66th Legislature

1	HOUSE BILL NO. 461
2	INTRODUCED BY C. KEOGH
3	
4	A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE UNIFORM POWERS OF
5	APPOINTMENT ACT; ALLOWING FOR REAPPOINTMENT OF APPOINTIVE PROPERTY TO PERMISSIBLE
6	APPOINTEES; PROTECTING PROPERTY SUBJECT TO AN UNEXERCISED GENERAL OR NONGENERAL
7	POWER FROM THE POWERHOLDER'S CREDITORS; AND AMENDING SECTIONS 72-7-305 AND 72-7-502,
8	MCA."
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10	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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12	Section 1. Section 72-7-305, MCA, is amended to read:
13	"72-7-305. Permissible appointment. (1) A powerholder of a general power of appointment that permits
14	appointment to the powerholder or the powerholder's estate may make any appointment, including an
15	appointment in trust or creating a new power of appointment, that the powerholder could make in disposing of
16	the powerholder's own property.
17	(2) A powerholder of a general power of appointment that permits appointment only to the creditors of
18	the powerholder or of the powerholder's estate may appoint only to those creditors.
19	(3) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the
20	powerholder of a nongeneral power may:
21	(a) make an appointment in any form, including an appointment in trust, in favor of a permissible
22	appointee;
23	(b) create a general power in a permissible appointee; or
24	(c) create a nongeneral power in any person to appoint to one or more of the permissible appointees
25	of the original nongeneral power . ; or
26	(d) create a nongeneral power in a permissible appointee to appoint to one or more persons if the
27	permissible appointees of the new nongeneral power include the permissible appointees of the original
28	nongeneral power."
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30	Section 2. Section 72-7-502, MCA, is amended to read:



1	"72-7-502. Creditor claim general power not created by powerholder. (1) Except as otherwise
2	provided in subsection (2), appointive property subject to a general power of appointment created by a person
3	other than the powerholder is subject to a claim of a creditor of:
4	(a) the powerholder, to the extent the powerholder's property is insufficient, if the power is presently
5	exercisable; and
6	(b) the powerholder's estate, to the extent the estate is insufficient, subject to the right of a decedent to
7	direct the source from which liabilities are paid. <u>Property subject to a general or nongeneral power of appointment</u>
8	created by a person other than the powerholder, including a presently exercisable general or nongeneral power
9	of appointment, is exempt from a claim by a creditor of the powerholder or the powerholder's estate. The
10	powerholder of such a power may not be compelled to exercise the power, and the powerholder's creditors may
11	not acquire the power or any rights to the power or reach the trust property or beneficial interests by any other
12	means. A court may not exercise or require the powerholder to exercise the power of appointment.
13	(2) Subject to 72-7-504(3), a power of appointment created by a person other than the powerholder that
14	is subject to an ascertainable standard relating to an individual's health, education, support, or maintenance within
15	the meaning of 26 U.S.C. Section 2041(b)(1)(A) or 26 U.S.C. Section 2514(c)(1), on October 1, 2015, is treated
16	for purposes of this act as a nongeneral power."

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