

1 AN ACT relating to trusts.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 386B.1-010 is amended to read as follows:

4 As used in this chapter, unless the context requires otherwise:

- 5 (1) "Action" with respect to an act of a trustee, includes a failure to act;
- 6 (2) "Ascertainable standard" means a standard relating to an individual's health,
7 education, support, or maintenance within the meaning of 26 U.S.C. sec.
8 2041(b)(1)(A) or 26 U.S.C. sec. 2514(c)(1), as amended;
- 9 (3) "Beneficiary" means a person that:
- 10 (a) Has a present or future beneficial interest in a trust, vested or contingent; or
- 11 (b) In a capacity other than that of trustee, holds a power of appointment over
12 trust property;
- 13 (4) "Charitable trust" means a trust, or part of a trust, established for a charitable
14 purpose as described in KRS 386B.4-050(1);
- 15 (5) "Conservator" means a person appointed by the court to administer the estate of a
16 minor or adult individual;
- 17 **(6) "Creditor" means a person having a right to payment, whether or not the right is**
18 **reduced to judgment, liquidated, unliquidated, fixed, contingent, matured,**
19 **unmatured, disputed, undisputed, legal, equitable, secured, or unsecured;**
- 20 ~~(7)(6)~~ "Environmental law" means a federal, state, or local law, rule, regulation, or
21 ordinance relating to protection of the environment;
- 22 ~~(8)(7)~~ "Guardian" means a person appointed by the court, a parent, or a spouse to
23 make decisions regarding the support, care, education, health, and welfare of a
24 minor or adult individual. The term shall not include a guardian ad litem;
- 25 ~~(9)(8)~~ "Interests of the beneficiaries" means the beneficial interests provided in the
26 terms of the trust;
- 27 ~~(10)(9)~~ "Jurisdiction," with respect to a geographic area, includes a state or country;

1 ~~(11)~~~~(10)~~ "Person" means any individual or entity as defined in KRS 446.010;

2 ~~(12)~~~~(11)~~ "Power of withdrawal" means a presently exercisable general power of
3 appointment other than a power:

4 (a) Exercisable by a trustee and limited by an ascertainable standard; or

5 (b) Exercisable by another person only on the consent of the trustee or a person
6 holding an adverse interest;

7 ~~(13)~~~~(12)~~ "Property" means anything that may be the subject of ownership, whether
8 legal or equitable, or any interest therein;

9 ~~(14)~~~~(13)~~ "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's
10 qualification is determined:

11 (a) Is a distributee or permissible distributee of trust income or principal;

12 (b) Would be a distributee or permissible distributee of trust income or principal
13 if the interests of the distributees described in paragraph (a) of this subsection
14 ended on that date without causing the trust to end; or

15 (c) Would be a distributee or permissible distributee of trust income or principal
16 if the trust ended on that date;

17 ~~(15)~~ **"Remainder beneficiary" means a person entitled to receive principal when an**
18 **income interest ends;**

19 ~~(16)~~~~(14)~~ "Revocable," as applied to a trust, means revocable by the settlor without the
20 consent of the trustee or a person holding an adverse interest;

21 ~~(17)~~~~(15)~~ "Settlor" means a person, including a testator, who creates or contributes
22 property to a trust. If more than one (1) person creates or contributes property to a
23 trust, each person is a settlor of the part of the trust property attributable to that
24 person's contribution, except to the extent another person has the power to revoke
25 or withdraw that part;

26 ~~[(16) "Spendthrift provision" means a term of a trust which restrains both voluntary and~~
27 ~~involuntary transfer of a beneficiary's interest;]~~

1 **(18) "Spendthrift trust adviser" means any person, including but not limited to an**
2 **accountant, attorney, or investment adviser, who gives advice concerning or was**
3 **involved in the creation of, transfer of property to, or administration of a**
4 **spendthrift trust or who participated in the preparation of accountings, tax**
5 **returns, or other reports related to the trust;**

6 **(19) (a) "Spendthrift trust" means an active trust which:**

7 **1. Is not governed or executed by any use or rule of law uses; and**

8 **2. Imposes a valid restraint on the voluntary and involuntary transfer of**
9 **the interest of the beneficiary.**

10 **(b) No specific language is necessary for the creation of a spendthrift trust. It is**
11 **sufficient if the settlor manifests an intention to create a trust through the**
12 **terms of the writing;**

13 ~~(20)~~~~(17)~~ "State" means a state of the United States, the District of Columbia, Puerto
14 Rico, the United States Virgin Islands, or any territory or insular possession subject
15 to the jurisdiction of the United States. The term includes an Indian tribe or band
16 recognized by federal law or formally acknowledged by a state;

17 ~~(21)~~~~(18)~~ "Terms of a trust" means the manifestation of the settlor's intent regarding a
18 trust's provisions as expressed in the trust instrument or as may be established by
19 other evidence that would be admissible in a judicial proceeding;

20 ~~(22)~~~~(19)~~ (a) "Trust" means an express trust established by a trust instrument,
21 including a will, whereby a trustee has the duty to administer a trust asset for
22 the benefit of a named or otherwise described income or principal beneficiary,
23 or both. This definition includes oral trusts.

