

Table 2
Uniform Trust Code States with Asset Protection Trust Legislation

State	Citation	Statutory Provisions
Missouri	V.A.M.S. §456.5-501 through 504	<i>These statutes are substantially similar to the same sections of the UTC.</i>
	V.A.M.S. §456.5-505 (Creditor's Claim against Settlor)	<p>3. With respect to an irrevocable trust with a spendthrift provision, a spendthrift provision will prevent the settlor's creditors from satisfying claims from the trust assets except:</p> <p>(1) Where the conveyance of assets to the trust was fraudulent as to creditors pursuant to the provisions of [Missouri's Uniform Fraudulent Transfer Act]; or</p> <p>(2) To the extent of the settlor's beneficial interest in the trust assets, if at the time the trust became irrevocable:</p> <p>(a) The settlor was the sole beneficiary of either the income or principal of the trust or retained the power to revoke or amend the trust; or</p> <p>(b) The settlor was one of a class of beneficiaries and retained a right to receive a specific portion of the income or principal of the trust that was determinable solely from the provisions of the trust instrument.</p>
Tennessee	T.C.A. §35-15-501 & 502	These statutes are substantially similar to the same sections of the UTC.
	T.C.A. §35-15-503 (Exceptions to Spendthrift Provisions)	A spendthrift provision is unenforceable against a claim of this state to the extent a statute of this state so provides. <i>[No exception for child or spousal support]</i>
	T.C.A. §35-15-504 (Discretionary Trusts; Effect of Standard)	<p>(a) Whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:</p> <p>(1) The discretion is expressed in the form of a standard of distribution; or</p> <p>(2) The trustee has abused the discretion.</p> <p>(b) This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.</p> <p>(c) If the trustee's or co-trustee's discretion to make distributions for the trustee's or co-trustee's own benefit is limited by an ascertainable standard, a creditor may not reach or compel distribution of the beneficial interest except to the extent the interest would be subject to the creditor's claim were the beneficiary not acting as trustee or co-trustee.</p> <p><i>[No exception for child or spousal support]</i></p>
	T.C.A. § 35-15-505	This statute is substantially similar to the same section of the UTC, except for the provisions

	(Creditor's Claims against Settlor)	<p>noted below.</p> <p>(a) (2) Except as provided in [the Tennessee Investment Services Act] a creditor or assignee of the settlor of an irrevocable trust may reach the maximum amount that can be distributed to or for the settlor's benefit.</p> <p>(c) For purposes of subdivision (a)(2), the power of a trustee of an irrevocable trust, whether arising under the trust agreement or any other provision of the law, to make a distribution to or for the benefit of a settlor for the purpose of reimbursing the settlor in an amount equal to any income taxes payable on any portion of the trust principal and income that are includable in the settlor's personal income under applicable law, as well as distributions made by the trustee pursuant to such authority, shall not be considered an amount that may be distributed to or for the settlor's benefit.</p>
	<p>Tennessee Investment Services Act T.C.A. § 35-16-102 (Definitions)</p> <p>[Selected Provisions]</p>	<p>As used in this act, unless the context otherwise requires:</p> <p>(1) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured;</p> <p>(2) "Creditor" means, with respect to a transferor, a person who has a claim;</p> <p>(3) "Debt" means liability on a claim;</p> <p>(4) "Disposition" means a transfer, conveyance or assignment of property including a change in the legal ownership of property occurring upon the substitution of one (1) trustee for another or the addition of one (1) or more new trustees. "Disposition" also includes the exercise of a power so as to cause a transfer of property to a trustee or trustees, but shall not include the release or relinquishment of an interest in property that until the release or relinquishment was the subject of a qualified disposition;</p> <p style="text-align: center;">* * *</p> <p>(7) "Investment Services Trust" means an instrument appointing a qualified trustee or qualified trustees for the property that is the subject of a disposition, which instrument:</p> <p>(A) Expressly incorporates the law of this state to govern the validity, construction and administration of the trust;</p> <p>(B) Is irrevocable; and</p> <p>(C) Provides that the interest of the transferor or other beneficiary in the trust property or the income therefrom may not be transferred, assigned, pledged or mortgaged, whether voluntarily or involuntarily, before the qualified trustee or qualified trustees actually distribute the property or income therefrom to the beneficiary;</p> <p style="text-align: center;">* * *</p> <p>(10) "Qualified affidavit" means a sworn affidavit signed by the transferor before a disposition of assets to an Investment Services Trust that meets the requirements of § 35-16-103. In the event of a disposition by a transferor who is a trustee, the affidavit shall be signed by the</p>

