

State of Arizona  
Senate  
Fifty-first Legislature  
First Regular Session  
2013

# SENATE BILL 1232

AN ACT

AMENDING SECTIONS 14-2902, 14-2905, 14-3971, 14-10002, 14-10111, 14-10504, 14-10505, 14-10506, 14-10814, 14-10818 AND 33-1126, ARIZONA REVISED STATUTES; RELATING TO TRUSTS AND ESTATES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 14-2902, Arizona Revised Statutes, is amended to  
3 read:

4 14-2902. Nonvested property interest or power of appointment;  
5 creation

6 A. Except as provided in subsections B and C of this section and  
7 section 14-2905, subsection ~~A~~ C, the time of creation of a nonvested  
8 property interest or a power of appointment is determined under general  
9 principles of property law.

10 B. If there is a person who alone can exercise a power created by a  
11 governing instrument to become the unqualified beneficial owner of a  
12 nonvested property interest or a property interest subject to a power of  
13 appointment described in section 14-2901, subsection B or C, the nonvested  
14 property interest or power of appointment is created when that person's power  
15 to become the unqualified beneficial owner terminates. A joint power with  
16 respect to community property or to marital property held by a married couple  
17 is a power exercisable by one person alone.

18 C. A nonvested property interest or a power of appointment arising  
19 from a transfer of property to a previously funded trust or any other  
20 existing property arrangement is created when the nonvested property interest  
21 or power of appointment in the original contribution was created.

22 Sec. 2. Section 14-2905, Arizona Revised Statutes, is amended to read:

23 14-2905. Nonvested property interest or power of appointment;  
24 creation; effective date; judicial reformation

25 A. Except as otherwise provided, this article applies to a nonvested  
26 property interest or a power of appointment that is created on or after  
27 December 31, 1994.

28 B. If a nonvested property interest or a power of appointment is  
29 determined in a judicial proceeding to violate this state's rule against  
30 perpetuities as that rule existed when the nonvested property interest or  
31 power of appointment was created, a court on the petition of an interested  
32 person may reform the disposition in the manner that most closely  
33 approximates the transferor's manifested plan of distribution and that is  
34 within the limits of the requirements of section 14-2901.

35 C. For **THE** purposes of this article, **IF THE PERSON WHO EXERCISES A**  
36 **POWER OF APPOINTMENT SO PROVIDES IN THE EXERCISE**, a nonvested property  
37 interest or a power of appointment created by the exercise of a power of  
38 appointment is created when the power is irrevocably exercised or when a  
39 revocable exercise becomes irrevocable.

40 Sec. 3. Section 14-3971, Arizona Revised Statutes, is amended to read:

41 14-3971. Collection of personal property by affidavit;  
42 ownership of vehicles; affidavit of succession to  
43 real property

44 A. At any time after the death of a decedent, any employer owing  
45 wages, salary or other compensation for personal services of the decedent  
46 shall pay to the surviving spouse of the decedent the amount owing, not in

1 excess of five thousand dollars, on being presented an affidavit made by or  
2 on behalf of the spouse stating that the affiant is the surviving spouse of  
3 the decedent, or is authorized to act on behalf of the spouse, and that no  
4 application or petition for the appointment of a personal representative is  
5 pending or has been granted in this state or, if granted, the personal  
6 representative has been discharged or more than one year has elapsed since a  
7 closing statement has been filed.

8 B. Thirty days after the death of a decedent, any person indebted to  
9 the decedent or having possession of tangible personal property or an  
10 instrument evidencing a debt, obligation, stock or chose in action belonging  
11 to the decedent shall make payment of the indebtedness or deliver the  
12 tangible personal property or an instrument evidencing a debt, obligation,  
13 stock or chose in action to a person claiming to be the successor of the  
14 decedent upon being presented an affidavit made by or on behalf of the  
15 successor and stating that all of the following are true:

16 1. Thirty days have elapsed since the death of the decedent.

17 2. Either:

18 (a) An application or petition for the appointment of a personal  
19 representative is not pending and a personal representative has not been  
20 appointed in any jurisdiction and the value of all personal property in the  
21 decedent's estate, wherever located, less liens and encumbrances, does not  
22 exceed ~~fifty~~ SEVENTY-FIVE thousand dollars as valued as of the date of death.