24 (b) "Trust" does not include a resulting or constructive trust, a business trust
25 which provides for certificates to be issued to the beneficiary, an investment
26 trust, a voting trust, a security instrument, a trust established by the judgment
27 of a court, a liquidation trust, or a trust for the primary purpose of paying

1 dividends, interests, interest coupons, salaries, wages, pensions or profits, or
 2 employee benefits of any kind, an instrument in which a person is nominee or
 3 escrowee for another, a trust established in deposits in any financial
 4 institution, or other trust the nature of which does not admit of general trust
 5 administration;

6 ~~(23)~~~~(20)~~ "Trust instrument" means an instrument signed by the settlor that contains
 7 terms of the trust, including any amendments thereto; and

8 ~~(24)~~~~(21)~~ "Trustee" includes an original, additional, and successor trustee, and a
 9 cotrustee.

10 ➔SECTION 2. A NEW SECTION OF SUBCHAPTER 5 OF KRS CHAPTER
 11 386B IS CREATED TO READ AS FOLLOWS:

12 **(1) Unless the writing creating a spendthrift trust expressly and specifically declares**
 13 **to the contrary, this chapter governs the construction, operation, and**
 14 **enforcement in this state of all spendthrift trusts created in or outside this state if:**

15 **(a) All or part of the land, rents, issues, or profits affected are in this state;**

16 **(b) All or part of the personal property, interest of money, dividends upon stock**
 17 **and other produce thereof, affected, are in this state;**

18 **(c) The declared domicile of the settlor of a spendthrift trust affecting personal**
 19 **property is in this state; or**

20 **(d) At least one (1) trustee qualified under subsection (2) of this section has**
 21 **powers that include maintaining records and preparing income tax returns**
 22 **for the trust, and all or part of the administration of the trust is performed**
 23 **in this state.**

24 **(2) If the settlor is a beneficiary of the trust, at least one (1) trustee of a spendthrift**
 25 **trust shall be:**

26 **(a) A natural person who resides and is domiciled in this state;**

27 **(b) A trust company that:**

- 1 1. Is organized under federal law or under the laws of Kentucky or
 2 another state; and
 3 2. Maintains an office in this state for the transaction of business; or
 4 (c) A bank that:
 5 1. Is organized under federal law or under the laws of Kentucky or
 6 another state;
 7 2. Maintains an office in this state for the transaction of business; and
 8 3. Possesses and exercises trust powers.

9 ➔SECTION 3. A NEW SECTION OF SUBCHAPTER 5 OF KRS CHAPTER
 10 386B IS CREATED TO READ AS FOLLOWS:

- 11 (1) Any person competent by law to execute a will or deed, by duly executed will,
 12 conveyance, or other writing, may create a spendthrift trust in real, personal, or
 13 mixed property for the benefit of:
 14 (a) A person other than the settlor;
 15 (b) The settlor, if the writing:
 16 1. Is irrevocable;
 17 2. Does not require that any part of the income or principal of the trust
 18 be distributed to the settlor; and
 19 3. Was not intended to hinder, delay, or defraud known creditors; or
 20 (c) Both the settlor and another person if the writing meets the requirements of
 21 paragraph (b) of this subsection.
 22 (2) For the purposes of this section, a writing meets the requirements of subsection
 23 (1)(b) of this section even if under the terms of the writing:
 24 (a) The settlor may prevent a distribution from the trust;
 25 (b) The settlor holds a special lifetime or testamentary power of appointment
 26 that cannot be exercised in favor of the settlor, the settlor's estate, a creditor
 27 of the settlor, or a creditor of the settlor's estate;

1 (c) The settlor is a beneficiary of a trust that qualifies as a charitable remainder
2 trust pursuant to 26 U.S.C. sec. 664, or any successor provision, even if the
3 settlor has the right to release the settlor's retained interest in the trust, in
4 whole or in part, in favor of one (1) or more of the remainder beneficiaries
5 of the trust;

6 (d) The settlor is authorized or entitled to receive a percentage of the value of
7 the trust each year as specified in the writing of the initial value of the trust
8 assets or their value determined from time to time pursuant to the writing,
9 but not exceeding:

10 1. The amount that may be defined as income pursuant to 26 U.S.C. sec.
11 643(b); or

12 2. With respect to benefits from any qualified retirement plan or any
13 eligible deferred compensation plan, the minimum required
14 distribution as defined in 26 U.S.C. sec. 4974(b);

15 (e) The settlor is authorized or entitled to receive income or principal from:

16 1. A grantor retained annuity trust paying out a qualified annuity
17 interest within the meaning of 26 C.F.R. sec. 25.2702-3(b); or

18 2. A grantor retained unitrust paying out a qualified unitrust interest
19 within the meaning of 26 C.F.R. sec. 25.2702-3(c);

20 (f) The settlor is authorized or entitled to use real property held under a
21 qualified personal residence trust as described in 26 C.F.R. sec. 25.2702-
22 5(c), or any successor provision, or the settlor may possess or actually
23 possesses a qualified annuity interest within the meaning of that term as
24 described in 26 C.F.R. sec. 25.2702-3(b), or any successor provision;

25 (g) The settlor is authorized to receive income or principal from the trust, but
26 only subject to the discretion of another person; or

27 (h) The settlor is authorized to use real or personal property owned by the trust.

