

1 **UNIFORM TRUST CODE**

2 2004 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Lyle W. Hillyard**

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**LONG TITLE**

6 **General Description:**

7 This bill makes substantial changes in Title 75, Chapter 7, Trust Administration to  
8 enact the Utah Uniform Trust Code.

9 **Highlighted Provisions:**

10 This bill:

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- 12 ▶ creates the Utah Uniform Trust Code;
  - 13 ▶ provides a governing law for the administration of trusts in concert with other states  
14 who have adopted the uniform law; and
  - 15 ▶ provides some new terms and definitions.

16 **Monies Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **7-5-7**, as last amended by Chapter 196, Laws of Utah 1994

23 **7-5-10**, as last amended by Chapter 6, Laws of Utah 1982

24 **7-5-14**, as last amended by Chapter 267, Laws of Utah 1989

25 **25-6-14**, as last amended by Chapter 3, Laws of Utah 2003, Second Special Session

26 **49-11-303**, as renumbered and amended by Chapter 250, Laws of Utah 2002

27 **75-1-201**, as last amended by Chapter 49, Laws of Utah 2003



- 28           **75-1-403**, as last amended by Chapter 116, Laws of Utah 2000
- 29           **75-2-1209**, as enacted by Chapter 3, Laws of Utah 2003, Second Special Session
- 30           **75-3-703**, as enacted by Chapter 150, Laws of Utah 1975
- 31           **75-3-913**, as enacted by Chapter 150, Laws of Utah 1975
- 32           **75-5-417**, as last amended by Chapter 119, Laws of Utah 1995

33 ENACTS:

- 34           **75-7-102**, Utah Code Annotated 1953
- 35           **75-7-103**, Utah Code Annotated 1953
- 36           **75-7-104**, Utah Code Annotated 1953
- 37           **75-7-105**, Utah Code Annotated 1953
- 38           **75-7-106**, Utah Code Annotated 1953
- 39           **75-7-108**, Utah Code Annotated 1953
- 40           **75-7-109**, Utah Code Annotated 1953
- 41           **75-7-110**, Utah Code Annotated 1953
- 42           **75-7-111**, Utah Code Annotated 1953
- 43           **75-7-112**, Utah Code Annotated 1953
- 44           **75-7-113**, Utah Code Annotated 1953
- 45           **75-7-412**, Utah Code Annotated 1953
- 46           **75-7-413**, Utah Code Annotated 1953
- 47           **75-7-414**, Utah Code Annotated 1953
- 48           **75-7-415**, Utah Code Annotated 1953
- 49           **75-7-416**, Utah Code Annotated 1953
- 50           **75-7-417**, Utah Code Annotated 1953
- 51           **75-7-502**, Utah Code Annotated 1953
- 52           **75-7-503**, Utah Code Annotated 1953
- 53           **75-7-504**, Utah Code Annotated 1953
- 54           **75-7-505**, Utah Code Annotated 1953
- 55           **75-7-506**, Utah Code Annotated 1953
- 56           **75-7-507**, Utah Code Annotated 1953
- 57           **75-7-604**, Utah Code Annotated 1953
- 58           **75-7-605**, Utah Code Annotated 1953

- 59           **75-7-606**, Utah Code Annotated 1953
- 60           **75-7-607**, Utah Code Annotated 1953
- 61           **75-7-701**, Utah Code Annotated 1953
- 62           **75-7-702**, Utah Code Annotated 1953
- 63           **75-7-703**, Utah Code Annotated 1953
- 64           **75-7-704**, Utah Code Annotated 1953
- 65           **75-7-705**, Utah Code Annotated 1953
- 66           **75-7-706**, Utah Code Annotated 1953
- 67           **75-7-707**, Utah Code Annotated 1953
- 68           **75-7-708**, Utah Code Annotated 1953
- 69           **75-7-709**, Utah Code Annotated 1953
- 70           **75-7-801**, Utah Code Annotated 1953
- 71           **75-7-802**, Utah Code Annotated 1953
- 72           **75-7-803**, Utah Code Annotated 1953
- 73           **75-7-804**, Utah Code Annotated 1953
- 74           **75-7-805**, Utah Code Annotated 1953
- 75           **75-7-806**, Utah Code Annotated 1953
- 76           **75-7-807**, Utah Code Annotated 1953
- 77           **75-7-808**, Utah Code Annotated 1953
- 78           **75-7-809**, Utah Code Annotated 1953
- 79           **75-7-810**, Utah Code Annotated 1953
- 80           **75-7-811**, Utah Code Annotated 1953
- 81           **75-7-812**, Utah Code Annotated 1953
- 82           **75-7-813**, Utah Code Annotated 1953
- 83           **75-7-814**, Utah Code Annotated 1953
- 84           **75-7-815**, Utah Code Annotated 1953
- 85           **75-7-816**, Utah Code Annotated 1953
- 86           **75-7-817**, Utah Code Annotated 1953
- 87           **75-7-901**, Utah Code Annotated 1953
- 88           **75-7-902**, Utah Code Annotated 1953
- 89           **75-7-903**, Utah Code Annotated 1953

- 90            **75-7-904**, Utah Code Annotated 1953
- 91            **75-7-905**, Utah Code Annotated 1953
- 92            **75-7-906**, Utah Code Annotated 1953
- 93            **75-7-907**, Utah Code Annotated 1953
- 94            **75-7-1001**, Utah Code Annotated 1953
- 95            **75-7-1002**, Utah Code Annotated 1953
- 96            **75-7-1003**, Utah Code Annotated 1953
- 97            **75-7-1004**, Utah Code Annotated 1953
- 98            **75-7-1005**, Utah Code Annotated 1953
- 99            **75-7-1006**, Utah Code Annotated 1953
- 100           **75-7-1007**, Utah Code Annotated 1953
- 101           **75-7-1008**, Utah Code Annotated 1953
- 102           **75-7-1009**, Utah Code Annotated 1953
- 103           **75-7-1010**, Utah Code Annotated 1953
- 104           **75-7-1011**, Utah Code Annotated 1953
- 105           **75-7-1012**, Utah Code Annotated 1953
- 106           **75-7-1013**, Utah Code Annotated 1953
- 107           **75-7-1101**, Utah Code Annotated 1953
- 108           **75-7-1102**, Utah Code Annotated 1953
- 109           **75-7-1103**, Utah Code Annotated 1953

110 **REPEALS AND REENACTS:**

- 111           **75-7-101**, as enacted by Chapter 150, Laws of Utah 1975
- 112           **75-7-203**, as last amended by Chapter 194, Laws of Utah 1977
- 113           **75-7-205**, as enacted by Chapter 150, Laws of Utah 1975
- 114           **75-7-301**, as enacted by Chapter 150, Laws of Utah 1975
- 115           **75-7-302**, as last amended by Chapter 93, Laws of Utah 2002
- 116           **75-7-303**, as last amended by Chapter 179, Laws of Utah 1992
- 117           **75-7-304**, as enacted by Chapter 150, Laws of Utah 1975
- 118           **75-7-305**, as enacted by Chapter 150, Laws of Utah 1975
- 119           **75-7-401**, as last amended by Chapter 39, Laws of Utah 1998
- 120           **75-7-402**, as last amended by Chapter 3, Laws of Utah 2003, Second Special Session

- 121 **75-7-403**, as last amended by Chapter 93, Laws of Utah 2002
- 122 **75-7-404**, as last amended by Chapter 133, Laws of Utah 1991
- 123 **75-7-405**, as enacted by Chapter 150, Laws of Utah 1975
- 124 **75-7-406**, as enacted by Chapter 150, Laws of Utah 1975
- 125 **75-7-407**, as enacted by Chapter 150, Laws of Utah 1975
- 126 **75-7-408**, as enacted by Chapter 150, Laws of Utah 1975
- 127 **75-7-409**, as last amended by Chapter 320, Laws of Utah 2000
- 128 **75-7-410**, as enacted by Chapter 196, Laws of Utah 1999
- 129 **75-7-411**, as enacted by Chapter 196, Laws of Utah 1999
- 130 **75-7-501**, as enacted by Chapter 54, Laws of Utah 1982

131 RENUMBERS AND AMENDS:

- 132 **75-7-107**, (Renumbered from 75-7-208, as last amended by Chapter 3, Laws of Utah
- 133 2003, Second Special Session)
- 134 **75-7-508**, (Renumbered from 75-7-308, as enacted by Chapter 227, Laws of Utah 2002)
- 135 **75-7-509**, (Renumbered from 75-7-309, as enacted by Chapter 227, Laws of Utah 2002)
- 136 **75-7-510**, (Renumbered from 75-7-310, as enacted by Chapter 227, Laws of Utah 2002)
- 137 **75-7-511**, (Renumbered from 75-7-311, as enacted by Chapter 227, Laws of Utah 2002)
- 138 **75-7-512**, (Renumbered from 75-7-312, as enacted by Chapter 227, Laws of Utah 2002)
- 139 **75-7-513**, (Renumbered from 75-7-313, as enacted by Chapter 227, Laws of Utah 2002)
- 140 **75-7-514**, (Renumbered from 75-7-314, as enacted by Chapter 227, Laws of Utah 2002)
- 141 **75-7-515**, (Renumbered from 75-7-315, as enacted by Chapter 227, Laws of Utah 2002)
- 142 **75-7-516**, (Renumbered from 75-7-316, as enacted by Chapter 227, Laws of Utah 2002)
- 143 **75-7-517**, (Renumbered from 75-7-317, as enacted by Chapter 227, Laws of Utah 2002)
- 144 **75-7-518**, (Renumbered from 75-7-318, as enacted by Chapter 227, Laws of Utah 2002)
- 145 **75-7-519**, (Renumbered from 75-7-319, as enacted by Chapter 227, Laws of Utah 2002)

146 REPEALS:

- 147 **75-7-206**, as enacted by Chapter 150, Laws of Utah 1975
- 148 **75-7-207**, as enacted by Chapter 150, Laws of Utah 1975
- 149 **75-7-306**, as last amended by Chapter 179, Laws of Utah 1992
- 150 **75-7-307**, as last amended by Chapter 30, Laws of Utah 1992
- 151 **75-7-405.5**, as enacted by Chapter 3, Laws of Utah 2003, Second Special Session

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

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

**7-5-7. Management and investment of trust funds.**

(1) Funds received or held by any trust company as agent or fiduciary, whether for investment or distribution, shall be invested or distributed as soon as practicable as authorized under the instrument creating the account and shall not be held uninvested any longer than is reasonably necessary.

(2) If the instrument creating an agency or fiduciary account contains provisions authorizing the trust company, its officers, or its directors to exercise their discretion in the matter of investments, funds held in the trust account under that instrument may be invested only in those classes of securities which are approved by the directors of the trust company or a committee of directors appointed for that purpose. If a trust company acts in any agency or fiduciary capacity under appointment by a court of competent jurisdiction, it shall make and account for all investments according to the provisions of Title 75, Utah Uniform Probate Code, unless the underlying instrument provides otherwise.

(3) (a) Funds received or held as agent or fiduciary by any trust company which is also a depository institution, whether for investment or distribution, may be deposited in the commercial department or savings department of that trust company to the credit of its trust department. Whenever the funds so deposited in a fiduciary or managing agency account exceed the amount of federal deposit insurance applicable to that account, the trust company shall deliver to the trust department or put under its control collateral security as outlined in Regulation 9.10 of the Comptroller of the Currency or in Regulation 550.8 of the Office of Thrift Supervision, as amended. However, if the instrument creating such a fiduciary or managing agency account expressly provides that funds may be deposited to the commercial or savings department of the trust company, then the funds may be so deposited without setting aside collateral securities as required under this section and the deposits in the event of insolvency of any such trust company shall be treated as other general deposits are treated. A trust company which deposits trust funds in its commercial or savings department shall be liable for interest on the deposits only at the rates, if any, paid by the trust company on deposits of like kind not made to the credit of its trust department.

183 (b) Funds received or held as agent or fiduciary by a trust company, whether for  
184 investment or distribution, may be deposited in an affiliated depository institution. Whenever  
185 the funds so deposited in a fiduciary or managing agency account exceed the amount of federal  
186 deposit insurance applicable to that account, the depository institution shall deliver to the trust  
187 company or put under its control collateral security as outlined in Regulation 9.10 of the  
188 Comptroller of the Currency or in Regulation 550.8 of the Office of Thrift Supervision as  
189 amended. However, if the instrument creating the fiduciary or managing agency account  
190 expressly permits funds to be deposited in the affiliated depository institution, the funds may be  
191 so deposited without setting aside collateral securities as required under this section and  
192 deposits in the event of insolvency of the depository institution shall be treated as other general  
193 deposits are treated. A trust company which deposits trust funds in an affiliated depository  
194 institution is liable for interest on the deposits only at the rates, if any, paid by the depository  
195 institution on deposits of like kind.

196 (4) In carrying out all aspects of its trust business, a trust company shall have all the  
197 powers, privileges, and duties as set forth in [~~Section 75-7-402~~] Sections 75-7-813 and  
198 75-7-814 with respect to trustees, whether or not the trust company is acting as a trustee as  
199 defined in Title 75.

200 (5) Nothing in this section may alter, amend, or limit the powers of a trust company  
201 acting in a fiduciary capacity as specified in the particular instrument or order creating the  
202 fiduciary relationship.

203 Section 2. Section **7-5-10** is amended to read:

204 **7-5-10. Lending trust funds to trust company, officer, director, or employee as**  
205 **felony.**

206 Unless expressly permitted in the instrument creating a trust account or by a person  
207 authorized to give that permission or by a court order as permitted in Section [~~75-7-404~~]  
208 75-7-802, no trust company shall lend to itself or to any officer or director or employee of the  
209 trust company any funds held in any trust account under the powers conferred in this chapter.  
210 Any officer, director or employee making such a loan, or to whom such a loan is made, is  
211 guilty of a third degree felony.

212 Section 3. Section **7-5-14** is amended to read:

213 **7-5-14. Mergers, consolidations, acquisitions, transfers, or reorganizations**

214 **involving entities engaged in trust business -- Succession of rights and duties -- Petition**  
215 **for appointment of another trust company.**

216 (1) Notwithstanding any provision of law to the contrary, a trust company, depository  
217 institution, or other corporation authorized under this chapter or under the laws of the United  
218 States to engage in the trust business in this state may, subject to the provisions of Sections  
219 7-1-702, 7-1-704, and 7-1-705:

220 (a) (i) merge or consolidate with, (ii) acquire control of, acquire all or a portion of the  
221 assets and trust business of, or assume all or any portion of the liabilities of, or (iii) transfer  
222 control to, transfer all or a portion of its assets and trust business to, or transfer all or a portion  
223 of its liabilities to, any other trust company, depository institution, or other corporation, which  
224 institution is authorized under this chapter or under the laws of the United States to engage in  
225 the trust business in this state; or

226 (b) reorganize.

227 (2) Upon final approval by the commissioner of any merger, consolidation, acquisition  
228 of control, acquisition of assets, assumption of liabilities, or reorganization, and upon written  
229 notice of this approval to all persons entitled to and then receiving trust accountings from the  
230 transferring or reorganizing trust company, the resulting or acquiring trust company shall,  
231 without court proceedings or a court order, succeed to all rights, privileges, duties, obligations,  
232 and undertakings under all trust instruments, agency and fiduciary relationships and  
233 arrangements, and other trust business transferred and acquired in the manner authorized by  
234 this section. However, except as provided otherwise in the relevant trust instrument, any  
235 interested person may, not more than 30 days after receipt of written notice of the merger,  
236 consolidation, acquisition, transfer, or reorganization, petition any court of competent  
237 jurisdiction to appoint another or succeeding trust company with respect to any agency or  
238 fiduciary relationship affecting that interested person, and until another or succeeding trust  
239 company is so appointed, the acquiring or resulting trust company is entitled to act as agent or  
240 fiduciary with respect to the agency or fiduciary relationship. ~~[No merger, consolidation,  
241 acquisition, assumption, or reorganization pursuant to this section shall be deemed to be a  
242 transfer which is prohibited by Section 75-7-403.]~~

243 (3) As used in this section, a "reorganization" includes, but is not limited to:

244 (a) the creation by a trust company of a subsidiary corporation which is

245 [~~wholly-owned~~] wholly owned by that trust company and which is organized solely for the  
246 purpose of conducting all or any portion of the trust business of that trust company; or

247 (b) any merger or other combination between a trust company and:

248 (i) a [~~wholly-owned~~] wholly owned trust company subsidiary of that trust company; or

249 (ii) a [~~wholly-owned~~] wholly owned trust company subsidiary of the depository  
250 institution holding company which owns or controls that trust company.

251 Section 4. Section **25-6-14** is amended to read:

252 **25-6-14. Restricting transfers of trust interests.**

253 (1) (a) For trusts created on or after December 31, 2003, a settlor who in writing  
254 irrevocably transfers property in trust to a trust having as trustee a company defined in  
255 Subsection 7-5-1(1)(d) who holds some or all of the trust assets in this state in a savings  
256 account described in Subsection 7-1-103(29), a certificate of deposit, a brokerage account, a  
257 trust company fiduciary account, or account or deposit located in this state that is similar to  
258 such an account may provide that the income or principal interest of the settlor as beneficiary  
259 of the trust may not be either voluntarily or involuntarily transferred before payment or delivery  
260 to the settlor as beneficiary by the trustee. The provision shall be considered to be a restriction  
261 on the transfer of the settlor's beneficial interest in the trust that is enforceable under applicable  
262 nonbankruptcy law within the meaning of Section 541(c)(2) of the Bankruptcy Code or  
263 successor provision.

