

State of Arizona
House of Representatives
Fiftieth Legislature
First Regular Session
2011

HOUSE BILL 2403

AN ACT

AMENDING SECTIONS 14-2712, 14-10202, 14-10504, 14-10505, 14-10819, 14-11014,
25-213, 28-2055 AND 33-1126, ARIZONA REVISED STATUTES; RELATING TO PROBATE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 14-2712, Arizona Revised Statutes, is amended to
3 read:

4 14-2712. Burdens relating to validity of governing instruments

5 A. A proponent of a governing instrument has the burden of
6 establishing prima facie proof of due execution in all cases.

7 B. It is a rebuttable presumption that a person who executes a
8 governing instrument is presumed to have capacity to execute the governing
9 instrument and to have done so free from undue influence and duress.

10 C. If the validity of a governing instrument is challenged on the
11 grounds of revocation by a later governing instrument, the validity of the
12 later governing instrument must be determined first.

13 D. Except as prescribed pursuant to subsections E and F of this
14 section, a party that challenges the validity of a governing instrument has
15 the burden of establishing the invalidity of that governing instrument by a
16 preponderance of the evidence.

17 E. A governing instrument is presumed to be the product of undue
18 influence ~~and is invalid~~ if either:

19 1. A person who had a confidential relationship to the creator of the
20 governing instrument was active in procuring its creation and execution and
21 is a principal beneficiary of the governing instrument.

22 2. The preparer of the governing instrument or the preparer's spouse
23 or parents or the issue of the preparer's spouse or parents is a principal
24 beneficiary of the governing instrument. This paragraph does not apply if
25 the governing instrument was prepared for a person who is a grandparent of
26 the preparer, the issue of a grandparent of the preparer or the respective
27 spouses or former spouses of persons related to the preparer.

28 F. The beneficiary of the governing instrument may overcome a
29 presumption of undue influence by a preponderance of the evidence.

30 G. For the purposes of this section, determining if a person is a
31 principal beneficiary of a governing instrument or the preparer of a
32 governing instrument is a question of fact to be determined by the totality
33 of the circumstances.

34 H. This section does not apply to the following:

35 1. Proceedings to determine the validity of a durable power of
36 attorney pursuant to section 14-5506, subsection B.

37 2. Proceedings to determine ownership of multiple party accounts
38 pursuant to section 14-6211.

39 Sec. 2. Section 14-10202, Arizona Revised Statutes, is amended to
40 read:

41 14-10202. Jurisdiction over trustee and beneficiary

42 A. By accepting the trusteeship of a trust having its principal place
43 of administration in this state or by moving the principal place of
44 administration to this state, **OR UNTIL OTHERWISE DECLARED BY THE TRUSTEE IF A**
45 **PROCEEDING REGARDING A MATTER INVOLVING THE TRUST IS NOT PENDING IN A COURT**

1 OF THIS STATE, BY DECLARING THAT THE TRUST IS SUBJECT TO THE JURISDICTION OF
2 THE COURTS OF THIS STATE, the trustee submits personally to the jurisdiction
3 of the courts of this state regarding any matter involving the trust.

4 B. With respect to their interests in the trust, the beneficiaries of
5 a trust having its principal place of administration in this state are
6 subject to the jurisdiction of the courts of this state regarding any matter
7 involving the trust. By accepting a distribution from such a trust, the
8 recipient submits personally to the jurisdiction of the courts of this state
9 regarding any matter involving the trust.

10 C. This section does not preclude other methods of obtaining
11 jurisdiction over a trustee, beneficiary or other person receiving property
12 from the trust.

13 Sec. 3. Section 14-10504, Arizona Revised Statutes, is amended to
14 read:

15 14-10504. Discretionary trusts; effect of standard; definition

16 A. Except as provided in subsection B of this section, whether or not
17 a trust contains a spendthrift provision, a creditor of a beneficiary may not
18 compel a distribution that is subject to the trustee's discretion, even if
19 either:

20 1. The discretion is expressed in the form of a standard of
21 distribution.

22 2. The trustee has not complied with the applicable standard of
23 distribution or has abused the discretion regarding distributions.

24 B. To the extent a trustee has not complied with the applicable
25 standard of distribution or has abused the discretion regarding
26 distributions:

27 1. Except as provided in section 14-10503, a distribution may be
28 ordered by the court to satisfy a judgment or court order against the
29 beneficiary for support or maintenance of the beneficiary's child.

30 2. The court shall direct the trustee to pay to the child an amount as
31 is equitable under the circumstances but not more than the amount the trustee
32 would have been required to distribute to or for the benefit of the
33 beneficiary had the trustee complied with the standard or not abused the
34 discretion.