		<p>transferor who made the original disposition to the trustee, or a predecessor trustee, in a form that meets the requirements of subdivisions (7)(B) and (7)(C) and shall state facts as of the time of the original disposition;</p> <p>(11) "Qualified disposition" means a disposition by or from a transferor with or without consideration, to an Investment Services Trust after the transferor executes a qualified affidavit;</p> <p>(12) "Qualified trustee" means a person who:</p> <p>(A) In the case of a natural person, is a resident of this state, or, in all other cases, is authorized by the law of this state to act as a trustee and whose activities are subject to supervision by the Tennessee department of financial institutions, the federal deposit insurance corporation, the comptroller of the currency, or the office of thrift supervision or any successor to them;</p> <p>(B) Maintains or arranges for custody in this state of some or all of the property that is the subject of the qualified disposition, maintains records for the Investment Services Trust on an exclusive or nonexclusive basis, prepares or arranges for the preparation of required income tax returns for the Investment Services Trust, or otherwise materially participates in the administration of the Investment Services Trust; and</p> <p>(C) Is not the transferor; and</p> <p>(13) "Spouse" or "former spouse" means only persons to whom the transferor was legally married at, or before, the time the qualified disposition is made.</p> <p>(14) "Transferor" means a person who, as an owner of property, is a holder of a power of appointment which authorizes the holder to appoint in favor of the holder, the holder's creditors, the holder's estate or the creditors of the holder's estate, or as a trustee, directly or indirectly makes a disposition or causes a disposition to be made.</p>
	<p>T.C.A. § 35-16-103 (Qualified affidavit; contents)</p>	<p>A qualified affidavit shall state that:</p> <p>(1) The transferor has full right, title, and authority to transfer the assets to the trust;</p> <p>(2) The transfer of the assets to the trust will not render the transferor insolvent;</p> <p>(3) The transferor does not intend to defraud a creditor by transferring the assets to the trust;</p> <p>(4) The transferor does not have any pending or threatened court actions against the transferor, except for those court actions identified by the transferor on an attachment to the affidavit;</p> <p>(5) The transferor is not involved in any administrative proceedings except for those administrative proceedings identified on an attachment to the affidavit;</p> <p>(6) The transferor does not contemplate filing for relief under the provisions of the federal bankruptcy code; and</p>

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	<p>T.C.A. § 35-16-104 (Claims or actions against property subject to qualified disposition; claims or actions against trustees)</p>	<p>(7) The assets being transferred to the trust were not derived from unlawful activities.</p> <p>(a) Notwithstanding any law to the contrary, no action of any kind, including, but not limited to, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity for an attachment or other provisional remedy against property that is the subject of a qualified disposition to an investment services trust or for the avoidance of a qualified disposition to an investment services trust unless the action shall be brought pursuant to the provisions of the Uniform Fraudulent Transfer Act, compiled in title 66, chapter 3, part 3, and, in the case of a creditor whose claim arose after a qualified disposition, unless the qualified disposition was also made with actual intent to defraud such creditor.</p> <p>(b) A creditor's claim under subsection (a) shall be extinguished unless:</p> <p>(1) The creditor's claim arose before the qualified disposition to an Investment Services Trust was made, and the action is brought within the limitations of § 66-3-310 in effect on the date of the qualified disposition; or</p> <p>(2) Notwithstanding § 66-3-310, the creditor's claim arose concurrent with or subsequent to the qualified disposition and the action is brought within four (4) years after the qualified disposition is made.</p> <p>(c) For purposes of this chapter, a qualified disposition that is made by means of a disposition by a transferor who is a trustee shall be deemed to have been made as of the time, whether before, on or after July 1, 2007, the property that is the subject of the qualified disposition was originally transferred to the transferor acting in the capacity of trustee, or any predecessor trustee, in a form that meets the requirements of § 35-16-102(7)(B) and (C).</p> <p>(d) Notwithstanding any law to the contrary, a creditor, including a creditor whose claim arose before or after a qualified disposition, or any other person shall have only the rights with respect to a qualified disposition as are provided in this section and § 35-16-106, and neither a creditor nor any other person shall have any claim or cause of action against the trustee, or an advisor of an Investment Services Trust, or against any person involved in the counseling, drafting, preparation, execution or funding of an Investment Services Trust. For purposes of this section, counseling, drafting, preparation, execution or funding of an Investment Services Trust includes the counseling, drafting, preparation, execution and funding of a limited partnership or a limited liability company if interests in the limited partnership or limited liability company are subsequently transferred to the Investment Services Trust.</p> <p>(e) Notwithstanding any law to the contrary, no action of any kind, including, but not limited to, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity against a trustee or an advisor of an Investment Services Trust, or against</p>
