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HOUSE BILL NO. 2126

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Courts of Justice
on February 4, 2001)

(Patron Prior to Substitute—Delegate McClure)

*A BILL to amend and reenact § 55-19 of the Code of Virginia, relating to estates in trust subject to debts; exceptions.***Be it enacted by the General Assembly of Virginia:****1. That § 55-19 of the Code of Virginia is amended and reenacted as follows:**

§ 55-19. Estates in trust subject to debts of beneficiaries; exception for certain trusts.

A. Except as otherwise provided in this section, all trust estates shall be subject to the debts and charges of the persons who are beneficiaries of such trusts as if those persons owned a similar interest in the trust estate.

B. Any trust estate ~~not exceeding one million dollars in actual value~~ may be held in trust upon condition that the trust corpus and income, or either of them, shall in the case of a simple trust or, in the case of a complex trust, may in the discretion of the fiduciary be paid to or applied by the ~~trustee~~ *fiduciary* for the benefit of the beneficiaries without being subject to their liabilities or to alienation by them. However, no such trust shall operate to the prejudice of any existing creditor of the creator of such trust. The exception for spendthrift trusts shall not apply to an interest in a trust, contract, or other fund maintained in conjunction with an employee benefit plan, as defined in § 1002 (3) of Title 29 of the United States Code, or a similar plan or arrangement regardless of whether the beneficiary may claim the exemption provided under § 34-34. In addition, as to any claim first accruing on or after the effective date of the 1990 amendments to this section, and subject to the limitation of subsection D, no such trust condition shall operate to the prejudice of the United States or this Commonwealth or any county, city or town. *As to any claim for child support, no such condition shall operate to the prejudice of a judgment against a beneficiary for the support of the beneficiary's child.*

C. If the creator of a trust is also a beneficiary of the trust and the creator's interest is held upon condition that it is not subject to the creator's liabilities or to alienation by the creator, such condition is invalid against creditors and transferees of the creator, but shall not otherwise affect the validity of the trust. A transferee or creditor of the creator may, in addition to amounts required to be paid to or for the benefit of the creator, also reach the maximum amount that the trustee, in the exercise of discretion, could pay to or for the benefit of the creator under the trust instrument, which shall not exceed the amount of the creator's proportionate contribution to the trust. When a trust is funded by amounts attributable to any claim possessed by a beneficiary, whether paid pursuant to a structured settlement or otherwise, the beneficiary shall be considered a creator of the trust to the extent so funded.

D. Notwithstanding any contrary condition in the trust instrument, if a statute or regulation of the United States or the Commonwealth makes a beneficiary liable for reimbursement to the Commonwealth or any agency or instrumentality thereof, for public assistance, including medical assistance, furnished or to be furnished to the beneficiary, the Attorney General or the head of the state agency having responsibility for the program may file a petition in chancery in an appropriate circuit court having jurisdiction over the trustee seeking reimbursement without first obtaining a judgment. The beneficiary, or his guardian, conservator or committee, if any, shall be made a party. Following its review of the circumstances of the case, the court may:

1. Order the trustee to satisfy all or part of the liability out of all or part of the amounts to which the beneficiary is entitled, whether presently or in the future, to the extent the beneficiary has the right under the trust to compel the trustee to pay income or principal or both to or for the benefit of the beneficiary. A duty in the trustee under the instrument to make disbursements in a manner or in amounts that do not cause the beneficiary to suffer a loss of eligibility for public assistance to which the beneficiary might otherwise be entitled shall not be considered a right possessed by the beneficiary to compel such payments.

2. Whether or not the beneficiary has the right to compel the trustee to pay income or principal or both to or for the benefit of the beneficiary, order the trustee to satisfy all or part of the liability out of all or part of the future payments, if any, that the trustee chooses to make to or for the benefit of the beneficiary in the exercise of discretion granted under the trust.

No order shall be made pursuant to this subsection D if the beneficiary is an individual who has a medically determined physical or mental disability that substantially impairs his ability to provide for his care or custody and constitutes a substantial handicap.

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