, policy cash surrender values or other distributions
44 or payments are also exempt from attachment or garnishment by, execution on
45 or otherwise the reach of creditors if payable to a trust of which a
46 beneficiary is that individual.

1 E. A creditor of a beneficiary, whether or not the beneficiary is also
2 a trustee or cotrustee, may not reach the beneficiary's beneficial interest
3 or otherwise compel a distribution if either the trustee's discretion to make
4 distributions for the trustee's OR BENEFICIARY'S own benefit is purely
5 discretionary or is limited by an ascertainable standard, including a
6 standard relating to the beneficiary's health, education, support or
7 maintenance or similar language within the meaning of section 2041(b)(1)(a)
8 of the internal revenue code.

9 F. For the purposes of this section, "child" includes any person for
10 whom an order or judgment for child support has been entered in this or
11 another state.

12 Sec. 7. Section 14-10505, Arizona Revised Statutes, is amended to
13 read:

14 14-10505. Creditor's claim against settlor

15 A. Whether or not the terms of a trust contain a spendthrift
16 provision, the following rules apply:

17 1. During the lifetime of the settlor, the property of a revocable
18 trust is subject to claims of the settlor's creditors. If a trust has more
19 than one settlor or contributor, the amount the creditor or assignee of a
20 particular settlor may reach may not exceed the settlor's interest in the
21 portion of the trust attributable to that settlor's contribution. This
22 paragraph does not abrogate otherwise applicable laws relating to community
23 property.

24 2. Subject to the requirements of this section, with respect to an
25 irrevocable trust, a creditor or assignee of the settlor may reach the
26 maximum amount that can be distributed to or for the settlor's benefit. If a
27 trust has more than one settlor, the amount the creditor or assignee of a
28 particular settlor may reach may not exceed the settlor's interest in the
29 portion of the trust attributable to that settlor's contribution. This
30 paragraph does not apply to any trust from which any distribution to the
31 settlor can be made pursuant to the exercise of a power of appointment held
32 by a third party or abrogate otherwise applicable laws relating to community
33 property. A creditor of a settlor:

34 (a) Shall not reach any trust property based on a trustee's, trust
35 protector's or third party's power, whether or not discretionary, to pay or
36 reimburse the settlor for any income tax on trust income or trust principal
37 that is payable by the settlor under the law imposing the tax or to pay the
38 tax directly to any taxing authority.

39 (b) Is not entitled to any payment or reimbursement that is to be made
40 directly to any taxing authority.

41 (c) Shall not reach or compel distributions to or for the benefit of
42 the beneficiary of a special needs trust.

43 3. After the death of a settlor, and subject to the settlor's right to
44 direct the source from which liabilities will be paid, the property of a
45 trust that was revocable at the settlor's death is subject to claims of the
46 settlor's creditors, costs of administration of the settlor's estate, the
47 expenses of the settlor's funeral and disposal of remains and statutory

1 allowances to a surviving spouse and children to the extent the settlor's
2 probate estate is inadequate to satisfy those claims, costs, expenses and
3 allowances, except to the extent that state or federal law exempts any
4 property of the trust from these claims, costs, expenses or allowances. If a
5 trust has more than one settlor or contributor, the amount the creditor or
6 assignee of a particular settlor may reach may not exceed the settlor's
7 interest in the portion of the trust attributable to that settlor's
8 contribution. This paragraph does not abrogate otherwise applicable laws
9 relating to community property.

10 B. For the purposes of this section:

11 1. During the period the power may be exercised, the holder of a power
12 of withdrawal is treated in the same manner as the settlor of a revocable
13 trust to the extent of the property subject to the power.

14 2. On the lapse, release or waiver of a power of withdrawal, the
15 holder is not, by reason of any such ~~lapse, release or waiver~~ POWER OF
16 WITHDRAWAL, treated as the settlor of the trust.

17 C. For the purposes of this section, a trust settled or established by
18 a corporation, professional corporation, partnership, limited liability
19 company, governmental entity, trust, foundation or other entity is not deemed
20 to be settled or established by its directors, officers, shareholders,
21 partners, members, managers, employees, beneficiaries or agents.

22 D. For the purposes of this section, amounts contributed to a trust by
23 a corporation, professional corporation, partnership, limited liability
24 company, governmental entity, trust, foundation or other entity are not
25 deemed to have been contributed by its directors, officers, shareholders,
26 partners, employees, beneficiaries or agents. Powers, duties or
27 responsibilities granted to or reserved by the settlor pursuant to the trust
28 and any actions or omissions taken pursuant to the trust are deemed to be the
29 powers, responsibilities, duties, actions or omissions of the settlor and not
30 those of its directors, officers, shareholders, partners, members, managers,
31 employees, beneficiaries or agents.