35 C. This section does not limit the right of a beneficiary to maintain
36 a judicial proceeding against a trustee for an abuse of discretion or failure
37 to comply with a standard for distribution, provided that this right may not
38 be exercised by a creditor of the beneficiary OR TO THE EXTENT THAT ANY
39 CREDITOR OF THE BENEFICIARY TAKES THROUGH THE NAME OR RIGHTS OF THE
40 BENEFICIARY.

41 D. Whether or not a trust contains a spendthrift provision:

42 1. A creditor of a trust beneficiary may not compel a distribution
43 from insurance proceeds payable to the trustee as beneficiary to the extent
44 state law exempts such insurance proceeds from creditors' claims if it had
45 been paid directly to the trust beneficiary.

1 2. To the extent that under Arizona law life insurance proceeds,
2 policy cash surrender values or other distributions or payments are exempt
3 from attachment or garnishment by, execution on or otherwise the reach of
4 creditors, if the death benefit is payable to an individual beneficiary, the
5 life insurance proceeds, policy cash surrender values or other distributions
6 or payments are also exempt from attachment or garnishment by, execution on
7 or otherwise the reach of creditors if payable to a trust of which a
8 beneficiary is that individual.

9 E. A creditor of a beneficiary, whether or not the beneficiary is also
10 a trustee or cotrustee, may not reach the beneficiary's beneficial interest
11 or otherwise compel a distribution if either the trustee's discretion to make
12 distributions for the trustee's own benefit is purely discretionary or is
13 limited by an ascertainable standard, including a standard relating to the
14 beneficiary's health, education, support or maintenance or similar language
15 within the meaning of section 2041(b)(1)(a) of the internal revenue code.

16 F. For the purposes of this section, "child" includes any person for
17 whom an order or judgment for child support has been entered in this or
18 another state.

19 Sec. 4. Section 14-10505, Arizona Revised Statutes, is amended to
20 read:

21 14-10505. Creditor's claim against settlor

22 A. Whether or not the terms of a trust contain a spendthrift
23 provision, the following rules apply:

24 1. During the lifetime of the settlor, the property of a revocable
25 trust is subject to claims of the settlor's creditors. If a trust has more
26 than one settlor or contributor, the amount the creditor or assignee of a
27 particular settlor may reach may not exceed the settlor's interest in the
28 portion of the trust attributable to that settlor's contribution. This
29 paragraph does not abrogate otherwise applicable laws relating to community
30 property.

31 2. Subject to the requirements of this section, with respect to an
32 irrevocable trust, a creditor or assignee of the settlor may reach the
33 maximum amount that can be distributed to or for the settlor's benefit. If a
34 trust has more than one settlor, the amount the creditor or assignee of a
35 particular settlor may reach may not exceed the settlor's interest in the
36 portion of the trust attributable to that settlor's contribution. This
37 paragraph does not apply to any trust from which any distribution to the
38 settlor can be made pursuant to the exercise of a power of appointment held
39 by a third party or abrogate otherwise applicable laws relating to community
40 property. A creditor of a settlor:

41 (a) Shall not reach any trust property based on a trustee's, trust
42 protector's or third party's power, whether or not discretionary, to pay or
43 reimburse the settlor for any income tax on trust income or trust principal
44 that is payable by the settlor under the law imposing the tax or to pay the
45 tax directly to any taxing authority.

1 (b) Is not entitled to any payment or reimbursement that is to be made
2 directly to any taxing authority.

3 (c) Shall not reach or compel distributions to or for the benefit of
4 the beneficiary of a special needs trust.

5 3. After the death of a settlor, and subject to the settlor's right to
6 direct the source from which liabilities will be paid, the property of a
7 trust that was revocable at the settlor's death is subject to claims of the
8 settlor's creditors, costs of administration of the settlor's estate, the
9 expenses of the settlor's funeral and disposal of remains and statutory
10 allowances to a surviving spouse and children to the extent the settlor's
11 probate estate is inadequate to satisfy those claims, costs, expenses and
12 allowances, except to the extent that state or federal law exempts any
13 property of the trust from these claims, costs, expenses or allowances. IF A
14 TRUST HAS MORE THAN ONE SETTLOR OR CONTRIBUTOR, THE AMOUNT THE CREDITOR OR
15 ASSIGNEE OF A PARTICULAR SETTLOR MAY REACH MAY NOT EXCEED THE SETTLOR'S
16 INTEREST IN THE PORTION OF THE TRUST ATTRIBUTABLE TO THAT SETTLOR'S
17 CONTRIBUTION. THIS PARAGRAPH DOES NOT ABROGATE OTHERWISE APPLICABLE LAWS
18 RELATING TO COMMUNITY PROPERTY.