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		<p style="text-align: center;">past due;</p> <p style="text-align: center;">and</p> <p style="text-align: center;">(B) After the court has determined that the claimant has made reasonable attempts to collect the debt from any other sources of the transferor or that such attempts would be futile.</p> <p>Nothing herein shall be construed to prohibit the court from making the findings required in subdivisions 2(A) and 2(B) in the same proceeding and order.</p> <p>(j) Subsection (i) shall not apply to any claim for forced heirship, legitime or elective share.</p>
	<p>T.C.A. § 35-16-105 (Transferor's powers and rights)</p>	<p>A transferor shall have only the powers and rights as are conferred by the Investment Services Trust. The powers and rights conferred by the investment services trust upon the transferor are personal powers and rights that may not be exercised by a creditor or any other person, except as expressly permitted by the trust. Except as permitted by §§ 35-16-109 and 35-16-111, the transferor shall have no rights or authority with respect to the corpus of the investment services trust or the income from the trust, and any agreement or understanding purporting to grant or permit the retention of any greater rights or authority shall be void.</p>
	<p>T.C.A. § 35-16-106 (Avoidance of qualified disposition)</p>	<p>(a) A qualified disposition to an Investment Services Trust shall be avoided only to the extent necessary to satisfy the transferor's debt to the creditor at whose instance the disposition had been avoided, together with costs, including attorneys' fees, as the court may allow.</p> <p>(b) In the event any qualified disposition shall be avoided as provided in subsection (a), then:</p> <p>(1) If the court is satisfied that a qualified trustee has not acted in bad faith in accepting or administering the property that is the subject of the qualified disposition:</p> <p>(A) The qualified trustee shall have a first and paramount lien against the property that is the subject of the qualified disposition in an amount equal to the entire cost, including attorneys' fees, properly incurred by the qualified trustee in the defense of the action or proceedings to avoid the qualified disposition;</p> <p>(B) The qualified disposition shall be avoided subject to the proper fees, costs, preexisting rights, claims and interests of the qualified trustee and of any predecessor qualified trustee that has not acted in bad faith; and</p> <p>(C) For purposes of this subdivision (b)(1), it shall be presumed that the qualified trustee did not act in bad faith merely by accepting the property; and</p> <p>(2) If the court is satisfied that a beneficiary of an investment services trust has not acted in bad faith, the avoidance of the qualified disposition shall be subject to the right of the beneficiary to retain any distribution made upon the exercise of a trust power or discretion vested in the qualified trustee or qualified trustees of the investment services trust, which power or discretion was properly exercised prior to the creditor's commencement of an action to avoid the qualified disposition. For purposes of this subdivision, it shall be presumed that the beneficiary, including a</p>

		<p>beneficiary who is also a transferor of the trust, did not act in bad faith merely by creating the trust or by accepting a distribution made in accordance with the terms of the trust.</p> <p>(c) A disposition by a trustee that is not a qualified trustee to a trustee that is a qualified trustee shall not be treated as other than a qualified disposition solely because the trust instrument fails to meet the requirements of § 35-16-102(7)(A).</p> <p>(d) In the case of a disposition to more than one (1) trustee, a disposition that is otherwise a qualified disposition shall not be treated as other than a qualified disposition solely because not all of the recipient trustees are qualified trustees.</p>
	<p>T.C.A. § 35-16-109 (Investment advisors; service)</p>	<p>A person may serve as an investment advisor notwithstanding that the person is the transferor of the qualified disposition.</p>
	<p>T.C.A. § 35-16-111 (Revocation)</p>	<p>An Investment Services Trust shall not be deemed revocable on account of its inclusion of one (1) or more of the following:</p> <ol style="list-style-type: none"> (1) A transferor's power to veto a distribution from the trust; (2) A power of appointment, other than a power to appoint to the transferor, the transferor's creditors, the transferor's estate or the creditors of the transferor's estate, exercisable by will or other written instrument of the transferor effective only upon the transferor's death; (3) The transferor's potential or actual receipt of income, including rights to the income retained in the trust; (4) The transferor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust as those terms are defined in § 664 of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 664, and any successor provision thereto; (5) The transferor's receipt each year of an amount specified in the trust, the amount not to exceed five percent (5%) of the initial value of the trust or its value determined from time to time pursuant to the trust; (6) The transferor's potential or actual receipt or use of principal if the potential or actual receipt or use of principal would be the result of a qualified trustee's or qualified trustees' acting: <ol style="list-style-type: none"> (A) In the qualified trustees' or qualified trustees' discretion. For purposes of this section, a qualified trustee is presumed to have discretion with respect to the distribution of principal unless the discretion is expressly denied to the trustee by the terms of the trust; (B) Pursuant to a standard that governs the distribution of principal and does not confer upon the transferor a power to consume, invade or appropriate property for the benefit of the transferor, unless the power of the transferor is limited by an ascertainable standard relating to the health, education, support, or maintenance within the meaning of § 2041(b)(1)(A) or § 2514(c)(1) of the Internal Revenue Code