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

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

266 (A) conveyance; or

267 (B) assignment; and

268 (ii) transfers of:

269 (A) personal property;

270 (B) interests in personal property;

271 (C) real property; or

272 (D) interests in real property.

273 (2) (a) Except as provided in Subsection (2)(c), if a trust has a restriction as provided in  
274 Subsection (1)(a), a creditor or other claimant of the settlor may not satisfy a claim, or liability  
275 on it, in either law or equity, out of the settlor's transfer or settlor's beneficial interest in the

276 trust.

277 (b) For the purposes of Subsection (2)(a), a creditor includes one holding or seeking to  
278 enforce a judgment entered by a court or other body having adjudicative authority as well as  
279 one with a right to payment, whether or not reduced to judgment, liquidated, unliquidated,  
280 fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or  
281 unsecured.

282 (c) A restriction provided under Subsection (1) does not prevent a creditor or person  
283 described in Subsection (2)(a) from satisfying a claim or liability out of the settlor's beneficial  
284 interest in or transfer into trust if:

285 (i) the claim is a judgment, order, decree, or other legally enforceable decision or ruling  
286 resulting from a judicial, arbitration, mediation, or administrative proceeding commenced prior  
287 to or within three years after the trust is created;

288 (ii) the settlor's transfer into trust is made with actual intent to hinder, delay, or defraud  
289 that creditor;

290 (iii) the trust provides that the settlor may revoke or terminate all or part of the trust  
291 without the consent of a person who has a substantial beneficial interest in the trust and the  
292 interest would be adversely affected by the exercise of the settlor's power to revoke or  
293 terminate all or part of the trust;

294 (iv) the trust requires that all or a part of the trust's income or principal, or both must be  
295 distributed to the settlor as beneficiary;

296 (v) the claim is for a payment owed by a settlor under a child support judgment or  
297 order;

298 (vi) the transfer renders the settlor insolvent;

299 (vii) the claim is for recovery of public assistance received by the settlor allowed under  
300 Title 26, Chapter 19, Medical Benefits Recovery Act;

301 (viii) the claim is a tax or other amount owed by the settlor to any governmental entity;

302 (ix) the claim is by a spouse or former spouse of the settlor on account of an agreement  
303 or order for the payment of support or alimony or for a division or distribution of property;

304 (x) (A) the settlor transferred assets into the trust that:

305 (I) were listed in a written representation of the settlor's assets given to a claimant to  
306 induce the claimant to enter into a transaction or agreement with the settlor; or

307 (II) were transferred from the settlor's control in breach of any written agreement,  
308 covenant, or security interest between the settlor and the claimant; or

309 (B) without limiting the claimant's right to pursue assets not held by the trust, a  
310 claimant described in Subsection (2)(c)(x)(A) may only foreclose or execute upon an asset in  
311 the trust listed in the written representation described in Subsection (2)(c)(x)(A)(I) or  
312 transferred in breach of a written agreement, covenant, or security interest as provided in  
313 Subsection (2)(c)(x)(A)(II) to the extent of the settlor's interest in that asset when it was  
314 transferred to the trust or the equivalent value of that asset at the time of foreclosure or  
315 execution if the original asset was sold or traded by the trust; or

316 (xi) the claim is a judgment, award, order, sentence, fine, penalty, or other  
317 determination of liability of the settlor for conduct of the settlor constituting fraud, intentional  
318 infliction of harm, or a crime.

319 (d) The statute of limitations for actions to satisfy a claim or liability out of the settlor's  
320 beneficial interest in or transfer into trust under Subsections (2)(c)(i), (ii), (v), (vii), (viii), (ix),  
321 (x), and (xi) is the statute of limitations applicable to the underlying action.

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

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

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

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

330 (iv) the power to appoint nonsubordinate advisers or trust protectors who can remove  
331 and appoint trustees, who can direct, consent to or disapprove distributions, or is the power to  
332 serve as an investment director or appoint an investment director under [~~Subsections~~  
333 ~~75-7-302(13) and (14)] Section 75-7-906.~~

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

336 (4) (a) If a trust has a restriction as provided under Subsection (1), the restriction  
337 prevents anyone, including a person listed in Subsection (2)(a), from asserting any cause of

338 action or claim for relief against a trustee or anyone involved in the counseling, drafting,  
339 preparation, execution, or funding of the trust for:

- 340 (i) conspiracy to commit a fraudulent conveyance;
- 341 (ii) aiding and abetting a fraudulent conveyance; or
- 342 (iii) participating in the trust transaction.

343 (b) A person prevented from asserting a cause of action or claim for relief under this  
344 Subsection (4) may assert a cause of action only against:

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

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

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

351 (7) The courts of this state shall have exclusive jurisdiction over any action brought  
352 under this section.

353 (8) If a trust or a property transfer to a trust is voided or set aside under Subsection  
354 (2)(c), the trust or property transfer shall be voided or set aside only to the extent necessary to  
355 satisfy:

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

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

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

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

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

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

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

375 Section 5. Section **49-11-303** is amended to read:

376 **49-11-303. Fund investment standard -- Prudent investor rule.**

377 The [~~Utah State Retirement Investment Fund~~] fund shall be invested in accordance with  
378 the prudent [~~investor~~] man rule [~~under Section 75-7-302~~] established in Title 75, Chapter 7,  
379 Part 9, Utah Uniform Prudent Investor Act.

380 Section 6. Section **75-1-201** is amended to read:

381 **75-1-201. General definitions.**

382 Subject to additional definitions contained in the subsequent chapters that are  
383 applicable to specific chapters, parts, or sections, and unless the context otherwise requires, in  
384 this code:

385 (1) "Agent" includes an attorney-in-fact under a durable or nondurable power of  
386 attorney, an individual authorized to make decisions concerning another's health care, and an  
387 individual authorized to make decisions for another under a natural death act.

388 (2) "Application" means a written request to the registrar for an order of informal  
389 probate or appointment under Title 75, Chapter 3, Part 3, Informal Probate and Appointment  
390 Proceedings.

391 (3) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any  
392 present or future interest, vested or contingent, and also includes the owner of an interest by  
393 assignment or other transfer; as it relates to a charitable trust, includes any person entitled to  
394 enforce the trust; as it relates to a "beneficiary of a beneficiary designation," refers to a  
395 beneficiary of an insurance or annuity policy, of an account with POD designation, of a security  
396 registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar  
397 benefit plan, or other nonprobate transfer at death; and, as it relates to a "beneficiary designated  
398 in a governing instrument," includes a grantee of a deed, a devisee, a trust beneficiary, a  
399 beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of

400 appointment, and a person in whose favor a power of attorney or a power held in any  
401 individual, fiduciary, or representative capacity is exercised.

402 (4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of  
403 an insurance or annuity policy, of an account with POD designation, of a security registered in  
404 beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or  
405 other nonprobate transfer at death.

406 (5) "Child" includes any individual entitled to take as a child under this code by  
407 intestate succession from the parent whose relationship is involved and excludes any person  
408 who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

409 (6) "Claims," in respect to estates of decedents and protected persons, includes  
410 liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise,  
411 and liabilities of the estate which arise at or after the death of the decedent or after the  
412 appointment of a conservator, including funeral expenses and expenses of administration.  
413 "Claims" does not include estate or inheritance taxes, or demands or disputes regarding title of  
414 a decedent or protected person to specific assets alleged to be included in the estate.

415 (7) "Conservator" means a person who is appointed by a court to manage the estate of a  
416 protected person.

417 (8) "Court" means any of the courts of record in this state having jurisdiction in matters  
418 relating to the affairs of decedents.

419 (9) "Descendant" of an individual means all of his descendants of all generations, with  
420 the relationship of parent and child at each generation being determined by the definition of  
421 child and parent contained in this title.

422 (10) "Devise," when used as a noun, means a testamentary disposition of real or  
423 personal property and, when used as a verb, means to dispose of real or personal property by  
424 will.

425 (11) "Devisee" means any person designated in a will to receive a devise. For the  
426 purposes of Title 75, Chapter 3, Probate of Wills and Administration, in the case of a devise to  
427 an existing trust or trustee, or to a trustee in trust described by will, the trust or trustee is the  
428 devisee, and the beneficiaries are not devisees.

429 (12) "Disability" means cause for a protective order as described by Section 75-5-401.

430 (13) "Distributee" means any person who has received property of a decedent from his

431 personal representative other than as a creditor or purchaser. A testamentary trustee is a  
432 distributee only to the extent of distributed assets or increment thereto remaining in his hands.  
433 A beneficiary of a testamentary trust to whom the trustee has distributed property received from  
434 a personal representative is a distributee of the personal representative. For purposes of this  
435 provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to  
436 the extent of the devised assets.

437 (14) "Estate" includes the property of the decedent, trust, or other person whose affairs  
438 are subject to this title as originally constituted and as it exists from time to time during  
439 administration.

440 (15) "Exempt property" means that property of a decedent's estate which is described in  
441 Section 75-2-403.

442 (16) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

443 (17) "Foreign personal representative" means a personal representative of another  
444 jurisdiction.

445 (18) "Formal proceedings" means proceedings conducted before a judge with notice to  
446 interested persons.

447 (19) "Governing instrument" means a deed, will, trust, insurance or annuity policy,  
448 account with POD designation, security registered in beneficiary form (TOD), pension,  
449 profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of  
450 appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of  
451 any similar type.

452 (20) "Guardian" means a person who has qualified as a guardian of a minor or  
453 incapacitated person pursuant to testamentary or court appointment, or by written instrument as  
454 provided in Section 75-5-202.5, but excludes one who is merely a guardian ad litem.

455 (21) "Heirs," except as controlled by Section 75-2-711, means persons, including the  
456 surviving spouse and state, who are entitled under the statutes of intestate succession to the  
457 property of a decedent.

458 (22) "Incapacitated person" means any person who is impaired by reason of mental  
459 illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic  
460 intoxication, or other cause, except minority, to the extent of lacking sufficient understanding  
461 or capacity to make or communicate responsible decisions.

462 (23) "Informal proceedings" mean those conducted without notice to interested persons  
463 by an officer of the court acting as a registrar for probate of a will or appointment of a personal  
464 representative.

465 (24) "Interested person" includes heirs, devisees, children, spouses, creditors,  
466 beneficiaries, and any others having a property right in or claim against a trust estate or the  
467 estate of a decedent, ward, or protected person. It also includes persons having priority for  
468 appointment as personal representative ~~[and]~~, other fiduciaries representing interested persons,  
469 a settlor of a trust, if living, or the settlor's legal representative, if any, if the settlor is living but  
470 incapacitated. The meaning as it relates to particular persons may vary from time to time and  
471 shall be determined according to the particular purposes of, and matter involved in, any  
472 proceeding.

473 (25) "Issue" of a person means descendant as defined in Subsection (9).

474 (26) "Joint tenants with the right of survivorship" and "community property with the  
475 right of survivorship" includes coowners of property held under circumstances that entitle one  
476 or more to the whole of the property on the death of the other or others, but excludes forms of  
477 coownership registration in which the underlying ownership of each party is in proportion to  
478 that party's contribution.

479 (27) "Lease" includes an oil, gas, or other mineral lease.

480 (28) "Letters" includes letters testamentary, letters of guardianship, letters of  
481 administration, and letters of conservatorship.

482 (29) "Minor" means a person who is under 18 years of age.

483 (30) "Mortgage" means any conveyance, agreement, or arrangement in which property  
484 is used as security.

485 (31) "Nonresident decedent" means a decedent who was domiciled in another  
486 jurisdiction at the time of his death.

487 (32) "Organization" includes a corporation, limited liability company, business trust,  
488 estate, trust, partnership, joint venture, association, government or governmental subdivision or  
489 agency, or any other legal or commercial entity.

490 (33) "Parent" includes any person entitled to take, or who would be entitled to take if  
491 the child died without a will, as a parent under this code by intestate succession from the child  
492 whose relationship is in question and excludes any person who is only a stepparent, foster

493 parent, or grandparent.

494 (34) "Payor" means a trustee, insurer, business entity, employer, government,  
495 governmental agency or subdivision, or any other person authorized or obligated by law or a  
496 governing instrument to make payments.

497 (35) "Person" means an individual or an organization.

498 (36) (a) "Personal representative" includes executor, administrator, successor personal  
499 representative, special administrator, and persons who perform substantially the same function  
500 under the law governing their status.

501 (b) "General personal representative" excludes special administrator.

502 (37) "Petition" means a written request to the court for an order after notice.

503 (38) "Proceeding" includes action at law and suit in equity.

504 (39) "Property" includes both real and personal property or any interest therein and  
505 means anything that may be the subject of ownership.

506 (40) "Protected person" means a person for whom a conservator has been appointed. A  
507 "minor protected person" means a minor for whom a conservator has been appointed because  
508 of minority.

509 (41) "Protective proceeding" means a proceeding described in Section 75-5-401.

510 (42) "Registrar" refers to the official of the court designated to perform the functions of  
511 registrar as provided in Section 75-1-307.

512 (43) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of  
513 indebtedness, certificate of interest, or participation in an oil, gas, or mining title or lease or in  
514 payments out of production under such a title or lease, collateral trust certificate, transferable  
515 share, voting trust certificate, and, in general, any interest or instrument commonly known as a  
516 security, or any certificate of interest or participation, any temporary or interim certificate,  
517 receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of  
518 the foregoing.

519 (44) "Settlement," in reference to a decedent's estate, includes the full process of  
520 administration, distribution, and closing.

521 (45) "Special administrator" means a personal representative as described in Sections  
522 75-3-614 through 75-3-618.

523 (46) "State" means a state of the United States, the District of Columbia, the

524 Commonwealth of Puerto Rico, ~~or~~ any territory or insular possession subject to the  
525 jurisdiction of the United States, or a Native American tribe or band recognized by federal law  
526 or formally acknowledged by a state.

527 (47) "Successor personal representative" means a personal representative, other than a  
528 special administrator, who is appointed to succeed a previously appointed personal  
529 representative.

530 (48) "Successors" means persons, other than creditors, who are entitled to property of a  
531 decedent under the decedent's will or this title.

532 (49) "Supervised administration" refers to the proceedings described in Title 75,  
533 Chapter 3, Part 5, Supervised Administration.

534 (50) "Survive," except for purposes of Part 3 of Article VI, Uniform TOD Security  
535 Registration Act, means that an individual has neither predeceased an event, including the  
536 death of another individual, nor is considered to have predeceased an event under Section  
537 75-2-104 or 75-2-702. The term includes its derivatives, such as "survives," "survived,"  
538 "survivor," and "surviving."

539 (51) "Testacy proceeding" means a proceeding to establish a will or determine  
540 intestacy.

541 (52) "Testator" includes an individual of either sex.

542 (53) "Trust" includes any express trust, private or charitable, with additions thereto,  
543 wherever and however created. The term also includes a trust created or determined by  
544 judgment or decree under which the trust is to be administered in the manner of an express  
545 trust. The term excludes other constructive trusts, and it excludes resulting trusts,  
546 conservatorships, personal representatives, trust accounts as defined in Title 75, Chapter 6,  
547 Nonprobate Transfers, custodial arrangements pursuant to any Uniform Transfers To Minors  
548 Act, business trusts providing for certificates to be issued to beneficiaries, common trust funds,  
549 voting trusts, preneed funeral plans under Title 58, Chapter 9, Funeral Services Licensing Act,  
550 security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts,  
551 dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any  
552 arrangement under which a person is nominee or escrowee for another.

553 (54) "Trustee" includes an original, additional, ~~or~~ and successor trustee, and  
554 cotrustee, whether or not appointed or confirmed by the court.

555 (55) "Ward" means a person for whom a guardian has been appointed. A "minor ward"  
556 is a minor for whom a guardian has been appointed solely because of minority.

557 (56) "Will" includes codicil and any testamentary instrument which merely appoints an  
558 executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits  
559 the right of an individual or class to succeed to property of the decedent passing by intestate  
560 succession.

561 Section 7. Section **75-1-403** is amended to read:

562 **75-1-403. Pleadings -- When parties bound by others -- Notice.**

563 In formal proceedings involving inter vivos or testamentary trusts, including  
564 proceedings to modify or terminate a trust, estates of decedents, minors, protected persons, or  
565 incapacitated persons, and in judicially supervised settlements, the following apply:

566 (1) Interests to be affected shall be described in pleadings which give reasonable  
567 information to owners by name or class, by reference to the instrument creating the interests, or  
568 in any other appropriate manner.

569 [~~(2) Persons are bound by orders binding others in the following cases:]~~

570 [~~(a) To the extent there is no conflict of interest between the holder of a general  
571 testamentary power of appointment and the persons represented with respect to a particular  
572 question or dispute, the holder may represent and bind persons whose interests, as permissible  
573 appointees, takers in default, or otherwise, are subject to the power:]~~

574 [~~(b) To the extent there is no conflict of interest between the representative and the  
575 person represented with respect to a particular question or dispute:]~~

576 [~~(i) a conservator may represent and bind the person whose estate he controls;]~~

577 [~~(ii) a guardian may represent and bind the ward if no conservator of the ward's estate  
578 has been appointed;]~~

579 [~~(iii) an agent having authority to do so may represent and bind the principal;]~~

580 [~~(iv) a trustee may represent and bind the beneficiaries of the trust;]~~

581 [~~(v) a personal representative of a decedent's estate may represent and bind persons  
582 interested in the estate; and]~~

583 [~~(vi) if no conservator or guardian has been appointed, a parent may represent and bind  
584 the parent's minor or unborn child.]~~

585 [~~(c) Unless otherwise represented, a minor, incapacitated or unborn person, or a person~~

586 whose identity or location is unknown and not reasonably ascertainable, may be represented  
587 and bound by another person having a substantially identical interest with respect to the  
588 particular question or dispute, but only to the extent there is no conflict of interest between the  
589 representative and the person represented.]

