

1 **TRUST LAW AMENDMENTS**

2 2003 SECOND SPECIAL SESSION

3 STATE OF UTAH

4 **Sponsor: David Clark**

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**LONG TITLE**

6 **General Description:**

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8 This bill makes changes in legislation passed during the 2003 General Session that  
9 allowed for the administration of trusts created outside Utah by trustees within Utah,  
10 and provided favorable tax provisions.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ allows for the creation of spendthrift trusts in which the settlor of the trust is also a  
14 beneficiary;
- 15 ▶ defines resident trusts as trusts with property created in this state or trusts that are  
16 administered in this state;
- 17 ▶ exempts income of an irrevocable resident trust from state income taxes under  
18 certain circumstances; and
- 19 ▶ allows for the administration of a foreign trust in Utah, and the enforcement of its  
20 provisions regardless of its initial validity under Utah law.

21 **Monies Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 This bill takes effect on December 31, 2003, with the exception of Sections 59-10-114  
25 and 59-10-202, which take effect on January 1, 2004.

26 **Utah Code Sections Affected:**

27 AMENDS:



- 28           **25-6-14 (Effective 12/31/03)**, as enacted by Chapter 301, Laws of Utah 2003
- 29           **59-10-103 (Effective 01/01/04)**, as last amended by Chapter 301, Laws of Utah 2003
- 30           **59-10-114**, as last amended by Chapters 63 and 299, Laws of Utah 2003
- 31           **59-10-201 (Effective 01/01/04)**, as last amended by Chapter 301, Laws of Utah 2003
- 32           **59-10-202**, as last amended by Chapter 345, Laws of Utah 1995
- 33           **75-2-205 (Effective 12/31/03)**, as last amended by Chapter 301, Laws of Utah 2003
- 34           **75-2-1207 (Effective 12/31/03)**, as last amended by Chapter 301, Laws of Utah 2003
- 35           **75-7-201 (Effective 12/31/03)**, as last amended by Chapter 301, Laws of Utah 2003
- 36           **75-7-202 (Effective 12/31/03)**, as last amended by Chapter 301, Laws of Utah 2003
- 37           **75-7-204 (Effective 12/31/03)**, as last amended by Chapter 301, Laws of Utah 2003
- 38           **75-7-208 (Effective 12/31/03)**, as enacted by Chapter 301, Laws of Utah 2003
- 39           **75-7-402**, as last amended by Chapter 179, Laws of Utah 1992

40 ENACTS:

- 41           **75-2-1209**, Utah Code Annotated 1953
- 42           **75-7-405.5**, Utah Code Annotated 1953

43 REPEALS:

- 44           **75-7-601 (Effective 12/31/03)**, as enacted by Chapter 301, Laws of Utah 2003
- 45           **75-7-602 (Effective 12/31/03)**, as enacted by Chapter 301, Laws of Utah 2003
- 46           **75-7-603 (Effective 12/31/03)**, as enacted by Chapter 301, Laws of Utah 2003



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

49           Section 1. Section **25-6-14 (Effective 12/31/03)** is amended to read:

50           **25-6-14 (Effective 12/31/03). Restricting transfers of trust interests.**

51           (1) (a) For trusts created on or after [~~May 5, 2003~~] December 31, 2003, a settlor who in

52 writing irrevocably transfers property in trust to a trust having as trustee a company [as]

53 defined in Subsection 7-5-1(1)(d) who holds some or all of the trust assets in this state in a

54 savings account described in Subsection 7-1-103(29), a certificate of deposit, a brokerage

55 account, a trust company fiduciary account, or account or deposit located in this state that is

56 similar to such an account may provide that the income or principal interest of the settlor as

57 beneficiary of the trust may not be either voluntarily or involuntarily transferred before

58 payment or delivery to the settlor [~~or~~] as beneficiary by the trustee. The provision shall be

59 considered to be a restriction on the transfer of the settlor's beneficial interest in the trust that is  
 60 enforceable under applicable nonbankruptcy law within the meaning of Section 541(c)(2) of  
 61 the Bankruptcy Code or successor provision.

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

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

64 (A) conveyance; or

65 (B) assignment; and

66 (ii) transfers of:

67 (A) personal property; ~~or~~

68 (B) interests in personal property[-];

69 (C) real property; or

70 (D) interests in real property.

71 ~~[(c) This Subsection (1) does not apply to any interest in real property.]~~

72 (2) (a) Except as provided in Subsection (2)(c), if a trust has a restriction as provided in  
 73 Subsection (1)(a), **h [the following] A CREDITOR OR OTHER CLAIMANT OF THE SETTLOR h** may  
 73a not satisfy a claim, or liability on it, in either law or  
 74 equity, out of the ~~[settlor or beneficiary's restricted]~~ settlor's transfer or settlor's beneficial  
 75 interest in the trust h [-] h

76 **h [(i) a creditor of the settlor existing on the date of the transfer;**

77 **—— (ii) a person who becomes a creditor of the settlor after the date of transfer; or**

78 **—— (iii) another person wishing to satisfy a claim out of the [settlor or beneficiary's]**

79 **settlor's beneficial interest in or transfer to the trust.] h**

80 (b) For the purposes of **h [Subsections (2)(a)(i) and (ii)] SUBSECTION (2)(a) h**, a creditor  
 80a includes one holding or  
 81 seeking to enforce a judgment entered by a court or other body having adjudicative authority as  
 82 well as one with a right to payment, whether or not reduced to judgment, liquidated,  
 83 unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable,  
 84 secured, or unsecured.

85 (c) A restriction provided under Subsection (1) does not prevent a creditor or person  
 86 described in Subsection (2)(a) from satisfying a claim or liability out of the ~~[settlor or~~  
 87 ~~beneficiary's restricted]~~ settlor's beneficial interest in or transfer into trust if:

87a **h (i) THE CLAIM IS A JUDGMENT, ORDER, DECREE, OR OTHER LEGALLY ENFORCEABLE**  
 87b **DECISION OR RULING RESULTING FROM A JUDICIAL, ARBITRATION, MEDIATION, OR**  
 87c **ADMINISTRATIVE PROCEEDING COMMENCED PRIOR TO OR WITHIN THREE YEARS AFTER THE**  
 87d **TRUST IS CREATED; h**

88 **h [(ii) h** the settlor's transfer into trust is made ~~[in whole or in part]~~ with actual intent to  
 89 hinder, delay, or defraud ~~[creditors or other persons under Subsection 25-6-5(1)(a)]~~ that

90 creditor;

91 ~~h [(iii)] (iii) h~~ the trust provides that the settlor may revoke or terminate all or part of the trust  
 92 without the consent of a person who has a substantial beneficial interest in the trust and the  
 93 interest would be adversely affected by the exercise of the settlor's power to revoke or  
 94 terminate all or part of the trust;

95 ~~h [(iii)] (iv) h~~ the trust requires that all or a part of the trust's income or principal, or both  
 95a must  
 96 be distributed to the settlor ~~[or]~~ as beneficiary;

96a ~~h (v) THE CLAIM IS FOR A PAYMENT OWED BY A SETTLOR UNDER A CHILD SUPPORT~~  
 96b ~~JUDGMENT OR ORDER; h~~

97 ~~h [(iv) at the time of the transfer or any time thereafter, the settlor [or beneficiary] is in~~  
 98 ~~default by 30 or more days of making a payment due under a child support judgment or order;~~

99 ~~—— (v) (vi) h~~ the transfer renders the settlor ~~[or beneficiary]~~ insolvent ~~[after the transfer];~~

100 ~~h [(vi) at the time of the transfer, or at any time thereafter, the [person] settlor receives~~  
 101 ~~public assistance and recovery is allowed under Title 26, Chapter 19, Medical Benefits~~  
 102 ~~Recovery Act; [or]~~

103 ~~—— (vii) at any time before or after the transfer in trust is made, the settlor is or becomes~~  
 104 ~~subject to a claim or tax of the state, its agencies, or political subdivisions[.];~~

105 ~~—— (viii) if the person seeking to satisfy a claim is a spouse or former spouse to whom the~~  
 106 ~~settlor is indebted on account of an agreement or order for the payment of support or alimony~~  
 107 ~~or for a division or distribution of property; or~~