1 (3) (a) Except for the power of the settlor to make distributions to himself or
2 herself without the consent of another person, the provisions of this section
3 shall not be construed to prohibit the settlor of a spendthrift trust from
4 holding other powers conferred to him or her under the trust, whether or
5 not the settlor is a cotrustee, including but not limited to the power to
6 remove and replace a trustee, direct trust investments, and execute other
7 management powers.

8 (b) An agreement or understanding, express or implied, between the settlor and
9 the trustee that attempts to grant or permit the retention of greater rights or
10 authority than is stated in the trust instrument is void.

11 ➔SECTION 4. A NEW SECTION OF SUBCHAPTER 5 OF KRS CHAPTER
12 386B IS CREATED TO READ AS FOLLOWS:

13 (1) With respect to a spendthrift trust:

14 (a) 1. The beneficiary or beneficiaries of the trust shall be named or clearly
15 referred to in the writing.

16 2. No spouse, former spouse, child, or dependent shall be a beneficiary
17 unless named or clearly referred to as a beneficiary in the writing;

18 (b) A provision for the support, education, maintenance, or benefit of a
19 beneficiary shall be for the beneficiary alone, and without reference to or
20 limitation by:

21 1. The beneficiary's needs, station in life, or mode of life; or

22 2. The needs of any other person, whether dependent upon the
23 beneficiary or not;

24 (c) A provision for a beneficiary shall extend to all of the income from the trust
25 estate, devoted for that purpose by the settlor of the trust, without exception
26 or deduction, other than for:

27 1. Costs or fees regularly earned, paid, or incurred by the trustee for

- 1 administration of or protection of the trust estate;
- 2 2. Taxes on those costs or fees; or
- 3 3. Taxes on the interest of the beneficiary;
- 4 (d) An accumulation of the income of trust property may be directed in the will
5 or other writing creating the trust, for the benefit of one (1) or more
6 beneficiaries, to commence within the time permitted for the vesting of
7 future interests and not to extend beyond the period limiting the time within
8 which the absolute power of alienation of property may be suspended; and
- 9 (e) A beneficiary of the trust has no legal estate in the capital, principal, or
10 other corpus of the trust estate unless, under the terms of the trust the
11 beneficiary or a person deriving title from the beneficiary is entitled to:
- 12 1. Have the corpus conveyed or transferred to him or her immediately,
13 after a term of years, or after a life; and
- 14 2. The income from the corpus is not to be paid to him or her or any
15 other beneficiary prior to transfer or conveyance.
- 16 (2) The existence of a spendthrift trust does not depend on the character, capacity,
17 incapacity, competency, or incompetency of a beneficiary.
- 18 ➔SECTION 5. A NEW SECTION OF SUBCHAPTER 5 OF KRS CHAPTER
19 386B IS CREATED TO READ AS FOLLOWS:
- 20 (1) The following discretionary powers shall be absolute, whether any valid provision
21 for the accumulation of income is made or not and whether it relates to the
22 income from real or personal property in all cases where the settlor of a
23 spendthrift trust:
- 24 (a) Indicates the sum to be applied for or paid to the beneficiary;
- 25 (b) Makes the application or payment of sums or further sums for or to the
26 beneficiary discretionary with the trustee;
- 27 (c) Makes the amount payable to the beneficiary discretionary with the trustee;

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(d) Gives the trustee discretion to pay all or any part of the income to any one

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(1) or more of the beneficiaries.

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(2) The discretionary powers referenced in subsection (1) of this section shall not be interfered with for any consideration of:

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(a) The needs, station in life, or mode of life of the beneficiary;

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(b) Uncertainty; or

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(c) Any pretext.

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(3) The giving of any absolute discretionary powers to a trustee shall not invalidate any spendthrift trust.

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➔SECTION 6. A NEW SECTION OF SUBCHAPTER 5 OF KRS CHAPTER

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386B IS CREATED TO READ AS FOLLOWS:

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(1) (a) A spendthrift trust restrains and prohibits generally the assignment, alienation, acceleration, and anticipation of any interest of the beneficiary under the trust by the voluntary or involuntary act of the beneficiary, by operation of law or any process or at all.

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(b) The spendthrift trust estate, corpus, or capital shall not be deemed assigned, aliened, diminished, or impaired under Kentucky law by any alienation, transfer, or seizure so as to cut off or diminish the payments, or the rents, profits, earnings, or income of the trust estate that would otherwise be available for the benefit of the beneficiary.