		<p>of 1986, as in effect on July 1, 2007, or as later amended; or</p> <p>(C) At the direction of an advisor described in § 35-16-108 who is acting:</p> <p>(i) In the advisor's discretion; or</p> <p>(ii) Pursuant to a standard that governs the distribution of principal and does not confer upon the transferor a power to consume, invade, or appropriate property for the benefit of the transferor, unless the power of the transferor is limited by an ascertainable standard relating to the health, education, support, or maintenance within the meaning of § 2041(b)(1)(A) or § 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on July 1, 2007, or as later amended.</p> <p>(7) The transferor's right to remove a trustee or advisor and to appoint a new trustee or advisor; provided, however, that the right shall not include the appointment of a person who is a related or subordinate party with respect to the transferor within the meaning of § 672(c) of the Internal Revenue Code of 1986, 26 U.S.C. § 672(c), and any successor provision;</p> <p>(8) The transferor's potential or actual use of real property held under a qualified personal residence trust within the meaning of the term as described in § 2702(c) of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 2702(c), and any successor provision;</p> <p>(9) The transferor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes due on income of the trust if such potential or actual receipt of income or principal is pursuant to a provision in the trust instrument that expressly permits a distribution to the transferor as reimbursement for such taxes and if such distribution would be the result of a qualified trustee's or qualified trustees' acting:</p> <p>(A) In such qualified trustee's or qualified trustees' discretion or pursuant to a mandatory direction in the trust instrument; or</p> <p>(B) At the direction of an adviser described in § 35-16-108, who is acting in such adviser's discretion;</p> <p>(10) The ability, whether pursuant to direction in the investment services trust or discretion of a qualified trustee to pay, after the death of the transferor, all or any part of the debts of the transferor outstanding at the time of the transferor's death, the expenses of administering the transferor's estate, or any estate or inheritance tax imposed on or with respect to the transferor's estate; and</p> <p>(11) A qualified trustee's or qualified trustees' authority to make distributions to pay taxes in lieu of or in addition to the power to make a distribution for taxes pursuant to subdivision (3), (6), (9), or (10) by direct payment to the taxing authorities.</p>
	T.C.A. § 35-16-112 (Application of chapter)	This chapter applies to qualified dispositions to Investment Services Trusts and dispositions by transferors who are trustees made on or after July 1, 2007.
Utah	U.C.A. 1953 §75-7-501 through §75-7-504	<i>These statutes are substantially similar to the same sections of the UTC; however, these</i>

	<p>U.C.A. 1953 §75-7-505 (Creditor's Claim Against Settlor) U.C.A. 1953 §25-6-14 Utah's protective trust legislation is contained in its fraudulent transfer statutes.</p>	<p><i>sections (unlike the asset protection trust legislation, which is contained in Utah's fraudulent transfer statutes) do not provide an exception to spendthrift protection for spousal support or governmental claims.</i></p> <p>(1) (b) With respect to an irrevocable trust other than an irrevocable trust that meets the requirements of Section 25-6-14, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If the 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.</p> <hr/> <p>(1) (a) For trusts created on or after December 31, 2003, a settlor who in writing irrevocably transfers property in trust to a trust having as trustee a company defined in Subsection 7-5-1(1)(d) who holds some or all of the trust assets in this state in a savings account described in Subsection 7-1-103(29), a certificate of deposit, a brokerage account, a trust company fiduciary account, or account or deposit located in this state that is similar to such an account may provide that the income or principal interest of the settlor as beneficiary of the trust may not be either voluntarily or involuntarily transferred before payment or delivery to the settlor as beneficiary by the trustee. The provision shall be considered to be a restriction on the transfer of the settlor's beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within the meaning of Section 541(c)(2) of the Bankruptcy Code or successor provision.</p> <p style="text-align: center;">* * *</p> <p>(2) (a) Except as provided in Subsection (2)(c), if a trust has a restriction as provided in Subsection (1)(a), a creditor or other claimant of the settlor may not satisfy a claim, or liability on it, in either law or equity, out of the settlor's transfer or settlor's beneficial interest in the trust.