108 ~~—— (ix) the settlor's transfer is:~~

109 ~~—— (A) inconsistent with any written representation made to a creditor of the settlor,~~  
 110 ~~including a creditor who obtains a judgment, to induce the creditor of the settlor to enter into a~~  
 111 ~~transaction or agreement with the settlor; or~~

112 ~~—— (B) in violation of any written agreement, covenant, or security interest between the~~  
 113 ~~settlor and the creditor;~~

114 ~~—— (d) The applicable statute of limitations for a claim under Subsection (2)(c)(ix) shall be~~  
 115 ~~that which applies to the agreement, covenant, security interest or representation rather than the~~  
 116 ~~provisions of Subsection (4).]~~

116a ~~(vii) THE CLAIM IS FOR RECOVERY OF PUBLIC ASSISTANCE RECEIVED BY THE SETTLOR~~  
 116b ~~ALLOWED UNDER TITLE 26, CHAPTER 19, MEDICAL BENEFITS RECOVERY ACT;~~

116c ~~(viii) THE CLAIM IS A TAX OR OTHER AMOUNT OWED BY THE SETTLOR TO ANY~~  
 116d ~~GOVERNMENTAL ENTITY;~~

116e ~~(ix) THE CLAIM IS BY A SPOUSE OR FORMER SPOUSE OF THE SETTLOR ON ACCOUNT OF~~  
 116f ~~AN AGREEMENT OR ORDER FOR THE PAYMENT OF SUPPORT OR ALIMONY OR FOR A DIVISION OR~~  
 116g ~~DISTRIBUTION OF PROPERTY; h~~

116h h (x)(A) THE SETTLOR TRANSFERRED ASSETS INTO THE TRUST THAT:  
 116i (1) WERE LISTED IN A WRITTEN REPRESENTATION OF THE SETTLOR'S ASSETS GIVEN TO A  
 116j CLAIMANT TO INDUCE THE CLAIMANT TO ENTER INTO A TRANSACTION OR AGREEMENT WITH  
 116k THE SETTLOR, OR  
 116l (2) WERE TRANSFERRED FROM THE SETTLOR'S CONTROL IN BREACH OF ANY WRITTEN  
 116m AGREEMENT, COVENANT, OR SECURITY INTEREST BETWEEN THE SETTLOR AND THE CLAIMANT;  
 116n OR  
 116o (B) WITHOUT LIMITING THE CLAIMANT'S RIGHT TO PURSUE ASSETS NOT HELD BY THE  
 116p TRUST, A CLAIMANT DESCRIBED IN SUBSECTION (x)(A) MAY ONLY FORECLOSE OR EXECUTE  
 116q UPON AN ASSET IN THE TRUST LISTED IN THE WRITTEN REPRESENTATION DESCRIBED IN  
 116r SUBSECTION (x)(A)(1) OR TRANSFERRED IN BREACH OF A WRITTEN AGREEMENT, COVENANT, OR  
 116s SECURITY INTEREST AS PROVIDED IN SUBSECTION (x)(A)(2) TO THE EXTENT OF THE SETTLOR'S  
 116t INTEREST IN THAT ASSET WHEN IT WAS TRANSFERRED TO THE TRUST OR THE EQUIVALENT  
 116u VALUE OF THAT ASSET AT THE TIME OF FORECLOSURE OR EXECUTION IF THE ORIGINAL ASSET  
 116v WAS SOLD OR TRADED BY THE TRUST; OR  
 116w (xi) THE CLAIM IS A JUDGMENT, AWARD, ORDER, SENTENCE, FINE, PENALTY, OR OTHER  
 116x DETERMINATION OF LIABILITY OF THE SETTLOR FOR CONDUCT OF THE SETTLOR CONSTITUTING  
 116y FRAUD, INTENTIONAL INFLICTION OF HARM, OR A CRIME.  
 116z (d) THE STATUTE OF LIMITATIONS FOR ACTIONS TO SATISFY A CLAIM OR LIABILITY OUT  
 116aa OF THE SETTLOR'S BENEFICIAL INTEREST IN OR TRANSFER INTO TRUST UNDER SUBSECTIONS  
 116ab (2)(c)(i), (ii), (v), (vii), (viii), (ix), (x), AND (xi) IS THE STATUTE OF LIMITATIONS APPLICABLE TO THE  
 116ac UNDERLYING ACTION § [SPECIFIED IN THE SUBSECTION.] . § h  
 117 [~~(d)~~] (e) For the purposes of Subsection (2)(c) "revoke or terminate" does not include:  
 118 (i) a power to veto a distribution from the trust;  
 119 (ii) a testamentary special power of appointment or similar power;  
 120 (iii) the right to receive a distribution of income, principal, or both in the discretion of

121 another, including a trustee other than the settlor, [~~or is~~] an interest in a charitable remainder  
 122 unitrust or charitable remainder annuity trust as defined in Internal Revenue Code Section 664  
 123 or successor provision, or [~~is~~] a right to receive principal subject to an ascertainable standard  
 124 set forth in the trust; or

125 (iv) the power to appoint nonsubordinate advisers or trust protectors who can remove  
 126 and appoint trustees, who can direct, consent to or disapprove distributions, or is the power to  
 127 serve as an investment director or appoint an investment director under Subsections  
 128 75-7-302(13) and (14).

129 (3) The satisfaction of a claim under Subsection (2)(c) is limited to that part of the trust  
 130 or transfer to which it applies.

131 ~~h [(4) A cause of action or claim for relief under Subsection (2)(c) is extinguished unless~~  
 132 ~~the action is brought by a person who:~~

133 ~~—— (a) is a creditor of the settlor on the date of the transfer to trust within the later of:~~

134 ~~—— (i) three years after the date the transfer is made; or~~

135 ~~—— (ii) one year after the transfer is or reasonably could have been discovered by the~~  
 136 ~~person; or~~

137 ~~—— (b) becomes a creditor of the settlor after the date of the transfer into trust, within two~~  
 138 ~~years after the date the transfer is made.] h~~

139 ~~h [(5) (4) h~~ (a) If a trust has a restriction as provided under Subsection (1), the restriction  
 140 prevents anyone, including a person listed in Subsection (2)(a), from asserting any cause of  
 141 action or claim for relief against a trustee or anyone involved in the counseling, drafting,  
 142 preparation, execution, or funding of the trust for:

143 (i) conspiracy to commit a fraudulent conveyance;

144 (ii) aiding and abetting a fraudulent conveyance; or

145 (iii) participating in the trust transaction.

146 (b) A person prevented from asserting a cause of action or claim for relief under this  
 147 Subsection ~~h [(5) (4) h~~ may assert a cause of action only against:

148 (i) the trust assets; or

149 (ii) the settlor or beneficiary to the extent allowed under Subsection 25-6-5(1)(a).

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

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

154 (8) The courts of this state shall have exclusive jurisdiction over any action brought  
155 under this section.

156 (9) If a trust or a property transfer to a trust is voided or set aside under Subsection  
157 (2)(c), the trust or property transfer shall be voided or set aside only to the extent necessary to  
158 satisfy:

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

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

162 (10) If a trust or a property transfer to a trust is voided or set aside under Subsection  
163 (2)(c) and the court is satisfied that the trustee did not act in bad faith in accepting or  
164 administering the property that is the subject of the trust:

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

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

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

176 (11) If at least one trustee is a trust company as defined in Subsection 7-5-1(1)(d), then  
177 individuals may also serve as cotrustees.

178 Section 2. Section **59-10-103 (Effective 01/01/04)** is amended to read:

179 **59-10-103 (Effective 01/01/04). Definitions.**

180 (1) As used in this chapter:

181 (a) "Adoption expenses" means:

182 (i) any actual medical and hospital expenses of the mother of the adopted child which

183 are incident to the child's birth;

184 (ii) any welfare agency fees or costs;

185 (iii) any child placement service fees or costs;

186 (iv) any legal fees or costs; or

187 (v) any other fees or costs relating to an adoption.

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

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

190 (ii) is eligible for services under Title 62A, Chapter 5, Services [tø] for People with

191 Disabilities; and

192 (iii) is not enrolled in:

193 (A) an education program for students with disabilities that is authorized under Section

194 53A-15-301; or

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

196 (c) (i) For purposes of Subsection 59-10-114(2)(m), "capital gain transaction" means a

197 transaction that results in a:

198 (A) short-term capital gain; or

199 (B) long-term capital gain.

