

Representative David Clark proposes the following substitute bill:

UNIFORM PRINCIPAL AND INCOME ACT

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill revises the Uniform Principal and Income Act enacted in 1979.

Highlighted Provisions:

This bill:

- ▶ applies probate administration rules to revocable living trusts;
- ▶ provides for the allocation of net income from partnership interests under specific circumstances;
- ▶ allocates between principal and income the income from harvesting and selling timber;
- ▶ allocates between principal and income the receipts from derivatives, options, and asset-backed securities;
- ▶ deals with disbursements made because of environmental laws;
- ▶ specifically addresses deferred compensation in greater detail than the previous version;
- ▶ changes the percentage used to allocate amounts received from oil and gas; and
- ▶ eliminates the unproductive property rule for trusts other than marital deduction trusts.

Monies Appropriated in this Bill:

None



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 ENACTS:

- 30 **22-3-101**, Utah Code Annotated 1953
- 31 **22-3-102**, Utah Code Annotated 1953
- 32 **22-3-103**, Utah Code Annotated 1953
- 33 **22-3-104**, Utah Code Annotated 1953
- 34 **22-3-105**, Utah Code Annotated 1953
- 35 **22-3-106**, Utah Code Annotated 1953
- 36 **22-3-107**, Utah Code Annotated 1953
- 37 **22-3-201**, Utah Code Annotated 1953
- 38 **22-3-202**, Utah Code Annotated 1953
- 39 **22-3-301**, Utah Code Annotated 1953
- 40 **22-3-302**, Utah Code Annotated 1953
- 41 **22-3-303**, Utah Code Annotated 1953
- 42 **22-3-401**, Utah Code Annotated 1953
- 43 **22-3-402**, Utah Code Annotated 1953
- 44 **22-3-403**, Utah Code Annotated 1953
- 45 **22-3-404**, Utah Code Annotated 1953
- 46 **22-3-405**, Utah Code Annotated 1953
- 47 **22-3-406**, Utah Code Annotated 1953
- 48 **22-3-407**, Utah Code Annotated 1953
- 49 **22-3-408**, Utah Code Annotated 1953
- 50 **22-3-409**, Utah Code Annotated 1953
- 51 **22-3-410**, Utah Code Annotated 1953
- 52 **22-3-411**, Utah Code Annotated 1953
- 53 **22-3-412**, Utah Code Annotated 1953
- 54 **22-3-413**, Utah Code Annotated 1953
- 55 **22-3-414**, Utah Code Annotated 1953
- 56 **22-3-415**, Utah Code Annotated 1953

- 57 **22-3-501**, Utah Code Annotated 1953
- 58 **22-3-502**, Utah Code Annotated 1953
- 59 **22-3-503**, Utah Code Annotated 1953
- 60 **22-3-504**, Utah Code Annotated 1953
- 61 **22-3-505**, Utah Code Annotated 1953
- 62 **22-3-506**, Utah Code Annotated 1953
- 63 **22-3-601**, Utah Code Annotated 1953
- 64 **22-3-602**, Utah Code Annotated 1953
- 65 **22-3-603**, Utah Code Annotated 1953

66 REPEALS:

- 67 **22-3-1**, as enacted by Chapter 89, Laws of Utah 1979
- 68 **22-3-2**, as enacted by Chapter 89, Laws of Utah 1979
- 69 **22-3-3**, as enacted by Chapter 89, Laws of Utah 1979
- 70 **22-3-4**, as enacted by Chapter 89, Laws of Utah 1979
- 71 **22-3-5**, as enacted by Chapter 89, Laws of Utah 1979
- 72 **22-3-6**, as enacted by Chapter 89, Laws of Utah 1979
- 73 **22-3-7**, as enacted by Chapter 89, Laws of Utah 1979
- 74 **22-3-8**, as enacted by Chapter 89, Laws of Utah 1979
- 75 **22-3-9**, as enacted by Chapter 89, Laws of Utah 1979
- 76 **22-3-10**, as enacted by Chapter 89, Laws of Utah 1979
- 77 **22-3-11**, as enacted by Chapter 89, Laws of Utah 1979
- 78 **22-3-12**, as enacted by Chapter 89, Laws of Utah 1979
- 79 **22-3-13**, as enacted by Chapter 89, Laws of Utah 1979
- 80 **22-3-14**, as enacted by Chapter 89, Laws of Utah 1979
- 81 **22-3-15**, as enacted by Chapter 89, Laws of Utah 1979
- 82 **22-3-16**, as enacted by Chapter 89, Laws of Utah 1979



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

85 Section 1. Section **22-3-101** is enacted to read:

86 **CHAPTER 3. UNIFORM PRINCIPAL AND INCOME ACT**

87 **Part 1. Definitions and Fiduciary Duties**

88 **22-3-101. Title.**

89 This chapter is known as the "Uniform Principal and Income Act."

90 Section 2. Section **22-3-102** is enacted to read:

91 **22-3-102. Definitions.**

92 In this chapter:

93 (1) "Accounting period" means a calendar year unless another 12-month period is
94 selected by a fiduciary. The term includes a portion of a calendar year or other 12-month
95 period that begins when an income interest begins or ends when an income interest ends.