</p> <p>(b) For the purposes of Subsection (2)(a), a creditor includes one holding or seeking to enforce a judgment entered by a court or other body having adjudicative authority as well as one with a right to payment, whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.</p> <p>(c) A restriction provided under Subsection (1) does not prevent a creditor or person described in Subsection (2)(a) from satisfying a claim or liability out of the settlor's beneficial interest in or transfer into trust if:</p> <ul style="list-style-type: none"> (i) the claim is a judgment, order, decree, or other legally enforceable decision or ruling resulting from a judicial, arbitration, mediation, or administrative proceeding commenced prior to or within three years after the trust is created; (ii) the settlor's transfer into trust is made with actual intent to hinder, delay, or defraud that creditor; (iii) the trust provides that the settlor may revoke or terminate all or part of the
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		<p>trust without the consent of a person who has a substantial beneficial interest in the trust and the interest would be adversely affected by the exercise of the settlor's power to revoke or terminate all or part of the trust;</p> <ul style="list-style-type: none"> (iv) the trust requires that all or a part of the trust's income or principal, or both must be distributed to the settlor as beneficiary; (v) the claim is for a payment owed by a settlor under a child support judgment or order; (vi) the transfer is made when the settlor is insolvent or the transfer renders the settlor insolvent; (vii) the claim is for recovery of public assistance received by the settlor allowed under Title 26, Chapter 19, Medical Benefits Recovery Act; (viii) the claim is a tax or other amount owed by the settlor to any governmental entity; (ix) the claim is by a spouse or former spouse of the settlor on account of an agreement or order for the payment of support or alimony or for a division or distribution of property; (x) (A) the settlor transferred assets into the trust that: <ul style="list-style-type: none"> I. were listed in a written representation of the settlor's assets given to a claimant to induce the claimant to enter into a transaction or agreement with the settlor; or II. were transferred from the settlor's control in breach of any written agreement, covenant, or security interest between the settlor and the claimant; or (B) without limiting the claimant's right to pursue assets not held by the trust, a claimant described in Subsection (2)(c)(x)(A) may only foreclose or execute upon an asset in the trust listed in the written representation described in Subsection (2)(c)(x)(A)(I) or transferred in breach of a written agreement, covenant, or security interest as provided in Subsection (2)(c)(x)(A)(II) to the extent of the settlor's interest in that asset when it was transferred to the trust or the equivalent value of that asset at the time of foreclosure or execution if the original asset was sold or traded by the trust; or (xi) the claim is a judgment, award, order, sentence, fine, penalty, or other determination of liability of the settlor for conduct of the settlor constituting fraud, intentional infliction of harm, or a crime. <p>(d) The statute of limitations for actions to satisfy a claim or liability out of the settlor's beneficial interest in or transfer into trust under Subsections (2)(c)(ii), (v), (vii), (viii), (ix), (x), and (xi) is the statute of limitations applicable to the underlying action.</p>
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		<p>(e) For the purposes of Subsection (2)(c) "revoke or terminate" does not include:</p> <ul style="list-style-type: none"> (i) a power to veto a distribution from the trust; (ii) a testamentary special power of appointment or similar power; (iii) the right to receive a distribution of income, principal, or both in the discretion of another, including a trustee other than the settlor, an interest in a charitable remainder unitrust or charitable remainder annuity trust as defined in Internal Revenue Code Section 664 or successor provision, or a right to receive principal subject to an ascertainable standard set forth in the trust; or (iv) the power to appoint nonsubordinate advisers or trust protectors who can remove and appoint trustees, who can direct, consent to or disapprove distributions, or is the power to serve as an investment director or appoint an investment director under Section 75-7-906. <p>(3) The satisfaction of a claim under Subsection (2)(c) is limited to that part of the trust or transfer to which it applies.</p> <p>(4) (a) If a trust has a restriction as provided under Subsection (1), the restriction prevents anyone, including a person listed in Subsection (2)(a), from asserting any cause of action or claim for relief against a trustee or anyone involved in the counseling, drafting, preparation, execution, or funding of the trust for:</p> <ul style="list-style-type: none"> (i) conspiracy to commit a fraudulent conveyance; (ii) aiding and abetting a fraudulent conveyance; or (iii) participating in the trust transaction. <p>(b) A person prevented from asserting a cause of action or claim for relief under this Subsection (4) may assert a cause of action only against:</p> <ul style="list-style-type: none"> (i) the trust assets; or (ii) the settlor or beneficiary to the extent allowed under Subsection 25-6-5(1)(a). <p>(5) In any action brought under Subsection (2)(c), the burden to prove the matter by clear and convincing evidence shall be upon the creditor.</p> <p>(6) For purposes of this section, the transfer shall be considered to have been made on the date the property was originally transferred in trust.</p> <p>(7) The courts of this state shall have exclusive jurisdiction over any action brought under this section.</p> <p>(8) If a trust or a property transfer to a trust is voided or set aside under Subsection (2)(c), the trust or property transfer shall be voided or set aside only to the extent necessary to satisfy:</p>