19 B. For the purposes of this section:

20 1. During the period the power may be exercised, the holder of a power
21 of withdrawal is treated in the same manner as the settlor of a revocable
22 trust to the extent of the property subject to the power.

23 2. On the lapse, release or waiver of a power of withdrawal, the
24 holder is ~~treated as the settlor of the trust only to the extent the value of~~
25 ~~the property affected by the lapse, release or waiver exceeds the greater of~~
26 ~~the amount specified in section 2041(b)(2) or 2514(e) of the internal revenue~~
27 ~~code, or section 2503(b) of the internal revenue code. On the lapse, release~~
28 ~~or waiver of a power of withdrawal in the case of a trust created under~~
29 ~~section 2503(c) of the internal revenue code, the holder will not be treated~~
30 ~~as the settlor of the trust~~ NOT, BY REASON OF ANY SUCH LAPSE, RELEASE OR
31 WAIVER, TREATED AS THE SETTLOR OF THE TRUST.

32 C. For the purposes of this section, a trust settled or established by
33 a corporation, professional corporation, partnership, limited liability
34 company, governmental entity, trust, foundation or other entity is not deemed
35 to be settled or established by its directors, officers, shareholders,
36 partners, members, managers, employees, beneficiaries or agents.

37 D. For the purposes of this section, amounts contributed to a trust by
38 a corporation, professional corporation, partnership, limited liability
39 company, governmental entity, trust, foundation or other entity are not
40 deemed to have been contributed by its directors, officers, shareholders,
41 partners, employees, beneficiaries or agents. Powers, duties or
42 responsibilities granted to or reserved by the settlor pursuant to the trust
43 and any actions or omissions taken pursuant to the trust are deemed to be the
44 powers, responsibilities, duties, actions or omissions of the settlor and not

1 those of its directors, officers, shareholders, partners, members, managers,
2 employees, beneficiaries or agents.

3 E. For the purposes of this section, amounts and property contributed
4 to the following trusts are not deemed to have been contributed by the
5 settlor, and a person who would otherwise be treated as a settlor or a deemed
6 settlor of the following trusts shall not be treated as a settlor:

7 1. An irrevocable inter vivos marital trust that is treated as
8 qualified terminable interest property under section 2523(f) of the internal
9 revenue code if the settlor is a beneficiary of the trust after the death of
10 the settlor's spouse.

11 2. An irrevocable inter vivos marital trust that is treated as a
12 general power of appointment trust under section 2523(e) of the internal
13 revenue code if the settlor is a beneficiary of the trust after the death of
14 the settlor's spouse.

15 3. An irrevocable inter vivos trust for the settlor's spouse ~~that does~~
16 ~~not qualify for the gift tax marital deduction~~ if the settlor is a
17 beneficiary of the trust after the death of the settlor's spouse.

18 ~~4. An irrevocable inter vivos trust created by the settlor's spouse~~
19 ~~for the benefit of the settlor, regardless of whether or when the settlor~~
20 ~~also created an irrevocable inter vivos trust with respect to which such~~
21 ~~spouse is a beneficiary.~~

22 4. AN IRREVOCABLE TRUST FOR THE BENEFIT OF A PERSON, THE SETTLOR OF
23 WHICH IS THE PERSON'S SPOUSE, REGARDLESS OF WHETHER OR WHEN THE PERSON WAS
24 THE SETTLOR OF AN IRREVOCABLE TRUST FOR THE BENEFIT OF THAT SPOUSE.

25 5. AN IRREVOCABLE TRUST FOR THE BENEFIT OF A PERSON TO THE EXTENT THAT
26 THE PROPERTY OF THE TRUST WAS SUBJECT TO A GENERAL POWER OF APPOINTMENT IN
27 ANOTHER PERSON.

28 F. For the purposes of subsection E, a person is a beneficiary whether
29 so named under the initial trust instrument or through the exercise by that
30 person's spouse or by another person of a limited or general power of
31 appointment.

32 G. Subsections C and D do not apply to:

33 1. A trust that has no valid business purpose and that has as its
34 principal purpose the evasion of the claims of the creditors of the persons
35 or entities listed in those subsections.

36 2. A trust that would be treated as a grantor trust pursuant to
37 sections 671 through 679 of the internal revenue code. This paragraph does
38 not apply to a qualified subchapter S trust that is treated as a grantor
39 trust solely by application of section 1361(d) of the internal revenue code.

40 Sec. 5. Section 14-10819, Arizona Revised Statutes, is amended to
41 read:

42 14-10819. Trustee's special power to appoint to other trust

43 A. Unless the terms of the instrument expressly provide otherwise, a
44 trustee who has the discretion under the terms of a testamentary instrument
45 or irrevocable inter vivos agreement to make distributions, regardless of

1 whether a standard is provided in the instrument or agreement, for the
2 benefit of a beneficiary of the trust may exercise without prior court
3 approval the trustee's discretion by appointing part or all of the estate
4 trust in favor of a trustee of a- ANOTHER trust ~~under an instrument other~~
5 ~~than that under which the power to make distributions was created~~ if the
6 exercise of this discretion:

7 1. Does not reduce any fixed nondiscretionary income payment to a
8 beneficiary.

9 2. Does not alter any nondiscretionary annuity or unitrust payment to
10 a beneficiary.

11 3. Is in favor of the beneficiaries of the trust.

12 4. Results in any ascertainable standard applicable for distributions
13 from the trust being the same or more restrictive standard applicable for
14 distributions from the recipient trust when the trustee exercising the power
15 described in this subsection is a possible beneficiary under the standard.

16 5. Does not adversely affect the tax treatment of the trust, the
17 trustee, the settlor or the beneficiaries.

18 6. Does not violate the limitations on validity under sections 14-2901
19 and 14-2905.

20 B. This section applies to a trust governed by the laws of this state,
21 including a trust whose governing jurisdiction is transferred to this state.

22 C. The exercise of the power to invade the principal of a trust under
23 subsection A of this section is considered to be the exercise of a special
24 power of appointment.

25 D. The trustee, in the trustee's sole discretion, ~~prior to~~ BEFORE or
26 after the exercise of the trustee's discretion under this section, may
27 request the court to approve the exercise.

28 E. THE TRUSTEE MAY EXERCISE THE DISCRETION TO APPOINT ALL OF THE TRUST
29 ESTATE PURSUANT TO THIS SECTION BY RESTATING THE TRUST.

30 Sec. 6. Section 14-11014, Arizona Revised Statutes, is amended to
31 read:

32 14-11014. Total return trusts; definitions

33 A. A trustee, other than an interested trustee, or if two or more
34 persons are acting as trustee, a majority of the trustees who are not an
35 interested trustee, in its sole discretion and without the approval of the
36 ~~probate~~ court may:

37 1. Convert an income trust to a total return unitrust.

38 2. Reconvert a total return unitrust to an income trust.

39 3. Change the percentage used to calculate the unitrust amount or the
40 method used to determine the fair market value of the trust, or both, if:

41 (a) The trustee adopts a written policy for the trust providing
42 either:

43 (i) In the case of a trust being administered as an income trust,
44 future distributions from the trust will be unitrust amounts rather than net
45 income.

1 (ii) In the case of a trust being administered as a total return
2 unitrust, future distributions from the trust will be net income rather than
3 unitrust amounts.

4 (iii) That the percentage used to calculate the unitrust amount or the
5 method used to determine the fair market value of the trust, or both, will be
6 changed as stated in the policy.

7 (b) The trustee sends written notice of its intention to take this
8 action, along with copies of the written policy and this section, to:

9 (i) The settlor of the trust, if living.

10 (ii) All ~~living persons who are currently receiving or eligible to~~
11 ~~receive distributions of income~~ QUALIFIED BENEFICIARIES of the trust.

12 ~~(iii) Without regard to the exercise of any power of appointment, all~~
13 ~~living persons who would receive principal of the trust if the trust were to~~
14 ~~terminate at the time of the giving of the notice and all living persons who~~
15 ~~would receive or be eligible to receive distributions of income or principal~~
16 ~~of the trust if the interests of all of the beneficiaries currently eligible~~
17 ~~to receive income under item (ii) of this subdivision were to terminate at~~
18 ~~the time of the giving of the notice.~~

19 ~~(iv)~~ (iii) All persons acting as adviser or trust protector of the
20 trust.

21 (c) At least one person receiving notice under subdivision (b), item
22 (ii) or (iii) of this subsection is legally competent.

23 (d) No person receiving notice objects to the proposed action of the
24 trustee by submitting a written instrument delivered to the trustee within
25 thirty days after receipt of the notice.

