**South Carolina General Assembly**

125th Session, 2023-2024

**H. 5316**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. W. Newton and Bernstein

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Currently residing in the House Committee on **Judiciary**

Summary: Grantor Trust Reimbursement

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 3/21/2024 House Introduced and read first time (House Journal‑page 56)

 3/21/2024 House Referred to Committee on **Judiciary** (House Journal‑page 56)

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**VERSIONS OF THIS BILL**

[03/21/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/5316_20240321.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 27‑6‑20, RELATING TO NONVESTED PROPERTY INTEREST OR POWER OF APPOINTMENT, SO AS TO INCREASE THE TIME AN INTEREST CAN VEST FROM NINETY YEARS TO THREE HUNDRED SIXTY YEARS; BY AMENDING SECTION 27‑6‑40, RELATING TO REFORMATION OF PROPERTY DISPOSITIONS, SO AS TO INCREASE THE TIME LIMIT FROM NINETY YEARS TO THREE HUNDRED SIXTY YEARS; BY AMENDING SECTION 27‑6‑60, RELATING TO THE EFFECT OF TIMING OF CREATION OF PROPERTY INTEREST, SO AS TO UPDATE CERTAIN DATES; BY AMENDING SECTION 62‑7‑504, RELATING TO DISCRETIONARY TRUSTS SO AS TO PROVIDE CERTAIN SITUATIONS IN WHICH A BENEFICIARY OF A TRUST MAY NOT BE CONSIDERED A SETTLOR; BY AMENDING SECTION 62‑7‑505, RELATING TO CREDITORS’ CLAIMS AGAINST A SETTLOR, SO AS TO PROVIDE THAT CERTAIN AMOUNTS PAID TO TAXING AUTHORITIES MAY NOT BE CONSIDERED AN AMOUNT THAT MAY BE DISTRIBUTED FOR THE SETTLOR’S BENEFIT; AND BY ADDING SECTION 62‑7‑508 SO AS TO PROVIDE FOR CERTAIN GRANTOR TRUST REIMBURSEMENTS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 27‑6‑20 of the S.C. Code is amended to read:

 Section 27‑6‑20. (A) A nonvested property interest is invalid unless:

 (1) when the interest is created, it is certain to vest or terminate no later than twenty‑one years after the death of an individual then alive; or

 (2) the interest either vests or terminates within ninety three hundred sixty years after its creation.

 (B) A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

 (1) when the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy no later than twenty‑one years after the death of an individual then alive; or

 (2) the condition precedent either is satisfied or becomes impossible to satisfy within ninety three hundred sixty years after its creation.

 (C) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

 (1) when the power is created, it is certain to be irrevocably exercised or to terminate no later than twenty‑one years after the death of an individual then alive; or

 (2) the power is irrevocably exercised or terminates within ninety three hundred sixty years after its creation.

 (D) In determining whether a nonvested property interest or a power of appointment is valid under subsection (A)(1), (B)(1), or (C)(1), the possibility that a child will be born to an individual after the individual’s death is disregarded.

 (E) If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument seeks to disallow the vesting or termination of any interest or trust beyond, seeks to postpone the vesting or termination of any interest or trust until, or seeks to operate in effect in any similar fashion upon, the later of: (1) the expiration of a period of time not exceeding twenty‑one years after the death of a specified life or the survivor of specified lives, or upon the death of a specified life or the death of the survivor of specified lives in being at the creation of the trust or other property arrangement or (2) the expiration of a period of time that exceeds or might exceed twenty‑one years after the death of the survivor of lives in being at the creation of the trust or other property arrangement, that language is inoperative to the extent it produces a period of time that exceeds twenty‑one years after the death of the survivor of the specified lives.

SECTION 2. Section 27‑6‑40 of the S.C. Code is amended to read:

 Section 27‑6‑40. Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor’s manifested plan of distribution and is within the ninety three hundred sixty years permitted by this chapter if:

 (1) a nonvested property interest or a power of appointment becomes invalid under §Section 27‑6‑20;

 (2) a class gift is not but may become invalid under §Section 27‑6‑20 and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

 (3) a nonvested property interest that is not validated by §Section 27‑6‑20(A)(1) can vest but not within ninety three hundred sixty years after its creation.

SECTION 3. Section 27‑6‑60 of the S.C. Code is amended to read:

 Section 27‑6‑60. (A) Except as extended by subsection (B), this chapter applies to a nonvested property interest or a power of appointment that is created on or after July 1, 19872024. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

 (B) If a nonvested property interest or a power of appointment was created before July 1, 19872024, and is determined in a judicial proceeding, commenced on or after July 1, 19872024, to violate this State's rule against perpetuities as that rule existed before July 1, 19872024, a court upon the petition of an interested person shall reform the disposition by inserting a savings clause that preserves most closely the transferor's plan of distribution and that brings that plan within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

SECTION 4. Section 62‑7‑504 of the S.C. Code is amended by adding:

(g) With respect to an irrevocable trust, whether created on, before, or after June 1, 2024, a beneficiary of a trust may not be considered to be a settlor, to have made a voluntary or involuntary transfer of the beneficiary’s interest in the trust, or to have the power to make a voluntary or involuntary transfer of the beneficiary’s interest in the trust merely because the beneficiary, in any capacity, holds or exercises a testamentary power of appointment.

SECTION 5. Section 62‑7‑505 of the S.C. Code is amended to read:

 Section 62‑7‑505. (a) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

 (1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor’s creditors.