23 (b) The personal representative has been discharged or more than one  
24 year has elapsed since a closing statement has been filed and the value of  
25 all personal property in the decedent's estate, wherever located, less liens  
26 and encumbrances, does not exceed ~~fifty~~ SEVENTY-FIVE thousand dollars as  
27 valued as of the date of the affidavit.

28 3. The claiming successor is entitled to payment or delivery of the  
29 property.

30 C. A transfer agent of any security shall change the registered  
31 ownership on the books of a corporation from the decedent to the successor or  
32 successors on presentation of an affidavit pursuant to subsection B of this  
33 section.

34 D. The motor vehicle division shall transfer title of a motor vehicle  
35 from the decedent to the successor or successors on presentation of an  
36 affidavit as provided in subsection B of this section and on payment of the  
37 necessary fees.

38 E. No sooner than six months after the death of a decedent, a person  
39 or persons claiming as successor or successors to the decedent's interest in  
40 real property, including any debt secured by a lien on real property, may  
41 file in the court in the county in which the decedent was domiciled at the  
42 time of death, or if the decedent was not domiciled in this state then in any  
43 county in which real property of the decedent is located, an affidavit  
44 describing the real property and the interest of the decedent in that  
45 property and stating that all of the following are true and material and  
46 acknowledging that any false statement in the affidavit may subject the

1 person or persons to penalties relating to perjury and subornation of  
2 perjury:

3 1. Either:

4 (a) An application or petition for the appointment of a personal  
5 representative is not pending and a personal representative has not been  
6 appointed in any jurisdiction and the value of all real property in the  
7 decedent's estate located in this state, less liens and encumbrances against  
8 the real property, does not exceed ~~seventy-five~~ ONE HUNDRED thousand dollars  
9 as valued at the date of death. The value of the decedent's interest in that  
10 real property shall be determined from the full cash value of the property as  
11 shown on the assessment rolls for the year in which the decedent died, except  
12 that in the case of a debt secured by a lien on real property the value shall  
13 be determined by the unpaid principal balance due on the debt as of the date  
14 of death.

15 (b) The personal representative has been discharged or more than one  
16 year has elapsed since a closing statement has been filed and the value of  
17 all real property in the decedent's estate, wherever located, less liens and  
18 encumbrances, does not exceed ~~seventy-five~~ ONE HUNDRED thousand dollars as  
19 valued as of the date of the affidavit. The value of the decedent's interest  
20 in that real property is determined from the full cash value of the property  
21 as shown on the assessment rolls for the year in which the affidavit is  
22 given, except that if a debt is secured by a lien on real property, the value  
23 is determined by the unpaid principal balance due on the debt as of the date  
24 of the affidavit.

25 2. Six months have elapsed since the death of the decedent as shown in  
26 a certified copy of the decedent's death certificate attached to the  
27 affidavit.

28 3. Funeral expenses, expenses of last illness, ~~and~~ and all unsecured  
29 debts of the decedent have been paid.

30 4. The person or persons signing the affidavit are entitled to the  
31 real property by reason of the allowance in lieu of homestead, exempt  
32 property or family allowance, by intestate succession as the sole heir or  
33 heirs, or by devise under a valid last will of the decedent, the original of  
34 which is attached to the affidavit or has been probated.

35 5. No other person has a right to the interest of the decedent in the  
36 described property.

37 6. No federal estate tax is due on the decedent's estate.

38 F. The normal filing fee shall be charged for the filing of an  
39 affidavit under subsection E of this section unless waived by the court as  
40 provided by section 12-301 or 12-302. On receipt of the affidavit and after  
41 determining that the affidavit is complete, the registrar shall ~~cause to be~~  
42 ~~issued~~ ISSUE a certified copy of the affidavit without attachments, and the  
43 copy shall be recorded in the office of the recorder in the county where the  
44 real property is located.

45 G. This section does not limit the rights of heirs and devisees under  
46 section 14-3901.

1           Sec. 4. Section 14-10002, Arizona Revised Statutes, is amended to  
2 read:

3           14-10002. Definitions

4           In this chapter, unless the context otherwise requires:

5           1. "Disclaimant" means the person to whom a disclaimed interest or  
6 power would have passed had the disclaimer not been made.

7           2. "Disclaimed interest" means the interest that would have passed to  
8 the disclaimant had the disclaimer not been made.