26 B. If there is no trustee of the trust other than an interested
27 trustee, the interested trustee or, if two or more persons are acting as
28 trustee and are interested trustees, a majority of interested trustees, in
29 its sole discretion and without the approval of the probate court may:

- 30 1. Convert an income trust to a total return unitrust.
31 2. Reconvert a total return unitrust to an income trust.
32 3. Change the percentage used to calculate the unitrust amount or the
33 method used to determine the fair market value of the trust, or both, if:

34 (a) The trustee adopts a written policy for the trust providing
35 either:

36 (i) In the case of a trust being administered as an income trust, that
37 future distributions from the trust will be unitrust amounts rather than net
38 income.

39 (ii) In the case of a trust being administered as a total return
40 unitrust, that future distributions from the trust will be net income rather
41 than unitrust amounts.

42 (iii) That the percentage used to calculate the unitrust amount or the
43 method used to determine the fair market value of the trust, or both, will be
44 changed as stated in the policy.

1 (b) The trustee appoints a disinterested person who, in its sole
2 discretion but acting in a fiduciary capacity, determines for the trustee:

3 (i) The percentage to be used to calculate the unitrust amount.

4 (ii) The method to be used in determining the fair market value of the
5 trust.

6 (iii) Which assets, if any, are to be excluded in determining the
7 unitrust amount.

8 (c) The trustee sends written notice of its intention to take such
9 action, along with copies of the written policy and this section, and the
10 determinations of the disinterested person to:

11 (i) The settlor of the trust, if living.

12 (ii) All ~~living persons who are currently receiving or eligible to~~
13 ~~receive distributions of income~~ QUALIFIED BENEFICIARIES of the trust.

14 ~~(iii) Without regard to the exercise of any power of appointment, all~~
15 ~~living persons who would receive principal of the trust if the trust were to~~
16 ~~terminate at the time of the giving of the notice and all living persons who~~
17 ~~would receive or be eligible to receive distributions of income or principal~~
18 ~~of the trust if the interests of all of the beneficiaries currently eligible~~
19 ~~to receive income under item (ii) of this subdivision were to terminate at~~
20 ~~the time of the giving of the notice.~~

21 ~~(iv)~~ (iii) All persons acting as adviser or protector of the trust.

22 (d) At least one person receiving notice under subdivision (c), item
23 (ii) or (iii) of this subsection is legally competent.

24 (e) No person receiving notice objects to the proposed action or the
25 determinations of the disinterested person by submitting a written instrument
26 delivered to the trustee within thirty days after receipt of the notice.

27 C. If any trustee wishes to convert an income trust to a total return
28 unitrust, reconvert a total return unitrust to an income trust or change the
29 percentage used to calculate the unitrust amount or the method used to
30 determine the fair market value of the trust, or both, but does not have the
31 ability to or elects not to do it pursuant to subsection A or B of this
32 section, the trustee may petition the probate court for an order as the
33 trustee deems appropriate. If there is only one trustee of such a trust and
34 that trustee is an interested trustee or if there are two or more trustees of
35 such a trust and a majority of them are interested trustees, the court, in
36 its discretion or on petition of the trustee or trustees or of any person
37 interested in the trust, may appoint a disinterested person who, acting in a
38 fiduciary capacity, shall present information to the court necessary to
39 enable the court to make its determinations.

40 D. The fair market value of the trust shall be determined at least
41 annually, using a valuation date or dates or averages of valuation dates as
42 are deemed appropriate. Assets for which a fair market value cannot be
43 readily ascertained shall be valued using valuation methods as are deemed
44 reasonable and appropriate. Assets used by a trust beneficiary, such as a

1 residence property or tangible personal property, may be excluded from fair
2 market value for computing the unitrust amount.

3 E. The percentage to be used in determining the unitrust amount shall
4 be a reasonable current return from the trust, but not less than three per
5 cent or more than five per cent, taking into account the intentions of the
6 settlor of the trust as expressed in the governing instrument, the needs of
7 the beneficiaries, general economic conditions, projected current earnings
8 and appreciation for the trust, and projected inflation and its impact on the
9 trust.

10 F. A trustee may act pursuant to subsection A or B of this section
11 with respect to a trust for which both income and principal have been
12 permanently set aside for charitable purposes under the governing instrument
13 and for which a federal estate or gift tax deduction has been taken, provided
14 that:

15 1. Instead of sending written notice to the persons described in
16 subsection A, paragraph 3, subdivision (b), ~~items ITEM (ii) and (iii)~~ of this
17 section or pursuant to subsection B, paragraph 3, subdivision (c), ~~items ITEM~~
18 (ii) ~~and (iii)~~ of this section, as the case may be, the trustee shall send
19 the written notice to the named charity or charities then entitled to receive
20 income of the trust and, if no named charity or charities are entitled to
21 receive all of that income, to the attorney general of this state.

22 2. Subsection A, paragraph 3, subdivision (c) of this section or
23 subsection B, paragraph 3, subdivision (d) of this section, as the case may
24 be, does not apply to that action.

25 3. In each taxable year, the trustee must distribute the greater of
26 the unitrust amount and the amount required by section 4942 of the internal
27 revenue code.

28 G. Following the conversion of an income trust to a total return
29 unitrust, the trustee:

30 1. Shall consider the unitrust amount as paid from net accounting
31 income determined as if the trust were not a unitrust.

32 2. Shall then consider the unitrust amount as paid from ordinary
33 income not allocable to net accounting income.

34 3. After calculating the trust's capital gain net income described in
35 section 1222(9) of the internal revenue code, may consider the unitrust
36 amount as paid from net short-term capital gain described in section 1222(5)
37 of the internal revenue code and then from net long-term capital gain
38 described in section 1222(7) of the internal revenue code.

39 4. Shall then consider the unitrust amount as coming from the
40 principal of the trust.

41 H. In administering a total return unitrust, the trustee, in its sole
42 discretion but subject to the provisions of the governing instrument, may
43 determine:

44 1. The effective date of the conversion.

1 2. The timing of distributions, including provisions for prorating a
2 distribution for a short year in which a beneficiary's right to payments
3 commences or ceases.

4 3. Whether distributions are to be made in cash or in kind or partly
5 in cash and partly in kind.

6 4. If the trust is reconverted to an income trust, the effective date
7 of the reconversion.

8 5. Any other administrative issues as may be necessary or appropriate
9 to carry out the purposes of this section.

10 I. Conversion to a total return unitrust under this section does not
11 affect any other provision of the governing instrument, if any, regarding
12 distributions of principal.

13 J. Notwithstanding anything in this section to the contrary, in the
14 case of a trust for which a marital deduction has been taken for federal tax
15 purposes under section 2056 or 2523 of the internal revenue code, the spouse
16 otherwise entitled to receive the net income of the trust has the right, by
17 written instrument delivered to the trustee, to prohibit conversion to a
18 total return unitrust and to compel the reconversion during that spouse's
19 lifetime of the trust from a total return unitrust to an income trust.

20 K. This section pertains to the administration of a trust and is
21 available to any trust that is administered in this state under Arizona law
22 or to any trust, regardless of its place of administration, whose governing
23 instrument provides that Arizona law governs matters of construction or
24 administration unless:

25 1. The governing instrument reflects an intention that the current
26 beneficiary or beneficiaries are to receive an amount other than a reasonable
27 current return from the trust.

28 2. The trust is a pooled income fund described in section 642(c)(5) of
29 the internal revenue code or a charitable remainder **ANNUITY** trust described
30 in section 664(d) of the internal revenue code.

31 3. The governing instrument expressly prohibits use of this section by
32 specific reference to this section or expressly states the settlor's intent
33 that net income not be calculated as a unitrust amount. A provision in the
34 governing instrument that "the provisions of Arizona Revised Statutes,
35 section 14-11014, as amended, or any corresponding provision of future law,
36 shall not be used in the administration of this trust" or "my trustee shall
37 not determine the distributions to the income beneficiary as a unitrust
38 amount" or similar words reflecting such intent shall be sufficient to
39 preclude the use of this section.

40 L. Any trustee or disinterested person who in good faith takes or
41 fails to take any action under this section is not liable to any person
42 affected by that action or inaction, regardless of whether the person
43 received written notice as prescribed in this section and regardless of
44 whether the person was under a legal disability at the time of the delivery
45 of the notice. The person's exclusive remedy is to obtain a court order

1 directing the trustee to convert an income trust to a total return unitrust,
2 to reconvert from a total return unitrust to an income trust or to change the
3 percentage used to calculate the unitrust amount.

4 M. This section is available to trusts in existence on October 1, 2008
5 or created after that date.

6 N. For the purposes of this section:

7 1. "Disinterested person" means a person who is not a related or
8 subordinate party pursuant to section 672(c) of the internal revenue code
9 with respect to the person then acting as trustee of the trust and excludes
10 the settlor of the trust and any interested trustee.

11 2. "Income trust" means a trust that is created by either an inter
12 vivos or a testamentary instrument and that directs or permits the trustee to
13 distribute the net income of the trust to one or more persons, either in
14 required amounts or proportions, or in amounts or proportions determined by
15 the trustee and regardless of whether the trust directs or permits the
16 trustee to distribute the principal of the trust to one or more of these
17 persons.