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		<p>(a) the settlor's debt to the creditor or other person at whose instance the trust or property transfer is voided or set aside; and</p> <p>(b) the costs and attorney fees allowed by the court.</p> <p>(9) If a trust or a property transfer to a trust is voided or set aside under Subsection (2)(c) and the court is satisfied that the trustee did not act in bad faith in accepting or administering the property that is the subject of the trust:</p> <p>(a) the trustee has a first and paramount lien against the property that is the subject of the trust in an amount equal to the entire cost properly incurred by the trustee in a defense of the action or proceedings to void or set aside the trust or the property transfer, including attorney fees;</p> <p>(b) the trust or property transfer that is voided or set aside is subject to the proper fees, costs, preexisting rights, claims, and interest of the trustee and any predecessor trustee if the trustee and predecessor trustee did not act in bad faith; and</p> <p>(c) any beneficiary, including the settlor, may retain a distribution made by exercising a trust power or discretion vested in the trustee of the trust, if the power or discretion was properly exercised before the commencement of the action or proceeding to void or set aside the trust or property transfer.</p> <p>(10) If at least one trustee is a trust company as defined in Subsection 7-5- 1(1)(d), then individuals may also serve as cotrustees.</p>
Virginia		
Wyoming	W.S. §4-10-501 through 505	<i>These statutes are substantially similar to sections 501 through 504 of the UTC; however, these sections do not provide an exception to spendthrift protection for spousal support or governmental claims.</i>
	W.S. §4-10-506 (Creditor's Claim against Settlor)	(b) With respect to an irrevocable trust with a spendthrift provision, a creditor or assignee of the right of a settlor are limited by the provisions of W.S. 4-10-510 et seq.
	W.S. §4-10-508 (Overdue Mandatory Distribution)	(b) If the trust includes a spendthrift provision, a creditor or assignee of a beneficiary may not compel a mandatory distribution or attach a mandatory distribution until it is received by the beneficiary.
	W.S. §4-10-510 (Creation of Qualified Spendthrift Trust)	<p>(a) A settlor may create a qualified spendthrift trust with a trust instrument appointing a qualified trustee for qualified trust property, which instrument:</p> <p>(i) States that the trust is a qualified spendthrift trust under this section;</p> <p>(ii) Expressly incorporates the law of this state to govern the validity, construction and administration of the trust;</p> <p>(iii) Provides that the interest of the settlor in the trust income or principal, or both, is held subject to a spendthrift provision under W.S. 4-10-502 and such provision of</p>

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		<p>the trust instrument shall be deemed to be a restriction on the transfer of the settlor's beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within the meaning of Section 541(c)(2) of the Bankruptcy Code;</p> <p>(iv) Is irrevocable, but a trust instrument may not be deemed revocable on account of its inclusion of one (1) or more of the following:</p> <ul style="list-style-type: none"> (A) A settlor's power to veto a distribution from the trust; (B) An inter vivos or testamentary general or limited power of appointment held by the settlor; (C) The settlor's potential or actual receipt of income, including rights to the income retained in the trust instrument; (D) The settlor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust as those terms are defined in Section 664 of the Internal Revenue Code; (E) The settlor's receipt each year of a percentage, not to exceed five percent (5%), specified in the trust instrument, of the initial value of the trust or its value determined from time to time pursuant to the trust instrument; (F) The settlor's potential or actual receipt or use of principal when a qualified trustee, including a trustee acting at the direction of a trust advisor other than the settlor, makes such distribution or grants such use in the trustee's sole discretion or pursuant to an ascertainable standard contained in the trust instrument; (G) The settlor's right to add or remove a trustee, trust protector or trust advisor and to appoint a new trustee, trust protector or trust advisor, other than the settlor; (H) The settlor's potential or actual use of real property held under a qualified personal residence trust within the meaning of the term as described in Section 2702(c) of the Internal Revenue Code; (J) A trust protector as provided in W.S. 4-10-710 has the power to add beneficiaries to the trust who are not the trust protector, the estate of the trust protector, the creditors of the trust protector or the heirs of the trust protector; (K) The settlor's right to serve as an investment advisor to the trust, with the powers provided in W.S. 4-10-712(a)(iii) and (iv). (M) The court's right to revoke a trust created by a conservator for a ward under W.S. 3-3-607.