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(2) (a) Payments by a trustee of a spendthrift trust to a beneficiary shall be made only to or for the benefit of the beneficiary and not by way of acceleration or anticipation, nor to any assignee of the beneficiary, nor to or upon any order given by the beneficiary, whether such assignment or order is:

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1. The voluntary contractual act of the beneficiary;

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2. Is made pursuant to or by virtue of any legal process in judgment,

1 execution, attachment, garnishment, bankruptcy, or otherwise; or

2 3. In connection with any contract, tort, or duty.

3 (b) Any action to enforce a spendthrift trust beneficiary's rights shall be made
4 only in a proceeding commenced pursuant to this chapter, including an
5 action to determine if the beneficiary's rights are subject to execution, to
6 levy an attachment, or for any other remedy.

7 (c) A court has exclusive jurisdiction over any proceeding pursuant to this
8 section.

9 (3) A spendthrift trustee shall have no power or capacity to make any disposition
10 whatever of any of the income by his or her order, and whether made upon the
11 order or direction of any court or courts, nor shall the interest of the beneficiary
12 be subject to any process of attachment issued against the beneficiary, or to be
13 taken in execution under any form of legal process directed against the
14 beneficiary, the trustee, the trust estate, or any part of its income, but the whole of
15 the trust estate and the income of the trust estate shall go to and be applied by the
16 trustee solely for the benefit of the beneficiary, free, clear, and discharged from
17 any and all obligations and responsibilities of the beneficiary.

18 (4) The trustee of a spendthrift trust is required to disregard and defeat every
19 assignment or other act that is attempted contrary to the provisions of this
20 chapter.

21 ➔SECTION 7. A NEW SECTION OF SUBCHAPTER 5 OF KRS CHAPTER
22 386B IS CREATED TO READ AS FOLLOWS:

23 (1) Except as provided in subsection (4) of this section, a person may not bring an
24 action with respect to a transfer of property to a spendthrift trust:

25 (a) If the person is a creditor when the transfer is made, unless the action is
26 commenced within:

27 1. One (1) year after the transfer is made; or

- 1 2. Six (6) months after the person discovers or reasonably should have
2 discovered the transfer, whichever is later; or
- 3 (b) If the person becomes a creditor after the transfer is made, unless the action
4 is commenced within one (1) year after the transfer is made.
- 5 (2) A person shall be deemed to have discovered a transfer at the time a public record
6 is made of the transfer, including but not limited to:
- 7 (a) The conveyance of real property that is recorded in the office of the county
8 clerk of the county in which the property is located; or
- 9 (b) The filing of a financing statement pursuant to KRS Chapter 355.
- 10 (3) (a) A creditor may not bring an action with respect to transfer of property to a
11 spendthrift trust unless a creditor can prove by clear and convincing
12 evidence that:
- 13 1. The transfer of property was a fraudulent transfer; or
14 2. The transfer violates a legal obligation owed to the creditor under a
15 contract or a valid court order that is legally enforceable by that
16 creditor.
- 17 (b) In the absence of clear and convincing proof, as provided under paragraph
18 (a) of this subsection, the property transferred to a spendthrift trust shall not
19 be subject to the claims of a creditor.
- 20 (c) Proof by one (1) creditor that a transfer of property was fraudulent or
21 wrongful does not constitute proof as to any other creditor.
- 22 (d) Proof of a fraudulent or wrongful transfer of property as to one (1) creditor
23 shall not invalidate any other transfer of property.
- 24 (4) (a) If property transferred to a spendthrift trust is conveyed to the settlor or to a
25 beneficiary for the purpose of obtaining a loan secured by a mortgage or
26 deed of trust on the property and then reconveyed to the trust, the transfer
27 shall be disregarded and the reconveyance shall be deemed to relate back to

- 1 *the date the property was originally transferred to the trust.*
- 2 *(b) A mortgage or deed of trust on spendthrift trust property shall be*
- 3 *enforceable against the trust.*
- 4 *(5) A person may not bring a claim against a spendthrift trust adviser to the settlor or*
- 5 *trustee of a spendthrift trust unless the person can show by clear and convincing*
- 6 *evidence that:*
- 7 *(a) The adviser acted in violation of the laws of this state, knowingly, and in*
- 8 *bad faith; and*
- 9 *(b) The adviser's actions directly caused the damages suffered by the person.*
- 10 *(6) A person other than a beneficiary or settlor may not bring a claim against a*
- 11 *trustee, including a cotrustee, if any, and a predecessor trustee, of a spendthrift*
- 12 *trust unless the person can show by clear and convincing evidence that:*
- 13 *(a) The trustee acted in violation of the laws of this state, knowingly, and in bad*
- 14 *faith; and*
- 15 *(b) The trustee's actions directly caused the damages suffered by the person.*
- 16 *(7) If more than one (1) transfer is made to a spendthrift trust:*
- 17 *(a) The subsequent transfer to the spendthrift trust shall be disregarded for the*
- 18 *purpose of determining whether a person may bring an action pursuant to*
- 19 *subsection (1) of this section; and*
- 20 *(b) Any distribution to a beneficiary from the spendthrift trust shall be deemed*
- 21 *to have been made from the most recent transfer made to the spendthrift*
- 22 *trust.*
- 23 *(8) Notwithstanding any other provision of law, no action of any kind, including but*
- 24 *not limited to an action to enforce a judgment entered by a court or other body*
- 25 *having adjudicative authority, may be brought at law or in equity against the*
- 26 *trustee of a spendthrift trust if, as of the date the action is brought, an action by a*
- 27 *creditor with respect to a transfer to the spendthrift trust would be barred*

1 pursuant to this section.

