

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 12

(Senator West)

Judicial Proceedings

Estates and Trusts - Spousal Lifetime Access Trusts

This bill establishes protection from creditors (of a creator of a trust) for specified irrevocable trusts (1) created by an individual for the benefit of the individual's spouse during the spouse's lifetime (or for the benefit of the individual's spouse and any other beneficiary during the spouse's lifetime) and (2) with respect to which, after the death of the individual's spouse, the individual is a beneficiary through the exercise of a power of appointment by the individual's spouse or another individual.

Fiscal Summary

State Effect: State revenues may decrease, but any decrease is likely limited, as discussed below. Expenditures are not affected.

Local Effect: Local government revenues may decrease, but any decrease is likely limited, as discussed below. Expenditures are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill, under the Maryland Trust Act, establishes protection from creditors (of a creator of a trust) for a trust:

- that an individual creates or has created (1) for the benefit of the individual's spouse during the spouse's lifetime or (2) for the benefit of the individual's spouse and any other beneficiary during the spouse's lifetime;

- that does not meet the requirements for specified qualified terminable interest property trusts (that already have protection from creditors – see Current Law);
- that is irrevocable; and
- with respect to which, after the death of the individual's spouse, the individual is a beneficiary through the exercise of a power of appointment by the individual's spouse or by another individual who did not create the trust.

For trusts that meet those criteria, the individual who creates the trust is not considered the settlor of the trust with regard to the individual's interest in the trust, and a creditor of the individual may not attach, exercise, reach, or otherwise compel distribution of:

- any principal or income of the trust;
- any principal or income of any other trust to the extent that the property held in the other trust is attributable to a trust that meets those criteria;
- the individual's interest in the trust; or
- the individual's interest in any other trust to the extent the property held in the trust is attributable to a trust that meets those criteria.

The bill also establishes a definition for “spouse” that is applicable to the bill's provisions and existing provisions that establish protection from creditors for specified qualified terminable interest property trusts created for the benefit of an individual's spouse. “Spouse” means the individual to whom an individual who created a trust was married at the time the trust was created.

Current Law:

Claims of a Creditor of a Settlor – Irrevocable Trust

Under the Maryland Trust Act, a creditor of a settlor of an irrevocable trust may reach only the lesser of (1) the claim of the creditor and (2) the maximum amount that can be distributed to or for the benefit of the settlor. A “settlor” is a person that creates or contributes property to a trust.

Protection of Certain Trust Interests from Creditors of a Settlor

Certain trusts are given protection from creditors of the individual who created the trust despite the fact that the individual who created the trust has a remaining interest in the trust. An individual who creates a trust is not considered the settlor of that trust with regard to the individual's interest in the trust, and the trust and the individual's interest is protected from creditors' claims, if:

- the individual's interest in the trust is the authority of the trustee under the trust instrument 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
- the following criteria are met: (1) the individual creates or has created the trust for benefit of the individual's spouse; (2) the trust is treated as qualified terminable interest property under § 2523(f) of the Internal Revenue Code of 1986; and (3) the individual's interest in the trust income, trust principal, or both follows the termination of the spouse's prior interest in the trust.

In those cases, a creditor of the individual may not attach, exercise, reach, or otherwise compel distribution of:

- any principal or income of the trust;
- any principal or income of any other trust to the extent that the property held in the other trust is attributable to an above-specified trust that is treated as qualified terminable interest property;
- the individual's interest in the trust; or
- the individual's interest in any other trust to the extent the property held in the trust is attributable to an above-specified trust that is treated as qualified terminable interest property.

State and Local Revenues: State and/or local government revenues may decrease to the extent the bill prevents the State or a local government from recovering claims against an individual (*e.g.*, tax debt or other government claims) that otherwise are recovered in the absence of the bill. The extent of any decrease in State or local government revenues cannot be reliably estimated but is likely limited since the inability of the State or a local government to recover a claim as a result of the bill only occurs in relatively specific circumstances (in which an individual has created a trust under the bill, the individual has incurred a debt to the State or a local government after the trust is established, and the remaining assets of the individual are not sufficient to satisfy the debt).

Small Business Effect: Small businesses may be meaningfully affected to the extent the bill prevents small businesses from recovering claims against individuals that otherwise are recovered in the absence of the bill.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 50 (Delegate Cardin) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts); Orphans' Court of Baltimore County; Register of Wills; Maryland State Bar Association; Department of Legislative Services

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