200 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,

201 the commission may by rule define the term "transaction."

202 (d) "Commercial domicile" means the principal place from which the trade or business

203 of a Utah small business corporation is directed or managed.

204 (e) "Corporation" includes:

205 (i) associations;

206 (ii) joint stock companies; and

207 (iii) insurance companies.

208 (f) "Dependent child with a disability" means an individual 21 years of age or younger

209 who:

210 (i) (A) is diagnosed by a school district representative under rules adopted by the State

211 Board of Education as having a disability classified as:

212 (I) autism;

213 (II) deafness;



- 214 (III) preschool developmental delay;
- 215 (IV) dual sensory impairment;
- 216 (V) hearing impairment;
- 217 (VI) intellectual disability;
- 218 (VII) multidisability;
- 219 (VIII) orthopedic impairment;
- 220 (IX) other health impairment;
- 221 (X) traumatic brain injury; or
- 222 (XI) visual impairment;
- 223 (B) is not receiving residential services from:
  - 224 (I) the Division of Services for People with Disabilities created under Section
  - 225 62A-5-102; or
  - 226 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;
  - 227 and
  - 228 (C) is enrolled in:
    - 229 (I) an education program for students with disabilities that is authorized under Section
    - 230 53A-15-301; or
    - 231 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;
    - 232 or
    - 233 (ii) is identified under guidelines of the Department of Health as qualified for:
      - 234 (A) Early Intervention; or
      - 235 (B) Infant Development Services.
    - 236 (g) "Employer," "employee," and "wages" are defined as provided in Section
    - 237 59-10-401.
  - 238 (h) "Fiduciary" means:
    - 239 (i) a guardian;
    - 240 (ii) a trustee;
    - 241 (iii) an executor;
    - 242 (iv) an administrator;
    - 243 (v) a receiver;
    - 244 (vi) a conservator; or

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

246 (i) "Homesteaded land diminished from the Uintah and Ouray Reservation" means the  
247 homesteaded land that was held to have been diminished from the Uintah and Ouray  
248 Reservation in Hagen v. Utah, 510 U.S. 399 (1994).

249 (j) "Individual" means a natural person and includes aliens and minors.

250 (k) "Irrevocable trust" means a trust in which the settlor may not revoke or terminate  
251 all or part of the trust without the consent of a person who has a substantial beneficial interest  
252 in the trust and the interest would be adversely affected by the exercise of the settlor's power to  
253 revoke or terminate all or part of the trust.

254 (l) For purposes of Subsection 59-10-114(2)(m), "long-term capital gain" is as defined  
255 in Section 1222, Internal Revenue Code.

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

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

259 (o) (i) "Partnership" includes a syndicate, group, pool, joint venture, or other  
260 unincorporated organization:

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

263 (B) which is not, within the meaning of this chapter:

264 (I) a trust;

265 (II) an estate; or

266 (III) a corporation.

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

269 (iii) "Partner" includes a member in a syndicate, group, pool, joint venture, or  
270 organization described in Subsection (1)(o)(i).

271 (p) "Qualifying stock" means stock that is:

272 (i) (A) common; or

273 (B) preferred;

274 (ii) as defined by the commission by rule, originally issued to:

275 (A) a resident or nonresident individual; or

276 (B) a partnership if the resident or nonresident individual making a subtraction from  
277 federal taxable income in accordance with Subsection 59-10-114(2)(m):  
278 (I) was a partner when the stock was issued; and  
279 (II) remains a partner until the last day of the taxable year for which the resident or  
280 nonresident individual makes the subtraction from federal taxable income in accordance with  
281 Subsection 59-10-114(2)(m); and  
282 (iii) issued:  
283 (A) by a Utah small business corporation;  
284 (B) on or after January 1, 2003; and  
285 (C) for:  
286 (I) money; or  
287 (II) other property, except for stock or securities.  
288 (q) (i) "Resident individual" means:  
289 (A) an individual who is domiciled in this state for any period of time during the  
290 taxable year, but only for the duration of the period during which the individual is domiciled in  
291 this state; or  
292 (B) an individual who is not domiciled in this state but:  
293 (I) maintains a permanent place of abode in this state; and  
294 (II) spends in the aggregate 183 or more days of the taxable year in this state.  
295 (ii) For purposes of ~~[this]~~ Subsection (1)(q)(i)(B), a fraction of a calendar day shall be  
296 counted as a whole day.  
297 (r) (i) "Resident estate" or "resident trust" means:  
298 (A) an estate of a decedent who at death was domiciled in this state;  
299 (B) a trust, or a portion of a trust, consisting of property transferred by will of a  
300 decedent who at his death was domiciled in this state; or  
301 (C) a trust administered in this state.  
302 (ii) A trust shall be considered to be administered in this state if:  
303 (A) the place of business where the fiduciary transacts ~~[any]~~ a major portion of its  
304 administration of the trust is in this state; or  
305 (B) the trust states that ~~[it is governed by the laws of this state]~~ this state is the place of  
306 administration, and any administration of the trust is done in this state~~[-or]~~.

307 [~~(C) the trust falls within the provisions of Section 75-7-208.~~]

308 (s) For purposes of Subsection 59-10-114(2)(m), "short-term capital gain" is as defined  
309 in Section 1222, Internal Revenue Code.

310 (t) "Taxable income" and "state taxable income" are defined as provided in Sections  
311 59-10-111, 59-10-112, 59-10-116, 59-10-201.1, and 59-10-204.

312 (u) "Taxpayer" means any individual, estate, or trust or beneficiary of an estate or trust,  
313 whose income is subject in whole or part to the tax imposed by this chapter.

314 (v) "Uintah and Ouray Reservation" means the lands recognized as being included  
315 within the Uintah and Ouray Reservation in:

316 (i) Hagen v. Utah, 510 U.S. 399 (1994); and

317 (ii) Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997).

318 (w) (i) "Utah small business corporation" means a corporation that:

319 (A) is a small business corporation as defined in Section 1244(c)(3), Internal Revenue  
320 Code;

321 (B) except as provided in Subsection (1)(w)(ii), meets the requirements of Section  
322 1244(c)(1)(C), Internal Revenue Code; and

323 (C) has its commercial domicile in this state.

324 (ii) Notwithstanding Subsection (1)(w)(i)(B), the time period described in Section  
325 1244(c)(1)(C) and Section 1244(c)(2), Internal Revenue Code, for determining the source of a  
326 corporation's aggregate gross receipts shall end on the last day of the taxable year for which the  
327 resident or nonresident individual makes a subtraction from federal taxable income in  
328 accordance with Subsection 59-10-114(2)(m).

329 (x) "Ute tribal member" means a person who is enrolled as a member of the Ute Indian  
330 Tribe of the Uintah and Ouray Reservation.

331 (y) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

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

335 (b) Any reference to the Internal Revenue Code or to the laws of the United States shall  
336 mean the Internal Revenue Code or other provisions of the laws of the United States relating to  
337 federal income taxes that are in effect for the taxable year.

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

342 Section 3. Section **59-10-114** is amended to read:

343 **59-10-114. Additions to and subtractions from federal taxable income of an**  
344 **individual.**

345 (1) There shall be added to federal taxable income of a resident or nonresident  
346 individual:

347 (a) the amount of any income tax imposed by this or any predecessor Utah individual  
348 income tax law and the amount of any income tax imposed by the laws of another state, the  
349 District of Columbia, or a possession of the United States, to the extent deducted from federal  
350 adjusted gross income, as defined by Section 62, Internal Revenue Code, in determining federal  
351 taxable income;

352 (b) a lump sum distribution that the taxpayer does not include in adjusted gross income  
353 on the taxpayer's federal individual income tax return for the taxable year;

354 (c) for taxable years beginning on or after January 1, 2002, the amount of a child's  
355 income calculated under Subsection (5) that:

356 (i) a parent elects to report on the parent's federal individual income tax return for the  
357 taxable year; and

358 (ii) the parent does not include in adjusted gross income on the parent's federal  
359 individual income tax return for the taxable year;

360 (d) 25% of the personal exemptions, as defined and calculated in the Internal Revenue  
361 Code;

362 (e) a withdrawal from a medical care savings account and any penalty imposed in the  
363 taxable year if:

364 (i) the taxpayer did not deduct or include the amounts on the taxpayer's federal  
365 individual income tax return pursuant to Section 220, Internal Revenue Code; and

366 (ii) the withdrawal is subject to Subsections 31A-32a-105(1) and (2);

367 (f) the amount refunded to a participant under Title 53B, Chapter 8a, Higher Education  
368 Savings Incentive Program, in the year in which the amount is refunded; [~~and~~]

369 (g) except as provided in Subsection (6), for taxable years beginning on or after  
370 January 1, 2003, for bonds, notes, and other evidences of indebtedness acquired on or after  
371 January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness issued by  
372 one or more of the following entities:

373 (i) a state other than this state;

374 (ii) the District of Columbia;

375 (iii) a political subdivision of a state other than this state; or

376 (iv) an agency or instrumentality of an entity described in Subsections (1)(g)(i) through

377 (iii)[-];

378 (h) any distribution received by a resident beneficiary of a resident trust of income that  
379 was taxed at the trust level for federal tax purposes, but was subtracted from state taxable  
380 income of the trust pursuant to Subsection 59-10-202(2)(c); and

381 (i) any distribution received by a resident beneficiary of a nonresident trust of income  
382 that was taxed at the trust level for federal tax purposes, but was not taxed at the trust level by  
383 any state.

384 (2) There shall be subtracted from federal taxable income of a resident or nonresident  
385 individual:

386 (a) the interest or dividends on obligations or securities of the United States and its  
387 possessions or of any authority, commission, or instrumentality of the United States, to the  
388 extent includable in gross income for federal income tax purposes but exempt from state  
389 income taxes under the laws of the United States, but the amount subtracted under this  
390 Subsection (2)(a) shall be reduced by any interest on indebtedness incurred or continued to  
391 purchase or carry the obligations or securities described in this Subsection (2)(a), and by any  
392 expenses incurred in the production of interest or dividend income described in this Subsection  
393 (2)(a) to the extent that such expenses, including amortizable bond premiums, are deductible in  
394 determining federal taxable income;

395 (b) (i) except as provided in Subsection (2)(b)(ii), 1/2 of the net amount of any income  
396 tax paid or payable to the United States after all allowable credits, as reported on the United  
397 States individual income tax return of the taxpayer for the same taxable year; and

398 (ii) notwithstanding Subsection (2)(b)(i), for taxable years beginning on or after  
399 January 1, 2001, the amount of a credit or an advance refund amount reported on a resident or

400 nonresident individual's United States individual income tax return allowed as a result of the  
401 acceleration of the income tax rate bracket benefit for 2001 in accordance with Section 101,  
402 Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, may not be  
403 used in calculating the amount described in Subsection (2)(b)(i);

404 (c) the amount of adoption expenses for one of the following taxable years as elected  
405 by the resident or nonresident individual:

406 (i) regardless of whether a court issues an order granting the adoption, the taxable year  
407 in which the adoption expenses are:

408 (A) paid; or

409 (B) incurred;

410 (ii) the taxable year in which a court issues an order granting the adoption; or

411 (iii) any year in which the resident or nonresident individual may claim the federal  
412 adoption expenses credit under Section 23, Internal Revenue Code;

413 (d) amounts received by taxpayers under age 65 as retirement income which, for  
414 purposes of this section, means pensions and annuities, paid from an annuity contract  
415 purchased by an employer under a plan which meets the requirements of Section 404(a)(2),  
416 Internal Revenue Code, or purchased by an employee under a plan which meets the  
417 requirements of Section 408, Internal Revenue Code, or paid by the United States, a state, or  
418 political subdivision thereof, or the District of Columbia, to the employee involved or the  
419 surviving spouse;

420 (e) for each taxpayer age 65 or over before the close of the taxable year, a \$7,500  
421 personal retirement exemption;

422 (f) 75% of the amount of the personal exemption, as defined and calculated in the  
423 Internal Revenue Code, for each dependent child with a disability and adult with a disability  
424 who is claimed as a dependent on a taxpayer's return;

425 (g) any amount included in federal taxable income that was received pursuant to any  
426 federal law enacted in 1988 to provide reparation payments, as damages for human suffering,  
427 to United States citizens and resident aliens of Japanese ancestry who were interned during  
428 World War II;

429 (h) subject to the limitations of Subsection (3)(e), amounts a taxpayer pays during the  
430 taxable year for health care insurance, as defined in Title 31A, Chapter 1, General Provisions:

- 431 (i) for:
- 432 (A) the taxpayer;
- 433 (B) the taxpayer's spouse; and
- 434 (C) the taxpayer's dependents; and

435 (ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or  
436 213, Internal Revenue Code, in determining federal taxable income for the taxable year;

437 (i) (i) except as otherwise provided in this Subsection (2)(i), the amount of a  
438 contribution made during the taxable year on behalf of the taxpayer to a medical care savings  
439 account and interest earned on a contribution to a medical care savings account established  
440 pursuant to Title 31A, Chapter 32a, Medical Care Savings Account Act, to the extent the  
441 contribution is accepted by the account administrator as provided in the Medical Care Savings  
442 Account Act, and if the taxpayer did not deduct or include amounts on the taxpayer's federal  
443 individual income tax return pursuant to Section 220, Internal Revenue Code; and

444 (ii) a contribution deductible under this Subsection (2)(i) may not exceed either of the  
445 following:

446 (A) the maximum contribution allowed under the Medical Care Savings Account Act  
447 for the tax year multiplied by two for taxpayers who file a joint return, if neither spouse is  
448 covered by health care insurance as defined in Section 31A-1-301 or self-funded plan that  
449 covers the other spouse, and each spouse has a medical care savings account; or

450 (B) the maximum contribution allowed under the Medical Care Savings Account Act  
451 for the tax year for taxpayers:

- 452 (I) who do not file a joint return; or
- 453 (II) who file a joint return, but do not qualify under Subsection (2)(i)(ii)(A);

454 (j) the amount included in federal taxable income that was derived from money paid by  
455 the taxpayer to the program fund under Title 53B, Chapter 8a, Higher Education Savings  
456 Incentive Program, not to exceed amounts determined under Subsection 53B-8a-106(1)(d), and  
457 investment income earned on participation agreements under Subsection 53B-8a-106(1) that is  
458 included in federal taxable income, but only when the funds are used for qualified higher  
459 education costs of the beneficiary;

460 (k) for taxable years beginning on or after January 1, 2000, any amounts paid for  
461 premiums for long-term care insurance as defined in Section 31A-1-301 to the extent the



462 amounts paid for long-term care insurance were not deducted under Section 213, Internal  
463 Revenue Code, in determining federal taxable income;

464 (l) for taxable years beginning on or after January 1, 2000, if the conditions of  
465 Subsection (4)(a) are met, the amount of income derived by a Ute tribal member:

466 (i) during a time period that the Ute tribal member resides on homesteaded land  
467 diminished from the Uintah and Ouray Reservation; and

468 (ii) from a source within the Uintah and Ouray Reservation; and

469 (m) (i) for taxable years beginning on or after January 1, 2003, the total amount of a  
470 resident or nonresident individual's short-term capital gain or long-term capital gain on a  
471 capital gain transaction:

472 (A) that occurs on or after January 1, 2003;

473 (B) if 70% or more of the gross proceeds of the capital gain transaction are expended:

474 (I) to purchase qualifying stock in a Utah small business corporation; and

475 (II) within a 12-month period after the day on which the capital gain transaction occurs;

476 and

477 (C) if, prior to the purchase of the qualifying stock described in Subsection  
478 (2)(m)(i)(B)(I), the resident or nonresident individual did not have an ownership interest in the  
479 Utah small business corporation that issued the qualifying stock; and

480 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
481 commission may make rules:

482 (A) defining the term "gross proceeds"; and

483 (B) for purposes of Subsection (2)(m)(i)(C), prescribing the circumstances under which  
484 a resident or nonresident individual has an ownership interest in a Utah small business  
485 corporation.

486 (3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted  
487 for taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or  
488 \$4,800, except that:

489 (i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income  
490 earned over \$32,000, the amount of the retirement income exemption that may be subtracted  
491 shall be reduced by 50 cents;

492 (ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income

493 earned over \$16,000, the amount of the retirement income exemption that may be subtracted  
494 shall be reduced by 50 cents; and

495 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over  
496 \$25,000, the amount of the retirement income exemption that may be subtracted shall be  
497 reduced by 50 cents.