2 (9) For purposes of this section, if a trustee exercises his or her discretion or
3 authority to distribute trust income or principal to or for a beneficiary of the
4 spendthrift trust, by appointing the property of the original spendthrift trust in
5 favor of a second spendthrift trust for the benefit of one (1) or more of the
6 beneficiaries, the time of the transfer for purposes of this section shall be deemed
7 to have occurred on the date the settlor of the original spendthrift trust
8 transferred assets into the original spendthrift trust, regardless of the fact that the
9 property of the original spendthrift trust may have been transferred to a second
10 spendthrift trust.

11 ➔SECTION 8. A NEW SECTION OF SUBCHAPTER 5 OF KRS CHAPTER
12 386B IS CREATED TO READ AS FOLLOWS:

13 (1) A trust administered under the laws of another state, or under the laws of a
14 foreign jurisdiction, is a spendthrift trust pursuant to this chapter if:

15 (a) The trustee of the trust complies with any requirements set forth in the trust
16 instrument and any requirements of the laws of the state or jurisdiction
17 from which the trust is being transferred;

18 (b) The trustee or other person having the power to transfer domicile of the
19 trust declares an intent to transfer domicile in writing;

20 (c) If executed by a person other than the trustee, the writing declaring the
21 intent to transfer domicile of the trust is delivered to the trustee; and

22 (d) All requirements of this chapter are satisfied simultaneously with, or
23 immediately after, the change of domicile.

24 (2) For purposes of this section, if the domicile of an existing spendthrift trust is
25 transferred from another state or from a foreign jurisdiction to this state and the
26 laws of the other state or jurisdiction are similar to the provisions of this chapter,
27 the transfer shall be deemed to have occurred:

1 (a) On the date on which the settlor of the trust transferred assets into the trust
 2 if the applicable law of the trust has at all times been substantially similar to
 3 the provisions of this chapter; or

4 (b) On the earliest date on which the applicable laws of the trust were
 5 substantially similar to the provisions of this chapter.

6 ➔Section 9. KRS 386B.1-030 is amended to read as follows:

7 (1) Except as otherwise provided in the terms of the trust, this chapter governs the
 8 duties and powers of a trustee, relations among trustees, and the rights and interests
 9 of a beneficiary.

10 (2) The terms of a trust prevail over any provision of this chapter, except:

11 (a) The requirements for creating a trust;

12 (b) The duty of a trustee to act in good faith and in the interests of the
 13 beneficiaries;

14 (c) The requirement that a trust and its terms be for the benefit of its
 15 beneficiaries, and that the trust have a purpose that is lawful, not contrary to
 16 public policy, and possible to achieve;

17 (d) The power of the court to change or terminate a trust under Subchapter 4 of
 18 this chapter;

19 ~~(e) The effect of a spendthrift provision and the rights of certain creditors and~~
 20 ~~assignees to reach a trust as provided in Subchapter 5 of this chapter;~~

21 ~~(f) The power of the court under KRS 386B.7-020 to require, dispense with, or~~
 22 ~~modify or terminate a bond;~~

23 ~~(g)~~ ~~(g)~~ The power of the court under KRS 386B.7-080(2) to adjust a trustee's
 24 compensation as specified in the terms of the trust which is unreasonably low
 25 or high;

26 ~~(g)~~ ~~(h)~~ The duty to notify and report under KRS 386B.8-130(2);

27 ~~(h)~~ ~~(i)~~ The effect of an exculpatory term under KRS 386B.10-080;

1 ~~material purpose of the trust.~~

2 ~~(4)~~ Upon termination of a trust under subsection (1) or (2) of this section, the trustee
3 shall distribute the trust property as agreed by the beneficiaries.

4 ~~(4)~~~~(5)~~ If not all of the beneficiaries consent to a proposed modification or
5 termination of the trust under subsection (1) or (2) of this section, the modification
6 or termination may be approved by the court if the court is satisfied that:

7 (a) If all of the beneficiaries had consented, the trust could have been modified or
8 terminated under this section; and

9 (b) The interests of a beneficiary who does not consent will be adequately
10 protected.

