

TRUST LAW AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: David Clark

This act modifies the Revenue and Tax Code and the Utah Uniform Probate Code to address issues related to trusts and to make technical changes. The act repeals the tax on accrued income in irrevocable trusts. This act modifies the statutory rule against perpetuities. This act provides protection for assets of trusts and addresses administration of trusts. The provisions in this act that amend certain tax-related provisions take effect for taxable years beginning on or after January 1, 2004. All other provisions take effect on May 5, 2003.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

7-5-1, as last amended by Chapter 39, Laws of Utah 1998

59-10-103, as last amended by Chapter 257, Laws of Utah 2000

59-10-201, as last amended by Chapter 390, Laws of Utah 1997

75-2-205, as repealed and reenacted by Chapter 39, Laws of Utah 1998

75-2-702, as enacted by Chapter 39, Laws of Utah 1998

75-2-1201, as enacted by Chapter 39, Laws of Utah 1998

75-2-1203, as enacted by Chapter 39, Laws of Utah 1998

75-2-1205, as enacted by Chapter 39, Laws of Utah 1998

75-2-1207, as enacted by Chapter 39, Laws of Utah 1998

75-2-1208, as enacted by Chapter 39, Laws of Utah 1998

75-7-201, as enacted by Chapter 150, Laws of Utah 1975

75-7-202, as last amended by Chapter 119, Laws of Utah 1995

75-7-204, as enacted by Chapter 150, Laws of Utah 1975

ENACTS:



- 28 **25-6-14**, Utah Code Annotated 1953
- 29 **75-2-1206.5**, Utah Code Annotated 1953
- 30 **75-7-208**, Utah Code Annotated 1953
- 31 **75-7-601**, Utah Code Annotated 1953
- 32 **75-7-602**, Utah Code Annotated 1953
- 33 **75-7-603**, Utah Code Annotated 1953

34 *Be it enacted by the Legislature of the state of Utah:*

35 Section 1. Section **7-5-1** is amended to read:

36 **7-5-1. Definitions -- Allowable trust companies -- Exceptions.**

37 (1) As used in this chapter:

38 (a) "Business trust" means an entity engaged in a trade or business that is created by a
39 declaration of trust that transfers property to trustees, to be held and managed by them for the
40 benefit of persons holding certificates representing the beneficial interest in the trust estate and
41 assets.

42 (b) "Trust business" means, except as provided in Subsection (1)(c), a business in
43 which one acts in any agency or fiduciary capacity, including that of personal representative,
44 executor, administrator, conservator, guardian, assignee, receiver, depository, or trustee under
45 appointment as trustee for any purpose permitted by law, including the definition of "trust" set
46 forth in Subsection 75-1-201(53).

47 (c) "Trust business" does not include the following means of holding funds, assets, or
48 other property:

49 (i) funds held in a client trust account by an attorney authorized to practice law in this
50 state;

51 (ii) funds held in connection with the purchase or sale of real estate by a person
52 authorized to act as a real estate broker in this state;

53 (iii) funds or other assets held in escrow by a person authorized by the department in
54 accordance with Chapter 22 or by the Utah Insurance Department to act as an escrow agent in
55 this state;

56 (iv) funds held by a homeowners' association or similar organization to pay
57 maintenance and other related costs for commonly owned property;

58 (v) funds held in connection with the collection of debts or payments on loans by a

59 person acting solely as the agent or representative or otherwise at the sole direction of the
60 person to which the debt or payment is owed, including funds held by an escrow agent for
61 payment of taxes or insurance;

62 (vi) funds and other assets held in trust on an occasional or isolated basis by a person
63 who does not represent that he is engaged in the trust business in Utah;

64 (vii) funds or other assets found by a court to be held in an implied, resulting, or
65 constructive trust;

66 (viii) funds or other assets held by a court appointed conservator, guardian, receiver,
67 trustee, or other fiduciary if:

68 (A) the conservator, receiver, guardian, trustee, or other fiduciary is responsible to the
69 court in the same manner as a personal representative under Title 75, Chapter 3, Part 5,
70 Supervised Administration, or as a receiver under Rule 66, Utah Rules of Civil Procedure;

71 (B) the conservator, trustee, or other fiduciary is a certified public accountant or has
72 qualified for and received a designation as a certified financial planner, chartered financial
73 consultant, certified financial analyst, or similar designation suitable to the court, that
74 evidences the conservator's, trustee's, or other fiduciary's professional competence to manage
75 financial matters;

76 (C) no trust company is willing or eligible to serve as conservator, guardian, trustee, or
77 receiver after notice has been given pursuant to Section 75-1-401 to all trust companies doing
78 business in this state, including a statement of the value of the assets to be managed. That
79 notice need not be provided, however, if a trust company has been employed by the fiduciary to
80 manage the assets; and

81 (D) in the event guardianship services are needed, the person seeking appointment as a
82 guardian under this Subsection (1) is a specialized care professional, as that term is defined in
83 Section 75-5-311, or a business or state agency that employs the services of one of those
84 professionals for the purpose of caring for the incapacitated person, so long as the specialized
85 care professional, business, or state agency does not:

86 (I) profit financially or otherwise from, or receive compensation for acting in that
87 capacity, except for the direct costs of providing guardianship or conservatorship services; or

88 (II) otherwise have a conflict of interest in providing those services;

89 (ix) funds or other assets held by a credit services organization operating in compliance

90 with Title 13, Chapter 21, Credit Services Organizations Act;

91 (x) funds, securities, or other assets held in a customer account in connection with the
92 purchase or sale of securities by a regulated securities broker, dealer, or transfer agent; or

93 (xi) funds, assets, and other property held in a business trust for the benefit of holders
94 of certificates of beneficial interest if the fiduciary activities of the business trust are merely
95 incidental to conducting business in the business trust form.

96 (d) "Trust company" means an institution authorized to engage in the trust business
97 under this chapter. Only the following may be a trust company:

98 (i) a Utah depository institution or its wholly owned subsidiary;

99 (ii) an out-of-state depository institution authorized to engage in business as a
100 depository institution in Utah or its wholly owned subsidiary;

101 (iii) a corporation, including a credit union service organization, owned entirely by one
102 or more federally insured depository institutions as defined in Subsection 7-1-103(8);

103 [~~(iii)~~] (iv) a direct or indirect subsidiary of a depository institution holding company
104 that also has a direct or indirect subsidiary authorized to engage in business as a depository
105 institution in Utah; and

106 [~~(iv)~~] (v) any other corporation continuously and lawfully engaged in the trust business
107 in this state since before July 1, 1981.