498 (b) For purposes of Subsection (2)(e), the amount of the personal retirement exemption  
499 shall be further reduced according to the following schedule:

500 (i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income  
501 earned over \$32,000, the amount of the personal retirement exemption shall be reduced by 50  
502 cents;

503 (ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income  
504 earned over \$16,000, the amount of the personal retirement exemption shall be reduced by 50  
505 cents; and

506 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over  
507 \$25,000, the amount of the personal retirement exemption shall be reduced by 50 cents.

508 (c) For purposes of Subsections (3)(a) and (b), adjusted gross income shall be  
509 calculated by adding to federal adjusted gross income any interest income not otherwise  
510 included in federal adjusted gross income.

511 (d) For purposes of determining ownership of items of retirement income common law  
512 doctrine will be applied in all cases even though some items may have originated from service  
513 or investments in a community property state. Amounts received by the spouse of a living  
514 retiree because of the retiree's having been employed in a community property state are not  
515 deductible as retirement income of such spouse.

516 (e) For purposes of Subsection (2)(h), a subtraction for an amount paid for health care  
517 insurance as defined in Title 31A, Chapter 1, General Provisions, is not allowed:

518 (i) for an amount that is reimbursed or funded in whole or in part by the federal  
519 government, the state, or an agency or instrumentality of the federal government or the state;  
520 and

521 (ii) for a taxpayer who is eligible to participate in a health plan maintained and funded  
522 in whole or in part by the taxpayer's employer or the taxpayer's spouse's employer.

523 (4) (a) A subtraction for an amount described in Subsection (2)(l) is allowed only if:

- 524 (i) the taxpayer is a Ute tribal member; and  
525 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the  
526 requirements of this Subsection (4).
- 527 (b) The agreement described in Subsection (4)(a):  
528 (i) may not:  
529 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;  
530 (B) provide a subtraction under this section greater than or different from the  
531 subtraction described in Subsection (2)(1); or  
532 (C) affect the power of the state to establish rates of taxation; and  
533 (ii) shall:  
534 (A) provide for the implementation of the subtraction described in Subsection (2)(1);  
535 (B) be in writing;  
536 (C) be signed by:  
537 (I) the governor; and  
538 (II) the chair of the Business Committee of the Ute tribe;  
539 (D) be conditioned on obtaining any approval required by federal law; and  
540 (E) state the effective date of the agreement.
- 541 (c) (i) The governor shall report to the commission by no later than February 1 of each  
542 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is  
543 in effect.  
544 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the  
545 subtraction permitted under Subsection (2)(1) is not allowed for taxable years beginning on or  
546 after the January 1 following the termination of the agreement.
- 547 (d) For purposes of Subsection (2)(1) and in accordance with Title 63, Chapter 46a,  
548 Utah Administrative Rulemaking Act, the commission may make rules:  
549 (i) for determining whether income is derived from a source within the Uintah and  
550 Ouray Reservation; and  
551 (ii) that are substantially similar to how federal adjusted gross income derived from  
552 Utah sources is determined under Section 59-10-117.
- 553 (5) (a) For purposes of this Subsection (5), "Form 8814" means:  
554 (i) the federal individual income tax Form 8814, Parents' Election To Report Child's

555 Interest and Dividends; or

556 (ii) (A) for taxable years beginning on or after January 1, 2002, a form designated by  
557 the commission in accordance with Subsection (5)(a)(ii)(B) as being substantially similar to  
558 2000 Form 8814 if for purposes of federal individual income taxes the information contained  
559 on 2000 Form 8814 is reported on a form other than Form 8814; and

560 (B) for purposes of Subsection (5)(a)(ii)(A) and in accordance with Title 63, Chapter  
561 46a, Utah Administrative Rulemaking Act, the commission may make rules designating a form  
562 as being substantially similar to 2000 Form 8814 if for purposes of federal individual income  
563 taxes the information contained on 2000 Form 8814 is reported on a form other than Form  
564 8814.

565 (b) The amount of a child's income added to adjusted gross income under Subsection  
566 (1)(c) is equal to the difference between:

567 (i) the lesser of:

568 (A) the base amount specified on Form 8814; and

569 (B) the sum of the following reported on Form 8814:

570 (I) the child's taxable interest;

571 (II) the child's ordinary dividends; and

572 (III) the child's capital gain distributions; and

573 (ii) the amount not taxed that is specified on Form 8814.

574 (6) Notwithstanding Subsection (1)(g), interest from bonds, notes, and other evidences  
575 of indebtedness issued by an entity described in Subsections (1)(g)(i) through (iv) may not be  
576 added to federal taxable income of a resident or nonresident individual if, as annually  
577 determined by the commission:

578 (a) for an entity described in Subsection (1)(g)(i) or (ii), the entity and all of the  
579 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on  
580 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

581 (b) for an entity described in Subsection (1)(g)(iii) or (iv), the following do not impose  
582 a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of  
583 this state:

584 (i) the entity; or

585 (ii) (A) the state in which the entity is located; or

586 (B) the District of Columbia, if the entity is located within the District of Columbia.

587 Section 4. Section **59-10-201 (Effective 01/01/04)** is amended to read:

588 **59-10-201 (Effective 01/01/04). Taxation of resident trusts and estates.**

589 (1) A tax determined in accordance with the rates prescribed by Section 59-10-104 for  
590 individuals filing separately is imposed for each taxable year on the state taxable income of  
591 each resident estate or trust, except for trusts taxed as corporations.

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

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

599 ~~[(4) (a) Income in an irrevocable trust consisting of interest, capital gains, and  
600 dividends will not be subject to the tax specified in this section if:]~~

601 ~~[(i) the trust first became a resident trust on or after January 1, 2004; and]~~

602 ~~[(ii) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d).]~~

603 ~~[(b) For the purposes of this section, interest, capital gains, and dividends do not  
604 include:]~~

605 ~~[(i) Subchapter S dividends that represent ordinary income;]~~

606 ~~[(ii) noninvestment income from a pass-through entity;]~~

607 ~~[(iii) rents; and]~~

608 ~~[(iv) royalties.]~~

609 Section 5. Section **59-10-202** is amended to read:

610 **59-10-202. Additions to and subtractions from state taxable income of resident or  
611 nonresident estate or trust.**

612 (1) There shall be added to federal taxable income of a resident or nonresident estate or  
613 trust:

614 (a) the amount of any income tax imposed by this or any predecessor Utah individual  
615 income tax law and the amount of any income tax imposed by the laws of another state, the  
616 District of Columbia, or a possession of the United States, to the extent deducted from federal

617 adjusted total income as defined in Section 62, Internal Revenue Code, in determining federal  
618 taxable income;

619 (b) a lump sum distribution allowable as a deduction under Section 402(d)(3) of the  
620 Internal Revenue Code, to the extent deductible under Section 62(a)(8) of the Internal Revenue  
621 Code in determining federal adjusted gross income; and

622 (c) the amount of any gain as defined in Section 644(b) of the Internal Revenue Code,  
623 to the extent deductible under Section 641(c) of the Internal Revenue Code in determining the  
624 federal taxable income of a trust.

625 (2) There shall be subtracted from federal taxable income of a resident or nonresident  
626 estate or trust:

627 (a) the interest or dividends on obligations or securities of the United States and its  
628 possessions or of any authority, commission, or instrumentality of the United States, to the  
629 extent includable in gross income for federal income tax purposes but exempt from state  
630 income taxes under the laws of the United States, but the amount subtracted under this  
631 Subsection (2) shall be reduced by any interest on indebtedness incurred or continued to  
632 purchase or carry the obligations or securities described in this Subsection (2), and by any  
633 expenses incurred in the production of interest or dividend income described in this Subsection  
634 (2) to the extent that such expenses, including amortizable bond premiums, are deductible in  
635 determining federal taxable income; [~~and~~]

636 (b) 1/2 of the net amount of any income tax paid or payable to the United States after  
637 all allowable credits, as per the United States fiduciary income tax return of the taxpayer for the  
638 same taxable year[-]; and

639 (c) income of an irrevocable resident trust if:

640 (i) the income would not be treated as state taxable income derived from Utah sources  
641 under Section 59-10-204 if received by a nonresident trust;

642 (ii) the trust first became a resident trust on or after January 1, 2004;

643 (iii) no assets of the trust were held, at any time after January 1, 2003, in another  
644 resident irrevocable trust created by the same settlor or the spouse of the same settlor;

645 (iv) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d);

646 (v) the amount subtracted under this Subsection (2) is reduced to the extent the settlor  
647 or any other person is treated as an owner of any portion of the trust under Subtitle A,

648 Subchapter J, Subpart E of the Internal Revenue Code; and  
649 (vi) the amount subtracted under this Subsection (2) is reduced by any interest on  
650 indebtedness incurred or continued to purchase or carry the assets generating the income  
651 described in this Subsection (2), and by any expenses incurred in the production of income  
652 described in this Subsection (2), to the extent that those expenses, including amortizable bond  
653 premiums, are deductible in determining federal taxable income.