32 E. For the purposes of this section, amounts and property contributed
33 to the following trusts are not deemed to have been contributed by the
34 settlor, and a person who would otherwise be treated as a settlor or a deemed
35 settlor of the following trusts shall not be treated as a settlor:

36 1. An irrevocable inter vivos marital trust that is treated as
37 qualified terminable interest property under section 2523(f) of the internal
38 revenue code if the settlor is a beneficiary of the trust after the death of
39 the settlor's spouse.

40 2. An irrevocable inter vivos marital trust that is treated as a
41 general power of appointment trust under section 2523(e) of the internal
42 revenue code if the settlor is a beneficiary of the trust after the death of
43 the settlor's spouse.

44 3. An irrevocable inter vivos trust for the settlor's spouse if the
45 settlor is a beneficiary of the trust after the death of the settlor's
46 spouse.

1 4. An irrevocable trust for the benefit of a person, the settlor of
2 which is the person's spouse, regardless of whether or when the person was
3 the settlor of an irrevocable trust for the benefit of that spouse.

4 5. An irrevocable trust for the benefit of a person to the extent that
5 the property of the trust was subject to a general power of appointment in
6 another person.

7 F. For the purposes of subsection E, a person is a beneficiary whether
8 so named under the initial trust instrument or through the exercise by that
9 person's spouse or by another person of a limited or general power of
10 appointment.

11 G. Subsections C and D do not apply to:

12 1. A trust that has no valid business purpose and that has as its
13 principal purpose the evasion of the claims of the creditors of the persons
14 or entities listed in those subsections.

15 2. A trust that would be treated as a grantor trust pursuant to
16 sections 671 through 679 of the internal revenue code. This paragraph does
17 not apply to a qualified subchapter S trust that is treated as a grantor
18 trust solely by application of section 1361(d) of the internal revenue code.

19 Sec. 8. Section 14-10506, Arizona Revised Statutes, is amended to
20 read:

21 14-10506. Overdue distribution: definition

22 A. Whether or not a trust contains a spendthrift provision, a creditor
23 or assignee of a beneficiary may reach a mandatory distribution of income or
24 principal, including a distribution on termination of the trust, if the
25 trustee has not made the distribution to the beneficiary within a reasonable
26 ~~time~~ PERIOD after the mandated distribution date unless the terms of the
27 trust expressly authorize the trustee to delay the distribution to protect
28 the beneficiary's interest in the distribution.

29 B. For the purposes of this section, "mandatory distribution" means a
30 distribution of income or principal that the trustee is required to make to a
31 beneficiary under the terms of the trust, including a distribution on
32 termination of the trust. Mandatory distribution does not include a
33 distribution that is subject to the exercise of the trustee's discretion even
34 if:

35 1. The discretion is expressed in the form of a standard of
36 distribution.

37 2. The terms of the trust authorizing a distribution couple language
38 of discretion with language of direction.

39 Sec. 9. Section 14-10814, Arizona Revised Statutes, is amended to
40 read:

41 14-10814. Discretionary powers: tax savings

42 A. Notwithstanding the breadth of discretion granted to a trustee in
43 the terms of the trust, including the use of terms such as absolute, sole or
44 uncontrolled, the trustee shall exercise a discretionary power in good faith
45 as to only beneficiaries of the trust and creditors of the trust and no other
46 persons, including creditors of the beneficiaries, except only to the extent
47 that creditors of beneficiaries are expressly entitled to attachment pursuant

1 to section 14-10504, subsection B and in accordance with the terms and
2 purposes of the trust and the interests of the beneficiaries.

3 B. Subject to subsection D of this section, and unless the terms of
4 the trust expressly indicate that a rule in this subsection does not apply:

5 1. A person other than a settlor who is a beneficiary and trustee of a
6 trust that confers on the trustee a power to make discretionary distributions
7 to or for the trustee's personal benefit may exercise the power only in
8 accordance with an ascertainable standard relating to the trustee's
9 individual health, education, support or maintenance within the meaning of
10 section 2041(b)(1)(A) or 2514(c)(1) of the internal revenue code. This
11 paragraph does not expand the power or duty of a trustee to make
12 distributions and does not apply to a power held in an individual capacity.

13 2. A trustee may not exercise a power to make discretionary
14 distributions to satisfy a legal obligation of support that the trustee
15 personally owes another person.