108 (2) Only a trust company may engage in the trust business in this state.

109 (3) The requirements of this chapter do not apply to:

110 (a) an institution authorized to engage in a trust business in another state that is
111 engaged in trust activities in this state solely to fulfill its duties as a trustee of a trust created
112 and administered in another state;

113 (b) a national bank, federal savings bank, federal savings and loan association, or
114 federal credit union authorized to engage in business as a depository institution in Utah, or any
115 wholly owned subsidiary of any of these, to the extent the institution is authorized by its
116 primary federal regulator to engage in the trust business in this state; or

117 (c) a state agency that is otherwise authorized by statute to act as a conservator,
118 receiver, guardian, trustee, or in any other fiduciary capacity.

119 Section 2. Section **25-6-14** is enacted to read:

120 **25-6-14. Restricting transfers of trust interests.**

121 (1) (a) For trusts created on or after May 5, 2003, a settlor who in writing irrevocably
122 transfers property in trust may provide that the income or principal interest of the settlor as
123 beneficiary of the trust may not be either voluntarily or involuntarily transferred before
124 payment or delivery to the settlor or beneficiary by the trustee. The provision shall be
125 considered to be a restriction on the transfer of the settlor's beneficial interest in the trust that is
126 enforceable under applicable nonbankruptcy law within the meaning of Section 541(c)(2) of
127 the Bankruptcy Code or successor provision.

128 (b) This Subsection (1) applies to:

129 (i) any form of transfer into trust including:

130 (A) deed;

131 (B) conveyance; or

132 (C) assignment; and

133 (ii) transfers of:

134 (A) real property;

135 (B) personal property; or

136 (C) interests in real or personal property.

137 (2) (a) Except as provided in Subsection (2)(b), if a trust has a restriction as provided in
138 Subsection (1)(a), the following may not satisfy a claim, or liability on it, in either law or
139 equity, out of the settlor or beneficiary's restricted interest in the trust:

140 (i) a creditor existing on the date of the transfer;

141 (ii) a person who becomes a creditor after the date of transfer; or

142 (iii) another person wishing to satisfy a claim out of the settlor or beneficiary's interest
143 in the trust.

144 (b) For the purposes of Subsections (2)(a)(i) and (ii), a creditor includes one holding or
145 seeking to enforce a judgment entered by a court or other body having adjudicative authority as
146 well as one with a right to payment, whether or not reduced to judgment, liquidated,
147 unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable,
148 secured, or unsecured.

149 (c) A restriction provided under Subsection (1) does not prevent a person described in
150 Subsection (2)(a) from satisfying a claim or liability out of the settlor or beneficiary's restricted
151 interest if:

152 (i) the transfer into trust is made in whole or in part with actual intent to hinder, delay,
153 or defraud creditors or other persons under Subsection 25-6-5(1)(a);

154 (ii) the trust provides that the settlor may revoke or terminate all or part of the trust
155 without the consent of a person who has a substantial beneficial interest in the trust and the
156 interest would be adversely affected by the exercise of the settlor's power to revoke or
157 terminate all or part of the trust;

158 (iii) the trust requires that all or a part of the trust's income or principal, or both must
159 be distributed to the settlor or beneficiary;

160 (iv) at the time of the transfer, the settlor or beneficiary is in default by 30 or more days
161 of making a payment due under a child support judgment or order; or

162 (v) the transfer renders the settlor or beneficiary insolvent after the transfer.

163 (d) For the purposes of Subsection (2)(c) "revoke or terminate" does not include:

164 (i) a power to veto a distribution from the trust;

165 (ii) a testamentary special power of appointment or similar power;

166 (iii) the right to receive a distribution of income, principal, or both in the discretion of
167 another, including a trustee other than the settlor, or is an interest in a charitable remainder
168 unitrust or charitable remainder annuity trust as defined in Internal Revenue Code Section 664
169 or successor provision, or is a right to receive principal subject to an ascertainable standard set
170 forth in the trust; or

171 (iv) the power to appoint nonsubordinate advisers or trust protectors who can remove
172 and appoint trustees, who can direct, consent to or disapprove distributions, or is the power to
173 serve as an investment adviser or appoint an investment adviser under Subsections
174 75-7-302(14) and (16).

175 (3) The satisfaction of a claim under Subsection (2)(c) is limited to that part of the trust
176 to which it applies.

177 (4) A cause of action or claim for relief under Subsection (2)(c), is extinguished unless
178 the action is brought by a person who:

179 (a) is a creditor on the date of the transfer to trust within the later of:

180 (i) three years after the date the transfer is made; or

181 (ii) one year after the transfer is or reasonably could have been discovered by the
182 person; or

183 (b) becomes a creditor after the date of the transfer into trust, within two years after the
 184 date the transfer is made.

185 (5) (a) If a trust has a restriction as provided under Subsection (1), the restriction
 186 prevents anyone, including a person listed in Subsection (2)(a), from asserting any cause of
 187 action or claim for relief against a trustee or anyone involved in the counseling, drafting,
 188 preparation, execution, or funding of the trust for:

- 189 (i) conspiracy to commit a fraudulent conveyance;
- 190 (ii) aiding and abetting a fraudulent conveyance; or
- 191 (iii) participating in the trust transaction.

192 (b) A person prevented from asserting a cause of action or claim for relief under this
 193 Subsection (5) may assert a cause of action only against:

- 194 (i) the trust assets; or
- 195 (ii) the settlor or beneficiary to the extent allowed under Subsection 25-6-5(1)(a).

196 (6) In any action brought under Subsection (2)(c), the burden to prove the matter by
 197 clear and convincing evidence shall be upon the creditor.

198 (7) For purposes of this section, the transfer shall be considered to have been made on
 199 the date the property was originally transferred in trust.

200 Section 3. Section **59-10-103** is amended to read:

201 **59-10-103. Definitions.**

202 (1) As used in this chapter:

203 (a) "Adult with a disability" means an individual who:

204 (i) is 18 years of age or older;

205 (ii) is eligible for services under Title 62A, Chapter 5, Services to People with
 206 Disabilities; and

207 (iii) is not enrolled in:

208 (A) an education program for students with disabilities that is authorized under Section
 209 53A-15-301; or

210 (B) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind.