9           3. "Disclaimer" means the refusal to accept an interest in or power  
10 over property.

11           4. "FIDUCIARY" MEANS A PERSONAL REPRESENTATIVE, A TRUSTEE, AN AGENT  
12 ACTING UNDER A POWER OF ATTORNEY OR ANY OTHER PERSON WHO IS AUTHORIZED TO ACT  
13 AS A FIDUCIARY WITH RESPECT TO THE PROPERTY OF ANOTHER PERSON.

14           ~~4.~~ 5. "Jointly held property" means property held in the name of two  
15 or more persons under an arrangement in which all holders have concurrent  
16 interests and under which the last surviving holder is entitled to the whole  
17 of the property.

18           Sec. 5. Section 14-10111, Arizona Revised Statutes, is amended to  
19 read:

20           14-10111. Nonjudicial settlement agreements; definition

21           A. Except as otherwise provided in subsection B of this section, and  
22 except for modification or termination of a trust as otherwise permitted  
23 pursuant to the trust instrument, interested persons may enter into a binding  
24 nonjudicial settlement agreement with respect to any matter involving a  
25 trust.

26           B. A nonjudicial settlement agreement is valid only to the extent it  
27 does not violate a material purpose of the trust and includes terms and  
28 conditions that could be properly approved by the court under this chapter or  
29 other applicable law.

30           C. Matters that may be resolved by a nonjudicial settlement agreement  
31 include:

32           1. The interpretation or construction of the terms of the trust.

33           2. The approval of a trustee's report or accounting.

34           3. Direction to a trustee to refrain from performing a particular act  
35 or the grant to a trustee of any necessary or desirable power.

36           4. The resignation or appointment of a trustee and the determination  
37 of a trustee's compensation.

38           5. The transfer of a trust's principal place of administration.

39           6. The liability of a trustee for an action relating to the trust.

40           D. **BEFORE OR AFTER THE PARTIES ENTER INTO A NONJUDICIAL SETTLEMENT**  
41 **AGREEMENT**, any interested person may request the court to approve a  
42 nonjudicial settlement agreement to determine whether the representation as  
43 provided in article 3 of this chapter was adequate and to determine whether  
44 the agreement contains terms and conditions the court could have properly  
45 approved.

1 E. UNLESS THE INTERESTED PERSON, PURSUANT TO SUBSECTION D OF THIS  
2 SECTION, ASKS THE COURT TO RULE WITHOUT REGARD TO THIS SUBSECTION, THE COURT  
3 MAY EITHER APPROVE THE AGREEMENT OR DECLINE TO APPROVE THE AGREEMENT, BUT MAY  
4 NOT DISAPPROVE OR DENY THE EFFECTIVENESS OF THE AGREEMENT. IF THE COURT DOES  
5 NOT APPROVE THE AGREEMENT PURSUANT TO THIS SUBSECTION, THE FAILURE TO APPROVE  
6 IS NOT ANY PREJUDICE AGAINST THE EFFECTIVENESS OF THE AGREEMENT AND IS NOT A  
7 FINAL JUDGMENT OR JUDICIAL PRECEDENT WITH RESPECT TO THE AGREEMENT OR  
8 SUBSEQUENT AGREEMENTS PURSUANT TO THE SECTION.

9 ~~E.~~ F. For the purposes of this section, "interested person" has the  
10 same meaning prescribed in section 14-1201.

11 Sec. 6. Section 14-10504, Arizona Revised Statutes, is amended to  
12 read:

13 14-10504. Discretionary trusts; effect of standard; definition

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

18 1. The discretion is expressed in the form of a standard of  
19 distribution.

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

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

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

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

33 C. This section does not limit the right of a beneficiary to maintain  
34 a judicial proceeding against a trustee for an abuse of discretion or failure  
35 to comply with a standard for distribution, provided that this right may not  
36 be exercised by a creditor of the beneficiary or to the extent that any  
37 creditor of the beneficiary takes through the name or rights of the  
38 beneficiary.