590 [~~(3)~~ Notice is required as follows:]

591 [(a)] (2) Notice as prescribed by Section 75-1-401 shall be given to every interested  
592 person. Notice may be given both to a person and to another who may bind him.

593 [(b) Whenever notice to a person is required or permitted under this chapter, notice to  
594 another person who may represent and bind the person represented under this section  
595 constitutes notice to the person represented.]

596 [(4) Even if there is representation under this section, if the court determines that  
597 representation of the interest might otherwise be inadequate, the court may appoint a guardian  
598 ad litem to represent the interest of, and approve an agreement on behalf of, a minor,  
599 incapacitated or unborn person, or a person whose identity or location is unknown.]

600 [(5) If not precluded by conflict of interest, a guardian ad litem may be appointed to  
601 represent several persons or interests. In approving an agreement, a guardian ad litem may  
602 consider general family benefit accruing to the living members of the family of the person  
603 represented.]

604 [(6) Whenever consent may be given by a person pursuant to this chapter, the consent  
605 of a person who may represent and bind the person represented under this section is the consent  
606 of, and is binding on, the person represented unless the person represented objects to the  
607 representation before the consent would otherwise become effective.]

608 Section 8. Section **75-2-1209** is amended to read:

609 **75-2-1209. Real estate conveyed to a trust under the Statutory Rule Against**  
610 **Perpetuities.**

611 On or after the effective date, when title to real property is granted to the trustee of a  
612 trust governed by Title 75, Chapter 2, Part 12, [~~Uniform~~] Statutory Rule Against Perpetuities,  
613 the terms of the trust, provisions regarding the appointment of successor trustees, and the  
614 names and addresses of successor trustees must be disclosed in accordance with Section  
615 [~~75-7-409~~] 75-7-816.

616 Section 9. Section **75-3-703** is amended to read:

617           **75-3-703. General duties -- Relation and liability to persons interested in estate --**  
618 **Standing to sue.**

619           (1) A personal representative is a fiduciary who shall observe the standard of care  
620 applicable to trustees as described by Section [~~75-7-302~~] 75-7-902. A personal representative is  
621 under a duty to settle and distribute the estate of the decedent in accordance with the terms of  
622 any probated and effective will and this code and as expeditiously and efficiently as is  
623 consistent with the best interests of the estate. He shall use the authority conferred upon him by  
624 this code, the terms of the will, if any, and any order in proceedings to which he is party for the  
625 best interests of successors to the estate.

626           (2) A personal representative shall not be surcharged for acts of administration or  
627 distribution if the conduct in question was authorized at the time. Subject to other obligations  
628 of administration, an informally probated will is authority to administer and distribute the  
629 estate according to its terms. An order of appointment of a personal representative, whether  
630 issued in informal or formal proceedings, is authority to distribute apparently intestate assets to  
631 the heirs of the decedent if, at the time of distribution, the personal representative is not aware  
632 of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy  
633 proceeding, a formal proceeding questioning his appointment or fitness to continue, or a  
634 supervised administration proceeding. Nothing in this section affects the duty of the personal  
635 representative to administer and distribute the estate in accordance with the rights of claimants,  
636 the surviving spouse, any minor and dependent children, and any pretermitted child of the  
637 decedent as described elsewhere in this code.

638           (3) Except as to proceedings which do not survive the death of the decedent, a personal  
639 representative of a decedent domiciled in this state at his death has the same standing to sue  
640 and be sued in the courts of this state and courts of any other jurisdiction as his decedent had  
641 immediately prior to death.

642           Section 10. Section **75-3-913** is amended to read:

643           **75-3-913. Distributions to trustee.**

644           (1) Before distributing to a trustee, the personal representative may require that the trust  
645 be registered if the state in which it is to be administered provides for registration and that the  
646 trustee inform the beneficiaries as provided in Section [~~75-7-303~~] 75-7-811.

647           (2) If the trust instrument does not excuse the trustee from giving bond, the personal

648 representative may petition the appropriate court to require that the trustee post bond if he  
649 apprehends that distribution might jeopardize the interests of persons who are not able to  
650 protect themselves; and he may withhold distribution until the court has acted.

651 (3) No inference of negligence on the part of the personal representative shall be drawn  
652 from his failure to exercise the authority conferred by Subsections (1) and (2).

653 Section 11. Section **75-5-417** is amended to read:

654 **75-5-417. General duty of conservator.**

655 (1) A conservator shall act as a fiduciary and shall observe the standards of care as set  
656 forth in Section ~~[75-7-302]~~ 75-7-902.

657 (2) The conservator shall, for all estates in excess of \$50,000, excluding the residence  
658 owned by the ward, send a report with a full accounting to the court on an annual basis. For  
659 estates less than \$50,000, excluding the residence owned by the ward, the conservator shall fill  
660 out an informal annual report and mail the report to the court. The report shall include the  
661 following: a statement of assets at the beginning and end of the reporting year, income received  
662 during the year, disbursements for the support of the ward, and other expenses incurred by the  
663 estate. The court may require additional information. The forms for both the informal report  
664 for estates under \$50,000, excluding the residence owned by the ward, and the full accounting  
665 report for larger estates shall be approved by the judicial council. This annual report shall be  
666 examined and approved by the court.

667 (3) Corporate fiduciaries are not required to fully petition the court, but shall submit  
668 their internal report annually to the court. The report shall be examined and approved by the  
669 court.

670 (4) (a) ~~[H]~~ The court may impose a fine in an amount not to exceed \$5,000, if, after  
671 receiving written notice of the failure to file and after a grace period of two months have  
672 elapsed, a conservator or corporate fiduciary: ~~[(a)]~~

673 (i) makes a substantial misstatement on filings of any required annual reports; ~~[(b)]~~

674 (ii) is guilty of gross impropriety in handling the property of the ward; or ~~[(c)]~~

675 (iii) willfully fails to file the report required by this section~~[, after receiving written~~  
676 notice of the failure to file and after a grace period of two months have elapsed; then the court  
677 may impose a fine in an amount not to exceed \$5,000].

678 (b) The court may also order restitution of funds misappropriated from the estate of a

679 ward.

680 (c) The penalty shall be paid by the conservator or corporate fiduciary and may not be  
681 paid by the estate.

682 (5) These provisions and penalties governing annual reports do not apply if the  
683 conservator is the parent of the ward.

684 Section 12. Section **75-7-101** is repealed and reenacted to read:

685 **CHAPTER 7. UTAH UNIFORM TRUST CODE**

686 **Part 1. General Provisions**

687 **75-7-101. Title.**

688 This chapter is known as the "Utah Uniform Trust Code."

689 Section 13. Section **75-7-102** is enacted to read:

690 **75-7-102. Scope.**

691 This chapter applies to trusts as defined in Section 75-1-201.

692 Section 14. Section **75-7-103** is enacted to read:

693 **75-7-103. Definitions.**

694 (1) In this chapter:

695 (a) "Action," with respect to an act of a trustee, includes a failure to act.

696 (b) "Beneficiary" means a person that:

697 (i) has a present or future beneficial interest in a trust, vested or contingent; or

698 (ii) in a capacity other than that of trustee, holds a power of appointment over trust  
699 property.

700 (c) "Charitable trust" means a trust, or portion of a trust, created for a charitable  
701 purpose described in Subsection 75-7-405(1).

702 (d) "Environmental law" means a federal, state, or local law, rule, regulation, or  
703 ordinance relating to protection of the environment.

704 (e) "Interests of the beneficiaries" means the beneficial interests provided in the terms  
705 of the trust.

706 (f) "Jurisdiction," with respect to a geographic area, includes a state or country.

707 (g) "Power of withdrawal" means a presently exercisable general power of appointment  
708 other than a power exercisable only upon consent of the trustee or a person holding an adverse  
709 interest.

710 (h) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's  
711 qualification is determined:

712 (i) is a distributee or permissible distributee of trust income or principal; or

713 (ii) would be a distributee or permissible distributee of trust income or principal if the  
714 trust terminated on that date.

715 (i) "Revocable," as applied to a trust, means revocable by the settlor without the  
716 consent of the trustee or a person holding an adverse interest.

717 (j) "Settlor" means a person, including a testator, who creates, or contributes property  
718 to, a trust. If more than one person creates or contributes property to a trust, each person is a  
719 settlor of the portion of the trust property attributable to that person's contribution except to the  
720 extent another person has the power to revoke or withdraw that portion.

721 (k) "Spendthrift provision" means a term of a trust which restrains both voluntary and  
722 involuntary transfer or encumbrance of a beneficiary's interest.

723 (l) "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's  
724 provisions as expressed in the trust instrument or as may be established by other evidence that  
725 would be admissible in a judicial proceeding.

726 (m) "Trust instrument" means an instrument executed by the settlor that contains terms  
727 of the trust, including any amendments thereto.

728 (2) Terms not specifically defined in this section have the meanings provided in  
729 Section 75-1-201.

730 Section 15. Section **75-7-104** is enacted to read:

731 **75-7-104. Knowledge.**

732 (1) Subject to Subsection (2), a person has knowledge of a fact if the person:

733 (a) has actual knowledge of it;

734 (b) has received a notice or notification of it; or

735 (c) from all the facts and circumstances known to the person at the time in question,  
736 has reason to know it.

737 (2) An organization that conducts activities through employees has notice or  
738 knowledge of a fact involving a trust only from the time the information was received by an  
739 employee having responsibility to act for the trust, or would have been brought to the  
740 employee's attention if the organization had exercised reasonable diligence. An organization

741 exercises reasonable diligence if it maintains reasonable routines for communicating significant  
742 information to the employee having responsibility to act for the trust and there is reasonable  
743 compliance with the routines. Reasonable diligence does not require an employee of the  
744 organization to communicate information unless the communication is part of the individual's  
745 regular duties or the individual knows a matter involving the trust would be materially affected  
746 by the information.

747 Section 16. Section **75-7-105** is enacted to read:

748 **75-7-105. Default and mandatory rules.**

749 (1) Except as otherwise provided in the terms of the trust, this chapter governs the  
750 duties and powers of a trustee, relations among trustees, and the rights and interests of a  
751 beneficiary.

752 (2) The terms of a trust prevail over any provision of this chapter except:

753 (a) the requirements for creating a trust;

754 (b) the duty of a trustee to act in good faith and in accordance with the purposes of the  
755 trust;

756 (c) the requirement that a trust and its terms be for the benefit of its beneficiaries;

757 (d) the power of the court to modify or terminate a trust under Sections 75-7-410  
758 through 75-7-416;

759 (e) the effect of a spendthrift provision and the rights of certain creditors and assignees  
760 to reach a trust as provided in Part 5, Creditor's Claims-Spendthrift and Discretionary Trusts;

761 (f) the power of the court under Section 75-7-702 to require, dispense with, or modify  
762 or terminate a bond;

763 (g) the power of the court under Subsection 75-7-708(2) to adjust a trustee's  
764 compensation specified in the terms of the trust which is unreasonably low or high;

765 (h) the effect of an exculpatory term under Section 75-7-1008;

766 (i) the rights under Sections 75-7-1010 through 75-7-1013 of a person other than a  
767 trustee or beneficiary;

768 (j) periods of limitation for commencing a judicial proceeding;

769 (k) the power of the court to take such action and exercise such jurisdiction as may be  
770 necessary in the interests of justice; and

771 (l) the subject-matter jurisdiction of the court and venue for commencing a proceeding

772 as provided in Sections 75-7-203 and 75-7-205.

773 Section 17. Section **75-7-106** is enacted to read:

774 **75-7-106. Common law of trusts -- Principles of equity.**

775 The common law of trusts and principles of equity supplement this chapter, except to  
776 the extent modified by this chapter or laws of this state.

777 Section 18. Section **75-7-107**, which is renumbered from Section 75-7-208 is  
778 renumbered and amended to read:

779 ~~[75-7-208].~~ **75-7-107. Governing law.**

780 (1) For purposes of this section:

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

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

785 (2) If a trust has a state law provision specifying this state, the validity, construction,  
786 and administration of the trust are to be governed by the laws of this state if any administration  
787 of the trust is done in this state.

788 (3) For all trusts created on or after December 31, 2003, if a trust does not have a state  
789 law provision, the validity, construction, and administration of the trust are to be governed by  
790 the laws of this state if the trust is administered in this state.

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

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

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

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

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

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

802 Section 19. Section **75-7-108** is enacted to read:

803 **75-7-108. Principal place of administration.**

804 (1) Without precluding other means for establishing a sufficient connection with the  
805 designated jurisdiction, terms of a trust designating the principal place of administration are  
806 valid and controlling if:

807 (a) a trustee's principal place of business is located in or a trustee is a resident of the  
808 designated jurisdiction; or

809 (b) all or part of the administration occurs in the designated jurisdiction.

810 (2) A trustee is under a continuing duty to administer the trust at a place appropriate to  
811 its purposes, its administration, and the interests of the beneficiaries.

812 (3) Without precluding the right of the court to order, approve, or disapprove a transfer,  
813 the trustee, in furtherance of the duty prescribed by Subsection (2), may transfer the trust's  
814 principal place of administration to another state or to a jurisdiction outside of the United  
815 States.

816 (4) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's  
817 principal place of administration not less than 60 days before initiating the transfer. The notice  
818 of proposed transfer must include:

819 (a) the name of the jurisdiction to which the principal place of administration is to be  
820 transferred;

821 (b) the address and telephone number at the new location at which the trustee can be  
822 contacted;

823 (c) an explanation of the reasons for the proposed transfer;

824 (d) the date on which the proposed transfer is anticipated to occur; and

825 (e) the date, not less than 60 days after the giving of the notice, by which the qualified  
826 beneficiary must notify the trustee of an objection to the proposed transfer.

827 (5) The authority of a trustee under this section to transfer a trust's principal place of  
828 administration terminates if a qualified beneficiary notifies the trustee of an objection to the  
829 proposed transfer on or before the date specified in the notice.

830 (6) In connection with a transfer of the trust's principal place of administration, the  
831 trustee may transfer some or all of the trust property to a successor trustee designated in the  
832 terms of the trust or appointed pursuant to Section 75-7-704.

833 Section 20. Section **75-7-109** is enacted to read:

834 **75-7-109. Methods and waiver of notice.**

835 (1) Notice to a person under this chapter or the sending of a document to a person  
836 under this chapter must be accomplished in a manner reasonably suitable under the  
837 circumstances and likely to result in receipt of the notice or document. Permissible methods of  
838 notice or for sending a document include first-class mail, personal delivery, delivery to the  
839 person's last known place of residence or place of business, or a properly directed electronic  
840 message.

841 (2) Notice under this chapter or the sending of a document under this chapter may be  
842 waived by the person to be notified or sent the document.

843 (3) Notice of a judicial proceeding must be given as provided in the applicable rules of  
844 civil procedure.

845 Section 21. Section **75-7-110** is enacted to read:

846 **75-7-110. Others treated as qualified beneficiaries.**

847 (1) Whenever notice to qualified beneficiaries of a trust is required under this chapter,  
848 the trustee must also give notice to any other beneficiary who has sent the trustee a request for  
849 notice unless otherwise directed by the settlor in the terms of the trust.

850 (2) A charitable organization expressly entitled to receive benefits under the terms of a  
851 charitable trust or a person appointed to enforce a trust created for the care of an animal or  
852 another noncharitable purpose as provided in Section 75-7-408 or 75-7-409 has the rights of a  
853 qualified beneficiary under this chapter.

854 (3) The attorney general has the rights of a qualified beneficiary with respect to a  
855 charitable trust having its principal place of administration in this state.

856 Section 22. Section **75-7-111** is enacted to read:

857 **75-7-111. Nonjudicial settlement agreements.**

858 (1) For purposes of this section, "interested persons" means persons whose consent  
859 would be required in order to achieve a binding settlement were the settlement to be approved  
860 by the court.

861 (2) Except as otherwise provided in Subsection (3), interested persons may enter into a  
862 binding nonjudicial settlement agreement with respect to any matter involving a trust.

863 (3) A nonjudicial settlement agreement is valid only to the extent it does not violate a  
864 material purpose of the trust and includes terms and conditions that could be properly approved

865 by the court under this chapter or other applicable law.

866 (4) Matters that may be resolved by a nonjudicial settlement agreement include:

867 (a) the interpretation or construction of the terms of the trust;

868 (b) the approval of a trustee's report or accounting;

869 (c) direction to a trustee to refrain from performing a particular act or the grant to a  
870 trustee of any necessary or desirable power;

871 (d) the resignation or appointment of a trustee and the determination of a trustee's  
872 compensation;

873 (e) transfer of a trust's principal place of administration; and

874 (f) liability of a trustee for an action relating to the trust.

875 (5) Any interested person may request the court to approve a nonjudicial settlement  
876 agreement, to determine whether the representation as provided in Part 3 was adequate, and to  
877 determine whether the agreement contains terms and conditions the court could have properly  
878 approved.

879 Section 23. Section **75-7-112** is enacted to read:

880 **75-7-112. Rules of construction.**

881 The rules of construction that apply to the interpretation of and disposition of property  
882 by will or other governing instrument, as defined in Section 75-1-201, also apply as appropriate  
883 to the interpretation of the terms of a trust and the disposition of the trust property.