11 ~~(5)~~~~(6)~~ Subsection (1) of this section shall not apply to the following types of trusts:

12 (a) First-party special needs or supplemental trusts created under KRS 387.855 to
13 387.910;

14 (b) Trusts created under 42 U.S.C. sec. 1396p(d)(4)(A);

15 (c) Trusts created under 42 U.S.C. sec. 1396p(d)(4)(C);

16 (d) Trusts created under 42 U.S.C. sec. 1396p(c)(2)(B); and

17 (e) Third-party special needs or supplemental trusts established by a will, trust, or
18 similar document and created under the common law or any other law of the
19 Commonwealth.

20 ~~(6)~~~~(7)~~ The District Court shall have exclusive jurisdiction over matters under
21 subsection (2) of this section.

22 ➔Section 11. KRS 386.175 is amended to read as follows:

23 (1) For the purposes of this section, the following definitions apply:

24 (a) "Current beneficiary" means a person who is a permissible distributee of trust
25 income or principal;

26 (b) "Original trust" means a trust established under an irrevocable trust instrument
27 pursuant to the terms of which a trustee has discretionary power to distribute

1 principal or income of the trust to or for the benefit of one (1) or more current
2 beneficiaries of the trust; and

3 (c) "Second trust" means a trust established under an irrevocable trust instrument,
4 the current beneficiaries of which are one (1) or more of the current
5 beneficiaries of the original trust. The second trust may be a trust created
6 under the same trust instrument as the original trust or under a different trust
7 instrument or the original trust whose terms have been modified under this
8 section.

9 (2) A trustee of an original trust may, without authorization by the court, exercise the
10 discretionary power to distribute principal or income to or for the benefit of one (1)
11 or more current beneficiaries of the original trust by appointing all or part of the
12 principal or income of the original trust subject to the power in favor of the trustee
13 of a second trust or by modifying the terms of the original trust. The trustee of the
14 original trust may exercise this power whether or not there is a current need to
15 distribute principal or income under any standard provided in the terms of the
16 original trust. The trustee's special power to appoint trust principal or income in
17 further trust under this section includes the power to create the second trust.

18 (3) The second trust may be a trust created or administered under the laws of any
19 jurisdiction, within or without the United States.

20 (4) The terms of the second trust shall be subject to all of the following:

21 (a) The beneficiaries of the second trust may include only beneficiaries of the
22 original trust;

23 (b) A beneficiary who has only a future beneficial interest, vested or contingent,
24 in the original trust cannot have the future beneficial interest accelerated to a
25 present interest in the second trust;

26 (c) The terms of the second trust may not reduce any fixed income, annuity, or
27 unitrust interest of a beneficiary in the assets of the original trust, including an

- 1 interest which is to take effect in the future;
- 2 (d) If any contribution to the original trust qualified for a marital or charitable
3 deduction for federal income, gift, or estate tax purposes under the Internal
4 Revenue Code, then the second trust shall not contain any provision that, if
5 included in the original trust, would have prevented the original trust from
6 qualifying for the deduction or that would have reduced the amount of the
7 deduction;
- 8 (e) If contributions to the original trust have been excluded from the gift tax by
9 the application of Sections 2503(b) and 2503(c) of the Internal Revenue Code,
10 then the second trust shall provide that the beneficiary's remainder interest in
11 the contributions shall vest and become distributable no later than the date
12 upon which the interest would have vested and become distributable under the
13 terms of the original trust;
- 14 (f) If any beneficiary of the original trust has a currently exercisable power of
15 withdrawal over trust property, then either:
- 16 a. The terms of the second trust shall provide a power of withdrawal in the
17 second trust identical to the power of withdrawal in the original trust; or
18 b. Sufficient trust property shall remain in the original trust to satisfy the
19 currently exercisable power of withdrawal;
- 20 (g) If the original trust holds stock of an S corporation, the terms of the second
21 trust shall not prevent or eliminate an election to be a qualified subchapter S
22 trust or an electing small business trust or result in the termination of the S
23 election of such corporation;
- 24 (h) If the power to distribute principal or income in the original trust is subject to
25 an ascertainable standard, then the power to distribute income or principal in
26 the second trust shall be subject to the same or a more restrictive ascertainable
27 standard as in the original trust when the trustee exercising the power

- 1 described in subsection (2) of this section is a possible beneficiary under the
2 standard; and
- 3 (i) The second trust may confer a power of appointment upon a beneficiary of the
4 original trust to whom or for the benefit of whom the trustee has the power to
5 distribute principal or income of the original trust. The permissible appointees
6 of the power of appointment conferred upon a beneficiary may include
7 persons who are not beneficiaries of the original or second trust. The power of
8 appointment conferred upon a beneficiary shall be subject to KRS 381.224,
9 381.225, and 381.226 covering the time at which the permissible period of the
10 rule against perpetuities and suspension of power of alienation begins and the
11 law that determines the permissible period of the rule against perpetuities and
12 suspension of power of alienation of the original trust.
- 13 (5) The court may appoint a special fiduciary with the authority to exercise the power
14 to appoint principal or income under subsection (2) of this section.
- 15 (6) The exercise of the power to appoint principal or income under subsection (2) of
16 this section:
- 17 (a) Shall be considered an exercise of a power of appointment, other than a power
18 to appoint to the trustee, the trustee's creditors, the trustee's estate, or the
19 creditors of the trustee's estate;
- 20 (b) Shall be subject to KRS 381.224, 381.225, and 381.226 covering the time at
21 which the permissible period of the rule against perpetuities and suspension of
22 power of alienation begins and the law that determines the permissible period
23 of the rule against perpetuities and suspension of power of alienation of the
24 original trust; and
- 25 (c) Is not prohibited by ~~a spendthrift provision or by~~ a provision in the original
26 trust instrument that prohibits amendment or revocation of the trust.
- 27 (7) To effect the exercise of the power to appoint principal or income under subsection