211 (b) "Corporation" includes:

212 (i) associations[;];

213 (ii) joint stock companies[;]; and

214 (iii) insurance companies.
215 (c) "Dependent child with a disability" means an individual 21 years of age or younger
216 who:
217 (i) (A) is diagnosed by a school district representative under rules adopted by the State
218 Board of Education as having a disability classified as:
219 (I) autism;
220 (II) deafness;
221 (III) preschool developmental delay;
222 (IV) dual sensory impairment;
223 (V) hearing impairment;
224 (VI) intellectual disability;
225 (VII) multidisability;
226 (VIII) orthopedic impairment;
227 (IX) other health impairment;
228 (X) traumatic brain injury; or
229 (XI) visual impairment;
230 (B) is not receiving residential services from:
231 (I) the Division of Services for People with Disabilities created under Section
232 62A-5-102; or
233 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;
234 and
235 (C) is enrolled in:
236 (I) an education program for students with disabilities that is authorized under Section
237 53A-15-301; or
238 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;
239 or
240 (ii) is identified under guidelines of the Department of Health as qualified for:
241 (A) Early Intervention; or
242 (B) Infant Development Services.
243 (d) "Employer," "employee," and "wages" are defined as provided in Section
244 59-10-401.

245 (e) "Fiduciary" means:

246 (i) a guardian[;];

247 (ii) a trustee[;];

248 (iii) an executor[;];

249 (iv) an administrator[;];

250 (v) a receiver[;];

251 (vi) a conservator[;]; or

252 (vii) any person acting in any fiduciary capacity for any individual.

253 (f) "Homesteaded land diminished from the Uintah and Ouray Reservation" means the
254 homesteaded land that was held to have been diminished from the Uintah and Ouray
255 Reservation in Hagen v. Utah, 510 U.S. 399 (1994).

256 (g) "Individual" means a natural person and includes aliens and minors.

257 (h) "Nonresident individual" means an individual who is not a resident of this state.

258 (i) "Nonresident trust" or "nonresident estate" means a trust or estate which is not a
259 resident estate or trust.

260 (j) (i) "Partnership" includes a syndicate, group, pool, joint venture, or other
261 unincorporated organization[;];

262 (A) through or by means of which any business, financial operation, or venture is
263 carried on[;]; and

264 (B) which is not, within the meaning of this chapter[;];

265 (I) a trust [or];

266 (II) an estate; or

267 (III) a corporation.

268 (ii) "Partnership" does not include any organization not included under the definition of
269 "partnership" [~~contained~~] in Section 761, Internal Revenue Code.

270 (iii) "Partner" includes a member in [~~such~~] a syndicate, group, pool, joint venture, or
271 organization described in Subsection (1)(j)(i).

272 (k) (i) "Resident individual" means:

273 [(†)] (A) an individual who is domiciled in this state for any period of time during the
274 taxable year, but only for the duration of [~~such period; or (ii)~~] the period during which the
275 individual is domiciled in this state; or

- 276 (B) an individual who is not domiciled in this state but;
- 277 (I) maintains a permanent place of abode in this state; and
- 278 (II) spends in the aggregate 183 or more days of the taxable year in this state.
- 279 (ii) For purposes of this Subsection (1)(k)~~[(ii)]~~(i)(B), a fraction of a calendar day shall
- 280 be counted as a whole day.
- 281 (l) (i) "Resident estate" or "resident trust" means:
- 282 (A) an estate of a decedent who at ~~his~~ death was domiciled in this state;
- 283 (B) a trust, or a portion of a trust, consisting of property transferred by will of a
- 284 decedent who at his death was domiciled in this state; or
- 285 (C) a trust administered in this state.
- 286 (ii) ~~[For purposes of this chapter, a]~~ A trust shall be considered to be administered in
- 287 this state if~~[-(A) the place of business where the]~~ the fiduciary transacts ~~[a major portion of~~
- 288 ~~its]~~ any administration of the trust ~~[is in this state; or]~~ in this state, the trust states that it is
- 289 administered in this state, and the provisions of the trust are governed by the laws of this state.
- 290 ~~[(B) the usual place of business of the fiduciary is in this state.]~~
- 291 ~~[(iii) Where there are two or more fiduciaries, the residency status of the trust shall be~~
- 292 ~~determined by the situs of the corporate or professional fiduciary with primary responsibility~~
- 293 ~~for the administration of the trust as defined in the trust instrument.]~~
- 294 ~~[(iv) The commission may, by rule, provide additional guidelines to determine the~~
- 295 ~~residency status of a trust.]~~
- 296 (m) "Taxable income" and "state taxable income" are defined as provided in Sections
- 297 59-10-111, 59-10-112, 59-10-116, 59-10-201.1, and 59-10-204.
- 298 (n) "Taxpayer" means any individual, estate, or trust or beneficiary of an estate or trust,
- 299 whose income is subject in whole or part to the tax imposed by this chapter.
- 300 (o) "Uintah and Ouray Reservation" means the lands recognized as being included
- 301 within the Uintah and Ouray Reservation in:
- 302 (i) Hagen v. Utah, 510 U.S. 399 (1994); and
- 303 (ii) Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997).
- 304 (p) "Ute tribal member" means a person who is enrolled as a member of the Ute Indian
- 305 Tribe of the Uintah and Ouray Reservation.
- 306 (q) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

307 (2) (a) Any term used in this chapter has the same meaning as when used in
308 comparable context in the laws of the United States relating to federal income taxes unless a
309 different meaning is clearly required.

310 (b) Any reference to the Internal Revenue Code or to the laws of the United States shall
311 mean the Internal Revenue Code or other provisions of the laws of the United States relating to
312 federal income taxes [~~which~~] that are in effect for the taxable year.

313 (c) Any reference to a specific section of the Internal Revenue Code or other provision
314 of the laws of the United States relating to federal income taxes shall include any
315 corresponding or comparable provisions of the Internal Revenue Code as hereafter amended,
316 redesignated, or reenacted.

317 Section 4. Section **59-10-201** is amended to read:

318 **59-10-201. Taxation of resident trusts and estates.**

319 (1) [~~A~~] Except for trusts which first became resident trusts on or after January 1, 2004,
320 a tax determined in accordance with the rates prescribed by Section 59-10-104 for individuals
321 filing separately is imposed for each taxable year on the state taxable income of each resident
322 estate or trust, except for trusts taxed as corporations.

323 (2) A resident estate or trust shall be allowed the credit provided in Section 59-10-106,
324 relating to an income tax imposed by another state, except that the limitation shall be computed
325 by reference to the taxable income of the estate or trust.