884 Section 24. Section **75-7-113** is enacted to read:

885 **75-7-113. Penalty provisions.**

886 A provision in a trust instrument purporting to penalize a beneficiary by charging the  
887 beneficiary's interest in the trust, or to penalize the beneficiary in another manner, for  
888 instituting a proceeding to challenge the acts of the trustee or other fiduciary of a trust, or for  
889 instituting other proceedings relating to the trust is unenforceable if probable cause exists for  
890 instituting the proceedings.

891 Section 25. Section **75-7-203** is repealed and reenacted to read:

892 **75-7-203. Subject matter jurisdiction.**

893 (1) The district court has exclusive jurisdiction of proceedings in this state brought by a  
894 trustee or beneficiary concerning the administration of a trust.

895 (2) The district court has concurrent jurisdiction with other courts of this state of other

896 proceedings involving a trust.

897 (3) This section does not preclude judicial or nonjudicial alternative dispute resolution.

898 Section 26. Section **75-7-205** is repealed and reenacted to read:

899 **75-7-205. Venue.**

900 (1) Except as otherwise provided in Subsection (2), venue for a judicial proceeding  
901 involving a trust is in the county in which the trust's principal place of administration is or will  
902 be located and, if the trust is created by will and the estate is not yet closed, in the county in  
903 which the decedent's estate is being administered.

904 (2) If a trust has no trustee, venue for a judicial proceeding for the appointment of a  
905 trustee is in any county of this state in which a beneficiary resides, in any county in which any  
906 trust property is located, and if the trust is created by will, in the county in which the decedent's  
907 estate was or is being administered.

908 Section 27. Section **75-7-301** is repealed and reenacted to read:

909 **Part 3. Representation**

910 **75-7-301. Basic effect.**

911 (1) Notice to a person who may represent and bind another person under this part has  
912 the same effect as if notice were given directly to the other person.

913 (2) The consent of a person who may represent and bind another person under this part  
914 is binding on the person represented unless the person represented objects to the representation  
915 before the consent would otherwise have become effective.

916 (3) Except as otherwise provided in Sections 75-7-411 and 25-6-14, a person who  
917 under this part may represent a settlor who lacks capacity may receive notice and give a  
918 binding consent on the settlor's behalf.

919 Section 28. Section **75-7-302** is repealed and reenacted to read:

920 **75-7-302. Representation by holder of general testamentary power of**  
921 **appointment.**

922 To the extent there is no conflict of interest between the holder of a general  
923 testamentary power of appointment and the persons represented with respect to the particular  
924 question or dispute, the holder may represent and bind persons whose interests, as permissible  
925 appointees, takers in default, or otherwise, are subject to the power.

926 Section 29. Section **75-7-303** is repealed and reenacted to read:

927 **75-7-303. Representation by fiduciaries and parents.**

928 To the extent there is no conflict of interest between the representative and the person  
929 represented or among those being represented with respect to a particular question or dispute:

930 (1) a conservator may represent and bind the protected person whose estate the  
931 conservator controls;

932 (2) a guardian may represent and bind the ward if a conservator of the ward's estate has  
933 not been appointed;

934 (3) an agent having authority to act with respect to the particular question or dispute  
935 may represent and bind the principal;

936 (4) a trustee may represent and bind the beneficiaries of the trust;

937 (5) a personal representative of a decedent's estate may represent and bind persons  
938 interested in the estate; and

939 (6) a parent may represent and bind the parent's minor or unborn child if a conservator  
940 or guardian for the child has not been appointed.

941 Section 30. Section **75-7-304** is repealed and reenacted to read:

942 **75-7-304. Representation by person having substantially identical interest.**

943 Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person  
944 whose identity or location is unknown and not reasonably ascertainable, may be represented by  
945 and bound by another having a substantially identical interest with respect to the particular  
946 question or dispute, but only to the extent there is no conflict of interest between the  
947 representative and the person represented.

948 Section 31. Section **75-7-305** is repealed and reenacted to read:

949 **75-7-305. Appointment of guardian ad litem or other representative.**

950 (1) If the court determines that an interest is not represented under this part, or that the  
951 otherwise available representation might be inadequate, the court may appoint a guardian ad  
952 litem or other representative to receive notice, give consent, and otherwise represent, bind, and  
953 act on behalf of a minor, incapacitated or protected person, or unborn individual, or a person  
954 whose identity or location is unknown. A guardian ad litem or other representative may be  
955 appointed to represent several persons or interests.

956 (2) A guardian ad litem or other representative may act on behalf of the individual  
957 represented with respect to any matter arising under this chapter, whether or not a judicial

958 proceeding concerning the trust is pending.

959 (3) In making decisions, a guardian ad litem or other representative may consider  
960 general benefit accruing to the living members of the individual's family.

961 Section 32. Section **75-7-401** is repealed and reenacted to read:

962 **Part 4. Creation, Validity, Modification, and Termination of Trust**

963 **75-7-401. Methods of creating trust.**

964 A trust may be created by:

965 (1) transfer of property to another person as trustee during the settlor's lifetime or by  
966 will or other disposition taking effect upon the settlor's death;

967 (2) declaration by the owner of property that the owner holds identifiable property as  
968 trustee; or

969 (3) exercise of a power of appointment in favor of a trustee.

970 Section 33. Section **75-7-402** is repealed and reenacted to read:

971 **75-7-402. Requirements for creation.**

972 (1) A trust is created only if:

973 (a) the settlor has capacity to create a trust, which standard of capacity shall be the  
974 same as for a person to create a will;

975 (b) the settlor indicates an intention to create the trust or a statute, judgment, or decree  
976 authorizes the creation of a trust;

977 (c) the trust has a definite beneficiary or is:

978 (i) a charitable trust;

979 (ii) a trust for the care of an animal, as provided in Section 75-2-1001; or

980 (iii) a trust for a noncharitable purpose, as provided in Section 75-2-1001;

981 (d) the trustee has duties to perform; and

982 (e) the same person is not the sole trustee and sole beneficiary.

983 (2) A beneficiary is definite if the beneficiary can be ascertained now or in the future,  
984 subject to any applicable rule against perpetuities.

985 (3) A power in a trustee to select a beneficiary from an indefinite class is valid. If the  
986 power is not exercised within a reasonable time, the power fails and the property subject to the  
987 power passes to the persons who would have taken the property had the power not been  
988 conferred.

989 Section 34. Section **75-7-403** is repealed and reenacted to read:

990 **75-7-403. Trusts created in other jurisdictions.**

991 A trust not created by will is validly created if its creation complies with the law of the  
992 jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which,  
993 at the time of creation:

994 (1) the settlor was domiciled, had a place of abode, or was a national;

995 (2) a trustee was domiciled or had a place of business; or

996 (3) any trust property was located.

997 Section 35. Section **75-7-404** is repealed and reenacted to read:

998 **75-7-404. Trust purposes.**

999 A trust may be created only to the extent its purposes are lawful, not contrary to public  
1000 policy, and possible to achieve. A trust and its terms must be for the benefit of its  
1001 beneficiaries.

1002 Section 36. Section **75-7-405** is repealed and reenacted to read:

1003 **75-7-405. Charitable purposes -- Enforcement.**

1004 (1) A charitable trust may be created for the relief of poverty, the advancement of  
1005 education or religion, the promotion of health, governmental or municipal purposes, or other  
1006 purposes the achievement of which is beneficial to the community.

1007 (2) If the terms of a charitable trust do not indicate a particular charitable purpose or  
1008 beneficiary, the trustee, if authorized by the terms of the trust, or if not, the court may select  
1009 one or more charitable purposes or beneficiaries. The selection must be consistent with the  
1010 settlor's intention to the extent it can be ascertained.

1011 (3) The settlor of a charitable trust, among others, may maintain a proceeding to  
1012 enforce the trust.

1013 Section 37. Section **75-7-406** is repealed and reenacted to read:

1014 **75-7-406. Creation of trust induced by fraud, duress, or undue influence.**

1015 A trust is void to the extent its creation was induced by fraud, duress, or undue  
1016 influence.

1017 Section 38. Section **75-7-407** is repealed and reenacted to read:

1018 **75-7-407. Evidence of oral trust.**

1019 Except as required by a statute other than this chapter, a trust need not be evidenced by

1020 a trust instrument, but the creation of an oral trust and its terms may be established only by  
1021 clear and convincing evidence.

1022 Section 39. Section **75-7-408** is repealed and reenacted to read:

1023 **75-7-408. Trust for care of animal.**

1024 A trust may be created to provide for the care of a pet or animal as provided in Section  
1025 75-2-1001.

1026 Section 40. Section **75-7-409** is repealed and reenacted to read:

1027 **75-7-409. Noncharitable trust without ascertainable beneficiary.**

1028 A trust may be created for a noncharitable purpose without a definite or definitely  
1029 ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by  
1030 the trustee as provided in Section 75-2-1001.

1031 Section 41. Section **75-7-410** is repealed and reenacted to read:

1032 **75-7-410. Modification or termination of trust -- Proceedings for approval or**  
1033 **disapproval.**

1034 (1) In addition to the methods of termination prescribed by Sections 75-7-411 through  
1035 75-7-414, a trust terminates to the extent the trust is revoked or expires pursuant to its terms,  
1036 no purpose of the trust remains to be achieved, or the purposes of the trust have become  
1037 unlawful, contrary to public policy, or impossible to achieve.

1038 (2) A proceeding to approve or disapprove a proposed modification or termination  
1039 under Sections 75-7-411 through 75-7-416, or trust combination or division under Section  
1040 75-7-417, may be commenced by a trustee or qualified beneficiary, and a proceeding to  
1041 approve or disapprove a proposed modification or termination under Section 75-7-411 may be  
1042 commenced by the settlor. The settlor of a charitable trust may maintain a proceeding to  
1043 modify the trust under Section 75-7-413.

1044 Section 42. Section **75-7-411** is repealed and reenacted to read:

1045 **75-7-411. Modification or termination of noncharitable irrevocable trust by**  
1046 **consent.**

1047 (1) A noncharitable, irrevocable trust may be modified or terminated upon consent of  
1048 the settlor and all beneficiaries, even if the modification or termination is inconsistent with a  
1049 material purpose of the trust. A settlor's power to consent to a trust's termination may be  
1050 exercised by an agent under a power of attorney only to the extent expressly authorized by the

1051 power of attorney or the terms of the trust, by the settlor's conservator with the approval of the  
1052 court supervising the conservatorship if an agent is not so authorized, or by the settlor's  
1053 guardian with the approval of the court supervising the guardianship if an agent is not so  
1054 authorized and a conservator has not been appointed.

1055 (2) A noncharitable, irrevocable trust may be terminated upon consent of all of the  
1056 beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any  
1057 material purpose of the trust. A noncharitable, irrevocable trust may be modified upon consent  
1058 of all of the beneficiaries if the court concludes that modification is not inconsistent with a  
1059 material purpose of the trust.

1060 (3) A spendthrift provision in the terms of the trust is not presumed to constitute a  
1061 material purpose of the trust.

1062 (4) Upon termination of a trust under Subsection (1) or (2), the trustee shall distribute  
1063 the trust property as agreed by the beneficiaries.

1064 (5) If not all of the beneficiaries consent to a proposed modification or termination of  
1065 the trust under Subsection (1) or (2), the modification or termination may be approved by the  
1066 court if the court is satisfied that:

1067 (a) if all of the beneficiaries had consented, the trust could have been modified or  
1068 terminated under this section; and

1069 (b) the interests of a beneficiary who does not consent will be adequately protected.

1070 Section 43. Section **75-7-412** is enacted to read:

1071 **75-7-412. Modification or termination because of unanticipated circumstances or**  
1072 **inability to administer trust effectively.**

1073 (1) The court may modify the administrative or dispositive terms of a trust or terminate  
1074 the trust if, because of circumstances not anticipated by the settlor, modification or termination  
1075 will further the purposes of the trust. To the extent practicable, the modification must be made  
1076 in accordance with the settlor's probable intention.

1077 (2) The court may modify the administrative terms of a trust if continuation of the trust  
1078 on its existing terms would be impracticable or wasteful or impair the trust's administration.

1079 (3) Upon termination of a trust under this section, the trustee shall distribute the trust  
1080 property as directed by the court or otherwise in a manner consistent with the purposes of the  
1081 trust.

1082 Section 44. Section **75-7-413** is enacted to read:

1083 **75-7-413. Cy pres.**

1084 (1) Except as otherwise provided in Subsection (2), if a particular charitable purpose  
1085 becomes unlawful, impracticable, impossible to achieve, or wasteful:

1086 (a) the trust does not fail, in whole or in part;

1087 (b) the trust property does not revert to the settlor or the settlor's successors in interest;

1088 and

1089 (c) the court may apply cy pres to modify or terminate the trust by directing that the  
1090 trust property be applied or distributed, in whole or in part, in a manner consistent with the  
1091 settlor's charitable purposes.

1092 (2) A provision in the terms of a charitable trust that would result in distribution of the  
1093 trust property to a noncharitable beneficiary prevails over the power of the court under  
1094 Subsection (1) to apply cy pres to modify or terminate the trust only if, when the provision  
1095 takes effect:

1096 (a) the trust property is to revert to the settlor and the settlor is still living; or

1097 (b) fewer than 21 years have elapsed since the date of the trust's creation.

1098 Section 45. Section **75-7-414** is enacted to read:

1099 **75-7-414. Modification or termination of uneconomic trust.**

1100 (1) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust  
1101 property having a total value less than \$100,000, may terminate the trust if the trustee  
1102 concludes that the value of the trust property is insufficient to justify the cost of administration.

1103 (2) The court may modify or terminate a trust or remove the trustee and appoint a  
1104 different trustee if it determines that the value of the trust property is insufficient to justify the  
1105 cost of administration.

1106 (3) Upon termination of a trust under this section, the trustee shall distribute the trust  
1107 property in a manner consistent with the purposes of the trust.

1108 (4) This section does not apply to an easement for conservation or preservation.

1109 Section 46. Section **75-7-415** is enacted to read:

1110 **75-7-415. Reformation to correct mistakes.**

1111 The court may reform the terms of a trust, even if unambiguous, to conform the terms  
1112 to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's

1113 intent and the terms of the trust were affected by a mistake of fact or law, whether in  
1114 expression or inducement.

1115 Section 47. Section **75-7-416** is enacted to read:

1116 **75-7-416. Modification to achieve settlor's tax objectives.**

1117 To achieve the settlor's tax objectives, the court may modify the terms of a trust in order  
1118 to achieve the settlor's tax objectives. The court may provide that the modification has  
1119 retroactive effect.

1120 Section 48. Section **75-7-417** is enacted to read:

1121 **75-7-417. Combination and division of trusts.**

1122 After notice to the qualified beneficiaries, a trustee may combine two or more trusts  
1123 into a single trust or divide a trust into two or more separate trusts, if the result does not impair  
1124 rights of any beneficiary or adversely affect achievement of the purposes of the trust.

1125 Section 49. Section **75-7-501** is repealed and reenacted to read:

1126 **Part 5. Creditor's Claims - Spendthrift and Discretionary Trusts**

1127 **75-7-501. Rights of beneficiary's creditor or assignee.**

1128 To the extent a beneficiary's interest is not protected by a spendthrift provision, the  
1129 court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest  
1130 by attachment of present or future distributions to or for the benefit of the beneficiary or other  
1131 means. The court may limit the award to relief as is appropriate under the circumstances.

1132 Section 50. Section **75-7-502** is enacted to read:

1133 **75-7-502. Spendthrift provisions for beneficiaries other than the settlor.**

1134 (1) A spendthrift provision for a beneficiary other than the settlor is valid only if it  
1135 restrains both voluntary and involuntary transfer of a beneficiary's interest, even if the  
1136 beneficiary is the trustee or cotrustee of the trust.

1137 (2) A term of a trust providing that the interest of a beneficiary other than the settlor is  
1138 held subject to a "spendthrift trust," or words of similar import, is sufficient to restrain both  
1139 voluntary and involuntary transfer of the beneficiary's interest.

1140 (3) A beneficiary may not transfer an interest in a trust in violation of a valid  
1141 spendthrift provision and, except as otherwise provided in this part, a creditor or assignee of  
1142 the beneficiary may not reach the interest or a distribution by the trustee before its receipt by  
1143 the beneficiary.

1144 Section 51. Section **75-7-503** is enacted to read:

1145 **75-7-503. Exceptions to spendthrift provision.**

1146 (1) In this section, "child" includes any person for whom an order or judgment for child  
1147 support has been entered in this or another state.

1148 (2) Even if a trust contains a spendthrift provision, a beneficiary's child who has a  
1149 judgment or court order against the beneficiary for support or maintenance, or a judgment  
1150 creditor who has provided services for the protection of a beneficiary's interest in the trust, may  
1151 obtain from a court an order attaching present or future distributions to or for the benefit of the  
1152 beneficiary.

1153 (3) A spendthrift provision is unenforceable against a claim of this state or the United  
1154 States to the extent a statute of this state or federal law so provides.

1155 Section 52. Section **75-7-504** is enacted to read:

1156 **75-7-504. Discretionary trusts -- Effect of standard.**

1157 (1) In this section, "child" includes any person for whom an order or judgment for child  
1158 support has been entered in this or another state.

1159 (2) Except as otherwise provided in Subsection (3), whether or not a trust contains a  
1160 spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to  
1161 the trustee's discretion, even if:

1162 (a) the discretion is expressed in the form of a standard of distribution; or

1163 (b) the trustee has abused the discretion.

