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HOUSE BILL NO. 2832

Offered January 10, 2007

Prefiled January 10, 2007

A BILL to amend and reenact §§ 55-541.05, 55-545.01, 55-545.03, and 55-545.06 of the Code of Virginia, relating to mandatory rules regarding spendthrift trusts.

Patron—Waddell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-541.05, 55-545.01, 55-545.03, and 55-545.06 of the Code of Virginia are amended as follows:

§ 55-541.05. Default and mandatory rules.

A. Except as otherwise provided in the terms of the trust, this chapter governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

B. The terms of a trust prevail over any provision of this chapter except:

1. The requirements for creating a trust;

2. The duty of a trustee to act in good faith and in accordance with the *terms and* purposes of the trust *and the interests of the beneficiaries*;

3. The requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;

4. The power of the court to modify or terminate a trust under §§ 55-544.10 through 55-544.16;

5. The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Article 5;

6. The power of the court under § 55-547.02 to require, dispense with, or modify or terminate a bond;

7. The power of the court under subsection B of § 55-547.08 to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;

8. The effect of an exculpatory term under § 55-550.08;

9. The rights under §§ 55-550.10 through 55-550.13 of a person other than a trustee or beneficiary;

10. Periods of limitation for commencing a judicial proceeding; and

11. The power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice.

§ 55-545.01. Rights of beneficiary's creditor or assignee.

To the extent a beneficiary's interest is not ~~protected by~~ *subject to* a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances.

§ 55-545.03. Exceptions to spendthrift provision.

A. In this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

B. Even if a trust contains a spendthrift provision, a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance, or a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust, may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary.

C. Subject to the limitations of § 55-545.03:1, no spendthrift provision shall operate to the prejudice of the United States, the Commonwealth, or any county, city, or town.

D. A claimant against which a spendthrift provision cannot be enforced may obtain from a court an order attaching present or future distributions to or for the benefit of a beneficiary. The court may limit the award of such relief as is appropriate under the circumstances.

§ 55-545.06. Overdue distribution.

A. In this section "mandatory distribution" means a distribution of income or principal that the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust. The term does not include a distribution subject to the exercise of the trustee's discretion even if (i) the discretion is expressed in the form of a standard of distribution, or (ii) the terms of the trust authorizing a distribution use language of discretion with language of direction.

B. Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the

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59 trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the
60 designated distribution date.