326 (3) The property of the trusts established in Title 53B, Chapter 8a, Higher Education
327 Savings Incentive Program, and Chapter 8b, Higher Education Supplemental Savings Incentive
328 Program, and their income from operations and investments are exempt from all taxation by
329 the state under this chapter.

330 Section 5. Section **75-2-205** is amended to read:

331 **75-2-205. Decedent's nonprobate transfers to others.**

332 Unless excluded under Section 75-2-208, the value of the augmented estate includes the
333 value of the decedent's nonprobate transfers to others, not included under Section 75-2-204, of
334 any of the [~~following~~] types described in this section, in the amount provided respectively for
335 each type of transfer:

336 (1) Property owned or owned in substance by the decedent immediately before death
337 that passed outside probate at the decedent's death. Property included under this category

338 consists of[+] the property described in this Subsection (1).

339 (a) (i) Property over which the decedent alone, immediately before death, held a
340 presently exercisable general power of appointment.

341 (ii) The amount included is the value of the property subject to the power, to the extent
342 the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise,
343 to or for the benefit of any person other than the decedent's estate or surviving spouse.

344 (b) (i) The decedent's fractional interest in property held by the decedent in joint
345 tenancy with the right of survivorship.

346 (ii) The amount included is the value of the decedent's fractional interest, to the extent
347 the fractional interest passed by right of survivorship at the decedent's death to a surviving joint
348 tenant other than the decedent's surviving spouse.

349 (c) (i) The decedent's ownership interest in property or accounts held in POD, TOD, or
350 co-ownership registration with the right of survivorship.

351 (ii) The amount included is the value of the decedent's ownership interest, to the extent
352 the decedent's ownership interest passed at the decedent's death to or for the benefit of any
353 person other than the decedent's estate or surviving spouse.

354 (d) (i) Proceeds of insurance, including accidental death benefits, on the life of the
355 decedent, if the decedent owned the insurance policy immediately before death or if and to the
356 extent the decedent alone and immediately before death held a presently exercisable general
357 power of appointment over the policy or its proceeds.

358 (ii) The amount included:

359 (A) is the value of the proceeds, to the extent they were payable at the decedent's death
360 to or for the benefit of any person other than the decedent's estate or surviving spouse[;
361 ~~however, the amount included]; and~~

362 (B) may not exceed the greater of the cash surrender value of the policy immediately
363 prior to the death of the decedent or the amount of premiums paid on the policy during the
364 decedent's life.

365 (2) Property transferred in any of the [following] forms described in this Subsection (2)
366 by the decedent during marriage:

367 (a) (i) Any irrevocable transfer in which the decedent retained the right to the
368 possession or enjoyment of, or to the income from, the property if and to the extent the

369 decedent's right terminated at or continued beyond the decedent's death.

370 (ii) An irrevocable transfer in trust which includes a restrictive transfer on the
371 decedent's, settlor's, or beneficiary's interest as described in Section 25-6-14.

372 (iii) The amount included is the value of the fraction of the property to which the
373 decedent's right related, to the extent the fraction of the property passed outside probate to or
374 for the benefit of any person other than the decedent's estate or surviving spouse.

375 (b) (i) Any transfer in which the decedent created a power over income or property,
376 exercisable by the decedent alone or in conjunction with any other person, or exercisable by a
377 nonadverse party, to or for the benefit of the decedent, creditors of the decedent, the decedent's
378 estate, or creditors of the decedent's estate.

379 (ii) The amount included with respect to a power over property is the value of the
380 property subject to the power, and the amount included with respect to a power over income is
381 the value of the property that produces or produced the income, to the extent the power in
382 either case was exercisable at the decedent's death to or for the benefit of any person other than
383 the decedent's surviving spouse or to the extent the property passed at the decedent's death, by
384 exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than
385 the decedent's estate or surviving spouse.

386 (iii) If the power is a power over both income and property and [~~the preceding~~
387 sentence] Subsection (2)(b)(ii) produces different amounts, the amount included is the greater
388 amount.

389 (3) Property that passed during marriage and during the two-year period next preceding
390 the decedent's death as a result of a transfer by the decedent if the transfer was of any of the
391 [~~following~~] types[:] described in this Subsection (3).

392 (a) (i) Any property that passed as a result of the termination of a right or interest in, or
393 power over, property that would have been included in the augmented estate under Subsection
394 (1)(a), (b), or (c), or under Subsection (2), if the right, interest, or power had not terminated
395 until the decedent's death.

396 (ii) The amount included is the value of the property that would have been included
397 under [~~those subsections~~] Subsection (1)(a), (b), (c), or Subsection (2) if the property were
398 valued at the time the right, interest, or power terminated, and is included only to the extent the
399 property passed upon termination to or for the benefit of any person other than the decedent or

400 the decedent's estate, spouse, or surviving spouse.

401 (iii) (A) As used in this Subsection (3)(a), "termination," with respect to a right or
402 interest in property, occurs when the right or interest terminated by the terms of the governing
403 instrument or the decedent transferred or relinquished the right or interest, and, with respect to
404 a power over property, occurs when the power terminated by exercise, release, lapse, default, or
405 otherwise~~[-but, with]~~.

406 (B) With respect to a power described in Subsection (1)(a), "termination" occurs when
407 the power terminated by exercise or release, but not otherwise.

408 (b) (i) Any transfer of or relating to an insurance policy on the life of the decedent if
409 the proceeds would have been included in the augmented estate under Subsection (1)(d) had
410 the transfer not occurred.

411 (ii) The amount included:

412 (A) is the value of the insurance proceeds to the extent the proceeds were payable at
413 the decedent's death to or for the benefit of any person other than the decedent's estate or
414 surviving spouse~~[-however, the amount included]~~; and

415 (B) may not exceed the greater of the cash surrender value of the policy immediately
416 prior to the death of the decedent or the amount of premiums paid on the policy during the
417 decedent's life.

418 (c) (i) Any transfer of property, to the extent not otherwise included in the augmented
419 estate, made to or for the benefit of a person other than the decedent's surviving spouse.

420 (ii) The amount included is the value of the transferred property to the extent the
421 aggregate transfers to any one donee in either of the two years exceeded \$10,000.

422 Section 6. Section **75-2-702** is amended to read:

423 **75-2-702. Requirement of survival by 120 hours -- Under probate code or**
424 **governing instrument -- Co-owners -- Exceptions -- Protection of payors, third parties,**
425 **and bona fide purchasers -- Personal liability of recipient.**

426 (1) Except as provided in Subsection (4), an individual who is not established by clear
427 and convincing evidence to have survived an event, including the death of another individual,
428 by 120 hours is considered to have predeceased the event.