1164 (3) To the extent a trustee has not complied with a standard of distribution or has  
1165 abused a discretion:

1166 (a) a distribution may be ordered by the court to satisfy a judgment or court order  
1167 against the beneficiary for support or maintenance of the beneficiary's child, spouse, or former  
1168 spouse; and

1169 (b) the court shall direct the trustee to pay to the child, spouse, or former spouse such  
1170 amount as is equitable under the circumstances but not more than the amount the trustee would  
1171 have been required to distribute to or for the benefit of the beneficiary had the trustee complied  
1172 with the standard or not abused the discretion.

1173 (4) This section does not limit the right of a beneficiary to maintain a judicial  
1174 proceeding against a trustee for an abuse of discretion or failure to comply with a standard for

1175 distribution.

1176 Section 53. Section **75-7-505** is enacted to read:

1177 **75-7-505. Creditor's claim against settlor.**

1178 (1) Whether or not the terms of a trust contain a spendthrift provision, the following  
1179 rules apply:

1180 (a) During the lifetime of the settlor, the property of a revocable trust is subject to the  
1181 claims of the settlor's creditors. If a trust has more than one settlor, the amount the creditor or  
1182 assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of  
1183 the trust attributable to that settlor's contribution.

1184 (b) With respect to an irrevocable trust other than an irrevocable trust that meets the  
1185 requirements of Section 25-6-14, a creditor or assignee of the settlor may reach the maximum  
1186 amount that can be distributed to or for the settlor's benefit. If the trust has more than one  
1187 settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the  
1188 settlor's interest in the portion of the trust attributable to that settlor's contribution.

1189 (c) After the death of a settlor, and subject to the settlor's right to direct the source from  
1190 which liabilities will be paid, the property of a trust that was revocable at the settlor's death, but  
1191 not property received by the trust as a result of the death of the settlor which is otherwise  
1192 exempt from the claims of the settlor's creditors, is subject to claims of the settlor's creditors,  
1193 costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal  
1194 of remains, and statutory allowances to a surviving spouse and children to the extent the  
1195 settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

1196 (2) For purposes of this section:

1197 (a) during the period the power may be exercised, the holder of a power of withdrawal  
1198 is treated in the same manner as the settlor of a revocable trust to the extent of the property  
1199 subject to the power; and

1200 (b) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of  
1201 the trust only to the extent the value of the property affected by the lapse, release, or waiver  
1202 exceeds the greater of the amount specified in Subsection 2041(b)(2), 2514(e), or Section  
1203 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on May 1,2004.

1204 Section 54. Section **75-7-506** is enacted to read:

1205 **75-7-506. Overdue distribution.**

1206 Whether or not a trust contains a spendthrift provision, a creditor or assignee of a  
1207 beneficiary may reach a mandatory distribution of income or principal, including a distribution  
1208 upon termination of the trust, if the trustee has not made the distribution to the beneficiary  
1209 within a reasonable time after the required distribution date.

1210 Section 55. Section **75-7-507** is enacted to read:

1211 **75-7-507. Personal obligations of trustee.**

1212 Trust property is not subject to personal obligations of the trustee, even if the trustee  
1213 becomes insolvent or bankrupt.

1214 Section 56. Section **75-7-508**, which is renumbered from Section 75-7-308 is  
1215 renumbered and amended to read:

1216 **[75-7-308]. 75-7-508. Notice to creditors.**

1217 (1) A trustee for an inter vivos revocable trust, upon the death of the settlor, may  
1218 publish a notice to creditors once a week for three successive weeks in a newspaper of general  
1219 circulation in the county where the settlor resided at the time of death, providing the trustee's  
1220 name and address and notifying creditors of the deceased settlor to present their claims within  
1221 three months after the date of the first publication of the notice or be forever barred.

1222 (2) A trustee may give written notice by mail or other delivery to any known creditor of  
1223 the deceased settlor, notifying the creditor to present his claim within 90 days from the  
1224 published notice if given as provided in Subsection (1) or within 60 days from the mailing or  
1225 other delivery of the notice, whichever is later, or be forever barred. Written notice shall be the  
1226 notice described in Subsection (1) or a similar notice.

1227 (3) The trustee shall not be liable to any creditor or to any successor of the deceased  
1228 settlor for giving or failing to give notice under this section.

1229 Section 57. Section **75-7-509**, which is renumbered from Section 75-7-309 is  
1230 renumbered and amended to read:

1231 **[75-7-309]. 75-7-509. Limitations on presentation of claims.**

1232 (1) All claims against a deceased settlor which arose before the death of the deceased  
1233 settlor, including claims of the state and any subdivision of it, whether due or to become due,  
1234 absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal  
1235 basis, if not barred earlier by other statute of limitations, are barred against the deceased  
1236 settlor's estate, the trustee, the trust estate, and the beneficiaries of the deceased settlor's trust,

1237 unless presented within the earlier of the following:

1238 (a) one year after the settlor's death; or

1239 (b) the time provided by Subsection [~~75-3-308~~] 75-7-508(2) for creditors who are

1240 given actual notice, and where notice is published, within the time provided in Subsection

1241 [~~75-3-308~~] 75-7-508(1) for all claims barred by publication.

1242 (2) In all events, claims barred by the nonclaim statute at the deceased settlor's

1243 domicile are also barred in this state.

1244 (3) All claims against a deceased settlor's estate or trust estate which arise at or after

1245 the death of the settlor, including claims of the state and any of its subdivisions, whether due or

1246 to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or

1247 other legal basis are barred against the deceased settlor's estate, the trustee, the trust estate, and

1248 the beneficiaries of the deceased settlor, unless presented as follows:

1249 (a) a claim based on a contract with the trustee within three months after performance

1250 by the trustee is due; or

1251 (b) any other claim within the later of three months after it arises, or the time specified

1252 in Subsection (1).

1253 (4) Nothing in this section affects or prevents:

1254 (a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the  
1255 deceased settlor's estate or the trust estate;

1256 (b) to the limits of the insurance protection only, any proceeding to establish liability of

1257 the deceased settlor or the trustee for which he is protected by liability insurance; or

1258 (c) collection of compensation for services rendered and reimbursement for expenses

1259 advanced by the trustee or by the attorney or accountant for the trustee of the trust estate.

1260 Section 58. Section **75-7-510**, which is renumbered from Section 75-7-310 is

1261 renumbered and amended to read:

1262 ~~[75-7-310]~~. **75-7-510. Manner of presentation of claims.**

1263 (1) Claims against a deceased settlor's estate or inter vivos revocable trust shall be

1264 presented as follows:

1265 (a) The claimant may deliver or mail to the trustee, or the trustee's attorney of record, a

1266 written statement of the claim indicating its basis, the name and address of the claimant, and

1267 the amount claimed. The claim is considered presented upon the receipt of the written

1268 statement of claim by the trustee or the trustee's attorney of record. If a claim is not yet due, the  
1269 date when it will become due shall be stated. If the claim is contingent or unliquidated, the  
1270 nature of the uncertainty shall be stated. If the claim is secured, the security shall be described.  
1271 Failure to describe correctly the security, the nature of any uncertainty, and the due date of a  
1272 claim not yet due does not invalidate the presentation made.

1273 (b) The claimant may commence a proceeding against the trustee in any court where  
1274 the trustee may be subjected to jurisdiction to obtain payment of the claim against the deceased  
1275 settlor's estate or the trust estate, but the commencement of the proceeding must occur within  
1276 the time limited for presenting the claim. No presentation of claim is required in regard to  
1277 matters claimed in proceedings against the deceased settlor which were pending at the time of  
1278 the deceased settlor's death.

1279 (2) If a claim is presented under Subsection (1)(a), no proceeding thereon may be  
1280 commenced more than 60 days after the trustee has mailed a notice of disallowance; but, in the  
1281 case of a claim which is not presently due or which is contingent or unliquidated, the trustee  
1282 may consent to an extension of the 60-day period, or to avoid injustice, the court, on petition,  
1283 may order an extension of the 60-day period, but in no event may the extension run beyond the  
1284 applicable statute of limitations.

1285 Section 59. Section **75-7-511**, which is renumbered from Section 75-7-311 is  
1286 renumbered and amended to read:

1287 ~~[75-7-311].~~ **75-7-511. Classification of claims.**

1288 (1) If the applicable assets of the deceased settlor's estate or trust estate are insufficient  
1289 to pay all claims in full, the trustee shall make payment in the following order:

1290 (a) reasonable funeral expenses;

1291 (b) costs and expenses of administration;

1292 (c) debts and taxes with preference under federal law;

1293 (d) reasonable and necessary medical and hospital expenses of the last illness of the  
1294 deceased settlor, including compensation of persons attending him, and medical assistance if  
1295 Section 26-19-13.5 applies;

1296 (e) debts and taxes with preference under other laws of this state; and

1297 (f) all other claims.

1298 (2) No preference shall be given in the payment of any claim over any other claim of

1299 the same class, and a claim due and payable shall not be entitled to a preference over claims not  
1300 due.

1301 Section 60. Section **75-7-512**, which is renumbered from Section 75-7-312 is  
1302 renumbered and amended to read:

1303 ~~[75-7-312]~~. **75-7-512. Allowance of claims.**

1304 (1) As to claims presented in the manner described in Section ~~[75-7-310]~~ 75-7-510 and  
1305 within the time limit prescribed in Section ~~[75-7-309]~~ 75-7-509, the trustee may mail a notice  
1306 to any claimant stating that the claim has been allowed or disallowed. If, after allowing or  
1307 disallowing a claim, the trustee changes the decision concerning the claim, the trustee shall  
1308 notify the claimant. The trustee may not change a disallowance of a claim after the time for the  
1309 claimant to file a petition for allowance or to commence a proceeding on the claim has expired  
1310 and the claim has been barred. If the notice of disallowance warns the claimant of the  
1311 impending bar, a claim which is disallowed in whole or in part by the trustee is barred so far as  
1312 not allowed, unless the claimant seeks a court-ordered allowance by filing a petition for  
1313 allowance in the court or by commencing a proceeding against the trustee not later than 60 days  
1314 after the mailing of the notice of disallowance or partial allowance. If the trustee fails to mail  
1315 notice to a claimant of action on the claim within 60 days after the time for original  
1316 presentation of the claim has expired, this failure has the effect of a notice of allowance.

1317 (2) Upon the petition of the trustee or a claimant in a proceeding for this purpose, the  
1318 court may order any claim presented to the trustee or trustee's attorney in a timely manner and  
1319 not barred by Subsection (1) to be allowed in whole or in part. Notice of this proceeding shall  
1320 be given to the claimant, the trustee, and those other persons interested in the trust estate as the  
1321 court may direct by order at the time the proceeding is commenced.

1322 (3) A judgment in a proceeding in another court against the trustee to enforce a claim  
1323 against a deceased settlor's estate is a court-ordered allowance of the claim.

1324 (4) Unless otherwise provided in any judgment in another court entered against a  
1325 trustee, allowed claims bear interest at the legal rate for the period commencing six months  
1326 after the deceased settlor's date of death unless based on a contract making a provision for  
1327 interest, in which case they bear interest in accordance with that provision.

1328 Section 61. Section **75-7-513**, which is renumbered from Section 75-7-313 is  
1329 renumbered and amended to read:

1330            ~~[75-7-313]~~.    75-7-513.    **Payment of claims.**

1331            (1) Upon the expiration of the earliest of the time limitations provided in Section  
1332 ~~[75-7-309]~~ 75-7-509 for the presentation of claims, the trustee shall pay the claims allowed  
1333 against the deceased settlor's estate in the order of priority prescribed, for claims already  
1334 presented which have not yet been allowed or whose allowance has been appealed, and for  
1335 unbarred claims which may yet be presented, including costs and expenses of administration.  
1336 By petition to the court in a proceeding for that purpose, a claimant whose claim has been  
1337 allowed but not paid as provided in this section may secure an order directing the trustee to pay  
1338 the claim to the extent that funds of the deceased settlor's estate or trust estate are available for  
1339 the payment.

1340            (2) The trustee at any time may pay any just claim that has not been barred, with or  
1341 without formal presentation, but he shall be personally liable to any other claimant whose claim  
1342 is allowed and who is injured by the payment if:

1343            (a) the payment was made before the expiration of the time limit stated in Subsection  
1344 (1) and the trustee failed to require the payee to give adequate security for the refund of any of  
1345 the payment necessary to pay other claimants; or

1346            (b) the payment was made, due to the negligence or willful fault of the trustee, in a way  
1347 that deprived the injured claimant of his priority.

1348            Section 62. Section **75-7-514**, which is renumbered from Section 75-7-314 is  
1349 renumbered and amended to read:

1350            ~~[75-7-314]~~.    75-7-514.    **Secured claims.**

1351            Payment of a secured claim shall be upon the basis of the amount allowed if the creditor  
1352 surrenders his security; but otherwise payment shall be based upon one of the following:

1353            (1) if the creditor exhausts his security before receiving payment, unless precluded by  
1354 another provision of the law, upon the amount of the claim allowed less the fair value of the  
1355 security; or

1356            (2) if the creditor does not have the right to exhaust his security or has not done so,  
1357 upon the amount of the claim allowed less the value of the security determined by converting it  
1358 into money according to the terms of the agreement pursuant to which the security was  
1359 delivered to the creditor, or by the creditor and trustee by agreement, arbitration, compromise,  
1360 or litigation.

1361 Section 63. Section **75-7-515**, which is renumbered from Section 75-7-315 is  
1362 renumbered and amended to read:

1363 **[75-7-315]. 75-7-515. Claims not due and contingent -- unliquidated claims.**

1364 (1) If a claim which will become due at a future time or a contingent or unliquidated  
1365 claim becomes due or certain before the distribution of the trust estate, and if the claim has  
1366 been allowed or established by a proceeding, it shall be paid in the same manner as presently  
1367 due and absolute claims of the same class.

1368 (2) In other cases the trustee, or, on petition of the trustee or the claimant in a special  
1369 proceeding for that purpose, the court, may provide for payment as follows:

1370 (a) if the claimant consents, he may be paid the present or agreed value of the claim,  
1371 taking any uncertainty into account; or

1372 (b) arrangement for future payment, or possible payment, on the happening of the  
1373 contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a  
1374 bond or security from a beneficiary, or otherwise.

1375 Section 64. Section **75-7-516**, which is renumbered from Section 75-7-316 is  
1376 renumbered and amended to read:

1377 **[75-7-316]. 75-7-516. Counterclaims.**

1378 (1) In allowing a claim, the trustee may deduct any counterclaim which the deceased  
1379 settlor's estate has against the claimant. In determining a claim against a deceased settlor's  
1380 estate, a court shall reduce the amount allowed by the amount of any counterclaims and, if the  
1381 counterclaims exceed the claim, render a judgment against the claimant in the amount of the  
1382 excess.

1383 (2) A counterclaim, liquidated or unliquidated, may arise from a transaction other than  
1384 that upon which the claim is based.

1385 (3) A counterclaim may give rise to relief exceeding in amount or different in kind  
1386 from that sought in the claim.

1387 Section 65. Section **75-7-517**, which is renumbered from Section 75-7-317 is  
1388 renumbered and amended to read:

1389 **[75-7-317]. 75-7-517. Execution and levies prohibited.**

1390 (1) No execution may issue upon nor may any levy be made against any property of the  
1391 deceased settlor's estate under any judgment against a deceased settlor or a trustee.

1392 (2) This section may not be construed to prevent the enforcement of mortgages,  
1393 pledges, or liens upon real or personal property in an appropriate proceeding.

1394 Section 66. Section **75-7-518**, which is renumbered from Section 75-7-318 is  
1395 renumbered and amended to read:

1396 **[75-7-318]. 75-7-518. Compromise of claims.**

1397 When a claim against a deceased settlor's estate has been presented in any manner, the  
1398 trustee may, if it appears in the best interest of the deceased settlor's estate, compromise the  
1399 claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

1400 Section 67. Section **75-7-519**, which is renumbered from Section 75-7-319 is  
1401 renumbered and amended to read:

1402 **[75-7-319]. 75-7-519. Encumbered assets.**

1403 (1) If any assets of the deceased settlor's estate are encumbered by mortgage, pledge,  
1404 lien, or other security interest, the trustee may pay the encumbrance or any part thereof, renew  
1405 or extend any obligation secured by the encumbrance, or convey or transfer the assets to the  
1406 creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the  
1407 encumbrance has presented a claim, if it appears to be in the best interest of the deceased  
1408 settlor's estate.

1409 (2) Payment of an encumbrance does not increase the share of the beneficiary entitled  
1410 to the encumbered assets unless the beneficiary is entitled to exoneration or unless the terms of  
1411 the deceased settlor's trust, under which the beneficiary is entitled to the encumbered assets,  
1412 provides otherwise.

1413 Section 68. Section **75-7-604** is enacted to read:

1414 **Part 6. Revocable Trusts**

1415 **75-7-604. Capacity of settlor of revocable trust.**

1416 The capacity required to create, amend, revoke, or add property to a revocable trust, or  
1417 to direct the actions of the trustee of a revocable trust, is the same as that required to make a  
1418 will.

1419 Section 69. Section **75-7-605** is enacted to read:

1420 **75-7-605. Revocation or amendment of revocable trust.**

1421 (1) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor  
1422 may revoke or amend the trust. This Subsection (1) does not apply to a trust created under an

1423 instrument executed before May 1, 2004.

1424 (2) If a revocable trust is created or funded by more than one settlor:

1425 (a) to the extent the trust consists of community property, the trust may be revoked by  
1426 either spouse acting alone but may be amended only by joint action of both spouses; and

1427 (b) to the extent the trust consists of property other than community property, each  
1428 settlor may revoke or amend the trust with regard to the portion of the trust property  
1429 attributable to that settlor's contribution.

