

SENATE BILL 12

N2

(PRE-FILED)

5lr1284
CF HB 50

By: **Senator West**

Requested: October 19, 2024

Introduced and read first time: January 8, 2025

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts – Spousal Lifetime Access Trusts**

3 FOR the purpose of adding to the conditions under which an individual who creates a trust
4 may not be considered the settlor of the trust with regard to the individual's interest
5 in the trust; providing that a creditor of an individual may not attach, exercise, reach,
6 or otherwise compel distribution of certain trust assets in certain circumstances; and
7 generally relating to spousal lifetime access trusts.

8 BY repealing and reenacting, with amendments,
9 Article – Estates and Trusts
10 Section 14.5–1003
11 Annotated Code of Maryland
12 (2022 Replacement Volume and 2024 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
14 That the Laws of Maryland read as follows:

15 **Article – Estates and Trusts**

16 14.5–1003.

17 **(A) IN THIS SECTION, “SPOUSE” MEANS THE INDIVIDUAL TO WHOM AN**
18 **INDIVIDUAL WHO CREATED A TRUST WAS MARRIED AT THE TIME THE TRUST WAS**
19 **CREATED.**

20 **[(a)] (B)** An individual who creates a trust may not be considered the settlor of
21 that trust with regard to the individual's interest in the trust if:

22 (1) That interest is the authority of the trustee under the trust instrument

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



or any other provision of law to pay or reimburse the individual for any tax on trust income or trust principal that is payable by the individual under the law imposing that tax; [or]

(2) All of the following apply:

(i) The individual creates or has created the trust for the benefit of the individual's spouse;

(ii) The trust is treated as qualified terminable interest property under § 2523(f) of the Internal Revenue Code of 1986; and

(iii) The individual's interest in the trust income, trust principal, or both follows the termination of the spouse's prior interest in the trust; **OR**

(3) ALL OF THE FOLLOWING APPLY:

(I) THE INDIVIDUAL CREATES OR HAS CREATED THE TRUST:

1. FOR THE BENEFIT OF THE INDIVIDUAL'S SPOUSE DURING THE LIFETIME OF THE SPOUSE; OR

2. FOR THE BENEFIT OF THE INDIVIDUAL'S SPOUSE AND ANY OTHER BENEFICIARY DURING THE LIFETIME OF THE SPOUSE;

(II) THE TRUST DOES NOT MEET THE REQUIREMENTS OF ITEM (2) OF THIS SUBSECTION;

(III) THE TRUST IS IRREVOCABLE; AND

(IV) AFTER THE DEATH OF THE INDIVIDUAL'S SPOUSE, THE INDIVIDUAL IS A BENEFICIARY OF THE TRUST THROUGH THE EXERCISE OF A POWER OF APPOINTMENT BY THE INDIVIDUAL'S SPOUSE OR BY ANOTHER INDIVIDUAL WHO DID NOT CREATE THE TRUST.

[(b)] (C) A creditor of an individual described in subsection **[(a)] (B)** of this section may not attach, exercise, reach, or otherwise compel distribution of:

(1) Any principal or income of the trust;

(2) Any principal or income of any other trust to the extent that the property held in the other trust is attributable to a trust described in subsection **[(a)(2)] (B)(2) OR (3)** of this section;

(3) The individual's interest in the trust; or

1 (4) The individual's interest in any other trust to the extent that the
2 property held in the other trust is attributable to a trust described in subsection [(a)(2)]
3 **(B)(2) OR (3)** of this section.

4 [(c)] **(D)** This section may not be construed to affect any State law with respect
5 to a fraudulent transfer by an individual to a trustee.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2025.