429 (2) Except as provided in Subsection (4), for purposes of a provision of a governing
430 instrument that relates to an individual surviving an event, including the death of another

431 individual, an individual who is not established by clear and convincing evidence to have
432 survived the event by 120 hours is considered to have predeceased the event.

433 (3) Except as provided in Subsection (4), if:

434 (a) it is not established by clear and convincing evidence that one of two co-owners
435 with right of survivorship survived the other co-owner by 120 hours, 1/2 of the property passes
436 as if one had survived by 120 hours and 1/2 as if the other had survived by 120 hours; and

437 (b) there are more than two co-owners and it is not established by clear and convincing
438 evidence that at least one of them survived the others by 120 hours, the property passes in the
439 proportion that one bears to the whole number of co-owners. For the purposes of this
440 subsection, "co-owners with right of survivorship" includes joint tenants, tenants by the
441 entirety, and other co-owners of property or accounts held under circumstances that entitles
442 one or more to the whole of the property or account on the death of the other or others.

443 (4) Survival by 120 hours is not required if:

444 (a) the governing instrument contains language dealing explicitly with simultaneous
445 deaths or deaths in a common disaster and that language is operable under the facts of the case;

446 (b) the governing instrument expressly indicates that an individual is not required to
447 survive an event, including the death of another individual, by any specified period or expressly
448 requires the individual to survive the event by a specified period; but survival of the event or
449 the specified period shall be established by clear and convincing evidence;

450 (c) the imposition of a 120-hour requirement of survival would cause a nonvested
451 property interest or a power of appointment to fail to qualify for validity under [~~Subsection~~
452 Section 75-2-1203[(1)(a), (2)(a), or (3)(a)]] or to become invalid under [~~Subsection~~] Section
453 75-2-1203[(1)(b), (2)(b), or (3)(b)]; but survival shall be established by clear and convincing
454 evidence; or

455 (d) the application of a 120-hour requirement of survival to multiple governing
456 instruments would result in an unintended failure or duplication of a disposition; but survival
457 shall be established by clear and convincing evidence.

458 (5) (a) A payor or other third party is not liable for having made a payment or
459 transferred an item of property or any other benefit to a beneficiary designated in a governing
460 instrument who, under this section, is not entitled to the payment or item of property, or for
461 having taken any other action in good faith reliance on the beneficiary's apparent entitlement

462 under the terms of the governing instrument, before the payor or other third party received
463 written notice of a claimed lack of entitlement under this section. A payor or other third party
464 is liable for a payment made or other action taken after the payor or other third party received
465 written notice of a claimed lack of entitlement under this section.

466 (b) Written notice of a claimed lack of entitlement under Subsection (5)(a) shall be
467 mailed to the payor's or other third party's main office or home by registered or certified mail,
468 return receipt requested, or served upon the payor or other third party in the same manner as a
469 summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement
470 under this section, a payor or other third party may pay any amount owed or transfer or deposit
471 any item of property held by it to or with the court having jurisdiction of the probate
472 proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or
473 with the court having jurisdiction of probate proceedings relating to the decedent's estates
474 located in the county of the decedent's residence. The court shall hold the funds or item of
475 property and, upon its determination under this section, shall order disbursement in accordance
476 with the determination. Payments, transfers, or deposits made to or with the court discharge
477 the payor or other third party from all claims for the value of amounts paid to or items of
478 property transferred to or deposited with the court.

479 (6) (a) A person who purchases property for value and without notice, or who receives
480 a payment or other item of property in partial or full satisfaction of a legally enforceable
481 obligation, is neither obligated under this section to return the payment, item of property, or
482 benefit nor is liable under this section for the amount of the payment or the value of the item of
483 property or benefit. But a person who, not for value, receives a payment, item of property, or
484 any other benefit to which the person is not entitled under this section is obligated to return the
485 payment, item of property, or benefit, or is personally liable for the amount of the payment or
486 the value of the item of property or benefit, to the person who is entitled to it under this section.

487 (b) If this section or any part of this section is preempted by federal law with respect to
488 a payment, an item of property, or any other benefit covered by this section, a person who, not
489 for value, receives the payment, item of property, or any other benefit to which the person is
490 not entitled under this section is obligated to return the payment, item of property, or benefit, or
491 is personally liable for the amount of the payment or the value of the item of property or
492 benefit, to the person who would have been entitled to it were this section or part of this section

493 not preempted.

494 Section 7. Section **75-2-1201** is amended to read:

495 **Part 12. Statutory Rule Against Perpetuities**

496 **75-2-1201. Statutory Rule Against Perpetuities.**

497 This part is known as the "[Uniform] Statutory Rule Against Perpetuities."

498 Section 8. Section **75-2-1203** is amended to read:

499 **75-2-1203. Validity of nonvested property interest -- Validity of general power of**
 500 **appointment subject to a condition precedent -- Validity of nongeneral or testamentary**
 501 **power of appointment -- Effect of certain "later-of" type language.**

502 (1) A nonvested property interest is invalid unless[~~:~~] within 1,000 years after the
 503 interest's creation the interest vests or terminates.

504 [~~(a) when the interest is created, it is certain to vest or terminate no later than 21 years~~
 505 ~~after the death of an individual then alive; or]~~

506 [~~(b) the interest either vests or terminates within 90 years after its creation.]~~

507 (2) A general power of appointment not presently exercisable because of a condition
 508 precedent is invalid unless[~~:~~] within 1,000 years after the general power of appointment's
 509 creation the power of appointment is irrevocably exercised or terminates.

510 [~~(a) when the power is created, the condition precedent is certain to be satisfied or~~
 511 ~~becomes impossible to satisfy no later than 21 years after the death of an individual then alive;~~
 512 ~~or]~~

513 [~~(b) the condition precedent either is satisfied or becomes impossible to satisfy within~~
 514 ~~90 years after its creation.]~~

515 (3) A nongeneral power of appointment or a general testamentary power of
 516 appointment is invalid unless[~~:~~] within 1,000 years after its creation the power of appointment
 517 is irrevocably exercised or terminates.

