



AN ACT GENERALLY REVISING THE UNIFORM POWERS OF APPOINTMENT ACT; ALLOWING FOR REAPPOINTMENT OF APPOINTIVE PROPERTY TO PERMISSIBLE APPOINTEES; PROTECTING PROPERTY SUBJECT TO AN UNEXERCISED GENERAL OR NONGENERAL POWER FROM THE POWERHOLDER'S CREDITORS; AND AMENDING SECTIONS 72-7-305 AND 72-7-502, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 72-7-305, MCA, is amended to read:

"72-7-305. Permissible appointment. (1) A powerholder of a general power of appointment that permits appointment to the powerholder or the powerholder's estate may make any appointment, including an appointment in trust or creating a new power of appointment, that the powerholder could make in disposing of the powerholder's own property.

(2) A powerholder of a general power of appointment that permits appointment only to the creditors of the powerholder or of the powerholder's estate may appoint only to those creditors.

(3) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the powerholder of a nongeneral power may:

(a) make an appointment in any form, including an appointment in trust, in favor of a permissible appointee;

(b) create a general power in a permissible appointee; ~~or~~

(c) create a nongeneral power in any person to appoint to one or more of the permissible appointees of the original nongeneral power; or

(d) create a nongeneral power in a permissible appointee to appoint to one or more persons if the permissible appointees of the new nongeneral power include the permissible appointees of the original nongeneral power."

Section 2. Section 72-7-502, MCA, is amended to read:

"72-7-502. Creditor claim -- general power not created by powerholder. (1) ~~Except as otherwise provided in subsection (2), appointive property subject to a general power of appointment created by a person other than the powerholder is subject to a claim of a creditor of:~~

~~—— (a) the powerholder, to the extent the powerholder's property is insufficient, if the power is presently exercisable; and~~

~~—— (b) the powerholder's estate, to the extent the estate is insufficient, subject to the right of a decedent to direct the source from which liabilities are paid. Property subject to a general or nongeneral power of appointment created by a person other than the powerholder, including a presently exercisable general or nongeneral power of appointment, is exempt from a claim by a creditor of the powerholder or the powerholder's estate. The powerholder of such a power may not be compelled to exercise the power, and the powerholder's creditors may not acquire the power or any rights to the power or reach the trust property or beneficial interests by any other means. A court may not exercise or require the powerholder to exercise the power of appointment.~~

(2) Subject to 72-7-504(3), a power of appointment created by a person other than the powerholder that is subject to an ascertainable standard relating to an individual's health, education, support, or maintenance within 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 for purposes of this act as a nongeneral power."

- END -

I hereby certify that the within bill,
HB 0461, originated in the House.

Speaker of the House

Signed this _____ day
of _____, 2019.

Chief Clerk of the House

President of the Senate

Signed this _____ day
of _____, 2019.

HOUSE BILL NO. 461

INTRODUCED BY C. KEOGH

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