1430 (3) The settlor may revoke or amend a revocable trust:

1431 (a) by substantially complying with a method provided in the terms of the trust; or

1432 (b) if the terms of the trust do not provide a method or the method provided in the  
1433 terms is not expressly made exclusive, by:

1434 (i) executing a later will or codicil that expressly refers to the trust or specifically  
1435 devises property that would otherwise have passed according to the terms of the trust; or

1436 (ii) any other method manifesting clear and convincing evidence of the settlor's intent.

1437 (4) Upon revocation of a revocable trust, the trustee shall deliver the trust property as  
1438 the settlor directs.

1439 (5) A settlor's powers with respect to revocation, amendment, or distribution of trust  
1440 property may be exercised by an agent under a power of attorney only to the extent expressly  
1441 authorized by the terms of the trust or the power.

1442 (6) A conservator of the settlor or, if no conservator has been appointed, a guardian of  
1443 the settlor may exercise a settlor's powers with respect to revocation, amendment, or  
1444 distribution of trust property only with the approval of the court supervising the  
1445 conservatorship or guardianship.

1446 (7) A trustee who does not know that a trust has been revoked or amended is not liable  
1447 to the settlor or settlor's successors in interest for distributions made and other actions taken on  
1448 the assumption that the trust had not been amended or revoked.

1449 Section 70. Section **75-7-606** is enacted to read:

1450 **75-7-606. Settlor's powers -- Powers of withdrawal.**

1451 (1) While a trust is revocable and the settlor has capacity to revoke the trust, rights of  
1452 the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively  
1453 to, the settlor.

1454 (2) If a revocable trust has more than one settlor, the duties of the trustee are owed to  
1455 all of the settlors having capacity to revoke the trust.

1456 (3) During the period the power may be exercised, the holder of a power of withdrawal  
1457 has the rights of a settlor of a revocable trust under this section to the extent of the property  
1458 subject to the power.

1459 Section 71. Section **75-7-607** is enacted to read:

1460 **75-7-607. Limitation on action contesting validity of revocable trust --**

1461 **Distribution of trust property.**

1462 (1) A person shall commence a judicial proceeding to contest the validity of a trust that  
1463 was revocable at the settlor's death within the earlier of:

1464 (a) three years after the settlor's death; or

1465 (b) 90 days after the trustee sent the person a copy of the trust instrument and a notice  
1466 informing the person of the trust's existence, of the trustee's name and address, and of the time  
1467 allowed for commencing a proceeding.

1468 (2) Upon the death of the settlor of a trust that was revocable at the settlor's death, the  
1469 trustee may proceed to distribute the trust property in accordance with the terms of the trust.

1470 The trustee is not subject to liability for doing so unless:

1471 (a) the trustee knows of a pending judicial proceeding contesting the validity of the  
1472 trust; or

1473 (b) a potential contestant has notified the trustee of a possible judicial proceeding to  
1474 contest the trust and a judicial proceeding is commenced within 60 days after the contestant  
1475 sent the notification.

1476 (3) With respect to a potential contest, the trustee is only liable for actions taken two or  
1477 more business days after the trustee has actual receipt of written notice from a potential  
1478 contestant. The written notice shall include the name of the settlor or of the trust, the name of  
1479 the potential contestant, and a description of the basis for the potential contest. The written  
1480 notice shall be mailed to the trustee at the principal place of administration of the trust by  
1481 registered or certified mail, return receipt requested, or served upon the trustee in the same  
1482 manner as a summons in a civil action. Any other form or service of notice is not sufficient to  
1483 impose liability on the trustee for actions taken pursuant to the terms of the trust.

1484 (4) A beneficiary of a trust that is determined to have been invalid is liable to return

1485 any distribution received.

1486 Section 72. Section **75-7-701** is enacted to read:

1487 **Part 7. Office of Trustee**

1488 **75-7-701. Accepting or declining trusteeship.**

1489 (1) Except as otherwise provided in Subsection (3), a person designated as trustee  
1490 accepts the trusteeship:

1491 (a) by substantially complying with a method of acceptance provided in the terms of  
1492 the trust; or

1493 (b) if the terms of the trust do not provide a method or the method provided in the  
1494 terms is not expressly made exclusive, by accepting delivery of the trust property, exercising  
1495 powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

1496 (2) A person designated as trustee who has not yet accepted the trusteeship may reject  
1497 the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable  
1498 time after knowing of the designation is considered to have rejected the trusteeship.

1499 (3) A person designated as trustee, without accepting the trusteeship, may:

1500 (a) act to preserve the trust property if, within a reasonable time after acting, the person  
1501 sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a  
1502 qualified beneficiary; and

1503 (b) inspect or investigate trust property to determine potential liability under  
1504 environmental or other law or for any other purpose.

1505 Section 73. Section **75-7-702** is enacted to read:

1506 **75-7-702. Trustee's bond.**

1507 (1) A trustee shall give bond to secure performance of the trustee's duties only if the  
1508 court finds that a bond is needed to protect the interests of the beneficiaries or is required by  
1509 the terms of the trust and the court has not dispensed with the requirement.

1510 (2) The court may specify the amount of a bond, its liabilities, and whether sureties are  
1511 necessary. The court may modify or terminate a bond at any time.

1512 (3) A regulated financial service institution qualified to do trust business in this state  
1513 need not give bond, unless required by the terms of the trust. The cost of any bond shall be  
1514 borne by the trust.

1515 (4) Unless otherwise directed by the court, the cost of the bond is charged to the trust.

1516 Section 74. Section **75-7-703** is enacted to read:

1517 **75-7-703. Cotrustees.**

1518 (1) Cotrustees who are unable to reach a unanimous decision may act by majority  
1519 decision.

1520 (2) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the  
1521 trust.

1522 (3) A cotrustee must participate in the performance of a trustee's function unless the  
1523 cotrustee is unavailable to perform the function because of absence, illness, disqualification  
1524 under other law, or other temporary incapacity, or the cotrustee has properly delegated the  
1525 performance of the function to another trustee.

1526 (4) If a cotrustee is unavailable to perform duties because of absence, illness,  
1527 disqualification under other law, or other temporary incapacity, or if a cotrustee fails or refuses  
1528 to act after reasonable notice, and prompt action is necessary to achieve the purposes of the  
1529 trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the  
1530 remaining cotrustees may act for the trust.

1531 (5) A trustee may not delegate to a cotrustee the performance of a function the settlor  
1532 intended the trustees to perform jointly as determined from the terms of the trust. If one of the  
1533 cotrustees is a regulated financial service institution qualified to do trust business in this state  
1534 and the remaining cotrustees are individuals, a delegation by the individual cotrustees to the  
1535 regulated financial service institution of the performance of trust investment functions shall be  
1536 presumed to be in accordance with the settlor's intent unless the terms of the trust specifically  
1537 provide otherwise. Unless a delegation was irrevocable, a trustee may revoke a delegation  
1538 previously made.

1539 (6) Except as otherwise provided in Subsection (7), a trustee who does not join in an  
1540 action of another trustee is not liable for the action.

1541 (7) Each trustee shall exercise reasonable care to:

1542 (a) prevent a cotrustee from committing a serious breach of trust; and

1543 (b) compel a cotrustee to redress a serious breach of trust.

1544 (8) A dissenting trustee who joins in an action at the direction of the majority of the  
1545 trustees and who notified any cotrustee of the dissent at or before the time of the action is not  
1546 liable for the action unless the action is a serious breach of trust.

1547 Section 75. Section **75-7-704** is enacted to read:

1548 **75-7-704. Vacancy in trusteeship -- Appointment of successor.**

1549 (1) A vacancy in a trusteeship occurs if:

1550 (a) a person designated as trustee rejects the trusteeship;

1551 (b) a person designated as trustee cannot be identified or does not exist;

1552 (c) a trustee resigns;

1553 (d) a trustee is disqualified or removed;

1554 (e) a trustee dies; or

1555 (f) a guardian or conservator is appointed for an individual serving as trustee, unless  
1556 otherwise provided in the trust.

1557 (2) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be  
1558 filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

1559 (3) A vacancy in a trusteeship required to be filled must be filled in the following order  
1560 of priority:

1561 (a) by a person designated in the terms of the trust to act as successor trustee;

1562 (b) by a person appointed by unanimous agreement of the qualified beneficiaries; or

1563 (c) by a person appointed by the court.

1564 (4) A vacancy in a trusteeship of a charitable trust that is required to be filled must be  
1565 filled in the following order of priority:

1566 (a) by a person designated in the terms of the trust to act as successor trustee;

1567 (b) by a person selected by the charitable organizations expressly designated to receive  
1568 distributions under the terms of the trust if the attorney general concurs in the selection; or

1569 (c) by a person appointed by the court.

1570 (5) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court  
1571 may appoint an additional trustee or special fiduciary whenever the court considers the  
1572 appointment necessary for the administration of the trust.

1573 Section 76. Section **75-7-705** is enacted to read:

1574 **75-7-705. Resignation of trustee.**

1575 (1) A trustee may resign:

1576 (a) upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and  
1577 all cotrustees; or

1578 (b) with the approval of the court.

1579 (2) In approving a resignation, the court may issue orders and impose conditions  
1580 reasonably necessary for the protection of the trust property.

1581 (3) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or  
1582 omissions of the trustee is not discharged or affected by the trustee's resignation.

1583 Section 77. Section **75-7-706** is enacted to read:

1584 **75-7-706. Removal of trustee.**

1585 (1) The settlor, a cotrustee, or a qualified beneficiary may request the court to remove a  
1586 trustee, or a trustee may be removed by the court on its own initiative.

1587 (2) The court may remove a trustee if:

1588 (a) the trustee has committed a serious breach of trust;

1589 (b) lack of cooperation among cotrustees substantially impairs the administration of the  
1590 trust;

1591 (c) because of unfitness, unwillingness, or persistent failure of the trustee to administer  
1592 the trust effectively, the court determines that removal of the trustee best serves the interests of  
1593 the beneficiaries; or

1594 (d) there has been a substantial change of circumstances or removal is requested by all  
1595 of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests  
1596 of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a  
1597 suitable cotrustee or successor trustee is available.

1598 (3) Pending a final decision on a request to remove a trustee, or in lieu of or in addition  
1599 to removing a trustee, the court may order appropriate relief under Subsection 75-7-1001(2)  
1600 necessary to protect the trust property or the interests of the beneficiaries.

1601 Section 78. Section **75-7-707** is enacted to read:

1602 **75-7-707. Delivery of property by former trustee.**

1603 (1) Unless a cotrustee remains in office or the court otherwise orders, and until the trust  
1604 property is delivered to a successor trustee or other person entitled to it, a trustee who has  
1605 resigned or been removed has the duties of a trustee and the powers necessary to protect the  
1606 trust property.

1607 (2) A trustee who has resigned or been removed shall proceed expeditiously to deliver  
1608 the trust property within the trustee's possession to the cotrustee, successor trustee, or other

1609 person entitled to it.

1610 Section 79. Section **75-7-708** is enacted to read:

1611 **75-7-708. Compensation of trustee.**

1612 (1) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled  
1613 to compensation that is reasonable under the circumstances.

1614 (2) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be  
1615 compensated as specified, but the court may allow more or less compensation if:

1616 (a) the duties of the trustee are substantially different from those contemplated when  
1617 the trust was created; or

1618 (b) the compensation specified by the terms of the trust would be unreasonably low or  
1619 high.

1620 Section 80. Section **75-7-709** is enacted to read:

1621 **75-7-709. Reimbursement of expenses.**

1622 (1) A trustee is entitled to be reimbursed out of the trust property, with interest as  
1623 appropriate, for:

1624 (a) expenses that were properly incurred in the administration of the trust; and

1625 (b) to the extent necessary to prevent unjust enrichment of the trust, expenses that were  
1626 not properly incurred in the administration of the trust.

1627 (2) An advance by the trustee of money for the protection of the trust gives rise to a  
1628 lien against trust property to secure reimbursement with reasonable interest.

1629 Section 81. Section **75-7-801** is enacted to read:

1630 **Part 8. Duties and Powers of Trustee**

1631 **75-7-801. Duty to administer trust.**

1632 Upon acceptance of a trusteeship, the trustee shall administer the trust expeditiously  
1633 and in good faith, in accordance with its terms and purposes and the interests of the  
1634 beneficiaries, and in accordance with this chapter.

1635 Section 82. Section **75-7-802** is enacted to read:

1636 **75-7-802. Duty of loyalty.**

1637 (1) A trustee shall administer the trust solely in the interests of the beneficiaries.

1638 (2) Subject to the rights of persons dealing with or assisting the trustee as provided in  
1639 Section 75-7-1012, a sale, encumbrance, or other transaction involving the investment or

1640 management of trust property entered into by the trustee for the trustee's own personal account  
1641 or which is otherwise affected by a conflict between the trustee's fiduciary and personal  
1642 interests is voidable by a beneficiary affected by the transaction unless:

1643 (a) the transaction was authorized by the terms of the trust;

1644 (b) the transaction was approved by the court;

1645 (c) the beneficiary did not commence a judicial proceeding within the time allowed by  
1646 Section 75-7-1005;

1647 (d) the beneficiary consented to the trustee's conduct, ratified the transaction, or  
1648 released the trustee in compliance with Section 75-7-1009; or

1649 (e) the transaction involves a contract entered into or claim acquired by the trustee  
1650 before the person became or contemplated becoming trustee.

1651 (3) A sale, encumbrance, or other transaction involving the investment or management  
1652 of trust property is presumed to be affected by a conflict between personal and fiduciary  
1653 interests if it is entered into by the trustee with:

1654 (a) the trustee's spouse;

1655 (b) the trustee's descendants, siblings, parents, or their spouses;

1656 (c) an agent of the trustee, including but not limited to an attorney, accountant, or  
1657 financial advisor; or

1658 (d) a corporation or other person or enterprise in which the trustee, or a person that  
1659 owns a significant interest in the trustee, has an interest that might affect the trustee's best  
1660 judgment.

1661 (4) A transaction between a trustee and a beneficiary that does not concern trust  
1662 property but that occurs during the existence of the trust or while the trustee retains significant  
1663 influence over the beneficiary and from which the trustee obtains an advantage is voidable by  
1664 the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

1665 (5) A transaction not concerning trust property in which the trustee engages in the  
1666 trustee's individual capacity involves a conflict between personal and fiduciary interests if the  
1667 transaction concerns an opportunity properly belonging to the trust.

1668 (6) An investment by a trustee in securities of an investment company or investment  
1669 trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is  
1670 not presumed to be affected by a conflict between personal and fiduciary interests if the

1671 investment complies with the prudent investor rule of Section 75-7-901. The trustee may be  
1672 compensated by the investment company or investment trust for providing those services out of  
1673 fees charged to the trust if the trustee at least annually notifies the persons entitled under  
1674 Section 75-7-811 to receive a copy of the trustee's annual report, disclosing the existence of the  
1675 compensation, the reasons for the compensation, and how the amount was calculated.

1676 (7) In voting shares of stock or in exercising powers of control over similar interests in  
1677 other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the  
1678 trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or  
1679 appoint directors or other managers who will manage the corporation or enterprise in the best  
1680 interests of the beneficiaries.

1681 (8) This section does not preclude the following transactions, if fair to the  
1682 beneficiaries:

1683 (a) an agreement between a trustee and a beneficiary relating to the appointment or  
1684 compensation of the trustee;

1685 (b) payment of reasonable compensation to the trustee;

1686 (c) a transaction between a trust and another trust, decedent's estate, conservatorship, or  
1687 guardianship of which the trustee is a fiduciary or in which a beneficiary has an interest;

1688 (d) a deposit of trust money in a regulated financial service institution operated by the  
1689 trustee; or

1690 (e) an advance by the trustee of money for the protection of the trust.

1691 (9) The court may appoint a special fiduciary to make a decision with respect to any  
1692 proposed transaction that might violate this section if entered into by the trustee.

1693 Section 83. Section **75-7-803** is enacted to read:

1694 **75-7-803. Impartiality.**

1695 If a trust has two or more beneficiaries, the trustee shall act impartially in investing,  
1696 managing, and distributing the trust property, giving due regard to the beneficiaries' respective  
1697 interests.

1698 Section 84. Section **75-7-804** is enacted to read:

1699 **75-7-804. Prudent administration.**

1700 A trustee shall administer the trust as a prudent person would, by considering the  
1701 purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying

1702 this standard, the trustee shall exercise reasonable care, skill, and caution.

1703 Section 85. Section **75-7-805** is enacted to read:

1704 **75-7-805. Costs of administration.**

1705 In administering a trust, the trustee may incur only costs that are reasonable in relation  
1706 to the trust property, the purposes of the trust, and the skills of the trustee.

1707 Section 86. Section **75-7-806** is enacted to read:

1708 **75-7-806. Trustee's skills.**

1709 A trustee who is named trustee in reliance upon the trustee's representation that the  
1710 trustee has special skills or expertise, shall use those special skills or expertise.

1711 Section 87. Section **75-7-807** is enacted to read:

1712 **75-7-807. Control and protection of trust property.**

1713 A trustee shall take reasonable steps to take control of and protect the trust property.

1714 Section 88. Section **75-7-808** is enacted to read:

1715 **75-7-808. Recordkeeping and identification of trust property.**

1716 (1) A trustee shall keep adequate records of the administration of the trust.

1717 (2) A trustee shall keep trust property separate from the trustee's own property.