518 [~~(a) when the power is created, it is certain to be irrevocably exercised or otherwise to~~
 519 ~~terminate no later than 21 years after the death of an individual then alive; or]~~

520 [~~(b) the power is irrevocably exercised or otherwise terminates within 90 years after its~~
 521 ~~creation.]~~

522 [~~(4) In determining whether a nonvested property interest or a power of appointment is~~
 523 ~~valid under Subsection (1)(a), (2)(a), or (3)(a), the possibility that a child will be born to an~~

524 ~~individual after the individual's death is disregarded.]~~

525 ~~[(5)]~~ (4) The language in a governing instrument is inoperative to the extent it produces
526 a period of time that exceeds 21 years after the death of the survivor of the specified lives, if, in
527 measuring a period from the creation of a trust or other property arrangement, the language:

- 528 (a) seeks to disallow the vesting or termination of any interest or trust beyond;
529 (b) seeks to postpone the vesting or termination of any interest or trust until; or
530 (c) seeks to operate in effect in any similar fashion upon, the later of:
531 (i) the expiration of a period of time not exceeding 21 years after the death of the
532 survivor of specified lives in being at the creation of the trust or other property arrangement; or
533 (ii) the expiration of a period of time that exceeds or might exceed 21 years after the
534 death of the survivor of lives in being at the creation of the trust or other property arrangement.

535 (5) If a nongeneral power of appointment is exercised to create a new presently
536 exercisable general power of appointment, all property interests subject to that new presently
537 exercisable general power of appointment are invalid unless, within 1,000 years after the
538 creation of the new presently exercisable general power of appointment, the property interests
539 that are subject to the new presently exercisable general power of appointment vest or
540 terminate.

541 (6) If a nongeneral power of appointment is exercised to create a new or successive
542 nongeneral power of appointment or a new or successive testamentary general power of
543 appointment, all property interests subject to the exercise of that new or successive nongeneral
544 or testamentary general power of appointment are invalid unless, within 1,000 years from the
545 time of creation of the original instrument or conveyance creating the original nongeneral
546 power of appointment that is exercised to create a new or successive nongeneral or
547 testamentary general power of appointment, the property interests that are subject to the new or
548 successive nongeneral or testamentary general power of appointment vest or terminate.

549 Section 9. Section **75-2-1205** is amended to read:

550 **75-2-1205. Reformation.**

551 Upon the petition of an interested person, a court shall reform a disposition in the
552 manner that most closely approximates the transferor's manifested plan of distribution and is
553 within the [90] 1,000 years allowed by [~~Subsection~~] Section 75-2-1203[~~(1)(b), (2)(b), or (3)(b)~~]
554 if:

555 (1) a nonvested property interest or a power of appointment becomes invalid under
556 Section 75-2-1203;

557 (2) a class gift is not but might become invalid under Section 75-2-1203 and the time
558 has arrived when the share of any class member is to take effect in possession or enjoyment; or

559 (3) a nonvested property interest that is not validated by ~~[Subsection]~~ Section
560 75-2-1203~~[(1)(a)]~~ can vest but not within ~~[90]~~ 1,000 years after its creation.

561 Section 10. Section **75-2-1206.5** is enacted to read:

562 **75-2-1206.5. Savings provision.**

563 A property interest that becomes invalid pursuant to Section 75-2-1203 upon the
564 expiration of the 1,000-year period shall be distributed as follows:

565 (1) If the property interest is payable to one person, it shall be distributed to that
566 person. If the property interest is payable to more than one person, it shall be distributed to the
567 persons to whom the property interest is then payable:

568 (a) in the shares to which the persons are entitled; or

569 (b) equally among all persons who are entitled to shares if not specified.

570 (2) If the property interest is payable in the discretion of a trustee and is payable to one
571 person, it shall be distributed to that person. If the property interest is payable to more than one
572 person, it shall be distributed to the persons eligible to receive it:

573 (a) in the shares to which the persons are entitled; or

574 (b) equally among all persons who are entitled to shares if not specified.

575 (3) When there is no person then living to whom a property interest may be distributed
576 under Subsection (1) or (2), it shall be payable to one or more organizations described in 26
577 U.S.C. 2055(a) Internal Revenue Code, or successor provisions and in the shares or proportions
578 that the trustee or trustees then acting may determine.

579 Section 11. Section **75-2-1207** is amended to read:

580 **75-2-1207. Prospective application.**

581 (1) (a) Except as extended by Subsection (2), this section applies to a nonvested
582 property interest or a power of appointment that is created on or after ~~[July 1, 1998]~~ May 5,
583 2003.

584 (b) For purposes of this section, a nonvested property interest or a power of
585 appointment created by the exercise of a power of appointment is created when:

586 (i) the power is irrevocably exercised; or ~~[when]~~

587 (ii) a revocable exercise becomes irrevocable.

588 (2) If a nonvested property interest or a power of appointment was created before ~~[July~~
589 ~~1, 1998]~~ May 5, 2003, and is determined in a judicial proceeding, commenced on or after ~~[July~~
590 ~~1, 1998]~~ May 5, 2003, to violate Utah's rule against perpetuities as that rule existed before ~~[July~~
591 ~~1, 1998]~~ May 5, 2003, a court upon the petition of an interested person may reform the
592 disposition:

593 (a) in the manner that most closely approximates the transferor's manifested plan of
594 distribution; and

595 (b) that is within the limits of the rule against perpetuities applicable when the
596 nonvested property interest or power of appointment was created.

597 (3) Section 75-2-1203 applies to a trust instrument or conveyance executed on or after
598 May 5, 2003, if the trust instrument or conveyance creates a contingent power of appointment
599 or nonvested property interest subject to the exercise of a power of appointment that creates a
600 new or successive power of appointment.

601 Section 12. Section **75-2-1208** is amended to read:

602 **75-2-1208. Rule against perpetuities does not apply.**

603 ~~[This title supersedes the rule of the]~~ The common law ~~[known as the]~~ rule against
604 perpetuities does not apply in this state.

605 Section 13. Section **75-7-201** is amended to read:

606 **75-7-201. Court -- Exclusive jurisdiction of trusts.**

607 (1) (a) The court has exclusive jurisdiction of proceedings initiated by interested parties
608 concerning ~~[the internal affairs of trusts. Proceedings]~~ trusts administered in this state under
609 Subsection 59-10-103(1)(c), trusts described in Section 75-7-208 and Subsection 75-7-601(5),
610 and proceedings under Section 25-6-14.

611 (b) Proceedings which may be maintained under this section ~~[are those concerning]~~
612 include:

613 (i) the administration and distribution of trusts~~[-];~~

614 (ii) the declaration of rights~~[-];~~ and

615 (iii) the determination of other matters involving trustees and beneficiaries of trusts.