1 (2) of this section, all of the following shall apply:

2 (a) The exercise of the power to appoint shall be made by an instrument in
3 writing, signed and acknowledged by the trustee, setting forth the manner of
4 the exercise of the power, including the terms of the second trust and the
5 effective date of the exercise of the power. The instrument shall be filed with
6 the records of the original trust;

7 (b) The trustee shall give written notice of the trustee's intention to exercise the
8 power to all current beneficiaries of the original trust and all beneficiaries of
9 the oldest generation of remainder beneficiaries of the original trust, by
10 certified mail with restricted delivery and return receipt, at least sixty (60)
11 days prior to the effective date of the exercise of the power to appoint. The
12 notice shall include a copy of the instrument described in paragraph (a) of this
13 subsection;

14 (c) If all beneficiaries entitled to notice have received the notice as evidenced by
15 the certified mail return receipt and waive the notice period by a signed
16 written instrument delivered to the trustee, the trustee's power to appoint
17 principal or income shall be exercisable after notice is waived by all such
18 beneficiaries, notwithstanding the effective date of the exercise of the power;

19 (d) A current beneficiary or a beneficiary who is not a current beneficiary but is a
20 member of the oldest generation of the remainder beneficiaries of the original
21 trust may, no later than thirty (30) days from the date of receiving notice
22 under paragraph (b) of this subsection, commence a judicial proceeding
23 pursuant to KRS 386B.2-010 to object to the proposed exercise of the power
24 under subsection (2) of this section. In such case the proposed exercise of the
25 power shall require consent of the court; and

26 (e) In the event that a beneficiary did not receive the notice as evidenced by the
27 certified mail return receipt, and no other beneficiary has commenced a

1 proceeding under paragraph (d) of this subsection, the trustee may seek the
2 approval of the District Court to exercise the power.

3 (8) Nothing in this section shall be construed to create or imply a duty of the trustee to
4 exercise the power to distribute principal or income, and no inference of
5 impropriety shall be made as a result of a trustee not exercising the power to
6 appoint principal or income conferred under subsection (2) of this section. Nothing
7 in this section shall be construed to abridge the right of any trustee who has the
8 power to appoint property in further trust that arises under the terms of the original
9 trust or under any provision of law or under common law.

10 (9) This section shall not apply to any charitable remainder trust as defined in 26
11 U.S.C. sec. 664(d).

12 (10) A trustee or beneficiary may commence a judicial proceeding pursuant to KRS
13 386B.2-010 to approve or disapprove of a proposed exercise of the trustee's special
14 power to appoint to a second trust pursuant to subsection (2) of this section.

15 ➔Section 12. KRS 390.320 is amended to read as follows:

16 (1) As used in this section, "power of appointment created by the powerholder"
17 includes a power of appointment created in a transfer by another person to the
18 extent the powerholder contributed value to the transfer.

19 (2) Appointive property subject to a general power of appointment created by the
20 powerholder is subject to a claim of a creditor of the powerholder or of the
21 powerholder's estate to the extent provided in KRS Chapter 378A.

22 (3) Subject to subsection (2) of this section, appointive property subject to a general
23 power of appointment created by the powerholder is not subject to a claim of a
24 creditor of the powerholder or the powerholder's estate to the extent the
25 powerholder irrevocably appointed the property in favor of a person other than the
26 powerholder or the powerholder's estate.

27 (4) Subject to subsections (2) and (3) of this section, and notwithstanding ~~the presence~~

1 ~~of a spendthrift provision or~~ whether the claim arose before or after the creation of
2 the power of appointment, appointive property subject to a general power of
3 appointment created by the powerholder is subject to a claim of a creditor of:

4 (a) The powerholder, to the same extent as if the powerholder owned the
5 appointive property, if the power is presently exercisable; and

6 (b) The powerholder's estate, to the extent the estate is insufficient to satisfy the
7 claim and subject to the right of a decedent to direct the source from which
8 liabilities are paid, if the power is exercisable at the powerholder's death.

