

By: Burton

S.B. No. 500

A BILL TO BE ENTITLED

AN ACT

relating to self-settled asset protection trusts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 112.035(d), Property Code, is amended to read as follows:

(d) Except as provided by Section 112.0351, if ~~if~~ the settlor is also a beneficiary of the trust, a provision restraining the voluntary or involuntary transfer of the settlor's beneficial interest does not prevent the settlor's creditors from satisfying claims from the settlor's interest in the trust estate. A settlor is not considered a beneficiary of a trust solely because:

(1) a trustee who is not the settlor is authorized under the trust instrument to pay or reimburse the settlor for, or pay directly to the taxing authorities, any tax on trust income or principal that is payable by the settlor under the law imposing the tax; or

(2) the settlor's interest in the trust was created by the exercise of a power of appointment by a third party.

SECTION 2. Subchapter B, Chapter 112, Property Code, is amended by adding Section 112.0351 to read as follows:

Sec. 112.0351. SELF-SETTLED ASSET PROTECTION TRUST. (a) If a spendthrift trust of which the settlor is a beneficiary satisfies the requirements of Subsection (b):

(1) the trust is considered a self-settled asset

protection trust; and

(2) except as provided by this section, a restraint by the trust of the voluntary or involuntary transfer of the settlor's beneficial interest in the trust prevents the settlor's creditors from satisfying claims from that interest.

(b) A spendthrift trust of which the settlor is a beneficiary may be considered a self-settled asset protection trust under this section only if:

(1) the trust:

(A) is created in a writing signed by the settlor;

(B) is irrevocable;

(C) does not require that any part of the income or principal of the trust be distributed to the settlor; and

(D) is not intended to hinder, delay, or defraud known creditors; and

(2) at least one trustee of the trust is:

(A) an individual who resides in and is domiciled in this state;

(B) a trust company that:

(i) is organized under federal law or under the laws of this state or another state; and

(ii) maintains an office in this state for the transaction of business; or

(C) a financial institution, as defined by Section 201.101, Finance Code, that:

(i) is organized under federal law or under

1 the laws of this state or another state;

2 (ii) maintains an office in this state for
3 the transaction of business; and

4 (iii) has and exercises trust powers.

5 (c) A spendthrift trust may be considered a self-settled
6 asset protection trust even if under the trust terms:

7 (1) the settlor may prevent a distribution from the
8 trust;

9 (2) the settlor holds a special lifetime or
10 testamentary power of appointment, so long as that power cannot be
11 exercised in favor of the settlor, the settlor's estate, a creditor
12 of the settlor, or a creditor of the settlor's estate;

13 (3) the settlor is a beneficiary of a trust that
14 qualifies as a charitable remainder trust under 26 U.S.C. Section
15 664, or a successor provision, even if the settlor has the right to
16 release all or part of the settlor's retained interest in that trust
17 in favor of one or more of the remainder beneficiaries of the trust;

18 (4) the settlor is authorized or entitled to receive a
19 percentage of the value of the trust each year as specified in the
20 trust instrument, whether of the initial value of the trust assets
21 or their value determined from time to time as provided by the trust
22 instrument, so long as the authorized annual distribution may not
23 exceed:

24 (A) the amount that may be considered income
25 under 26 U.S.C. Section 643(b); or

26 (B) with respect to benefits from any qualified
27 retirement plan or any eligible deferred compensation plan, the

minimum required distribution as defined by 26 U.S.C. Section 4974(b);

(5) the settlor is authorized or entitled to receive income or principal from:

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

(B) a grantor retained unitrust paying out a qualified unitrust interest within the meaning of 26 C.F.R. Section 25.2702-3(c);

(6) the settlor:

(A) is authorized or entitled to use real property held under a qualified personal residence trust as described in 26 C.F.R. Section 25.2702-5(c), or a successor provision; or

(B) may possess or actually possesses a qualified annuity interest within the meaning of 26 C.F.R. Section 25.2702-3(b), or a successor provision;

(7) the settlor is authorized to receive income or principal from the trust, so long as the authorized distribution is subject to the discretion of another person; or

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

(d) Except as provided by this subsection, this section may not be construed to prohibit the settlor of a self-settled asset protection trust from holding any power under the trust, whether or not the settlor is a cotrustee, including the power to remove and

1 replace a trustee, direct trust investments, or execute other
2 management powers. The settlor may not hold a power to make
3 distributions to himself or herself without the consent of another
4 person.

5 (e) The settlor of a self-settled asset protection trust has
6 only those powers and rights that are conferred on the settlor by
7 the trust instrument. An agreement or understanding, express or
8 implied, between the settlor and the trustee that attempts to grant
9 or permit the retention of greater rights or authority than is
10 stated in the trust instrument is void.

11 (f) A person who is a settlor's creditor when a transfer is
12 made to a self-settled asset protection trust may not bring an
13 action with respect to the transfer unless the action is commenced
14 on or before the later of:

15 (1) the second anniversary of the date on which the
16 transfer was made; or

17 (2) the 180th day after the date on which the creditor
18 discovers or reasonably should have discovered the transfer.