616 ~~[These include, but are not limited to, proceedings to: (a) Appoint]~~

617 (c) This Subsection (1) applies to proceedings to:
 618 (i) appoint or remove a trustee~~[-(b) Review trustees']~~;
 619 (ii) review a trustee's fees [~~and~~];
 620 (iii) review and settle interim or final accounts~~[-(c) Ascertain]~~;
 621 (iv) ascertain beneficiaries~~[-];~~;
 622 (v) determine any question arising in the administration or distribution of any trust,
 623 including questions of construction of trust instruments~~[-];~~;
 624 (vi) instruct trustees [~~and~~];
 625 (vii) determine the existence or nonexistence of any immunity, power, privilege, duty,
 626 or right~~[-(d) Order]~~; and
 627 (viii) order transfer of administration of the trust to another state upon appropriate
 628 conditions as may be determined by the court or accept transfer of administration of a trust
 629 from another state to this state [~~upon such conditions as may be imposed by the supervising~~
 630 ~~court of the other state, unless the court in this state determines that these conditions are~~
 631 ~~incompatible with its own rules and procedures].~~

632 (2) (a) A proceeding under this section does not result in continuing supervision by the
 633 court over the administration of the trust.

634 (b) The management and distribution of a trust estate, submission of accounts and
 635 reports to beneficiaries, payment of trustee's fees and other obligations of a trust, acceptance
 636 and change of trusteeship, and other aspects of the administration of a trust shall proceed
 637 expeditiously consistent with the terms of the trust, free of judicial intervention and without
 638 order, approval or other action of any court, subject to the jurisdiction of the court as invoked
 639 by interested parties or as otherwise exercised as provided by law.

640 Section 14. Section **75-7-202** is amended to read:

641 **75-7-202. Effect of administration in this state -- Consent to jurisdiction.**

642 [~~(1) By accepting the trusteeship of a trust of which the principal place of~~
 643 ~~administration is in this state, or by moving the principal place of administration of a trust to~~
 644 ~~this state, the]~~

645 (1) The trustee submits personally to the jurisdiction of the courts of this state [~~in any~~
 646 ~~proceeding under Section 75-7-201 as to any matter relating to the trust arising while the~~
 647 ~~principal place of administration is located in this state.] regarding any matter involving the~~

648 trust if:

649 (a) the trustee accepts the trusteeship of a trust administered in this state;

650 (b) the trustee moves any administration to this state; or

651 (c) the trustee is a trustee of a trust described in Subsection 75-7-601(5).

652 (2) To the extent of the beneficial interests in a trust [~~of which the principal place of~~
653 ~~administration is] administered in this state, the beneficiaries of the trust are subject to the
654 jurisdiction of the courts of this state [~~for purposes of proceedings under Section 75-7-201.]~~
655 regarding any matter involving the trust. By accepting a distribution from such a trust, the
656 recipient submits personally to the jurisdiction of the courts of this state regarding any matter
657 involving the trust.~~

658 (3) Unless otherwise designated in the trust instrument, [~~the principal place of~~
659 ~~administration of a trust is the trustee's usual place of business where the records pertaining to~~
660 ~~the trust are kept or at the trustee's residence if the trustee has no such place of business. In the~~
661 ~~case of co-trustees, the principal place of administration, if not otherwise designated in the trust~~
662 ~~instrument, is:] a trust is administered in this state if it meets the requirements of Subsection
663 59-10-103(1)(c).~~

664 [~~(a) the usual place of business of the corporate trustee if there is but one corporate~~
665 ~~co-trustee;]~~

666 [~~(b) the usual place of business or residence of the individual trustee who is a~~
667 ~~professional fiduciary if there is one individual trustee and no corporate co-trustee; or]~~

668 [~~(c) the usual place of business or residence of any of the co-trustees as agreed upon by~~
669 ~~them.]~~

670 (4) By accepting the delegation of a trust function from the trustee of a trust [~~of which~~
671 ~~the principal place of administration is] administered in this state, the agent submits to the
672 jurisdiction of the courts of this state [~~for purposes of proceedings under Section 75-7-201]~~
673 regarding any matter involving the trust.~~

674 Section 15. Section **75-7-204** is amended to read:

675 **75-7-204. Trust proceedings -- Dismissal of matters relating to foreign trusts.**

676 (1) [~~The~~] Except as provided in Subsection (2), the court [will] may not, over the
677 objection of a party, entertain proceedings [under Section 75-7-201] involving a trust which;

678 (a) is under the continuing supervision of a foreign court[;]; or

679 (b) is registered in another state[, or has its principal place of business in another state,
680 except: (a) If].

681 (2) Notwithstanding Subsection (1), a court may entertain a proceeding regarding any
682 matter involving a trust if:

683 (a) all appropriate parties could not be bound by litigation in the courts of the other
684 state[-];

685 (b) [H] the interests of justice would be seriously impaired[-]; or

686 [(2) The court may condition a stay or dismissal of a proceeding on the consent of any
687 party to the jurisdiction of the courts of another state, or the court may grant a continuance or
688 enter any other appropriate order.]

689 (c) the trust is a trust described in Subsection 75-7-601(5), Section 75-7-208, or the
690 proceeding is a proceeding under Section 25-6-14, or a trust is administered in this state as set
691 forth in Subsection 59-10-103(1)(c).

692 Section 16. Section **75-7-208** is enacted to read:

693 **75-7-208. Governing law.**

694 (1) If a trust provides by its terms that it is governed by the laws of this state, the
695 meaning and effect of the terms of the trust are to be governed by the laws of this state if any
696 administration of the trust is done in this state, including without limitation items listed in
697 Subsection (3)(a) or (c).

698 (2) If a trust does not specify a governing state law, the meaning and effect of the terms
699 of the trust are to be governed by the laws of this state if the trust is administered in this state
700 under Subsection 59-10-103(1)(c) or is a trust described in Subsection 75-7-601(5).