9 ➔Section 13. KRS 394.035 is amended to read as follows:

10 (1) A person, or the representative of an incapacitated person or protected person, who
11 is a grantee, donee, surviving joint tenant, person succeeding to a disclaimed
12 interest, beneficiary under a nontestamentary instrument or contract, or appointee
13 under a power of appointment exercised by a nontestamentary instrument, may
14 disclaim in whole or in part the right of transfer to him of any property, or interest
15 therein by delivering or filing a written disclaimer under this section. A surviving
16 joint tenant may disclaim as a separate interest any property or interest therein
17 devolving to him by right of survivorship. A surviving joint tenant may disclaim
18 the entire interest in any property, or interest therein, that is the subject of a joint
19 tenancy devolving to him, if the joint tenancy was created by act of a deceased joint
20 tenant, if the survivor did not join in creating the joint tenancy and he has not
21 accepted a benefit thereunder. The right to disclaim shall survive the death of the
22 person having it and may be exercised by the personal representative of such
23 person's estate. The disclaimer shall describe the property or interest therein
24 disclaimed, declare the disclaimer and extent thereof, and be signed by the
25 disclaimant.

26 (2) (a) An instrument disclaiming a present interest shall be delivered or filed no later
27 than nine (9) months after the effective date of the nontestamentary

1 instrument or contract; and a future interest shall be delivered or filed not later
2 than nine (9) months after the event determining that the taker of the property
3 or interest is finally ascertained and his interest is indefeasibly vested. If the
4 person entitled to disclaim does not have actual knowledge of the existence of
5 the interest the instrument shall be delivered or filed not later than nine (9)
6 months after he has actual knowledge of the existence of the interest. The
7 effective date of a revocable instrument or contract is the date on which the
8 maker no longer has power to revoke it or to transfer to himself or another the
9 entire legal and equitable ownership of the interest.

10 (b) The disclaimer or a copy thereof shall be delivered in person or mailed by
11 registered or certified mail to the transferor or his representative or to the
12 trustee or other person having legal title to, or possession of, the property or
13 interest disclaimed. If real property or an interest therein is disclaimed, a
14 copy of the instrument may be filed for record in the office of the county clerk
15 of the county in which the real estate is situated.

16 (3) Unless the nontestamentary instrument or contract provides for another disposition,
17 the property or interest therein disclaimed shall devolve as if the disclaimant had
18 died before the effective date of the instrument or contract. A disclaimer relates
19 back for all purposes to that date. A future interest that takes effect in possession or
20 enjoyment at or after the termination of the disclaimed interest takes effect as if the
21 disclaimant had died before the effective date of the instrument or contract that
22 transferred the disclaimed interest.

23 (4) (a) The right to disclaim property or an interest therein is barred by an
24 assignment, conveyance, encumbrance, pledge, or transfer of the property or
25 interest, or a contract therefor, a written waiver of the right to disclaim, an
26 acceptance of the property or interest or benefit thereunder, or a sale of the
27 property or interest under judicial sale made before the disclaimer is *affected*

1 ~~effected~~].

2 (b) ~~[The right to disclaim exists notwithstanding any limitation on the interest of~~
3 ~~the disclaimant in the nature of a spendthrift provision or similar restriction.~~

4 ~~(e)~~—]The instrument of disclaimer or the written waiver of the right to disclaim is
5 binding upon the disclaimant or person waiving and all persons claiming
6 through or under him.

7 (5) This section does not abridge the right of a person to waive, release, disclaim, or
8 renounce property or an interest therein under any other statute.

9 (6) An interest in property existing on July 15, 1980, as to which, if a present interest,
10 the time for filing a disclaimer under this section has not expired, or if a future
11 interest, the interest has not become indefeasibly vested or the taker finally
12 ascertained, may be disclaimed within nine (9) months after July 15, 1980.

13 (7) This section shall be applied and construed to effectuate its general purpose to make
14 uniform the law with respect to the subject of this section among states enacting it.

15 (8) This section may be cited as the uniform disclaimer of transfers under
16 nontestamentary instruments section.

17 ➔Section 14. KRS 394.640 is amended to read as follows:

18 (1) The right to disclaim property or an interest therein is barred by (a) an assignment,
19 conveyance, encumbrance, pledge, or transfer of the property or interest, or a
20 contract therefor, (b) a written waiver of the right to disclaim, (c) an acceptance of
21 the property or interest or benefit thereunder, or (d) a sale of the property or interest
22 under judicial sale made before the disclaimer is affected~~effected~~].

23 (2) ~~[The right to disclaim exists notwithstanding any limitation on the interest of the~~
24 ~~disclaimant in the nature of a spendthrift provision or similar restriction.~~

25 ~~(3)~~—]The disclaimer or the written waiver of the right to disclaim is binding upon the
26 disclaimant or person waiving and all persons claiming through or under him.

27 ➔Section 15. The following KRS sections are repealed:

- 1 386B.5-010 Rights of beneficiary's creditor or assignee.
- 2 386B.5-020 Spendthrift trusts.
- 3 386B.5-030 Discretionary trusts -- Effect of standard.
- 4 386B.5-040 Creditor's claim against settlor.
- 5 386B.5-050 Overdue distribution.
- 6 386B.5-060 Personal obligations of trustee.