

IN THE SENATE

SENATE BILL NO. 1052

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO SPENDTHRIFT TRUSTS; AMENDING SECTION 15-7-502, IDAHO CODE, TO  
PROVIDE CORRECT TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 15-7-502, Idaho Code, be, and the same is hereby  
amended to read as follows:

15-7-502. SPENDTHRIFT TRUSTS. (1) A settlor may provide in the terms  
of the trust that the interest of a beneficiary in the income or in the prin-  
cipal or in both may not be voluntarily or involuntarily transferred before  
payment or delivery of the interest to the beneficiary by the trustee.

(2) A declaration in a trust instrument that the interest of a bene-  
ficiary shall be held subject to a "spendthrift trust" is sufficient to re-  
strain voluntary or involuntary alienation of the interest by a beneficiary  
to the maximum extent permitted under this section.

(3) Validity of a restraint on transfer in a trust document shall not  
require specific reference to or identical verbiage set forth in subsection  
(1) or (2) of this section.

(4) If a person is both a settlor and beneficiary of the same trust,  
a provision restraining the voluntary or involuntary transfer of the sett-  
lor's beneficial interest in such trust does not prevent the settlor's cred-  
itors from satisfying claims from the settlor's interest in the trust estate  
that relates to the portion of the trust that was contributed by the sett-  
lor. For the purposes of this subsection ~~(4)~~, however, a settlor shall not  
be considered to be a beneficiary of an irrevocable trust created by the set-  
tlor and taxed for federal income tax purposes pursuant to the grantor trust  
rules of the Internal Revenue Code, sections 671 through 679, inclusive, if  
the settlor's only beneficial interest in such trust consists of the right to  
receive a distribution from such trust in an amount equal to or less than the  
amount of the federal and state income tax liability incurred by the settlor  
as a result of such trust being characterized as a grantor trust pursuant to  
the aforementioned grantor trust rules.

(5) A beneficiary of a trust shall not be considered a settlor of a trust  
merely because of a lapse, waiver or release of:

- (a) A power described in subsection (6) of this section; or
- (b) The beneficiary's right to withdraw a part of the trust property to  
the extent that the value of the property affected by the lapse, waiver  
or release in any calendar year does not exceed the greater of the amount  
specified in:
  - (i) Section 2041(b)(2) or 2514(e) of the Internal Revenue Code of  
1986, as amended; or
  - (ii) Section 2503(b) of the Internal Revenue Code of 1986, as  
amended.

1 (6) A beneficiary of a trust shall not be considered a settlor, to have  
2 made a voluntary or involuntary transfer of the beneficiary's interest in a  
3 trust, or to have the power to make a voluntary or involuntary transfer of the  
4 beneficiary's interest in the trust, merely because the beneficiary, in any  
5 capacity including, but not limited to, as a trustee, holds or exercises:

6 (a) A presently exercisable power to:

7 (i) Consume, invade, appropriate or distribute property to or  
8 for the benefit of the beneficiary, if the power is either exer-  
9 cisable only on consent of another person holding an interest ad-  
10 verse to the beneficiary's interest or limited by an ascertainable  
11 ~~standing~~ standard including, but not limited to, health, educa-  
12 tion, support or maintenance of the beneficiary; or

13 (ii) Exercise a limited power of appointment, as defined in the  
14 Internal Revenue Code of 1986, as amended, including, but not lim-  
15 ited to, the power to appoint any property of the trust to or for  
16 the benefit of a person other than the beneficiary, a creditor of  
17 the beneficiary, the beneficiary's estate, or a creditor of the  
18 beneficiary's estate;

19 (b) A testamentary power of appointment; or

20 (c) A presently exercisable right described in subsection (5) (b) of  
21 this section.