

Self-Settled Spendthrift Trust

The Act authorizes the creation of self-settled spendthrift trusts, which protect trust assets against the claims of a settlor who is also a trust beneficiary. This bill allows a settlor to transfer assets to an irrevocable trust to be held for the joint benefit of the settlor and at least one other beneficiary. Currently, a spendthrift clause is ineffective to shield the beneficiary from creditors when the beneficiary is also the settlor. Current state law allows the creation of trusts that are protected from the claims of creditors against trust beneficiaries, and this bill extends that policy to trusts of which the settlor is also a discretionary beneficiary.

Submitted as:

Virginia

[S. 11](#)

Status: Became law in 2012.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. This Act may be cited as the “Self-Settled Spendthrift Trusts.”

2
3 Section 2. [*Definitions.*]

4 As used in this Act:

5 A. "Independent qualified trustee" means a qualified trustee who is not, and whose actions
6 are not, subject to direction by:

7 1. The settlor;

8 2. Any natural person who is not a resident of the Commonwealth;

9 3. Any entity that is not authorized to engage in trust business within the [insert state];

10 4. The settlor's spouse;

11 5. A parent of the settlor;

12 6. Any issue of the settlor;

13 7. A sibling of the settlor;

14 8. An employee of the settlor;

15 9. A business entity in which the settlor's holdings represent at least 30 percent of the
16 total voting power of all interests entitled to vote;

17 10. A subordinate employee of the settlor; or

18 11. A subordinate employee of a business entity in which the settlor is an executive.

19 B. "Qualified interest" means a settlor's interest in a qualified self-settled spendthrift trust, to
20 the extent that such interest entitles the settlor to receive distributions of income, principal, or both,
21 in the sole discretion of an independent qualified trustee. A settlor may have a qualified interest in a
22 qualified self-settled spendthrift trust and also have an interest in the same trust that is not a qualified
23 interest, and the rules shall apply to each interest of the settlor in the same trust other than the
24 settlor's qualified interest.

25 C. "Qualified self-settled spendthrift trust" means a trust if:

26 1. The trust is irrevocable;

27 2. The trust is created during the settlor's lifetime;

28 3. There is, at all times when distributions could be made to the settlor pursuant to the
29 settlor's qualified interest, at least one beneficiary other than the settlor (i) to whom income
30 may be distributed, if the settlor's qualified interest relates to trust income, (ii) to whom
31 principal may be distributed, if the settlor's qualified interest relates to trust principal, or (iii)
32 to whom both income and principal may be distributed, if the settlor's qualified interest
33 relates to both trust income and principal;

1 4. The trust has at all times at least one qualified trustee, who may be, but need not
2 be, an independent qualified trustee;

3 5. The trust instrument expressly incorporates the laws of the Commonwealth to
4 govern the validity, construction, and administration of the trust;

5 6. The trust instrument includes a spendthrift provision that restrains both voluntary
6 and involuntary transfer of the settlor's qualified interest; and

7 7. The settlor does not have the right to disapprove distributions from the trust.

8 D. "Qualified trustee" means any person who is a natural person residing within the [insert
9 state] or a legal entity authorized to engage in trust business within the Commonwealth and who
10 maintains or arranges for custody within the [insert state] of some or all of the property that has been
11 transferred to the trust by the settlor, maintains records within the Commonwealth for the trust on an
12 exclusive or nonexclusive basis, prepares or arranges for the preparation within the [insert state] of
13 fiduciary income tax returns for the trust, or otherwise materially participates within the [insert state]
14 in the administration of the trust. A trustee is not a qualified trustee if such trustee's authority to
15 make distributions of income or principal or both are subject to the direction of someone who, were
16 that person a trustee of the trust, would not meet the requirements to be a qualified trustee.
17

18 Section 3.[*Self-Settled Spendthrift Trusts*]

19 A. A settlor may transfer assets to a qualified self-settled spendthrift trust and retain in that
20 trust a qualified interest, and, except as otherwise provided shall not apply to such qualified interest.

21 B. This act shall continue to apply with respect to any interest held by a settlor in a qualified
22 self-settled spendthrift trust, other than a qualified interest.

23 C. A settlor's transfer to a qualified self-settled spendthrift trust shall not, to the extent of the
24 settlor's qualified interest, be deemed to have been made with intent to delay, hinder, or defraud
25 creditors, merely because it is made to a trust with respect to which the settlor retains a qualified
26 interest and merely because it is made without consideration. A settlor's transfer to a qualified self-
27 settled spendthrift trust may, however, be set on other bases, such as if the transfer renders the settlor
28 insolvent.

29 D. A settlor's creditor may bring an action to avoid a transfer to a qualified self-settled
30 spendthrift trust or otherwise to enforce a claim that existed on the date of the settlor's transfer to
31 such trust within five years after the date of the settlor's transfer to such trust to which such claim
32 relates.

33 E. A creditor shall have only such rights with respect to a settlor's transfer to a qualified self-
34 settled spendthrift trust as are provided in this section. No creditor and no other person shall have
35 any claim or cause of action against any trustee, trust adviser, trust director, or any person involved
36 in the counseling, drafting, preparation, or execution of, or transfers to a qualified self-settled
37 spendthrift trust.

38 F. If a settlor makes more than one transfer to the same qualified self-settled spendthrift trust,
39 the following rules shall apply:

40 1. The settlor's making of a subsequent transfer shall be disregarded in determining
41 whether a creditor's claim with respect to a prior transfer is valid under this section;

42 2. With respect to each subsequent transfer by the settlor, the five-year limitations
43 period commences on the date of such subsequent transfer; and

44 3. Any distribution to a beneficiary is deemed to have been made from the latest such
45 transfer.

46 G. The movement to the [insert state] of the administration of an existing trust, which, after
47 such movement to the [insert state], meets for the first time all of the requirements of a qualified
48 self-settled spendthrift trust, shall be treated, for purposes of this section, as a transfer to this trust by

1 the settlor on the date of such movement of all of the assets previously transferred to the trust by the
2 settlor.

3

4 Section 4. [*Severability clause.*] Insert Severability clause.

5

6 Section 5: [*Repealer clause.*] Insert repealer clause.

7

8 Section 6: [*Effective date.*] Insert effective date