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

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

44 2. To the extent that under Arizona law life insurance proceeds,  
45 policy cash surrender values or other distributions or payments are exempt  
46 from attachment or garnishment by, execution on or otherwise the reach of

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

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

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

17 Sec. 7. Section 14-10505, Arizona Revised Statutes, is amended to  
18 read:

19 14-10505. Creditor's claim against settlor

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

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

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

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

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

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

3 3. After the death of a settlor, and subject to the settlor's right to  
4 direct the source from which liabilities will be paid, the property of a  
5 trust that was revocable at the settlor's death is subject to claims of the  
6 settlor's creditors, costs of administration of the settlor's estate, the  
7 expenses of the settlor's funeral and disposal of remains and statutory  
8 allowances to a surviving spouse and children to the extent the settlor's  
9 probate estate is inadequate to satisfy those claims, costs, expenses and  
10 allowances, except to the extent that state or federal law exempts any  
11 property of the trust from these claims, costs, expenses or allowances. If a  
12 trust has more than one settlor or contributor, the amount the creditor or  
13 assignee of a particular settlor may reach may not exceed the settlor's  
14 interest in the portion of the trust attributable to that settlor's  
15 contribution. This paragraph does not abrogate otherwise applicable laws  
16 relating to community property.

17 B. For the purposes of this section:

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

21 2. On the lapse, release or waiver of a power of withdrawal, the  
22 holder is not, by reason of any such ~~lapse, release or waiver~~ POWER OF  
23 WITHDRAWAL, treated as the settlor of the trust.

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

29 D. For the purposes of this section, amounts contributed to a trust by  
30 a corporation, professional corporation, partnership, limited liability  
31 company, governmental entity, trust, foundation or other entity are not  
32 deemed to have been contributed by its directors, officers, shareholders,  
33 partners, employees, beneficiaries or agents. Powers, duties or  
34 responsibilities granted to or reserved by the settlor pursuant to the trust  
35 and any actions or omissions taken pursuant to the trust are deemed to be the  
36 powers, responsibilities, duties, actions or omissions of the settlor and not  
37 those of its directors, officers, shareholders, partners, members, managers,  
38 employees, beneficiaries or agents.

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

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

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

5           3. An irrevocable inter vivos trust for the settlor's spouse if the  
6 settlor is a beneficiary of the trust after the death of the settlor's  
7 spouse.

8           4. An irrevocable trust for the benefit of a person, the settlor of  
9 which is the person's spouse, regardless of whether or when the person was  
10 the settlor of an irrevocable trust for the benefit of that spouse.

11           5. An irrevocable trust for the benefit of a person to the extent that  
12 the property of the trust was subject to a general power of appointment in  
13 another person.

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

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

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

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

26           Sec. 8. Section 14-10506, Arizona Revised Statutes, is amended to  
27 read:

28           14-10506. Overdue distribution: definition

29           A. Whether or not a trust contains a spendthrift provision, a creditor  
30 or assignee of a beneficiary may reach a mandatory distribution of income or  
31 principal, including a distribution on termination of the trust, if the  
32 trustee has not made the distribution to the beneficiary within a reasonable  
33 ~~time~~ PERIOD after the mandated distribution date unless the terms of the  
34 trust expressly authorize the trustee to delay the distribution to protect  
35 the beneficiary's interest in the distribution.

36           B. For the purposes of this section, "mandatory distribution" means a  
37 distribution of income or principal that the trustee is required to make to a  
38 beneficiary under the terms of the trust, including a distribution on  
39 termination of the trust. Mandatory distribution does not include a  
40 distribution that is subject to the exercise of the trustee's discretion even  
41 if:

42           1. The discretion is expressed in the form of a standard of  
43 distribution.

44           2. The terms of the trust authorizing a distribution couple language  
45 of discretion with language of direction.

1           Sec. 9. Section 14-10814, Arizona Revised Statutes, is amended to  
2 read:

3           14-10814. Discretionary powers: tax savings

4           A. Notwithstanding the breadth of discretion granted to a trustee in  
5 the terms of the trust, including the use of terms such as absolute, sole or  
6 uncontrolled, the trustee shall exercise a discretionary power in good faith  
7 as to only beneficiaries of the trust and creditors of the trust and no other  
8 persons, including creditors of the beneficiaries, except only to the extent  
9 that creditors of beneficiaries are expressly entitled to attachment pursuant  
10 to section 14-10504, subsection B and in accordance with the terms and  
11 purposes of the trust and the interests of the beneficiaries.