16 3. EXCEPT IN THE CASE OF A SPECIAL NEEDS TRUST, A SETTLOR WHO IS A
17 TRUSTEE OF A TRUST THAT CONFERS ON THE TRUSTEE A POWER TO MAKE DISCRETIONARY
18 DISTRIBUTIONS TO OR FOR A BENEFICIARY MAY EXERCISE THE POWER ONLY IN
19 ACCORDANCE WITH AN ASCERTAINABLE STANDARD RELATING TO THE BENEFICIARY'S
20 HEALTH, EDUCATION, SUPPORT OR MAINTENANCE WITHIN THE MEANING OF SECTION
21 2041(b)(1)(A) OR 2514(c)(1) OF THE INTERNAL REVENUE CODE. THIS PARAGRAPH
22 DOES NOT EXPAND THE POWER OR DUTY OF A TRUSTEE TO MAKE DISTRIBUTIONS AND DOES
23 NOT APPLY TO A POWER HELD IN AN INDIVIDUAL CAPACITY.

24 C. A power whose exercise is limited or prohibited by subsection B of
25 this section may be exercised by a majority of the remaining trustees whose
26 exercise of the power is not so limited or prohibited. If the power of all
27 trustees is so limited or prohibited, the court may appoint a special
28 fiduciary with authority to exercise the power.

29 D. Subsection B of this section does not apply to:

30 1. A power held by the settlor's spouse who is the trustee of a trust
31 for which a marital deduction, as defined in section 2056(b)(5) or 2523(e) of
32 the internal revenue code, was previously allowed.

33 2. Any trust during any period that the trust may be revoked or
34 amended by its settlor.

35 3. A trust if contributions to the trust qualify for the annual
36 exclusion under section 2503(c) of the internal revenue code.

37 Sec. 10. Section 14-10818, Arizona Revised Statutes, is amended to
38 read:

39 14-10818. Trust protector

40 A. A trust instrument may provide for the appointment of a trust
41 protector. For the purposes of this section, a person designated IN THE
42 INSTRUMENT with a status or title, other than that of a beneficiary, with
43 powers similar to those specified in subsection B OF THIS SECTION, OR
44 DESIGNATED IN THE INSTRUMENT AS A TRUST PROTECTOR, is a trust protector,
45 except to the extent otherwise provided in the trust instrument.

46 B. A trust protector appointed by the trust instrument has the powers,
47 delegations and functions conferred on the trust protector by the trust

1 instrument. These powers, delegations and functions may include the
2 following, WHICH DO NOT LIMIT WHAT POWERS, DELEGATIONS AND FUNCTIONS MAY BE
3 GRANTED TO THE TRUST PROTECTOR:

4 1. Remove and appoint a trustee.

5 2. Modify or amend the trust instrument for any valid purpose or
6 reason, including, without limitation, to achieve favorable tax status or to
7 respond to changes in the internal revenue code or state law, or the rulings
8 and regulations under that code or law.

9 3. Increase, decrease, modify or restrict the interests of any
10 beneficiary of the trust.

11 4. Modify the terms of a power of appointment granted by the trust.

12 5. Change the applicable law governing the trust.

13 C. Except to the extent otherwise specifically provided in the trust
14 instrument, a modification authorized under subsection B OF THIS SECTION may
15 not:

16 1. Grant a beneficial interest to an individual or a class of
17 individuals unless the individual or class of individuals is specifically
18 provided for under the trust instrument.

19 2. Modify the beneficial interest of a governmental unit in a special
20 needs trust.

21 D. Any provision of this title to the contrary, but except to the
22 extent otherwise provided by the trust instrument, a trust protector is not a
23 trustee or fiduciary and is not liable or accountable as a trustee or
24 fiduciary because of an act or omission of the trust protector when
25 performing or failing to perform the duties of a trust protector under the
26 trust instrument. This subsection does not apply to trusts that become
27 irrevocable before January 1, 2009 if the trust instrument allows the settlor
28 to remove and replace the trust protector.

29 E. THE EXERCISE OF THE POWER PURSUANT TO SUBSECTION B OF THIS SECTION
30 IS THE EXERCISE OF A SPECIAL POWER OF APPOINTMENT.

31 Sec. 11. Section 33-1126, Arizona Revised Statutes, is amended to
32 read:

33 33-1126. Money benefits or proceeds; exception

34 A. The following property of a debtor is exempt from execution,
35 attachment or sale on any process issued from any court:

36 1. All money received by or payable to a surviving spouse or child on
37 the life of a deceased spouse, parent or legal guardian, not exceeding twenty
38 thousand dollars.

39 2. The earnings of the minor child of a debtor or the proceeds of
40 these earnings by reason of any liability of the debtor not contracted for
41 the special benefit of the minor child.

42 3. All monies received by or payable to a person entitled to receive
43 child support or spousal maintenance pursuant to a court order.