654 Section 6. Section **75-2-205 (Effective 12/31/03)** is amended to read:

655 **75-2-205 (Effective 12/31/03). Decedent's nonprobate transfers to others.**

656 Unless excluded under Section 75-2-208, the value of the augmented estate includes the  
657 value of the decedent's nonprobate transfers to others, not included under Section 75-2-204, of  
658 any of the types described in this section, in the amount provided respectively for each type of  
659 transfer:

660 (1) Property owned or owned in substance by the decedent immediately before death  
661 that passed outside probate at the decedent's death. Property included under this category  
662 consists of the property described in this Subsection (1).

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

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

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

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

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

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

678 (d) (i) Proceeds of insurance, including accidental death benefits, on the life of the

679 decedent, if the decedent owned the insurance policy immediately before death or if and to the  
680 extent the decedent alone and immediately before death held a presently exercisable general  
681 power of appointment over the policy or its proceeds.

682 (ii) The amount included:

683 (A) is the value of the proceeds, to the extent they were payable at the decedent's death  
684 to or for the benefit of any person other than the decedent's estate or surviving spouse; and

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

688 (2) Property transferred in any of the forms described in this Subsection (2) by the  
689 decedent during marriage:

690 (a) (i) Any irrevocable transfer in which the decedent retained the right to the  
691 possession or enjoyment of, or to the income from, the property if and to the extent the  
692 decedent's right terminated at or continued beyond the decedent's death.

693 (ii) An irrevocable transfer in trust which includes a [~~restrictive~~] restriction on transfer  
694 [~~on~~] of the decedent's [~~settlor's, or beneficiary's interest~~] interest as settlor and beneficiary as  
695 described in Section 25-6-14.

696 (iii) The amount included is the value of the fraction of the property to which the  
697 [~~decedent's~~] right or restriction related, to the extent the fraction of the property passed outside  
698 probate to or for the benefit of any person other than the decedent's estate or surviving spouse.

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

703 (ii) The amount included with respect to a power over property is the value of the  
704 property subject to the power, and the amount included with respect to a power over income is  
705 the value of the property that produces or produced the income, to the extent the power in  
706 either case was exercisable at the decedent's death to or for the benefit of any person other than  
707 the decedent's surviving spouse or to the extent the property passed at the decedent's death, by  
708 exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than  
709 the decedent's estate or surviving spouse.



710 (iii) If the power is a power over both income and property and Subsection (2)(b)(ii)  
711 produces different amounts, the amount included is the greater amount.

712 (3) Property that passed during marriage and during the two-year period next preceding  
713 the decedent's death as a result of a transfer by the decedent if the transfer was of any of the  
714 types described in this Subsection (3).

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

719 (ii) The amount included is the value of the property that would have been included  
720 under Subsection (1)(a), (b), (c), or Subsection (2) if the property were valued at the time the  
721 right, interest, or power terminated, and is included only to the extent the property passed upon  
722 termination to or for the benefit of any person other than the decedent or the decedent's estate,  
723 spouse, or surviving spouse.

724 (iii) (A) As used in this Subsection (3)(a), "termination," with respect to a right or  
725 interest in property, occurs when the right or interest terminated by the terms of the governing  
726 instrument or the decedent transferred or relinquished the right or interest, and, with respect to  
727 a power over property, occurs when the power terminated by exercise, release, lapse, default, or  
728 otherwise.

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

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

734 (ii) The amount included:

735 (A) is the value of the insurance proceeds to the extent the proceeds were payable at  
736 the decedent's death to or for the benefit of any person other than the decedent's estate or  
737 surviving spouse; and

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

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

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

745 Section 7. Section **75-2-1207 (Effective 12/31/03)** is amended to read:

746 **75-2-1207 (Effective 12/31/03). Prospective application.**

747 (1) (a) Except as extended by Subsection (2), this section applies to a nonvested  
748 property interest or a power of appointment that is created on or after [~~May 5, 2003~~] December  
749 31, 2003.

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

752 (i) the power is irrevocably exercised; or

753 (ii) a revocable exercise becomes irrevocable.

754 (2) If a nonvested property interest or a power of appointment was created before [~~May~~  
755 ~~5, 2003~~] December 31, 2003, and is determined in a judicial proceeding, commenced on or  
756 after [~~May 5, 2003~~] December 31, 2003, to violate Utah's rule against perpetuities as that rule  
757 existed before [~~May 5, 2003~~] December 31, 2003, a court upon the petition of an interested  
758 person may reform the disposition:

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

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

763 (3) Section 75-2-1203 applies to a trust instrument or conveyance executed on or after  
764 [~~May 5, 2003~~] December 31, 2003, if the trust instrument or conveyance creates a contingent  
765 power of appointment or nonvested property interest subject to the exercise of a power of  
766 appointment that creates a new or successive power of appointment.

767 Section 8. Section **75-2-1209** is enacted to read:

768 **75-2-1209. Real estate conveyed to a trust under the Statutory Rule Against**  
769 **Perpetuities.**

770 On or after the effective date, when title to real property is granted to the trustee of a  
771 trust governed by Title 75, Chapter 2, Part 12, Uniform Statutory Rule Against Perpetuities, the

772 terms of the trust, provisions regarding the appointment of successor trustees, and the names  
773 and addresses of successor trustees must be disclosed in accordance with Section 75-7-409.

774 Section 9. Section **75-7-201 (Effective 12/31/03)** is amended to read:

775 **75-7-201 (Effective 12/31/03). Court -- Exclusive jurisdiction of trusts.**

776 (1) (a) The court has exclusive jurisdiction of proceedings initiated by interested parties  
777 concerning the internal affairs of trusts [~~administered in this state under Subsection~~  
778 ~~59-10-103(1)(r), trusts described in Section 75-7-208 and Subsections 75-7-601(2) and (3), and~~  
779 ~~proceedings under Section 25-6-14].~~

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

782 (i) the administration and distribution of trusts;

783 (ii) the declaration of rights; and

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

785 (c) [~~This Subsection (1) applies~~] These include, but are not limited to proceedings to:

786 (i) appoint or remove a trustee;

787 (ii) review a trustee's fees;

788 (iii) review and settle interim or final accounts;

789 (iv) ascertain beneficiaries;

790 (v) determine any question arising in the administration or distribution of any trust,  
791 including questions of construction of trust instruments;

792 (vi) instruct trustees;

793 (vii) determine the existence or nonexistence of any immunity, power, privilege, duty,  
794 or right; and

795 (viii) order transfer of administration of the trust to another state upon appropriate  
796 conditions as may be determined by the court or accept transfer of administration of a trust  
797 from another state to this state upon such conditions as may be imposed by the supervising  
798 court of the other state, unless the court in this state determines that these conditions are  
799 incompatible with its own rules and procedures.

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

802 (b) The management and distribution of a trust estate, submission of accounts and

803 reports to beneficiaries, payment of trustee's fees and other obligations of a trust, acceptance  
 804 and change of trusteeship, and other aspects of the administration of a trust shall proceed  
 805 expeditiously consistent with the terms of the trust, free of judicial intervention and without  
 806 order, approval or other action of any court, subject to the jurisdiction of the court as invoked  
 807 by interested parties or as otherwise exercised as provided by law.