	<p>W.S. §4-10-511 (Qualified trust property)</p>	<p>(a) Qualified trust property includes real property, personal property and interests in real or personal property and all gains, appreciation and income thereon which:</p>

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	<ul style="list-style-type: none"> (i) Are the subject of a qualified transfer; and (ii) Are acquired with the proceeds of property of a qualified transfer. <p>(b) Qualified trust property is subject to W.S. 4-10-514 through 4-10- 523.</p>
W.S. §4-10-512 (Qualified transfers; exception)	<p>(a) Except as otherwise provided in this section, “qualified transfer” means a transfer, conveyance or assignment of property, by or from a settlor, with or without consideration, to a qualified trustee, under a trust instrument which meets the requirements of W.S. 4-10-510. “Qualified transfer” also includes:</p> <ul style="list-style-type: none"> (i) A change in the legal ownership of property occurring upon the substitution of a qualified trustee for another or the addition of one (1) or more qualified trustees; or (ii) The exercise of a power so as to cause a transfer of property to a qualified trustee. <p>(b) A qualified transfer shall require an affidavit from the settlor making the transfer to the trustee of the qualified spendthrift trust in the form provided in W.S. 4-10-523, except that no affidavit shall be required for a transfer under W.S. 4-10-515.</p> <p>(c) The term “qualified transfer” does not include the release or relinquishment of an interest in property that previously was the subject of a qualified transfer.</p>
W.S. §4-10-514 (Action brought pursuant to provisions of Uniform Fraudulent Transfers Act)	Except as provided in W.S. 4-10-518, no action of any kind, including an action to enforce a judgment entered by a court or other body having adjudicative authority, may be brought at law or in equity for an attachment or other provisional remedy against qualified trust property or to set aside a qualified transfer unless the action is brought pursuant to the provisions of the Uniform Fraudulent Transfers Act.
W.S. §4-10-515 (Transfer by a trustee; time of transfer)	<p>(a) A qualified transfer by a trustee of a qualified spendthrift trust to a qualified trustee of another qualified spendthrift trust shall relate back to the date of the original qualified transfer.</p> <p>(b) A transfer of trust property from the trustee of a trust created in another jurisdiction, which provides creditor protection to the settlor similar to that provided in this article, to a trustee of a qualified spendthrift trust shall relate back to the date of the original transfer to the trust created in the other jurisdiction.</p>
W.S. § 4-10-517 (Rights of creditors or others with respect to qualified spendthrift trust)	Notwithstanding any law to the contrary, a creditor or assignee of a settlor of a qualified spendthrift trust, or an agent of a creditor or settlor, has only such rights with respect to the qualified trust property as are provided in W.S. 4-10-514 through 4-10-523 and no creditor, assignee or agent may have any claim or cause of action against the trustee, trust protector, trust advisor or other fiduciary of the trust, or against any person involved in the counseling, drafting, administration, preparation, execution or funding of the trust.
W.S. §4-10-518 (Actions prohibited if action by creditor would be barred)	Notwithstanding any other provision of law, no judgment or order upon an action to enforce a judgment, or for relief for conspiracy to commit a fraudulent conveyance, aiding and abetting a fraudulent conveyance or participation in the trust transaction, may be entered by a court or other body having adjudicative authority, or may be brought at law or in equity against the

	trustee, trust protector, trust advisor or other fiduciary of a qualified spendthrift trust, or against any person involved in the counseling, drafting, preparation, administration, execution or funding of the trust, if, as of the date the action is brought, an action by a creditor or assignee with respect to the trust would be barred under W.S. 4-10-517.
W.S. §4-10-519 (Multiple qualified transfers in same trust instrument)	(a) If more than one (1) qualified transfer is made to the same qualified spendthrift trust: (i) The making of a subsequent qualified transfer shall be disregarded in determining whether a creditor's claim with respect to a prior qualified transfer is extinguished utilizing the procedures provided in W.S. 4-10- 514; and (ii) Any distribution to a beneficiary other than the settlor shall be deemed to have been made from the qualified trust property attributable to the earliest qualified transfer to the trust, unless a creditor of the settlor is able to prove by clear and convincing evidence otherwise.
W.S. §4-10-520 (Limitations on qualified trust property)	(a) The provisions of W.S. 4-10-510 through 4-10-523, do not apply in any respect to: (i) Any person to whom a settlor is indebted on account of an agreement or order of court for the payment of support in favor of the settlor's children; (ii) Qualified trust property that is listed upon an application or financial statement used to obtain or maintain credit other than for the benefit of the qualified spendthrift trust; or (iii) Property of a qualified spendthrift trust that was transferred to the trust by a settlor who received the property by a fraudulent transfer as defined by the Wyoming Fraudulent Transfers Act.
