

LEGAL SERVICES

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MEMORANDUM

March 23, 2010

SUBJECT: Sectional summary of CSSB 63(), a bill relating to transfer restrictions on trust interests (Work Order No. 26-LS0317P)

TO: Senator Lesil McGuire
Attn: Esther Cha

FROM: 
Theresa Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Amends the subsection that establishes four situations when a creditor can satisfy a claim out of a beneficiary's interest in a trust when the trust contains a transfer restriction. In the first situation, this bill requires that the creditor establish the intent to defraud by clear and convincing evidence. In the second situation, which is based on the settlor's (the creator of the trust) right to revoke or terminate the trust, deletes a current exclusion from the meaning of "revoke or terminate" because the exclusion does not fit within the concept of revocation or termination.

Section 2. Adds a new provision to the section that allows a person who creates a trust (settlor) to restrict the transfer of a beneficiary's interest before payment to the beneficiary. States that the transfer restriction is allowed even if the settlor has any of the three listed rights: (1) to appoint a trustee, a trust protector, or an advisor for the trust; (2) to remove a trustee or trust protector and appoint certain replacements; or (3) remove an advisor and appoint a replacement.

Section 3. Adds a new provision to the section that allows a person who creates a trust (settlor) to prohibit the transfer of a beneficiary's interest before payment to the beneficiary (the beneficiary can be the settlor). States that the transfer restriction operates even if two situations exist: (1) the beneficiary has the right to receive a distribution made in a person's discretion; or (2) the settlor, under specific conditions, potentially will receive or actually receives income or principal to pay income taxes due on the income of the trust.

If I may be of further assistance, please advise.

TLB:ljw
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