 (2) With respect to an irrevocable trust, whether created on, before, or after June 1, 2024:

 (A) except as otherwise provided in this section, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor’s benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor’s interest in the portion of the trust attributable to that settlor’s contribution.; and

 (B) notwithstanding subitem (A), the trustee’s discretionary authority to pay directly to the taxing authorities or to reimburse the settlor for any tax on trust income or trust principal that is payable by the settlor under the law imposing the tax may not be considered to be an amount that can be distributed to or for the settlor’s benefit.

 (3) After the death of a settlor, and subject to the settlor’s right to direct the source from which liabilities will be paid, and except to the extent state or federal law exempts any property of the trust from claims, costs, expenses, or allowances, the property held in a revocable trust at the time of the settlor’s death is subject to claims of the settlor’s creditors, costs of administration of the settlor’s estate, the expenses of the settlor’s funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor’s probate estate is inadequate to satisfy those claims, costs, expenses, and allowances, unless barred by Section 62‑3‑801, et seq.

 (b) For purposes of this section:

 (1) a beneficiary who is a trustee of a trust, but who is not the settlor of the trust, cannot be treated in the same manner as the settlor of a revocable trust if the beneficiary‑trustee’s power to make distributions to the beneficiary‑trustee is limited by an ascertainable standard related to the beneficiary‑trustee’s health, education, maintenance, and support;

 (2) the assets in a trust that are attributable to a contribution to an inter vivos marital deduction trust described in either Section 2523(e) or (f) of the Internal Revenue Code of 1986, after the death of the spouse of the settlor of the inter vivos marital deduction trust are deemed to have been contributed by the settlor’s spouse and not by the settlor.; and

 (3) that portion of a trust, whether created on, before, or after June 1, 2024, that can be distributed to or for the settlor’s benefit solely because the settlor’s interest in the trust was created by the settlor’s spouse or by any third party, whether through the exercise of a power of appointment or otherwise is considered to have been contributed to the trust by the person exercising the power of appointment or otherwise creating the interest and not by the settlor.

SECTION 6. Chapter 7, Title 62 of the S.C. Code is amended by adding:

 Section 62‑7‑508. (A)(1) Except as otherwise provided under the terms of a trust, if all or any portion of the trust is treated as being owned by a person under Section 671 of the Internal Revenue Code or any similar federal, state, or other tax law, the trustee of such trust may, in the trustee’s sole discretion, reimburse the person being treated as the owner for any amount of the person’s personal federal, state, or other income tax liability which is attributable to the inclusion of the trust’s income, capital gains, deductions, or credits in the calculation of the person’s taxable income. In the trustee’s sole discretion, the trustee may pay such tax reimbursement amount, determined without regard to any other distribution or payment made from trust assets, to the person directly or to the appropriate taxing authority.

 (2) A life insurance policy held in the trust, the cash value of any such policy, or the proceeds of any loan secured by an interest in the policy may not be used for such reimbursement or such payment if the person being treated of the owners of such trust is an insured of such policy.

 (B) This section applies to all trusts that are governed by the laws of this State or that have a principal place of administration within this State, whether created on, before, or after June 1, 2024, unless:

 (1) the trust contains a provision prohibiting the trustee from reimbursing the grantor or paying taxes on behalf of the grantor;

 (2) the trustee provides written notification that the trustee intends to irrevocably elect out of the application of this section at least ninety days before the effective date of such election which notice period may be waived by the persons to whom notice is required to the person treated as the owner of all or a portion of the trust under Section 671 of the Internal Revenue Code or any similar federal, state, or other tax law and to all persons who have the ability to remove and replace the trustee; or

 (3) applying this section would prevent a contribution to the trust from qualifying for, or would reduce, a federal tax benefit, including a federal tax exclusion or deduction, which was originally claimed or could have been claimed for the contribution, including:

 (a) an exclusion under Sections 2503(b) or 2503(c) of the Internal Revenue Code;

 (b) a marital deduction under Sections 2056, 2056A, or 2523 of the Internal Revenue Code;

 (c) a charitable deduction under Sections 170(a), 642(c), 2055(a), or 2522(a) of the Internal Revenue Code; or

 (d) direct skip treatment under Section 2642(c) of the Internal Revenue Code.

 (C) A trustee may not exercise, or participate in the exercise of, the powers granted by this section with respect to any trust if any of the following applies:

 (1) the trustee is treated as the owner of all or part of such trust under Section 671 of the Internal Revenue Code or any similar federal, state, or other tax law;

 (2) the trustee is a beneficiary of such trust; or

 (3) the trustee is a related or subordinate party, as defined in Section 672(c) of the Internal Revenue Code, with respect to a person described in items (1) or (2) who is treated as the owner of all or part of such trust under Section 671 of the Internal Revenue Code or any similar federal, state, or other tax law or with respect to a beneficiary of such trust.

 (D) If the terms of a trust require the trustee to act at the direction or with the consent of a trust advisor, a protector, or any other person, or that the decisions addressed in this section be made directly by a trust advisor, a protector, or any other person, the powers granted by this section to the trustee must instead or also be granted, as applicable under the terms of the trust, to the advisor, protector, or other person subject to the limitations set forth in subsection (C), which must be applied as if the advisor, protector, or other person were a trustee.

 (E) A person may not be considered a beneficiary of a trust solely by reason of the application of this section, including for purposes of determining the elective share.

 (F) The provisions of Section 62‑7‑109 regarding notices and the sending of documents to persons under this article apply for the purposes of notices and the sending of documents under this section.

SECTION 7. This act takes effect upon approval by the Governor.

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