44 4. All money, proceeds or benefits of any kind to be paid in a lump
45 sum or to be rendered on a periodic or installment basis to the insured or
46 any beneficiary under any policy of health, accident or disability insurance
47 or any similar plan or program of benefits in use by any employer, except for

1 premiums payable on ~~such~~ THE policy or debt of the insured secured by a
2 pledge, and except for collection of any debt or obligation for which the
3 insured or beneficiary has been paid under the plan or policy and except for
4 payment of amounts ordered for support of a person from proceeds and benefits
5 furnished in lieu of earnings that would have been subject to that order and
6 subject to any exemption applicable to earnings so replaced.

7 5. All money arising from any claim for the destruction of, or damage
8 to, exempt property and all proceeds or benefits of any kind arising from
9 fire or other insurance on any property exempt under this article.

10 6. The cash surrender value of life insurance policies where for a
11 continuous unexpired period of two years the policies have been owned by a
12 debtor and have named as beneficiary the debtor's surviving spouse, child,
13 parent, brother or sister, or any other dependent family member, in the
14 proportion that the policy names any such beneficiary, except that, subject
15 to the statute of limitations, the amount of any premium that is recoverable
16 or avoidable by a creditor pursuant to title 44, chapter 8, article 1, with
17 interest thereon, is not exempt. The exemption provided by this paragraph
18 does not apply to a claim for the payment of a debt of the insured or
19 beneficiary that is secured by a pledge or assignment of the cash value of
20 the insurance policy or the proceeds of the policy. For the purposes of this
21 paragraph, "dependent" means a family member who is dependent on the insured
22 debtor for not less than half support.

23 7. An annuity contract where for a continuous unexpired period of two
24 years that contract has been owned by a debtor and has named as beneficiary
25 the debtor, the debtor's surviving spouse, child, parent, brother or sister,
26 or any other dependent family member, except that, subject to the statute of
27 limitations, the amount of any premium, payment or deposit with respect to
28 that contract is recoverable or avoidable by a creditor pursuant to title 44,
29 chapter 8, article 1 is not exempt. The exemption provided by this paragraph
30 does not apply to a claim for a payment of a debt of the annuitant or
31 beneficiary that is secured by a pledge or assignment of the contract or its
32 proceeds. For the purposes of this paragraph, "dependent" means a family
33 member who is dependent on the debtor for not less than half support.

34 8. Any claim for damages recoverable by any person by reason of any
35 levy on or sale under execution of that person's exempt personal property or
36 by reason of the wrongful taking or detention of that property by any person,
37 and the judgment recovered for damages.

38 9. A total of one hundred fifty dollars held in a single account in
39 any one financial institution as defined by section 6-101. The property
40 declared exempt by this paragraph is not exempt from normal service charges
41 assessed against the account by the financial institution at which the
42 account is carried.

43 10. AN INTEREST IN A COLLEGE SAVINGS PLAN UNDER SECTION 529 OF THE
44 INTERNAL REVENUE CODE OF 1986, EITHER AS THE OWNER OR AS THE BENEFICIARY.
45 THIS DOES NOT INCLUDE MONEY CONTRIBUTED TO THE PLAN WITHIN TWO YEARS BEFORE A
46 DEBTOR FILES FOR BANKRUPTCY.

1 B. Any money or other assets payable to a participant in or
2 beneficiary of, or any interest of any participant or beneficiary in, a
3 retirement plan under section 401(a), 403(a), 403(b), 408, 408A or 409 or a
4 deferred compensation plan under section 457 of the United States internal
5 revenue code of 1986, as amended, whether the beneficiary's interest arises
6 by inheritance, designation, appointment or otherwise, is exempt from all
7 claims of creditors of the beneficiary or participant. This subsection does
8 not apply to any of the following:

9 1. An alternate payee under a qualified domestic relations order, as
10 defined in section 414(p) of the United States internal revenue code of 1986,
11 as amended. The interest of any and all alternate payees is exempt from any
12 and all claims of any creditor of the alternate payee.

13 2. Amounts contributed within one hundred twenty days before a debtor
14 files for bankruptcy.

15 3. The assets of bankruptcy proceedings filed before July 1, 1987.

16 C. Any person eighteen years of age or over, married or single, who
17 resides within this state and who does not exercise the homestead exemption
18 under article 1 of this chapter may claim as a personal property homestead
19 exempt from all process prepaid rent, including security deposits as provided
20 in section 33-1321, subsection A, for the claimant's residence, not exceeding
21 the lesser of one thousand dollars or one and one-half months' rent.

22 D. This section does not exempt property from orders that are the
23 result of a judgment for arrearages of child support or for a child support
24 debt.

APPROVED BY THE GOVERNOR APRIL 16, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 17, 2013.