W.S. §4-10-521 (Avoidance of qualified transfer)	(a) A qualified transfer to a qualified spendthrift trust is avoided only to the extent necessary to satisfy the settlor's debt to the creditor at whose instance the qualified transfer had been avoided, together with costs, including attorney's fees if otherwise authorized, as the court may allow. If any qualified transfer is avoided as provided in this section, then: (i) If the court is satisfied that a qualified trustee has not acted in bad faith in accepting or administering the property that is the subject of the qualified transfer: (A) The qualified trustee has a first and paramount lien against the property that is the subject of the qualified transfer in an amount equal to the entire cost, including attorney's fees, court costs, penalties, fines, fees and other amounts paid or payable, which were properly incurred by the qualified trustee in the defense of the action or proceedings to avoid the qualified transfer. It shall be presumed that the qualified trustee did not act in bad faith merely by accepting the property; and (B) The qualified transfer is avoided subject to the proper fees, costs, preexisting rights, claims and interests of the qualified trustee, and of any predecessor trustee that has not acted in bad faith. (ii) If the court is satisfied that a beneficiary of a qualified spendthrift trust has not acted

		<p>in bad faith, the avoidance of the qualified transfer is subject to the right of the beneficiary to retain any distribution made upon the exercise of a trust power or discretion vested in the qualified trustee of the trust, which power or discretion was properly exercised prior to the creditor's commencement of an action to avoid the qualified transfer. It shall be presumed that the beneficiary, including a beneficiary who is also a settlor of a qualified spendthrift trust, did not act in bad faith merely by creating the trust or by accepting a distribution made in accordance with the terms of the trust.</p> <p>(b) A creditor shall have the burden of proving by clear and convincing evidence that a trustee or beneficiary of a qualified spendthrift trust acted in bad faith under paragraph (a)(i) or (ii) of this section, except that, in the case of a beneficiary who is also a settlor, the burden on the creditor shall be to prove by a preponderance of the evidence that the settlor or beneficiary acted in bad faith.</p>
	<p>W.S. §4-10-522 (Limitation or termination of authority of trustee upon court decision not to apply Wyoming law)</p>	<p>If, in any action brought against a trustee of a qualified spendthrift trust, a court takes any action whereby the court declines to apply the law of this state in determining the validity, construction or administration of the trust, or the effect of a spendthrift provision thereof, the trustee may immediately resign without the further order of any court, and cease in all respects to be trustee of the trust. In the event that the trustee does resign and no provision for a successor trustee exists in the trust instrument, the qualified beneficiaries may then petition a Wyoming district court with appropriate jurisdiction to appoint a successor trustee who shall succeed as trustee upon such terms and conditions as the district court determines to be consistent with the purposes of the trust and this act. Upon the trustee's ceasing to be trustee, the trustee shall have no power or authority other than to convey the trust property to the successor trustee named in the trust instrument or appointed by the district court.</p>
	<p>W.S. §4-10-523 (Qualified transfer affidavit)</p>	<p>(a) A qualified transfer affidavit shall be in writing, sworn to by the settlor, and shall state that:</p> <ul style="list-style-type: none"> (i) The settlor has full right, title and authority to transfer the property to the qualified spendthrift trust; (ii) The transfer of the property to the qualified spendthrift trust will not render the settlor insolvent; (iii) The settlor does not intend to defraud any creditors by transferring the property to the qualified spendthrift trust; (iv) The settlor does not have any pending or threatened court actions against him, except for those court actions identified in the affidavit; (v) The settlor is not involved in any administrative proceedings, except for those administrative proceedings identified in the affidavit; (vi) At the time of the transfer of the property to the qualified spendthrift trust, the settlor is not in default of a child support obligation by more than thirty (30) days; (vii) The settlor does not contemplate the filing for relief under the provisions of the

		<p>federal Bankruptcy Code;</p> <p>(viii) The property transferred to the qualified spendthrift trust was not derived from any unlawful activities;</p> <p>(ix) The settlor has and shall maintain personal liability insurance of at least one million dollars (\$1,000,000.00) or shall provide coverage equal to the fair market value of the settlor's total qualified transfers to qualified spendthrift trusts, whichever is less. This affidavit requirement shall not apply to a qualified transfer to a trust created by a court order under W.S. 3-3-607 or an irrevocable income trust created under W.S. 42-2-403(f)(ii) and 42 U.S.C. 1396p(d)(4)(B).</p>
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