

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred Senate Bill No. 3
3 entitled “An act relating to the transfer of property to a trust” respectfully
4 reports that it has considered the same and recommends that the bill be
5 amended by striking out all after the enacting clause and inserting in lieu
6 thereof the following:

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

8 § 505. CREDITOR’S CLAIM AGAINST SETTLOR

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

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

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

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

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

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

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

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

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

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

3 Sec. 2. EFFECTIVE DATE

4 This act shall take effect on passage.

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11 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE