

HB0432S01 compared with HB0432

~~text~~ shows text that was in HB0432 but was deleted in HB0432S01.

text shows text that was not in HB0432 but was inserted into HB0432S01.

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Representative Brady Brammer proposes the following substitute bill:

PROBATE MODIFICATIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brady Brammer

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses probate provisions.

Highlighted Provisions:

This bill:

- ▶ addresses when certain nonvested property interests or powers of appointment are created;
- ▶ permits a court in an action related to the administration of an estate to award costs and expenses, including reasonable attorney fees, to any party to be paid by another party or from the estate that is the subject of the controversy;
- ▶ addresses when a creditor of a settlor may not satisfy the creditor's claim from an irrevocable trust; and
- ▶ make technical and conforming changes.

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Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

75-2-1204, as last amended by Laws of Utah 2013, Chapter 364

75-3-719, as last amended by Laws of Utah 2012, Chapter 274

75-7-505, as last amended by Laws of Utah 2017, Chapters 125, 204

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **75-2-1204** is amended to read:

75-2-1204. When nonvested property interest or power of appointment created.

(1) Except as [~~provided in Subsections (2) and (3) and in~~] otherwise provided in this section or Section 75-2-1207, the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

(2) For purposes of this part, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of:

(a) a nonvested property interest; or

(b) a property interest subject to a power of appointment described in Section 75-2-1203, the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

(3) For purposes of this title, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

(4) A person who exercises an initial power of appointment may provide in the exercise of that power of appointment:

(a) for a nonvested property interest that is considered:

(i) created when the initial power is irrevocably exercised or when a revocable exercise becomes irrevocable; and

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(ii) not created at the time of the creation of the initial power of appointment that is exercised; and

(b) for a further power of appointment created by the exercise of the initial power of appointment that is considered:

(i) created when the initial power is irrevocably exercised or when a revocable exercise becomes irrevocable; and

(ii) not created at the time of the creation of the initial power of appointment that is exercised.

Section 2. Section **75-3-719** is amended to read:

75-3-719. Costs and expenses in estate litigation.

(1) (a) In a judicial proceeding involving the administration of an estate, the court may, as justice and equity may require, award costs and expenses, including reasonable attorney fees, to any party to be paid by another party or from the estate that is the subject of the controversy.

(b) This Subsection (1) does not apply to the Office of the Attorney General when the Office of the Attorney General is a party to a judicial proceeding involving the administration of an estate to protect a public or charitable interest.

(2) If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not, the personal representative is entitled to receive from the estate ~~[att]~~ the necessary expenses and disbursements, including reasonable attorney fees incurred. This ~~[provision]~~ Subsection (2) expressly applies in a will contest to any person nominated as a personal representative in a testamentary instrument submitted in good faith.

Section 3. Section **75-7-505** is amended to read:

75-7-505. Creditor's claim against settlor.

~~[Whether or not]~~ Regardless of whether the terms of a trust contain a spendthrift provision, the following rules apply:

(1) During the lifetime of the settlor, the property of a revocable trust is subject to the claims of the settlor's creditors. If a revocable trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(2) (a) With respect to an irrevocable trust other than an irrevocable trust that meets the

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requirements of Section 25-6-502, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit.

(b) ~~[If the trust has]~~ ~~}~~ With respect to an irrevocable trust that has more than one settlor, other than an irrevocable trust that meets the requirements of Section 25-6-502, the amount [the] a creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(c) Notwithstanding Subsections (2)(a) and (b), a creditor of a settlor may not satisfy the creditor's claim from an irrevocable trust solely because the trustee may make a discretionary distribution reimbursing the settlor for income tax liability of the settlor attributable to the income of the irrevocable trust, when the distribution is:

- (i) subject to the discretion of a trustee who is not the settlor;
- (ii) subject to the consent of an advisor who is not the settlor; or
- (iii) at the direction of an advisor who is not the settlor.

(3) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death, but not property received by the trust as a result of the death of the settlor which is otherwise exempt from the claims of the settlor's creditors, is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.