808 Section 10. Section **75-7-202 (Effective 12/31/03)** is amended to read:

809 **75-7-202 (Effective 12/31/03). Effect of administration in this state -- Consent to**  
 810 **jurisdiction.**

811 (1) The trustee submits personally to the jurisdiction of the courts of this state  
 812 regarding any matter involving the trust if~~[(a)]~~ the trustee ~~[accepts the trusteeship]~~ acts as  
 813 trustee of a trust administered in this state~~[:]~~.

814 ~~[(b) the trustee moves any administration to this state; or]~~

815 ~~[(c) the trustee is a trustee of a trust described in Subsections 75-7-601(2) and (3).]~~

816 (2) To the extent of the beneficial interests in a trust administered in this state, the  
 817 beneficiaries of the trust are subject to the jurisdiction of the courts of this state regarding any  
 818 matter involving the trust. By accepting a distribution from such a trust, the recipient submits  
 819 personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

820 (3) By accepting the delegation of a trust function from the trustee of a trust  
 821 administered in this state, the agent submits to the jurisdiction of the courts of this state  
 822 regarding any matter involving the trust.

823 ~~[(3)]~~ (4) Unless otherwise designated in the trust instrument, a trust is administered in  
 824 this state if it meets the requirements of Subsection 59-10-103(1)(r)(ii).

825 ~~[(4) By accepting the delegation of a trust function from the trustee of a trust~~  
 826 ~~administered in this state, the agent submits to the jurisdiction of the courts of this state~~  
 827 ~~regarding any matter involving the trust.]~~

828 Section 11. Section **75-7-204 (Effective 12/31/03)** is amended to read:

829 **75-7-204 (Effective 12/31/03). Trust proceedings -- Dismissal of matters relating**  
 830 **to foreign trusts.**

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

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

834 (b) is registered in another state~~[-]; or~~  
 835 (c) has a fiduciary which transacts a major portion of its trust administration in another  
 836 state.

837 (2) Notwithstanding Subsection (1), ~~[a]~~ the court may entertain a proceeding regarding  
 838 any matter involving a trust if:

839 (a) all appropriate parties could not be bound by litigation in the courts of the other  
 840 state; or

841 (b) the interests of justice would be seriously impaired~~[-or]~~.

842 ~~[(c) the trust is a trust described in Subsection 75-7-601(3), Section 75-7-208, or the~~  
 843 ~~proceeding is a proceeding under Section 25-6-14, or a trust is administered in this state as set~~  
 844 ~~forth in Subsection 59-10-103(1)(r):]~~

845 (3) The court may condition a stay or dismissal of a proceeding on the consent of any  
 846 party to the jurisdiction of the courts of another state, or the court may grant a continuance or  
 847 enter any other appropriate order.

848 Section 12. Section **75-7-208 (Effective 12/31/03)** is amended to read:

849 **75-7-208 (Effective 12/31/03). Governing law.**

850 (1) For purposes of this section:

851 (a) "Foreign trust" means a trust that is created in another state or country and valid in  
 852 the state or country in which the trust is created.

853 (b) "State law provision" means a provision that the laws of a named state govern the  
 854 validity, construction, and administration of a trust.

855 ~~[(1)]~~ (2) If a trust ~~[provides by its terms that it is governed by the laws of]~~ has a state  
 856 law provision specifying this state, the ~~[meaning and effect of the terms]~~ validity, construction,  
 857 and administration of the trust are to be governed by the laws of this state if any administration  
 858 of the trust is done in this state~~[-including without limitation items listed in Subsection (3)(a)~~  
 859 ~~or (c)].~~

860 ~~[(2) If]~~ (3) For all trusts created on or after December 31, 2003, if a trust does not  
 861 [specify a governing state law, the meaning and effect of the terms] have a state law provision,  
 862 the validity, construction, and administration of the trust are to be governed by the laws of this  
 863 state if the trust is administered in this state ~~[under Subsection 59-10-103(1)(r) or is a trust~~  
 864 ~~described in Subsections 75-7-601(2) and (3)].~~

865 ~~[(3) A provision that the laws of this state govern the validity, construction, and~~  
866 ~~administration of the trust and that the trust is subject to the jurisdiction of this state is valid,~~  
867 ~~effective, and conclusive for the trust if:]~~

868 ~~[(a) some or all the trust assets are deposited in this state in:]~~

869 ~~[(i) a transaction account described in Subsection 7-1-103(34);]~~

870 ~~[(ii) a savings described in Subsection 7-1-103(29);]~~

871 ~~[(iii) a certificate of deposit;]~~

872 ~~[(iv) a brokerage account;]~~

873 ~~[(v) a trust company fiduciary account; or]~~

874 ~~[(vi) account or deposit located in this state that is similar to an account listed in this~~  
875 ~~Subsection (3)(a);]~~

876 ~~[(b) the trust is being administered by at least one qualified trustee; and]~~

877 ~~[(c) any administration of the trust occurs in this state, including:]~~

878 ~~[(i) physically maintaining trust records in this state; and]~~

879 ~~[(ii) preparing or arranging for the preparation of an income tax return that must be~~  
880 ~~filed by the trust.]~~

881 ~~[(4) The validity, construction, and administration of a trust with a state jurisdiction~~  
882 ~~provision is determined by the laws of this state, including provisions concerning the:]~~

883 ~~[(a) capacity of the settlor;]~~

884 ~~[(b) powers, obligations, liabilities, and rights of the trustee;]~~

885 ~~[(c) appointment and removal of the trustees; and]~~

886 ~~[(d) existence and extent of powers, conferred or retained, including:]~~

887 ~~[(i) a trustee's discretionary powers;]~~

888 ~~[(ii) the powers retained by a beneficiary of the trust; and]~~

889 ~~[(iii) the validity of the exercise of a power.]~~

890 (4) If a foreign trust is administered in this state as provided in this section, the  
891 following provisions are effective and enforceable under the laws of this state:

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

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

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

896           (5) A foreign trust that moves its administration to this state is valid whether or not the  
897 trust complied with the laws of this state at the time of the trust's creation or after the trust's  
898 creation.

899           (6) Unless otherwise designated in the trust instrument, a trust is administered in this  
900 state if it meets the requirements of Subsection 59-10-103(1)(r)(ii).

901           Section 13. Section **75-7-402** is amended to read:

902           **75-7-402. Powers of trustees conferred by this part.**

903           (1) From time of creation of the trust until final distribution of the assets of the trust, a  
904 trustee has the power to perform, without court authorization, every act which a prudent man  
905 would perform for the purposes of the trust, including the powers specified in Subsection (3).

906           (2) In the exercise of his powers, including the powers granted by this part, a trustee  
907 has a duty to act with due regard to his obligation as a fiduciary, according to the standard set  
908 forth in Section 75-7-302.

909           (3) A trustee has the power, subject to Subsections (1) and (2) to:

910           (a) collect, hold, and retain trust assets received from a trustor until, in the judgment of  
911 the trustee, disposition of the assets should be made. The assets may be retained even though  
912 they include an asset in which the trustee is personally interested;

913           (b) receive additions to the assets of the trust;

914           (c) continue or participate in the operation of any business or other enterprise and  
915 effect incorporation, dissolution, or other change in the form of the organization of the business  
916 or enterprise;

917           (d) acquire an undivided interest in a trust asset in which the trustee, in any trust  
918 capacity, holds an undivided interest;

919           (e) invest and reinvest trust assets in bonds, notes, stocks of corporations regardless of  
920 class, real estate or any interest in real estate, interests in trusts or in any other property, or  
921 individual interests in property wherever it is located;

922           (f) invest and reinvest trust assets in securities of an open-end or closed-end type  
923 management investment company or investment trust which is registered under the Investment  
924 Company Act of 1940, as amended, including securities of any investment company or  
925 investment trust that is affiliated with or a subsidiary of the trustee, or to which the trustee or  
926 its affiliate or subsidiary provides a service such as that of an investment advisor, custodian,

927 transfer agent, registrar, sponsor, distributor, manager, or otherwise, for which it receives  
928 reasonable remuneration for such service;

929 (g) deposit or invest trust funds in a bank, including a bank operated by the trustee;

930 (h) (i) acquire or dispose of an asset, for cash or on credit, at public or private sale;

931 (ii) manage, develop, improve, exchange, partition, change the character of, or abandon  
932 a trust asset or any interest therein; and