1718 (3) Except as otherwise provided in Subsection (4), a trustee shall cause the trust  
1719 property to be designated so that the interest of the trust, to the extent feasible, appears in  
1720 records maintained by a party other than a trustee or beneficiary.

1721 (4) If the trustee maintains records clearly indicating the respective interests, a trustee  
1722 may invest as a whole the property of two or more separate trusts.

1723 Section 89. Section **75-7-809** is enacted to read:

1724 **75-7-809. Enforcement and defense of claims.**

1725 A trustee shall take reasonable steps to enforce claims of the trust and to defend claims  
1726 against the trust.

1727 Section 90. Section **75-7-810** is enacted to read:

1728 **75-7-810. Collecting trust property.**

1729 A trustee shall take reasonable steps to compel a former trustee or other person to  
1730 deliver trust property to the trustee, and to redress a breach of trust known to the trustee to have  
1731 been committed by a former trustee, unless the terms of the trust provide otherwise.

1732 Section 91. Section **75-7-811** is enacted to read:

1733 **75-7-811. Duty to inform and report.**

1734 (1) Except to the extent the terms of the trust provide otherwise, a trustee shall keep the  
1735 qualified beneficiaries of the trust reasonably informed about the administration of the trust and  
1736 of the material facts necessary for them to protect their interests. Unless unreasonable under  
1737 the circumstances, and unless otherwise provided by the terms of the trust a trustee shall  
1738 promptly respond to a qualified beneficiary's request for information related to the  
1739 administration of the trust.

1740 (2) Except to the extent the terms of the trust provide otherwise, a trustee:

1741 (a) upon request of a qualified beneficiary, shall promptly furnish to the beneficiary a  
1742 copy of the portions of the trust instrument which describe or affect the beneficiary's interest;

1743 (b) within 60 days after accepting a trusteeship, shall notify the qualified beneficiaries  
1744 of the acceptance and of the trustee's name, address, and telephone number;

1745 (c) within 60 days after the date the trustee acquires knowledge of the creation of an  
1746 irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has  
1747 become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified  
1748 beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to  
1749 request a copy of the trust instrument, and of the right to a trustee's report as provided in  
1750 Subsection (3); and

1751 (d) shall notify the qualified beneficiaries in advance of any change in the method or  
1752 rate of the trustee's compensation.

1753 (3) A trustee shall send to the distributees or permissible distributees of trust income or  
1754 principal, and, except to the extent the terms of the trust provide otherwise, to other qualified  
1755 beneficiaries who request it, at least annually and at the termination of the trust, a report of the  
1756 trust property, liabilities, receipts, and disbursements, including the amount of the trustee's  
1757 compensation or a fee schedule or other writing showing how the trustee's compensation was  
1758 determined, a listing of the trust assets and, if feasible, their respective market values. Upon a  
1759 vacancy in a trusteeship, unless a cotrustee remains in office, a report must be sent to the  
1760 qualified beneficiaries by the former trustee, unless the terms of the trust provide otherwise. A  
1761 personal representative, conservator, or guardian may send the qualified beneficiaries a report  
1762 on behalf of a deceased or incapacitated trustee.

1763 (4) A beneficiary may waive the right to a trustee's report or other information

1764 otherwise required to be furnished under this section. A beneficiary, with respect to future  
1765 reports and other information, may withdraw a waiver previously given.

1766 Section 92. Section **75-7-812** is enacted to read:

1767 **75-7-812. Discretionary powers -- Tax savings.**

1768 (1) Notwithstanding the breadth of discretion granted to a trustee in the terms of the  
1769 trust, including the use of such terms as "absolute," "sole," or "uncontrolled," the trustee shall  
1770 exercise a discretionary power in good faith and in accordance with the terms and purposes of  
1771 the trust and the interests of the beneficiaries.

1772 (2) Subject to Subsection (4), and unless the terms of the trust expressly indicate that a  
1773 rule in this section does not apply:

1774 (a) a person other than a settlor who is a beneficiary and trustee of a trust that confers  
1775 on the trustee a power to make discretionary distributions to or for the trustee's personal benefit  
1776 may exercise the power only in accordance with an ascertainable standard relating to the  
1777 trustee's individual health, education, support, or maintenance within the meaning of  
1778 Subsection 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on  
1779 May 1, 2004; and

1780 (b) a trustee may not exercise a power to make discretionary distributions to satisfy a  
1781 legal obligation of support that the trustee personally owes another person.

1782 (3) A power whose exercise is limited or prohibited by Subsection (2) may be  
1783 exercised by a majority of the remaining trustees whose exercise of the power is not so limited  
1784 or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a  
1785 special fiduciary with authority to exercise the power.

1786 (4) Subsection (2) does not apply to:

1787 (a) a power held by the settlor's spouse who is the trustee of a trust for which a marital  
1788 deduction, as defined in Subsection 2056(b)(5) or 2523(e) of the Internal Revenue Code of  
1789 1986, as in effect on May 1, 2004, was previously allowed;

1790 (b) any trust during any period that the trust may be revoked or amended by its settlor;  
1791 or

1792 (c) a trust if contributions to the trust qualify for the annual exclusion under Subsection  
1793 2503(c) of the Internal Revenue Code of 1986, as in effect on May 1, 2004.

1794 Section 93. Section **75-7-813** is enacted to read:

1795 **75-7-813. General powers of trustee.**1796 (1) A trustee, without authorization by the court, may exercise:1797 (a) powers conferred by the terms of the trust; or1798 (b) except as limited by the terms of the trust:1799 (i) all powers over the trust property which an unmarried competent owner has over  
1800 individually owned property;1801 (ii) any other powers appropriate to achieve the proper investment, management, and  
1802 distribution of the trust property; and1803 (iii) any other powers conferred by this chapter.1804 (2) The exercise of a power is subject to the fiduciary duties prescribed by this part.1805 Section 94. Section **75-7-814** is enacted to read:1806 **75-7-814. Specific powers of trustee.**1807 Without limiting the authority conferred by Section 75-7-813, a trustee may:1808 (1) collect trust property and accept or reject additions to the trust property from a  
1809 settlor or any other person;1810 (2) acquire or sell property, for cash or on credit, at public or private sale;1811 (3) exchange, partition, or otherwise change the character of trust property;1812 (4) deposit trust money in an account in a regulated financial service institution;1813 (5) borrow money, with or without security from any financial institution, including a  
1814 financial institution that is serving as a trustee or one of its affiliates, and mortgage or pledge1815 trust property for a period within or extending beyond the duration of the trust;1816 (6) with respect to an interest in a proprietorship, partnership, limited liability  
1817 company, business trust, corporation, or other form of business or enterprise, continue the  
1818 business or other enterprise and take any action that may be taken by shareholders, members, or  
1819 property owners, including merging, dissolving, or otherwise changing the form of business  
1820 organization or contributing additional capital;1821 (7) with respect to stocks or other securities, exercise the rights of an absolute owner,  
1822 including the right to:1823 (a) vote, or give proxies to vote, with or without power of substitution, or enter into or  
1824 continue a voting trust agreement;1825 (b) hold a security in the name of a nominee or in other form without disclosure of the

1826 trust so that title may pass by delivery;

1827 (c) pay calls, assessments, and other sums chargeable or accruing against the securities,  
1828 and sell or exercise stock subscription or conversion rights; and

1829 (d) deposit the securities with a depository or other regulated financial service  
1830 institution;

1831 (8) with respect to an interest in real property, construct, or make ordinary or  
1832 extraordinary repairs to, alterations to, or improvements in, buildings or other structures,  
1833 demolish improvements, raze existing or erect new party walls or buildings, subdivide or  
1834 develop land, dedicate land to public use or grant public or private easements, and make or  
1835 vacate plats and adjust boundaries;

1836 (9) enter into a lease for any purpose as lessor or lessee, including a lease or other  
1837 arrangement for exploration and removal of natural resources, with or without the option to  
1838 purchase or renew, for a period within or extending beyond the duration of the trust;

1839 (10) grant an option involving a sale, lease, or other disposition of trust property or  
1840 acquire an option for the acquisition of property, including an option exercisable beyond the  
1841 duration of the trust, and exercise an option so acquired;

1842 (11) insure the property of the trust against damage or loss and insure the trustee, the  
1843 trustee's agents, and beneficiaries against liability arising from the administration of the trust;

1844 (12) abandon or decline to administer property of no value or of insufficient value to  
1845 justify its collection or continued administration;

1846 (13) with respect to possible liability for violation of environmental law:

1847 (a) inspect or investigate property the trustee holds or has been asked to hold, or  
1848 property owned or operated by an organization in which the trustee holds or has been asked to  
1849 hold an interest, for the purpose of determining the application of environmental law with  
1850 respect to the property;

1851 (b) take action to prevent, abate, or otherwise remedy any actual or potential violation  
1852 of any environmental law affecting property held directly or indirectly by the trustee, whether  
1853 taken before or after the assertion of a claim or the initiation of governmental enforcement;

1854 (c) decline to accept property into trust or disclaim any power with respect to property  
1855 that is or may be burdened with liability for violation of environmental law;

1856 (d) compromise claims against the trust which may be asserted for an alleged violation

1857 of environmental law; and  
1858 (e) pay the expense of any inspection, review, abatement, or remedial action to comply  
1859 with environmental law;  
1860 (14) pay or contest any claim, settle a claim by or against the trust, and release, in  
1861 whole or in part, a claim belonging to the trust;  
1862 (15) pay taxes, assessments, compensation of the trustee and of employees and agents  
1863 of the trust, and other expenses incurred in the administration of the trust;  
1864 (16) exercise elections with respect to federal, state, and local taxes;  
1865 (17) select a mode of payment under any employee benefit or retirement plan, annuity,  
1866 or life insurance payable to the trustee, exercise rights thereunder, including exercise of the  
1867 right to indemnification for expenses and against liabilities, and take appropriate action to  
1868 collect the proceeds;  
1869 (18) make loans out of trust property, including loans to a beneficiary on terms and  
1870 conditions the trustee considers to be fair and reasonable under the circumstances, and the  
1871 trustee has a lien on future distributions for repayment of those loans;  
1872 (19) pledge trust property to guarantee loans made by others to the beneficiary;  
1873 (20) appoint a trustee to act in another jurisdiction with respect to trust property located  
1874 in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the  
1875 appointing trustee, require that the appointed trustee furnish security, and remove any trustee so  
1876 appointed;  
1877 (21) pay an amount distributable to a beneficiary who is under a legal disability or who  
1878 the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or  
1879 applying it for the beneficiary's benefit, or by:  
1880 (a) paying it to the beneficiary's conservator or, if the beneficiary does not have a  
1881 conservator, the beneficiary's guardian;  
1882 (b) paying it to the beneficiary's custodian under Title 75, Chapter 5a, Uniform  
1883 Transfers to Minors Act;  
1884 (c) if the trustee does not know of a conservator, guardian, custodian, or custodial  
1885 trustee, paying it to an adult relative or other person having legal or physical care or custody of  
1886 the beneficiary, to be expended on the beneficiary's behalf; or  
1887 (d) managing it as a separate fund on the beneficiary's behalf, subject to the

1888 beneficiary's continuing right to withdraw the distribution;

1889 (22) on distribution of trust property or the division or termination of a trust, make  
1890 distributions in divided or undivided interests, allocate particular assets in proportionate or  
1891 disproportionate shares, value the trust property for those purposes, and adjust for resulting  
1892 differences in valuation;

1893 (23) resolve a dispute concerning the interpretation of the trust or its administration by  
1894 mediation, arbitration, or other procedure for alternative dispute resolution;

1895 (24) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to  
1896 protect trust property and the trustee in the performance of the trustee's duties;

1897 (25) sign and deliver contracts and other instruments that are useful to achieve or  
1898 facilitate the exercise of the trustee's powers; and

1899 (26) on termination of the trust, exercise the powers appropriate to finalize the  
1900 administration of the trust and distribute the trust property to the persons entitled to it.

1901 Section 95. Section **75-7-815** is enacted to read:

1902 **75-7-815. Distribution upon termination.**

1903 (1) Upon termination or partial termination of a trust, the trustee may send to the  
1904 beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed  
1905 distribution terminates if the beneficiary does not notify the trustee of an objection within 30  
1906 days after the proposal was sent but only if the proposal informed the beneficiary of the right to  
1907 object and of the time allowed for objection.

1908 (2) Upon the occurrence of an event terminating or partially terminating a trust, the  
1909 trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it,  
1910 subject to the right of the trustee to retain a reasonable reserve for the payment of debts,  
1911 expenses, and taxes.

1912 (3) A release by a beneficiary of a trustee from liability for breach of trust is invalid to  
1913 the extent:

1914 (a) it was induced by improper conduct of the trustee; or

1915 (b) the beneficiary, at the time of the release, did not know or had no reason to know of  
1916 the beneficiary's rights or of the material facts relating to the breach.

1917 Section 96. Section **75-7-816** is enacted to read:

1918 **75-7-816. Recitals when title to real property is in trust -- Failure.**

1919 (1) When title to real property is granted to a person as trustee, the terms of the trust  
1920 may be given either:

1921 (a) in the deed of transfer; or

1922 (b) in an instrument signed by the grantor and recorded in the same office as the grant  
1923 to the trustee.

1924 (2) If the terms of the trust are not made public as required in Subsection (1), a  
1925 conveyance from the trustee is absolute in favor of purchasers for value who take the property  
1926 without notice of the terms of the trust.

1927 (3) The terms of the trust recited in the deed of transfer or the instrument recorded  
1928 under Subsection (1)(b) shall include:

1929 (a) the name of the trustee;

1930 (b) the address of the trustee; and

1931 (c) the name and date of the trust.

1932 (4) Any real property titled in a trust which has a restriction on transfer described in  
1933 Section 25-6-14 shall include in the title the words "asset protection trust".

1934 Section 97. Section **75-7-817** is enacted to read:

1935 **75-7-817. Marital deduction formulas -- Trusts.**

1936 (1) For estates of decedents dying after December 31, 1981, where a decedent's trust  
1937 executed before September 13, 1981, contains a formula expressly providing that the  
1938 decedent's spouse is to receive the maximum amount of property qualifying for the marital  
1939 deduction allowable by federal law, this formula shall be construed as referring to the unlimited  
1940 marital deduction allowable by federal law as amended by Section 403(a) of the Economic  
1941 Recovery Tax Act of 1981.

1942 (2) The intention of a trustor as expressed in the trust shall control the legal effect of  
1943 any dispositions made by it for purposes of construing Subsection (1), and the rule of  
1944 construction of Subsection (1) shall apply unless a contrary intention is indicated by the trust.

1945 Section 98. Section **75-7-901** is enacted to read:

1946 **Part 9. Utah Uniform Prudent Investor Act**

1947 **75-7-901. Prudent investor rule.**

1948 (1) Except as otherwise provided in Subsection (2), a trustee who invests and manages  
1949 trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule

1950 set forth in this chapter.

1951 (2) The prudent investor rule is a default rule and may be expanded, restricted,  
1952 eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a  
1953 beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the  
1954 trust.

1955 Section 99. Section **75-7-902** is enacted to read:

1956 **75-7-902. Standard of care -- Portfolio strategy -- Risk and return objectives.**

1957 (1) A trustee shall invest and manage trust assets as a prudent investor would, by  
1958 considering the purposes, terms, distribution requirements, and other circumstances of the trust.  
1959 In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

1960 (2) A trustee's investment and management decisions respecting individual assets must  
1961 be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of  
1962 an overall investment strategy having risk and return objectives reasonably suited to the trust.

1963 (3) Among circumstances that a trustee shall consider in investing and managing trust  
1964 assets are the following which may be relevant to the trust or its beneficiaries:

1965 (a) general economic conditions;

1966 (b) the possible effect of inflation or deflation;

1967 (c) the expected tax consequences of investment decisions or strategies;

1968 (d) the role that each investment or course of action plays within the overall trust  
1969 portfolio, which may include financial assets, interests in closely held enterprises, tangible and  
1970 intangible personal property, and real property;

1971 (e) the expected total return from income and the appreciation of capital;

1972 (f) other resources of the beneficiaries;

1973 (g) needs for liquidity, regularity of income, and preservation or appreciation of capital;

1974 and

1975 (h) an asset's special relationship or special value, if any, to the purposes of the trust or  
1976 to one or more of the beneficiaries.

1977 (4) A trustee shall make a reasonable effort to verify facts relevant to the investment  
1978 and management of trust assets.

1979 (5) A trustee may invest in any kind of property or type of investment consistent with  
1980 the standards of this chapter.

1981 Section 100. Section **75-7-903** is enacted to read:

1982 **75-7-903. Diversification.**

1983 A trustee shall diversify the investments of the trust unless the trustee reasonably  
1984 determines that, because of special circumstances, the purposes of the trust are better served  
1985 without diversifying.

1986 Section 101. Section **75-7-904** is enacted to read:

1987 **75-7-904. Duties at inception of trusteeship.**

1988 Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee  
1989 shall review the trust assets and make and implement decisions concerning the retention and  
1990 disposition of assets, in order to bring the trust portfolio into compliance with the purposes,  
1991 terms, distribution requirements, and other circumstances of the trust, and with the  
1992 requirements of this chapter.

1993 Section 102. Section **75-7-905** is enacted to read:

1994 **75-7-905. Reviewing compliance.**

1995 Compliance with the prudent investor rule is determined in light of the facts and  
1996 circumstances existing at the time of a trustee's decision or action and not by hindsight. This  
1997 section does not require a specific outcome in investing.