12           B. Subject to subsection D of this section, and unless the terms of  
13 the trust expressly indicate that a rule in this subsection does not apply:

14           1. A person other than a settlor who is a beneficiary and trustee of a  
15 trust that confers on the trustee a power to make discretionary distributions  
16 to or for the trustee's personal benefit may exercise the power only in  
17 accordance with an ascertainable standard relating to the trustee's  
18 individual health, education, support or maintenance within the meaning of  
19 section 2041(b)(1)(A) or 2514(c)(1) of the internal revenue code. This  
20 paragraph does not expand the power or duty of a trustee to make  
21 distributions and does not apply to a power held in an individual capacity.

22           2. A trustee may not exercise a power to make discretionary  
23 distributions to satisfy a legal obligation of support that the trustee  
24 personally owes another person.

25           3. EXCEPT IN THE CASE OF A SPECIAL NEEDS TRUST, A SETTLOR WHO IS A  
26 TRUSTEE OF A TRUST THAT CONFERS ON THE TRUSTEE A POWER TO MAKE DISCRETIONARY  
27 DISTRIBUTIONS TO OR FOR A BENEFICIARY MAY EXERCISE THE POWER ONLY IN  
28 ACCORDANCE WITH AN ASCERTAINABLE STANDARD RELATING TO THE BENEFICIARY'S  
29 HEALTH, EDUCATION, SUPPORT OR MAINTENANCE WITHIN THE MEANING OF SECTION  
30 2041(b)(1)(A) OR 2514(c)(1) OF THE INTERNAL REVENUE CODE. THIS PARAGRAPH  
31 DOES NOT EXPAND THE POWER OR DUTY OF A TRUSTEE TO MAKE DISTRIBUTIONS AND DOES  
32 NOT APPLY TO A POWER HELD IN AN INDIVIDUAL CAPACITY.

33           C. A power whose exercise is limited or prohibited by subsection B of  
34 this section may be exercised by a majority of the remaining trustees whose  
35 exercise of the power is not so limited or prohibited. If the power of all  
36 trustees is so limited or prohibited, the court may appoint a special  
37 fiduciary with authority to exercise the power.

38           D. Subsection B of this section does not apply to:

39           1. A power held by the settlor's spouse who is the trustee of a trust  
40 for which a marital deduction, as defined in section 2056(b)(5) or 2523(e) of  
41 the internal revenue code, was previously allowed.

42           2. Any trust during any period that the trust may be revoked or  
43 amended by its settlor.

44           3. A trust if contributions to the trust qualify for the annual  
45 exclusion under section 2503(c) of the internal revenue code.

1           Sec. 10. Section 14-10818, Arizona Revised Statutes, is amended to  
2 read:

3           14-10818. Trust protector

4           A. A trust instrument may provide for the appointment of a trust  
5 protector. For the purposes of this section, a person designated **IN THE**  
6 **INSTRUMENT** with a status or title, other than that of a beneficiary, with  
7 powers similar to those specified in subsection B **OF THIS SECTION, OR**  
8 **DESIGNATED IN THE INSTRUMENT AS A TRUST PROTECTOR**, is a trust protector,  
9 except to the extent otherwise provided in the trust instrument.

10          B. A trust protector appointed by the trust instrument has the powers,  
11 delegations and functions conferred on the trust protector by the trust  
12 instrument. These powers, delegations and functions may include the  
13 following, **WHICH DO NOT LIMIT WHAT POWERS, DELEGATIONS AND FUNCTIONS MAY BE**  
14 **GRANTED TO THE TRUST PROTECTOR**:

15           1. Remove and appoint a trustee.

16           2. Modify or amend the trust instrument for any valid purpose or  
17 reason, including, without limitation, to achieve favorable tax status or to  
18 respond to changes in the internal revenue code or state law, or the rulings  
19 and regulations under that code or law.

20           3. Increase, decrease, modify or restrict the interests of any  
21 beneficiary of the trust.

22           4. Modify the terms of a power of appointment granted by the trust.

23           5. Change the applicable law governing the trust.

24          C. Except to the extent otherwise specifically provided in the trust  
25 instrument, a modification authorized under subsection B **OF THIS SECTION** may  
26 not:

27           1. Grant a beneficial interest to an individual or a class of  
28 individuals unless the individual or class of individuals is specifically  
29 provided for under the trust instrument.

30           2. Modify the beneficial interest of a governmental unit in a special  
31 needs trust.