933 (iii) encumber, mortgage, or pledge a trust asset for a term within or extending beyond  
934 the term of the trust, in connection with the exercise of any power vested in the trustee;

935 (i) make ordinary or extraordinary repairs or alterations in buildings or other structures,  
936 or demolish any improvements, raze existing or erect new party walls or buildings;

937 (j) (i) subdivide, develop, or dedicate land to public use;

938 (ii) make or obtain the vacation of plats and adjust boundaries;

939 (iii) adjust differences in valuation on exchange or partition by giving or receiving  
940 consideration; or

941 (iv) dedicate easements to public use without consideration;

942 (k) enter, for any purpose into a lease as lessor or lessee with or without an option to  
943 purchase or renew for a term within or extending beyond the term of the trust;

944 (l) enter into a lease or arrangement for exploration and removal of minerals or other  
945 natural resources or enter into a pooling or unitization agreement;

946 (m) grant an option involving disposition of a trust asset, or take an option for the  
947 acquisition of any asset;

948 (n) vote a security, in person or by general or limited proxy;

949 (o) pay calls, assessments, and any other sums chargeable or accruing against or on  
950 account of securities;

951 (p) sell or exercise stock subscription or conversion rights, consent, directly or through  
952 a committee or other agent, to the reorganization, consolidation, merger, dissolution, or  
953 liquidation of a corporation or other business enterprise;

954 (q) hold property in the name of a nominee or in other form without disclosure of the  
955 trust so that title to the property may pass by delivery, but the trustee is liable for any act of the  
956 nominee in connection with the property so held;

957 (r) insure the assets of the trust against damage or loss and the trustee against liability



958 with respect to third persons;

959 (s) (i) borrow money to be repaid from trust assets or otherwise;

960 (ii) advance money to be repaid from trust assets or otherwise; or

961 (iii) advance money for the protection of the trust, and for all expenses, losses, and  
962 liabilities sustained in the administration of the trust or because of the holding or ownership of  
963 any trust assets, for which advances with any interest the trustee has a lien on the trust assets as  
964 against the beneficiary;

965 (t) (i) pay or contest any claim;

966 (ii) settle a claim by or against the trust by compromise, arbitration, or otherwise; and

967 (iii) release, in whole or in part, any claim belonging to the trust to the extent that the  
968 claim is uncollectible;

969 (u) pay taxes, assessments, compensation of the trustee, and other expenses incurred in  
970 the collection, care, administration, and protection of the trust;

971 (v) allocate items of income or expense to either trust income or principal, as provided  
972 by law, including creation of reserves out of income for depreciation, obsolescence,  
973 amortization, or for depletion in mineral or timber properties;

974 (w) notwithstanding the provisions of Section 75-5-102, pay any sum distributable to a  
975 beneficiary under legal disability, without liability to the trustee, by paying the sum to the  
976 beneficiary or by paying the sum for the use of the beneficiary either to a legal representative  
977 appointed by the court, or if none, to a relative;

978 (x) effect distribution of property and money in divided or undivided interests and  
979 adjust resulting differences in valuation;

980 (y) (i) employ persons, including attorneys, auditors, investment advisers, or agents,  
981 even if they are associated with the trustee, to advise or assist the trustee in the performance of  
982 his administrative duties;

983 (ii) act without independent investigation upon their recommendations; and

984 (iii) instead of acting personally, employ one or more agents to perform any act of  
985 administration, whether or not discretionary;

986 (z) prosecute or defend actions, claims, or proceedings for the protection of trust assets  
987 and of the trustee in the performance of his duties; and

988 (aa) execute and deliver all instruments which will accomplish or facilitate the exercise

989 of the powers vested in the trustee.

990 (4) If a governing instrument or order requires or authorizes investment in United  
991 States government obligations, a trustee may invest in those obligations, either directly or in the  
992 form of securities or other interests, in any open-end or closed-end management type  
993 investment company or investment trust registered under the provisions of the Investment  
994 Company Act of 1940, 15 U.S.C. Sections 80a-1 through 80a-64 if:

995 (a) the portfolio of the investment company or investment trust is limited to United  
996 States government obligations, and repurchase agreements are fully collateralized by United  
997 States government obligations; and

998 (b) the investment company or investment trust takes delivery of the collateral for any  
999 repurchase agreement either directly or through an authorized custodian.

1000 (5) The trustee may exercise the powers set forth in this section and in the trust either  
1001 in the name of the trust or in the name of the trustee as trustee, specifically including the right  
1002 to take title to encumber or convey assets, including real property, in the name of the trust.  
1003 This Subsection (5) applies to a trustee's exercise of trust powers both prior to and after the  
1004 effective date of this Subsection (5). After the effective date of this Subsection (5), for  
1005 recording purposes, the name and address of at least one trustee must be included on all  
1006 recorded documents affecting real property to which the trust is a party in interest.

1007 (6) (a) If the fair market value of a trust is less than \$25,000, the trustee may terminate  
1008 the trust by the following procedure:

1009 (i) the trustee shall determine a plan of distribution that agrees, as nearly as possible,  
1010 with the trust's dispositive plan;

1011 (ii) the trustee shall give notice to all interested persons of its intent to distribute the  
1012 assets in accordance with the plan unless an interested person objects within 20 days after the  
1013 date of the notice;

1014 (iii) if no objection is received within 20 days after the date of the notice, the trustee  
1015 shall proceed to distribute the trust assets in accordance with the plan;

1016 (iv) if the trustee receives a written objection to the plan within 20 days of the date of  
1017 the notice, the trustee shall not distribute the assets of the trust, but may then petition the court  
1018 for an order authorizing distribution in accordance with the plan. The court shall have plenary  
1019 authority to approve, modify, or reject the trustee's petition.

1020 (b) The existence of a spendthrift or similar provision shall not effect the trustee's  
 1021 powers under this Subsection (6) unless the trust instrument specifically provides that the  
 1022 trustee shall not have the power to terminate the trust.

1023 (7) Any real property titled in a trust which has a restriction on transfer described in  
 1024 Section 25-6-14 shall include in the title the words "asset protection trust".

1025 Section 14. Section **75-7-405.5** is enacted to read:

1026 **75-7-405.5. Vacancy in trusteeship -- Appointment of successor.**

1027 (1) A vacancy in a trusteeship occurs if:

1028 (a) a person designated as trustee rejects the trusteeship;

1029 (b) a person designated as trustee cannot be identified or does not exist;

1030 (c) a trustee resigns;

1031 (d) a trustee is disqualified or removed;

1032 (e) a trustee dies; or

1033 (f) a guardian or conservator is appointed for an individual serving as trustee.

1034 (2) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be  
 1035 filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

1036 (3) A vacancy in a trusteeship of a noncharitable trust that is required to be filled must  
 1037 be filled in the following order of priority:

1038 (a) by a person designated in the terms of the trust to act as successor trustee;

1039 (b) by a person appointed by unanimous agreement of the **h [qualified] h** beneficiaries; or

1040 (c) by a person appointed by the court.

1041 (4) A vacancy in a trusteeship of a charitable trust that is required to be filled must be  
 1042 filled in the following order of priority:

1043 (a) by a person designated in the terms of the trust to act as successor trustee;

1044 (b) by a person selected by the charitable organizations expressly designated to receive  
 1045 distributions under the terms of the trust if the attorney general concurs in the selection; or

1046 (c) by a person appointed by the court.

1047 (5) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court  
 1048 may appoint an additional trustee or special fiduciary whenever the court considers the  
 1049 appointment necessary for the administration of the trust.

1050 Section 15. **Repealer.**

1051 This bill repeals:  
1052 Section **75-7-601 (Effective 12/31/03), Situs.**  
1053 Section **75-7-602 (Effective 12/31/03), Challenge to trusts.**  
1054 Section **75-7-603 (Effective 12/31/03), Nonqualified persons serving as trustee.**  
1055 Section 16. **Effective date.**  
1056 If approved by two-thirds of all the members elected to each house, this bill takes effect  
1057 on December 31, 2003, except Sections 59-10-114 and 59-10-202 take effect on January 1,  
1058 2004.

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**Legislative Review Note**  
**as of 10-20-03 12:48 PM**

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

**Office of Legislative Research and General Counsel**

**Interim Committee Note**  
**as of 11-14-03 9:11 AM**

The Judiciary Interim Committee recommended this bill.