1998 Section 103. Section **75-7-906** is enacted to read:

1999 **75-7-906. Investment direction.**

2000 (1) For purposes of this section, "investment direction" means a direction that is  
2001 binding on the trustee, except for an investment direction given by a settlor as described in  
2002 Subsection (2) to do any of the following with respect to an investment:

2003 (a) retention;

2004 (b) purchase;

2005 (c) sale;

2006 (d) exchange;

2007 (e) tender; or

2008 (f) any other transaction affecting ownership in the investment.

2009 (2) (a) During the time period that a trust is revocable, the trustee may follow any  
2010 investment direction of the settlor, including an investment direction that:

2011 (i) is manifestly contrary to the terms of the trust; or

2012 (ii) seriously breaches a fiduciary duty to the beneficiaries.

2013 (b) The trustee is not liable for any loss resulting from following an investment

2014 direction described in Subsection (2)(a).

2015 (3) If the terms of a trust authorize a person to give investment direction to the trustee,

2016 the person authorized to give investment direction:

2017 (a) is presumptively a fiduciary only with respect to an investment direction that the

2018 person gives to the trustee;

2019 (b) is required to act in good faith with regard to:

2020 (i) the purposes of the trust; and

2021 (ii) the interests of the beneficiaries; and

2022 (c) is liable for any loss that results from breach of the fiduciary duty only with respect

2023 to an investment direction that the person gives to the trustee.

2024 (4) Except in cases of willful misconduct or gross negligence, a trustee is not liable for

2025 any loss that results from following an investment direction if:

2026 (a) the terms of a trust authorizes a person to give the investment direction to the

2027 trustee; and

2028 (b) the trustee acts in accordance with the investment direction given by a person

2029 described in Subsection (4)(a).

2030 (5) If the terms of a trust require another person's approval or consent to an investment

2031 decision of the trustee:

2032 (a) the person from whom approval or consent is required:

2033 (i) is presumptively a fiduciary;

2034 (ii) is required to act in good faith with regard to:

2035 (A) the purposes of the trust; and

2036 (B) the interests of the beneficiaries; and

2037 (iii) is liable for any loss that results from breach of the fiduciary duty; and

2038 (b) except in cases of willful misconduct or gross negligence, the trustee is not liable

2039 for any loss resulting from any act not taken as a result of the person's failure to respond to a

2040 request for approval or consent.

2041 Section 104. Section **75-7-907** is enacted to read:

2042 **75-7-907. Language invoking standard of chapter.**

2043 The following terms or comparable language in the provisions of a trust, unless  
2044 otherwise limited or modified, authorizes any investment or strategy permitted under this  
2045 chapter: "investments permissible by law for investment of trust funds," "legal investments,"  
2046 "authorized investments," "using the judgment and care under the circumstances then  
2047 prevailing that persons of prudence, discretion, and intelligence exercise in the management of  
2048 their own affairs, not in regard to speculation but in regard to the permanent disposition of their  
2049 funds, considering the probable income as well as the probable safety of their capital," "prudent  
2050 man rule," "prudent trustee rule," "prudent person rule," and "prudent investor rule."

2051 Section 105. Section **75-7-1001** is enacted to read:

2052 **Part 10. Liability of Trustees and Rights of Persons Dealing with Trustee**

2053 **75-7-1001. Remedies for breach of trust.**

2054 (1) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of  
2055 trust.

2056 (2) To remedy a breach of trust that has occurred or may occur, the court may:

2057 (a) compel the trustee to perform the trustee's duties;

2058 (b) enjoin the trustee from committing a breach of trust;

2059 (c) compel the trustee to redress a breach of trust by paying money, restoring property,  
2060 or other means;

2061 (d) order a trustee to account;

2062 (e) appoint a special fiduciary to take possession of the trust property and administer  
2063 the trust;

2064 (f) suspend the trustee;

2065 (g) remove the trustee as provided in Section 75-7-706;

2066 (h) reduce or deny compensation to the trustee;

2067 (i) subject to Section 75-7-1012, void an act of the trustee, impose a lien or a  
2068 constructive trust on trust property, or trace trust property wrongfully disposed of and recover  
2069 the property or its proceeds; or

2070 (j) order any other appropriate relief.

2071 Section 106. Section **75-7-1002** is enacted to read:

2072 **75-7-1002. Damages for breach of trust.**

2073 (1) A trustee who commits a breach of trust is liable to the beneficiaries affected for the

2074 greater of:

2075 (a) the amount required to restore the value of the trust property and trust distributions  
2076 to what they would have been had the breach not occurred; or

2077 (b) the profit the trustee made by reason of the breach.

2078 (2) Except as otherwise provided in this Subsection (2), if more than one trustee is  
2079 liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the  
2080 other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially  
2081 more at fault than another trustee or if the trustee committed the breach of trust in bad faith or  
2082 with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A  
2083 trustee who received a benefit from the breach of trust is not entitled to contribution from  
2084 another trustee to the extent of the benefit received.

2085 Section 107. Section **75-7-1003** is enacted to read:

2086 **75-7-1003. Damages in absence of breach.**

2087 (1) A trustee is accountable to an affected beneficiary for any profit made by the trustee  
2088 arising from the administration of the trust, even absent a breach of trust.

2089 (2) Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or  
2090 depreciation in the value of trust property or for not having made a profit.

2091 Section 108. Section **75-7-1004** is enacted to read:

2092 **75-7-1004. Attorney's fees and costs.**

2093 In a judicial proceeding involving the administration of a trust, the court may, as justice  
2094 and equity may require, award costs and expenses, including reasonable attorney's fees, to any  
2095 party, to be paid by another party or from the trust that is the subject of the controversy.

2096 Section 109. Section **75-7-1005** is enacted to read:

2097 **75-7-1005. Limitation of action against trustee.**

2098 (1) A beneficiary may not commence a proceeding against a trustee for breach of trust  
2099 more than six months after the date that the beneficiary or a person who may represent and  
2100 bind the beneficiary was sent a report that adequately disclosed the existence of a potential  
2101 claim for breach of trust and informed the beneficiary of the time allowed for commencing a  
2102 proceeding.

2103 (2) A report adequately discloses the existence of a potential claim for breach of trust if  
2104 it provides sufficient information so that the beneficiary or representative knows of the

2105 potential claim or should have inquired into its existence.

2106 (3) If Subsection (1) does not apply, a judicial proceeding by a beneficiary against a  
2107 trustee for breach of trust must be commenced within one year after the first to occur of:

2108 (a) the removal, resignation, or death of the trustee;

2109 (b) the termination of the beneficiary's interest in the trust; or

2110 (c) the termination of the trust.

2111 (4) This section does not preclude an action to recover for fraud or misrepresentation  
2112 related to the report.

2113 Section 110. Section **75-7-1006** is enacted to read:

2114 **75-7-1006. Reliance on trust instrument.**

2115 A trustee who acts in reasonable reliance on the terms of the trust as expressed in the  
2116 trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach  
2117 resulted from the reliance.

2118 Section 111. Section **75-7-1007** is enacted to read:

2119 **75-7-1007. Event affecting administration or distribution.**

2120 If the happening of an event, including marriage, divorce, performance of educational  
2121 requirements, or death, affects the administration or distribution of a trust, a trustee is not liable  
2122 for a loss resulting from the trustee's lack of knowledge or lack of notice.

2123 Section 112. Section **75-7-1008** is enacted to read:

2124 **75-7-1008. Exculpation of trustee.**

2125 (1) A term of a trust relieving a trustee of liability for breach of trust is unenforceable  
2126 to the extent that it:

2127 (a) relieves the trustee of liability for breach of trust committed in bad faith or with  
2128 reckless indifference to the purposes of the trust or the interests of the beneficiaries; or

2129 (b) was inserted as the result of an abuse by the trustee of a fiduciary or confidential  
2130 relationship to the settlor.

2131 (2) An exculpatory term drafted or caused to be drafted by the trustee is invalid as an  
2132 abuse of a fiduciary or confidential relationship unless the settlor is or was represented by  
2133 independent counsel or the trustee proves that the exculpatory term is fair under the  
2134 circumstances and that its existence and contents were adequately communicated to the settlor.

2135 Section 113. Section **75-7-1009** is enacted to read:

2136 **75-7-1009. Beneficiary's consent, release, or ratification.**

2137 A trustee is not liable to a beneficiary for breach of trust if the beneficiary, while having  
2138 capacity, consented to the conduct constituting the breach, released the trustee from liability for  
2139 the breach, or ratified the transaction constituting the breach, unless:

2140 (1) the consent, release, or ratification of the beneficiary was induced by improper  
2141 conduct of the trustee;

2142 (2) at the time of the consent, release, or ratification, the beneficiary did not know of  
2143 the beneficiary's rights or of the material facts relating to the breach; or

2144 (3) the beneficiary was not represented by independent counsel.

2145 Section 114. Section **75-7-1010** is enacted to read:

2146 **75-7-1010. Limitation on personal liability of trustee.**

2147 (1) Except as otherwise provided in the contract, a trustee is not personally liable on a  
2148 contract properly entered into in the trustee's fiduciary capacity in the course of administering  
2149 the trust if the trustee in the contract disclosed the fiduciary capacity.

2150 (2) A trustee is personally liable for torts committed in the course of administering a  
2151 trust, or for obligations arising from ownership or control of trust property, including liability  
2152 for violation of environmental law, only if the trustee is personally at fault.

2153 (3) A claim based on a contract entered into by a trustee in the trustee's fiduciary  
2154 capacity, on an obligation arising from ownership or control of trust property, or on a tort  
2155 committed in the course of administering a trust, may be asserted in a judicial proceeding  
2156 against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally  
2157 liable for the claim.

2158 (4) The question of liability as between the trust estate and the trustee individually may  
2159 be determined in a proceeding for accounting, surcharge, or indemnification or other  
2160 appropriate proceeding.

2161 (5) Whenever an instrument creating a trust reserves to the settlor, or vests in an  
2162 advisory or investment committee, or in any other person or persons, including one or more  
2163 cotrustees to the exclusion of the trustee or to the exclusion of one or more of several trustees,  
2164 authority to direct the making or retention of any investment, the excluded trustee or trustees  
2165 shall not be liable, either individually or as a fiduciary, for any loss resulting from the making  
2166 or retention of any investment pursuant to such direction.

2167 (6) In the absence of actual knowledge or information which would cause a reasonable  
2168 trustee to inquire further, no trustee shall be liable for failure to take necessary steps to compel  
2169 the redress of any breach of trust or fiduciary duty by any predecessor personal representative,  
2170 trustee, or other fiduciary. The provisions of this section shall not be construed to limit the  
2171 fiduciary liability of any trustee for his own acts or omissions with respect to the trust estate.

2172 Section 115. Section **75-7-1011** is enacted to read:

2173 **75-7-1011. Interest as general partner.**

2174 (1) Except as otherwise provided in Subsection (3) or unless personal liability is  
2175 imposed in the contract, a trustee who holds an interest as a general partner in a general or  
2176 limited partnership is not personally liable on a contract entered into by the partnership after  
2177 the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in  
2178 a statement previously filed pursuant to Title 48, Chapter 2a, Utah Revised Uniform Limited  
2179 Partnership Act.

2180 (2) Except as otherwise provided in Subsection (3), a trustee who holds an interest as a  
2181 general partner is not personally liable for torts committed by the partnership or for obligations  
2182 arising from ownership or control of the interest unless the trustee is personally at fault.

2183 (3) The immunity provided by this section does not apply if an interest in the  
2184 partnership is held by the trustee in a capacity other than that of trustee or is held by the  
2185 trustee's spouse or one or more of the trustee's descendants, siblings, or parents, or the spouse  
2186 of any of them.

2187 (4) If the trustee of a revocable trust holds an interest as a general partner, the settlor is  
2188 personally liable for contracts and other obligations of the partnership as if the settlor were a  
2189 general partner.

2190 Section 116. Section **75-7-1012** is enacted to read:

2191 **75-7-1012. Protection of person dealing with trustee.**

2192 (1) A person other than a beneficiary who in good faith assists a trustee, or who in  
2193 good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or  
2194 improperly exercising the trustee's powers is protected from liability as if the trustee properly  
2195 exercised the power.

2196 (2) A person other than a beneficiary who in good faith deals with a trustee is not  
2197 required to inquire into the extent of the trustee's powers or the propriety of their exercise.

2198 (3) A person who in good faith delivers assets to a trustee need not ensure their proper  
2199 application.

2200 (4) A person other than a beneficiary who in good faith assists a former trustee, or who  
2201 in good faith and for value deals with a former trustee, without knowledge that the trusteeship  
2202 has terminated is protected from liability as if the former trustee were still a trustee.

2203 (5) Comparable protective provisions of other laws relating to commercial transactions  
2204 or transfer of securities by fiduciaries prevail over the protection provided by this section.

2205 Section 117. Section **75-7-1013** is enacted to read:

2206 **75-7-1013. Certification of trust.**

2207 (1) Instead of furnishing a copy of the trust instrument to a person other than a  
2208 beneficiary, the trustee may furnish to the person a certification of trust containing the  
2209 following information:

2210 (a) that the trust exists and the date the trust instrument was executed;

2211 (b) the identity of the settlor;

2212 (c) the identity and address of the currently acting trustee;

2213 (d) the powers of the trustee in the pending transaction;

2214 (e) the revocability or irrevocability of the trust and the identity of any person holding a  
2215 power to revoke the trust;

2216 (f) the authority of cotrustees to sign or otherwise authenticate and whether all or less  
2217 than all are required in order to exercise powers of the trustee; and

2218 (g) the name in which title to trust property may be taken.

2219 (2) A certification of trust may be signed or otherwise authenticated by any trustee.

2220 (3) A certification of trust must state that the trust has not been revoked, modified, or  
2221 amended in any manner that would cause the representations contained in the certification of  
2222 trust to be incorrect.

2223 (4) A certification of trust need not contain the dispositive terms of a trust.

2224 (5) A recipient of a certification of trust may require the trustee to furnish copies of  
2225 those excerpts from the original trust instrument and later amendments which designate the  
2226 trustee and confer upon the trustee the power to act in the pending transaction.

2227 (6) A person who acts in reliance upon a certification of trust without knowledge that  
2228 the representations contained in it are incorrect is not liable to any person for acting and may

2229 assume without inquiry the existence of the facts contained in the certification. Knowledge of  
2230 the terms of the trust may not be inferred solely from the fact that a copy of all or part of the  
2231 trust instrument is held by the person relying upon the certification.

2232 (7) A person who in good faith enters into a transaction in reliance upon a certification  
2233 of trust may enforce the transaction against the trust property as if the representations contained  
2234 in the certification were correct.

2235 (8) A person making a demand for the trust instrument in addition to a certification of  
2236 trust or excerpts is liable for costs, expenses, attorney fees, and damages if the court determines  
2237 that the person did not act in good faith in demanding the trust instrument.

2238 (9) This section does not limit the right of a person to obtain a copy of the trust  
2239 instrument in a judicial proceeding concerning the trust.

2240 Section 118. Section **75-7-1101** is enacted to read:

2241 **Part 11. Miscellaneous Provisions**

2242 **75-7-1101. Uniformity of application and construction.**

2243 In applying and construing this chapter, consideration must be given to the need to  
2244 promote uniformity of the law with respect to its subject matter among states that enact it.

2245 Section 119. Section **75-7-1102** is enacted to read:

2246 **75-7-1102. Electronic records and signatures.**

2247 The provisions of this chapter governing the legal effect, validity, or enforceability of  
2248 electronic records or electronic signatures, and of contracts formed or performed with the use  
2249 of such records or signatures, conform to the requirements of Section 102 of the Electronic  
2250 Signatures in Global and National Commerce Act (15 U.S.C. §7002) and supersede, modify,  
2251 and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

2252 Section 120. Section **75-7-1103** is enacted to read:

2253 **75-7-1103. Application to existing relationships.**

2254 (1) Except as otherwise provided, this chapter applies to:

2255 (a) all trusts created before, on, or after May 1, 2004;

2256 (b) all judicial proceedings concerning trusts commenced on or after May 1, 2004; and

2257 (c) judicial proceedings concerning trusts commenced before May 1, 2004 unless the  
2258 court finds that application of a particular provision of this chapter would substantially interfere  
2259 with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in

2260 which case the particular provision of this chapter does not apply and the superseded section  
2261 will apply.

2262 (2) Any rule of construction or presumption provided in this chapter applies to trust  
2263 instruments executed before May 1, 2004 unless there is a clear indication of a contrary intent  
2264 in the terms of the trust.

2265 (3) An act done before May 1, 2004 is not affected by this chapter.

2266 (4) If a right is acquired, extinguished, or barred upon the expiration of a prescribed  
2267 period that has commenced to run under any other statute before May 1, 2004, that statute  
2268 continues to apply to the right even if it has been repealed or superseded.

2269 Section 121. **Repealer.**

2270 This bill repeals:

2271 Section **75-7-206, Proceedings for review of employment of agents and review of**  
2272 **compensation of trustee and employees of trust.**

2273 Section **75-7-207, Trust proceedings -- Initiation by notice -- Necessary parties.**

2274 Section **75-7-306, Personal liability of trustee to third parties.**

2275 Section **75-7-307, Limitations on proceedings against trustees after final account.**

2276 Section **75-7-405.5, Vacancy in trusteeship -- Appointment of successor.**

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**Legislative Review Note**  
as of 1-16-04 3:30 PM

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

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number SB0047**

**Uniform Trust Code**

*02-Feb-04*

*10:51 AM*

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**State Impact**

Provisions of this bill can be handled within existing budgets.

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**Individual and Business Impact**

Impact on individuals and entities affected by this legislation is not determinable.

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**Office of the Legislative Fiscal Analyst**