

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Trusts and Trustees Act is amended by adding
5 Section 5.4 as follows:

6 (760 ILCS 5/5.4 new)

7 Sec. 5.4. Spendthrift trusts.

8 (a) For trusts created on or after the effective date of
9 this amendatory Act of the 96th General Assembly, a settlor who
10 in writing irrevocably transfers property in any manner to a
11 trust having at least one trustee as defined in subsection (b)
12 of this Section may, subject to the limitations in subsection
13 (c) of this Section, provide that the income or principal
14 interest of the settlor as beneficiary may not be either
15 voluntarily or involuntarily transferred before payment or
16 delivery to the settlor as beneficiary by the trustee. This
17 Section shall be considered to be a restriction on the transfer
18 of the settlor's beneficial interest in the trust that is
19 enforceable under applicable nonbankruptcy law within the
20 meaning of Section 541(c)(2) of the Bankruptcy Code or any
21 successor provision.

22 (b) If the settlor is a beneficiary of the trust, at least
23 one trustee of a trust described in this Section must be a

1 corporate fiduciary who:

2 (1) is authorized by the laws of this State to act as a
3 trustee and whose activities are subject to supervision by
4 the Director of the Division of Banking of this State, the
5 Office of the Comptroller of the Currency, or the Office of
6 Thrift Supervision, or any successor thereto; and

7 (2) maintains or arranges for custody in this State of
8 some or all of the property that is the subject of the
9 trust described in this Section, maintains records for the
10 trust on an exclusive or nonexclusive basis, prepares or
11 arranges for the preparation of fiduciary income tax
12 returns for the trust, or otherwise materially
13 participates in the administration of the trust.

14 (c) (1) Except as provided in this subsection, if a trust
15 has a restriction as provided in subsection (a) of this
16 Section, a creditor or other claimant of the settlor may not
17 satisfy a claim, or liability on a claim, in either law or
18 equity, out of the settlor's transfer or the settlor's
19 beneficial interest in the trust. For purposes of this Section,
20 a creditor includes one holding or seeking to enforce a
21 judgment entered by a court or other body having adjudicative
22 authority as well as one with a right to payment, whether or
23 not reduced to judgment, liquidated, unliquidated, fixed,
24 contingent, matured, unmatured, disputed, undisputed, legal,
25 equitable, secured, or unsecured.

26 (2) A trust described in this Section does not prevent a

1 creditor or person described in this subsection (c) from
2 satisfying a claim or liability out of the settlor's beneficial
3 interest in or transfer into trust if:

4 (A) the claim is a judgment, order, decree, or other
5 legally enforceable decision or ruling resulting from a
6 judicial, arbitration, mediation, or administrative
7 proceeding commenced prior to or within 3 years after the
8 trust is created;

9 (B) the settlor's transfer into trust is made with
10 actual intent to hinder, delay, or defraud that creditor or
11 claimant;

12 (C) the trust provides that the settlor may revoke or
13 terminate all or part of the trust;

14 (D) the claim is for a payment owed by the settlor
15 under a child support judgment or order;

16 (E) the claim is by a spouse or former spouse of the
17 settlor on account of an agreement or court order for the
18 payment of support or maintenance or for a division or
19 distribution of property;

20 (F) the claim is a tax or other amount owed by the
21 settlor to any governmental entity;

22 (G) the claim is by a governmental entity for recovery
23 of public assistance received by the settlor from the
24 governmental entity;

25 (H) the transfer is made when the settlor is insolvent
26 or the transfer renders the settlor insolvent;

1 (I) the claim is a judgment, award, order, sentence,
2 fine, penalty, or other determination of liability of the
3 settlor for conduct of the settlor constituting fraud,
4 intentional infliction of harm, or a crime; or

5 (J) the settlor transferred assets into the trust that:
6 (i) were listed in a written representation of the
7 settlor's assets given to a claimant to induce the claimant
8 to enter into a transaction or agreement with the settlor;
9 or (ii) were transferred from the settlor's control in
10 breach of any written agreement, covenant, or security
11 interest between the settlor and the claimant.

12 (d) The statute of limitations for actions to satisfy a
13 claim or liability out of the settlor's beneficial interest in
14 or transfer into trust under this Section is the statute of
15 limitations applicable to the underlying action.

16 (e) The satisfaction of a claim under this Section is
17 limited to that part of the trust or transfer to which it
18 applies.

19 (f) For purposes of this Section, a trust is not revoked or
20 terminated by:

21 (1) a power to veto a distribution from the trust;

22 (2) a testamentary special power of appointment or
23 similar power;

24 (3) the right to receive a distribution of income,
25 principal, or both in the discretion of another, including
26 a trustee other than the settlor;

1 (4) an interest in a charitable remainder unitrust or
2 charitable remainder annuity trust as defined in Internal
3 Revenue Code Section 664 or any successor provision;

4 (5) a right to receive principal subject to an
5 ascertainable standard set forth in the trust; or

6 (6) the power to appoint a nonsubordinate adviser or
7 trust protector who can remove and appoint trustees, who
8 can direct, consent to, or disapprove distributions, or who
9 is an investment adviser or has the power to appoint an
10 investment adviser or investment director pursuant to the
11 laws of this State.

12 (g) The courts of this State shall have exclusive
13 jurisdiction over any action brought under this Section.