

1 S.3

2 An act relating to the transfer of property to a trust

3 It is hereby enacted by the General Assembly of the State of Vermont:

4 Sec. 1. 14A V.S.A. § 505 is amended to read:

5 § 505. CREDITOR'S CLAIM AGAINST SETTLOR

6 (a) Whether or not the terms of a trust contain a spendthrift provision, the
7 following rules apply:

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

10 (2) With respect to an irrevocable trust, a creditor or assignee of the
11 settlor may reach the maximum amount that can be distributed to or for the
12 settlor's benefit. If a trust has more than one settlor, the amount the creditor or
13 assignee of a particular settlor may reach shall not exceed the settlor's interest
14 in the portion of the trust attributable to that settlor's contribution. This
15 subdivision shall not apply to an irrevocable "special needs trust" established
16 for a disabled person as described in 42 U.S.C. § 1396p(d)(4) or similar federal
17 law governing the transfer to such a trust.

18 (3) After the death of a settlor, and subject to the settlor's right to direct
19 the source from which liabilities will be paid, the property of a trust that was
20 revocable at the settlor's death is subject to claims of the settlor's creditors,
21 costs of administration of the settlor's estate, the expenses of the settlor's
22 funeral and disposal of remains, and statutory allowances to a surviving spouse

1 and children to the extent the settlor's probate estate is inadequate to satisfy
2 those claims, costs, expenses, and allowances.

3 * * *

4 (c)(1) Property held by spouses as tenants by the entirety that is conveyed
5 to the spouses' jointly or separately held revocable or irrevocable trusts, and
6 any proceeds of the sale or disposition of the property, shall be immune from
7 the claims of the spouses' separate creditors to the same extent as the property
8 would have been if it had remained held by the spouses as tenants by the
9 entirety if the following apply:

10 (A) the spouses are married to each other;

11 (B) the property is held in the trust or trusts or has been deeded out of
12 the trust to the spouses as tenants by the entirety;

13 (C) if the trust is a joint trust, the trust may be revoked by either
14 spouse acting alone but may be amended only by action of both spouses;

15 (D) the property is the spouses' property; and

16 (E)(i) both spouses are current beneficiaries of one joint trust that
17 holds the entire property; or

18 (ii) each spouse is a current beneficiary of a separate trust and the
19 two separate trusts, together, hold the entire property, whether or not other
20 persons are also current or future beneficiaries of the trust or trusts.

1 (2)(A) Property at any time held in a tenants by the entirety trust shall
2 have the same immunity from the claims of a separate creditor of either settlor
3 as the property would have if it were held outside the trust by the settlors as
4 tenants by the entirety unless otherwise provided in writing by the settlor or
5 settlors who transferred the property to the trust. The property shall be treated
6 in all respects as tenants by the entirety property, including for purposes of
7 federal and state bankruptcy laws.

8 (B) Property held in a tenants by the entirety trust shall cease to
9 receive immunity from the claims of creditors upon the dissolution of the
10 settlors' marriage by a court.

11 (3) Except as otherwise provided in this title, on the effective date of
12 this subsection:

13 (A) notwithstanding 1 V.S.A. § 214, this subsection (c) applies to all
14 trusts created before, on, or after the effective date of this subsection and to
15 property held by spouses as tenants by the entirety that is conveyed before, on,
16 or after the effective date of this subsection;

17 (B) this subsection (c) applies to all judicial proceedings concerning
18 trusts commenced on or after the effective date of this subsection.

19 Sec. 2. EFFECTIVE DATE

20 This act shall take effect on passage.