701 (3) A provision that the laws of this state govern the validity, construction, and
702 administration of the trust and that the trust is subject to the jurisdiction of this state is valid,
703 effective, and conclusive for the trust if:

704 (a) some or all the trust assets are deposited in this state in:

705 (i) a checking account;

706 (ii) a time deposit account;

707 (iii) a certificate of deposit;

708 (iv) a brokerage account;

709 (v) a trust company fiduciary account; or

710 (vi) account or deposit located in this state that is similar to an account listed in this
711 Subsection (3)(a);
712 (b) the trust is being administered by at least one qualified trustee; and
713 (c) any administration of the trust occurs in this state, including:
714 (i) physically maintaining trust records in this state; and
715 (ii) preparing or arranging for the preparation of an income tax return that must be filed
716 by the trust.
717 (4) The validity, construction, and administration of a trust with a state jurisdiction
718 provision is determined by the laws of this state, including provisions concerning the:
719 (a) capacity of the settlor;
720 (b) powers, obligations, liabilities, and rights of the trustee;
721 (c) appointment and removal of the trustees; and
722 (d) existence and extent of powers, conferred or retained, including:
723 (i) a trustee's discretionary powers;
724 (ii) the powers retained by a beneficiary of the trust; and
725 (iii) the validity of the exercise of a power.
726 Section 17. Section **75-7-601** is enacted to read:
727 **75-7-601. Situs.**
728 (1) (a) For purposes of this section:
729 (i) "Foreign trust" means a trust that is created in another state or country and valid in
730 the state or country in which the trust is created.
731 (ii) "State jurisdiction provision" means a provision that the laws of this state govern
732 the validity, construction, and administration of a trust and the trust is subject to the jurisdiction
733 of this state.
734 (iii) "Qualified trustee" means a person other than a settlor or beneficiary of a trust
735 who:
736 (A) resides in this state, has a true and permanent home in this state, does not have a
737 present intention of moving from this state, and has the intention of returning to this state when
738 away; or
739 (B) an allowable trust company under Title 7, Chapter 5, Trust Business, that exercises
740 trust powers and has a place of business in this state.

741 (b) An individual may be a qualified trustee if the individual's absence from the state is
742 for:

743 (i) brief intervals;

744 (ii) military service;

745 (iii) attendance at an educational or training institution; or

746 (iv) good cause shown.

747 (2) The situs of any trust is this state when a qualified person serves as a trustee, and:

748 (a) the trust satisfies the provisions of Subsection 75-7-208(3)(a); or

749 (b) any administration of the trust occurs in this state.

750 (3) If the situs of a foreign trust is moved to this state as provided in this section, the
751 following provisions are effective and enforceable under the laws of this state:

752 (a) a provision in the trust that restricts the transfer of trust assets in a manner similar
753 to Section 25-6-14;

754 (b) a provision that allows the trust to be perpetual; or

755 (c) a provision that is not expressly prohibited by the law of this state.

756 (4) A foreign trust that moves its situs to this state is valid whether or not the trust
757 complied with the laws of this state at the time of the trust's creation or after the trust's creation.

758 (5) If a qualified trustee ceases to be a qualified trustee, the successor qualified trustee
759 appointed in the trust shall serve, but if none is appointed, the courts of this state shall appoint
760 a qualified trustee.

761 Section 18. Section **75-7-602** is enacted to read:

762 **75-7-602. Challenge to trusts.**

763 (1) (a) Except as provided in Section 25-6-14, a trust or transfer described in
764 Subsection (1)(b) is not void, voidable, liable to be set aside, defective in any fashion, or
765 questionable as to the settlor's capacity, on the grounds that the trust or transfer avoids or
766 defeats a right, claim, or interest conferred by law on a person by reason of a personal or
767 business relationship with the settlor or by way of a marital or similar right.

768 (b) Subsection (1)(a) applies to:

769 (i) a trust that is described in Subsection 75-7-601(5) or otherwise governed by the
770 laws of this state; or

771 (ii) a property transfer to a trust if the trust is described in Subsection 75-7-601(5) or

772 otherwise governed by the laws of this state.

773 (2) If a trust or a property transfer to a trust is voided or set aside under Subsection (1),
774 the trust or property transfer shall be voided or set aside only to the extent necessary to satisfy:

775 (a) the settlor or beneficiary's debt to the creditor or other person at whose instance the
776 trust or property transfer is voided or set aside; and

777 (b) the costs and attorney fees allowed by the court.

778 (3) If a trust or a property transfer to a trust is voided or set aside under Subsection (1)
779 and the court is satisfied that the trustee did not act in bad faith in accepting or administering
780 the property that is the subject of the trust:

781 (a) the trustee has a first and paramount lien against the property that is the subject of
782 the trust in an amount equal to the entire cost, properly incurred by the trustee in a defense of
783 the action or proceedings to void or set aside the trust or the property transfer, including
784 attorney fees;

785 (b) the trust or property transfer that is voided or set aside is subject to the proper fees,
786 costs, preexisting rights, claims, and interest of the trustee and any predecessor trustee if the
787 trustee and predecessor trustee did not act in bad faith; and

788 (c) any beneficiary, including the settlor, may retain a distribution made by exercising a
789 trust power or discretion vested in the trustee of the trust, if the power or discretion was
790 properly exercised before the commencement of the action or proceeding to void or set aside
791 the trust or property transfer.

792 Section 19. Section **75-7-603** is enacted to read:

793 **75-7-603. Nonqualified persons serving as trustee.**

794 (1) If at least one qualified trustee serves as trustee of a trust that contains a valid,
795 conclusive, and effective state jurisdiction provision, as defined in Section 75-7-601, then
796 individuals who do not reside in this state may also serve as trustees even though they are not
797 qualified.

798 (2) Notwithstanding any other provision of law, a trustee who is not a qualified trustee
799 is not considered to be engaging in business in this state solely by reason of serving as trustee
800 of a trust that contains a valid, conclusive, and effective state jurisdiction provision, as defined
801 in Section 75-7-601.

802 Section 20. **Effective date.**

803 (1) Sections 59-10-103 and 59-10-201 take effect for taxable years beginning on or
804 after January 1, 2004.

805 (2) All other provisions in this act take effect on May 5, 2003.

Legislative Review Note
as of 2-13-03 11:24 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

State Impact

The provisions of this bill apply only to new trusts so that the initial impact would be very low and rise slowly. In recent years, taxes from trusts has been in the \$10 to \$15 million range. There is some concern over the possibility of reconstituting existing trusts or portfolio reallocation causing a more rapid impact. Eventual impact is estimated at 4\$ - \$6 million loss in revenue. No reliable estimate of the fiscal impact's timing is made. If the bill creates new trust business in Utah, there would be off-setting revenues.

Individual and Business Impact

Any fiscal impact would be dependent on the types of financial institutions that would be affected by this bill.

Office of the Legislative Fiscal Analyst