18 3. "Interested distributee" means a person to whom distributions of
19 income or principal can currently be made who has the power to remove the
20 existing trustee and designate as successor a person who may be a related or
21 subordinate party pursuant to section 672(c) of the internal revenue code
22 with respect to that distributee.

23 4. "Interested trustee" means:

24 (a) An individual trustee to whom the net income or principal of the
25 trust can currently be distributed or would be distributed if the trust were
26 then to terminate and be distributed.

27 (b) Any trustee who may be removed and replaced by an interested
28 distributee.

29 (c) An individual trustee whose legal obligation to support a
30 beneficiary may be satisfied by distributions of income and principal of the
31 trust.

32 5. "Total return unitrust" means an income trust that has been
33 converted under and meets the requirements of this section.

34 6. "Trustee" means any person acting as trustee of the trust, unless
35 expressly noted otherwise, whether acting in that person's discretion or on
36 the direction of one or more persons acting in a fiduciary capacity.

37 7. "Unitrust amount" means an amount computed as a percentage of the
38 fair market value of the trust.

39 Sec. 7. Section 25-213, Arizona Revised Statutes, is amended to read:

40 25-213. Separate property

41 A. A spouse's real and personal property that is owned by that spouse
42 before marriage and that is acquired by that spouse during the marriage by
43 gift, devise or descent, and the increase, rents, issues and profits of that
44 property, is the separate property of that spouse.

1 B. Property that is acquired by a spouse after service of a petition
2 for dissolution of marriage, legal separation or annulment is also the
3 separate property of that spouse if the petition results in a decree of
4 dissolution of marriage, legal separation or annulment.

5 C. Notwithstanding subsection B of this section and section 25-214,
6 subsection C, a mortgage or deed of trust executed by a spouse who acquires
7 the real property encumbered by that mortgage or deed of trust after service
8 of a petition for dissolution of marriage, legal separation or annulment
9 shall be enforceable against the real property if the petition does not
10 result in a decree of dissolution of marriage, legal separation or annulment.

11 D. A contribution to an irrevocable trust that has OR WILL HAVE as its
12 principal asset life insurance on the person making the contribution is a
13 contribution of the insured's separate property if the spouse of the insured
14 is the primary beneficiary of the trust.

15 Sec. 8. Section 28-2055, Arizona Revised Statutes, is amended to read:

16 28-2055. Certificate of title; content requirements; transfer
17 on death provision; delivery

18 A. The department or an authorized third party shall print the
19 certificate of title, and it shall contain forms for assignment of title or
20 interest and warranty by the owner, with space for notation of liens and
21 encumbrances on the vehicle at the time of transfer. The certificate of
22 title shall also contain the odometer mileage disclosure statement pursuant
23 to section 28-2058.

24 B. At the request of the owner and on payment of a fee prescribed by
25 the department by rule, the certificate of title may contain, by attachment,
26 a transfer on death provision where the owner may designate a beneficiary of
27 the title. ~~The attachment shall include a notice to the owner and any~~
28 ~~beneficiary that the monetary limitation on the transfer of personal property~~
29 ~~in a decedent's estate prescribed in section 14-3971 may apply.~~

30 C. If a motor vehicle, trailer or semitrailer has been registered in
31 any other state or country, the department shall retain in its records the
32 name of the state or country in which the prior registration took place.

33 D. Except as provided in section 28-2064, the department shall deliver
34 or mail the original certificate of title to:

35 1. The applicant if there are not any liens or encumbrances on the
36 certificate of title.

37 2. The holder of the lien or encumbrance first in time on the date of
38 the application if there are liens or encumbrances on the certificate of
39 title.

40 Sec. 9. Section 33-1126, Arizona Revised Statutes, is amended to read:

41 33-1126. Money benefits or proceeds; exception

42 A. The following property of a debtor ~~shall be~~ IS exempt from
43 execution, attachment or sale on any process issued from any court:

- 1 1. All money received by or payable to a surviving spouse or child
2 ~~upon~~ ON the life of a deceased spouse, parent or legal guardian, not
3 exceeding twenty thousand dollars.
- 4 2. The earnings of the minor child of a debtor or the proceeds ~~thereof~~
5 OF THESE EARNINGS by reason of any liability of ~~such~~ THE debtor not
6 contracted for the special benefit of ~~such~~ THE minor child.
- 7 3. All monies received by or payable to a person entitled to receive
8 child support or spousal maintenance pursuant to a court order.
- 9 4. All money, proceeds or benefits of any kind to be paid in a lump
10 sum or to be rendered on a periodic or installment basis to the insured or
11 any beneficiary under any policy of health, accident or disability insurance
12 or any similar plan or program of benefits in use by any employer, except for
13 premiums payable on such policy or debt of the insured secured by a pledge,
14 and except for collection of any debt or obligation for which the insured or
15 beneficiary has been paid under the plan or policy and except for payment of
16 amounts ordered for support of a person from proceeds and benefits furnished
17 in lieu of earnings ~~which~~ THAT would have been subject to ~~such~~ THAT order and
18 subject to any exemption applicable to earnings so replaced.
- 19 5. All money arising from any claim for the destruction of, or damage
20 to, exempt property and all proceeds or benefits of any kind arising from
21 fire or other insurance ~~upon~~ ON any property exempt under this article.
- 22 6. The cash surrender value of life insurance policies where for a
23 continuous unexpired period of two years ~~such~~ THE policies have been owned by
24 a debtor and have named as beneficiary the debtor's surviving spouse, child,
25 parent, brother or sister, or any other dependent family member, in the
26 proportion that the policy names any such beneficiary, except that, subject
27 to the statute of limitations, the amount of any premium ~~which~~ THAT is
28 recoverable or avoidable by a creditor pursuant to title 44, chapter 8,
29 article 1, with interest thereon, ~~shall~~ IS not ~~be~~ exempt. The exemption
30 provided by this paragraph does not apply to a claim for the payment of a
31 debt of the insured or beneficiary that is secured by a pledge or assignment
32 of the cash value of the insurance policy or the proceeds of the policy. For
33 the purposes of this paragraph, "dependent" means a family member who is
34 dependent on the insured debtor for not less than half support.
- 35 7. An annuity contract where for a continuous unexpired period of two
36 years ~~such~~ THAT contract has been owned by a debtor and has named as
37 beneficiary the debtor, THE debtor's surviving spouse, child, parent, brother
38 or sister, or any other dependent family member, except that, subject to the
39 statute of limitations, the amount of any premium, payment or deposit with
40 respect to ~~such~~ THAT contract is recoverable or avoidable by a creditor
41 pursuant to title 44, chapter 8, article 1 ~~shall~~ IS not ~~be~~ exempt. The
42 exemption provided by this paragraph does not apply to a claim for a payment
43 of a debt of the annuitant or beneficiary that is secured by a pledge or
44 assignment of the contract or its proceeds. For the purposes of this

1 paragraph, "dependent" means a family member who is dependent on the debtor
2 for not less than half support.

3 8. Any claim for damages recoverable by any person by reason of any
4 levy ~~upon~~ ON or sale under execution of ~~his~~ THAT PERSON'S exempt personal
5 property or by reason of the wrongful taking or detention of ~~such~~ THAT
6 property by any person, and the judgment recovered for ~~such~~ damages.

7 9. A total of one hundred fifty dollars held in a single account in
8 any one financial institution as defined by section 6-101. The property
9 declared exempt by this paragraph is not exempt from normal service charges
10 assessed against the account by the financial institution at which the
11 account is carried.

12 B. Any money or other assets payable to a participant in or
13 beneficiary of, or any interest of any participant or beneficiary in, a
14 retirement plan under section 401(a), 403(a), 403(b), 408, 408A or 409 or a
15 deferred compensation plan under section 457 of the United States internal
16 revenue code of 1986, as amended, ~~shall be~~ WHETHER THE BENEFICIARY'S INTEREST
17 ARISES BY INHERITANCE, DESIGNATION, APPOINTMENT OR OTHERWISE, IS exempt from
18 ~~any and~~ all claims of creditors of the beneficiary or participant. This
19 subsection ~~shall~~ DOES not apply to any of the following:

20 1. An alternate payee under a qualified domestic relations order, as
21 defined in section 414(p) of the United States internal revenue code of 1986,
22 as amended. The interest of any and all alternate payees is exempt from any
23 and all claims of any creditor of the alternate payee.

24 2. Amounts contributed within one hundred twenty days before a debtor
25 files for bankruptcy.

26 3. The assets of bankruptcy proceedings filed before July 1, 1987.

27 C. Any person ~~the age of~~ eighteen years OF AGE or over, married or
28 single, who resides within this state and who does not exercise the homestead
29 exemption under article 1 of this chapter may claim as a personal property
30 homestead exempt from all process prepaid rent, including security deposits
31 as provided in section 33-1321, subsection A, for the claimant's residence,
32 not exceeding the lesser of one thousand dollars or one and one-half months'
33 rent.

34 D. ~~Nothing in~~ This section ~~exempts~~ DOES NOT EXEMPT property from
35 orders ~~which~~ THAT are the result of a judgment for arrearages of child
36 support or for a child support debt.