19 (g) A person who becomes a settlor's creditor after a
20 transfer is made to a self-settled asset protection trust may not
21 bring an action with respect to the transfer unless the action is
22 commenced on or before the second anniversary of the date on which
23 the transfer was made.

24 (h) For purposes of Subsection (f), a person is considered
25 to have discovered a transfer at the time a public record is made of
26 the transfer, including a recording of the conveyance of real
27 property in the deed records of the county in which the property is

1 located or the filing of a financing statement under Chapter 9,
2 Business & Commerce Code.

3 (i) A settlor's creditor may not bring an action with
4 respect to transfer of property to a self-settled asset protection
5 trust unless the creditor can prove by clear and convincing
6 evidence that the transfer of property was a fraudulent transfer
7 under Chapter 24, Business & Commerce Code, or that the transfer
8 violates a legal obligation owed to the creditor under a contract or
9 a valid court order that is legally enforceable by the creditor. In
10 the absence of such clear and convincing proof, the property
11 transferred is not subject to the claims of the creditor. Proof by
12 one creditor that a transfer of property was fraudulent or wrongful
13 does not constitute proof as to any other creditor, and proof of a
14 fraudulent or wrongful transfer of property as to one creditor does
15 not invalidate any other transfer of property.

16 (j) For purposes of Subsections (f) and (g), if property
17 transferred to a self-settled asset protection trust is
18 subsequently conveyed to the settlor or other trust beneficiary for
19 the purpose of obtaining a loan secured by a mortgage or deed of
20 trust on the property and then reconveyed to the trust, the
21 conveyance from and reconveyance to the trust shall be disregarded
22 and the property is considered to have been transferred to the trust
23 on the date of the original transfer to the trust. The mortgage or
24 deed of trust on the property is enforceable against the trust.

25 (k) If more than one transfer is made to a self-settled
26 asset protection trust:

27 (1) for purposes of Subsections (f) and (g), each

1 subsequent transfer to the trust shall be disregarded for the
2 purpose of determining whether a person may bring an action with
3 respect to a previous transfer to the trust; and

4 (2) any distribution to a beneficiary from the trust
5 is considered to have been made from the most recent transfer made
6 to the trust.

7 (1) For purposes of this section, if a trustee of a
8 self-settled asset protection trust exercises the trustee's
9 discretion or authority to distribute trust income or principal to
10 or for the settlor of the trust by appointing the property of the
11 original trust in favor of a second trust for the benefit of the
12 settlor as provided by Subchapter D:

13 (1) the second trust is considered to be a
14 self-settled asset protection trust under this section so long as
15 it satisfies the requirements of this section other than the
16 self-settlement requirement; and

17 (2) if considered a self-settled asset protection
18 trust under Subdivision (1), property transferred to the second
19 trust is considered for purposes of Subsections (f) and (g) to have
20 been transferred on the date the settlor of the original
21 self-settled asset protection trust transferred the property into
22 that trust, regardless of the fact that the property has been
23 transferred to a second trust.

24 (m) A trust the domicile of which is changed to this state is
25 considered a self-settled asset protection trust under this section
26 if the requirements of this section are satisfied simultaneously
27 with, or immediately after, the change of domicile to this state.

1 For purposes of Subsections (f) and (g), if the domicile of a
2 self-settled asset protection trust is changed to this state from a
3 jurisdiction having laws substantially similar to this section, a
4 transfer of assets to the trust before the change in domicile to
5 this state is considered to have occurred:

6 (1) on the date the assets were transferred to the
7 trust if, at the time of the transfer and at all times after the
8 transfer, the laws governing the trust were substantially similar
9 to this section; or

10 (2) if Subdivision (1) does not apply, on the earliest
11 date on which the trust was subjected, without interruption, to
12 laws substantially similar to this section.

13 (n) Unless the trust instrument expressly provides
14 otherwise, this subtitle governs the construction, operation, and
15 enforcement in this state of a self-settled asset protection trust
16 created in or outside this state if:

17 (1) any of the trust assets are in this state;

18 (2) the trust affects personal property and the
19 declared domicile of the creator of the trust is in this state; or

20 (3) at least one trustee serving under Subsection
21 (b)(2) has the power to maintain records and prepare income tax
22 returns for the trust and at least part of the trust administration
23 is performed in this state.

24 SECTION 3. (a) Except as provided by this section, the
25 change in law made by this Act applies only to a transfer of
26 property on or after the effective date of this Act to a
27 self-settled asset protection trust that satisfies the

1 requirements of Section 112.0351, Property Code, as added by this
2 Act.

3 (b) For purposes of Section 112.0351, Property Code, as
4 added by this Act, property transferred before the effective date
5 of this Act to a trust that on or after the effective date of this
6 Act satisfies the requirements of that section is considered
7 transferred to the trust on the earliest date on or after the
8 effective date of this Act on which the trust terms satisfy the
9 requirements of that section.

10 (c) With respect to a trust the domicile of which is changed
11 to this state on or after the effective date of this Act, Section
12 112.0351, Property Code, as added by this Act, applies with respect
13 to transfers made to the trust before, on, or after the effective
14 date of this Act.

15 SECTION 4. This Act takes effect September 1, 2015.