32          D. Any provision of this title to the contrary, but except to the  
33 extent otherwise provided by the trust instrument, a trust protector is not a  
34 trustee or fiduciary and is not liable or accountable as a trustee or  
35 fiduciary because of an act or omission of the trust protector when  
36 performing or failing to perform the duties of a trust protector under the  
37 trust instrument. This subsection does not apply to trusts that become  
38 irrevocable before January 1, 2009 if the trust instrument allows the settlor  
39 to remove and replace the trust protector.

40          **E. THE EXERCISE OF THE POWER PURSUANT TO SUBSECTION B OF THIS SECTION**  
41 **IS THE EXERCISE OF A SPECIAL POWER OF APPOINTMENT.**

42          Sec. 11. Section 33-1126, Arizona Revised Statutes, is amended to  
43 read:

44          33-1126. Money benefits or proceeds; exception

45          A. The following property of a debtor is exempt from execution,  
46 attachment or sale on any process issued from any court:

1           1. All money received by or payable to a surviving spouse or child on  
2 the life of a deceased spouse, parent or legal guardian, not exceeding twenty  
3 thousand dollars.

4           2. The earnings of the minor child of a debtor or the proceeds of  
5 these earnings by reason of any liability of the debtor not contracted for  
6 the special benefit of 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~~ THE policy or debt of the insured secured by a  
14 pledge, and except for collection of any debt or obligation for which the  
15 insured or beneficiary has been paid under the plan or policy and except for  
16 payment of amounts ordered for support of a person from proceeds and benefits  
17 furnished in lieu of earnings that would have been subject to 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 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 the policies have been owned by a  
24 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 that is recoverable  
28 or avoidable by a creditor pursuant to title 44, chapter 8, article 1, with  
29 interest thereon, is not exempt. The exemption provided by this paragraph  
30 does not apply to a claim for the payment of a debt of the insured or  
31 beneficiary that is secured by a pledge or assignment of the cash value of  
32 the insurance policy or the proceeds of the policy. For the purposes of this  
33 paragraph, "dependent" means a family member who is dependent on the insured  
34 debtor for not less than half support.

35           7. An annuity contract where for a continuous unexpired period of two  
36 years that contract has been owned by a debtor and has named as beneficiary  
37 the debtor, the debtor's surviving spouse, child, parent, brother or sister,  
38 or any other dependent family member, except that, subject to the statute of  
39 limitations, the amount of any premium, payment or deposit with respect to  
40 that contract is recoverable or avoidable by a creditor pursuant to title 44,  
41 chapter 8, article 1 is not exempt. The exemption provided by this paragraph  
42 does not apply to a claim for a payment of a debt of the annuitant or  
43 beneficiary that is secured by a pledge or assignment of the contract or its  
44 proceeds. For the purposes of this paragraph, "dependent" means a family  
45 member who is dependent on the debtor for not less than half support.

1           8. Any claim for damages recoverable by any person by reason of any  
2 levy on or sale under execution of that person's exempt personal property or  
3 by reason of the wrongful taking or detention of that property by any person,  
4 and the judgment recovered for damages.

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

10          10. AN INTEREST IN A COLLEGE SAVINGS PLAN UNDER SECTION 529 OF THE  
11 INTERNAL REVENUE CODE OF 1986, EITHER AS THE OWNER OR AS THE BENEFICIARY.  
12 THIS DOES NOT INCLUDE MONEY CONTRIBUTED TO THE PLAN WITHIN TWO YEARS BEFORE A  
13 DEBTOR FILES FOR BANKRUPTCY.

14          B. Any money or other assets payable to a participant in or  
15 beneficiary of, or any interest of any participant or beneficiary in, a  
16 retirement plan under section 401(a), 403(a), 403(b), 408, 408A or 409 or a  
17 deferred compensation plan under section 457 of the United States internal  
18 revenue code of 1986, as amended, whether the beneficiary's interest arises  
19 by inheritance, designation, appointment or otherwise, is exempt from all  
20 claims of creditors of the beneficiary or participant. This subsection does  
21 not apply to any of the following:

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

26           2. Amounts contributed within one hundred twenty days before a debtor  
27 files for bankruptcy.

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

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

35          D. This section does not exempt property from orders that are the  
36 result of a judgment for arrearages of child support or for a child support  
37 debt.