96 (2) "Beneficiary" includes, in the case of a decedent's estate, an heir and devisee and, in
97 the case of a trust, an income beneficiary and a remainder beneficiary.

98 (3) "Fiduciary" means a personal representative or a trustee. The term includes an
99 executor, administrator, successor personal representative, special administrator, and a person
100 performing substantially the same function.

101 (4) "Income" means money or property that a fiduciary receives as current return from
102 a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation
103 of a principal asset, to the extent provided in Part 4.

104 (5) "Income beneficiary" means a person to whom net income of a trust is or may be
105 payable.

106 (6) "Income interest" means the right of an income beneficiary to receive all or part of
107 net income, whether the terms of the trust require it to be distributed or authorize it to be
108 distributed in the trustee's discretion.

109 (7) "Mandatory income interest" means the right of an income beneficiary to receive
110 net income that the terms of the trust require the fiduciary to distribute.

111 (8) "Net income" means the total receipts allocated to income during an accounting
112 period minus the disbursements made from income during the period, plus or minus transfers
113 under this chapter to or from income during the period.

114 (9) "Person" means an individual, corporation, business trust, estate, trust, partnership,
115 limited liability company, association, joint venture, government; governmental subdivision,
116 agency, or instrumentality; public corporation, or any other legal or commercial entity.

117 (10) "Principal" means property held in trust for distribution to a remainder beneficiary
118 when the trust terminates.

119 (11) "Remainder beneficiary" means a person entitled to receive principal when an
120 income interest ends.

121 (12) "Terms of a trust" means the manifestation of the intent of a settlor or decedent
122 with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding,
123 whether by written or spoken words or by conduct.

124 (13) "Trustee" includes an original, additional, or successor trustee, whether or not
125 appointed or confirmed by a court.

126 Section 3. Section **22-3-103** is enacted to read:

127 **22-3-103. Fiduciary duties -- General principles.**

128 (1) In allocating receipts and disbursements to or between principal and income, and
129 with respect to any matter within the scope of Parts 2 and 3, a fiduciary:

130 (a) shall administer a trust or estate in accordance with the terms of the trust or the will,
131 even if there is a different provision in this chapter;

132 (b) may administer a trust or estate by the exercise of a discretionary power of
133 administration given to the fiduciary by the terms of the trust or the will, even if the exercise of
134 the power produces a result different from a result required or permitted by this chapter;

135 (c) shall administer a trust or estate in accordance with this chapter if the terms of the
136 trust or the will do not contain a different provision or do not give the fiduciary a discretionary
137 power of administration; and

138 (d) shall add a receipt or charge a disbursement to principal to the extent that the terms
139 of the trust and this chapter do not provide a rule for allocating the receipt or disbursement to
140 or between principal and income.

141 (2) In exercising the power to adjust under Subsection 22-3-104(1) or a discretionary
142 power of administration regarding a matter within the scope of this chapter, whether granted by
143 the terms of a trust, a will, or this chapter, a fiduciary shall administer a trust or estate
144 impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent
145 that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may
146 favor one or more of the beneficiaries. A determination in accordance with this chapter is
147 presumed to be fair and reasonable to all of the beneficiaries.

148 Section 4. Section **22-3-104** is enacted to read:

149 **22-3-104. Trustee's power to adjust.**

150 (1) A trustee may adjust between principal and income to the extent the trustee
151 considers necessary if the trustee invests and manages trust assets as a prudent investor, the
152 terms of the trust describe the amount that may or must be distributed to a beneficiary by
153 referring to the trust's income, and the trustee determines, after applying the rules in Subsection
154 22-3-103(1), that the trustee is unable to comply with Subsection 22-3-103(2).

155 (2) In deciding whether and to what extent to exercise the power conferred by
156 Subsection (1), a trustee shall consider all factors relevant to the trust and its beneficiaries,
157 including the following factors to the extent they are relevant:

158 (a) the nature, purpose, and expected duration of the trust;

159 (b) the intent of the settlor;

160 (c) the identity and circumstances of the beneficiaries;

161 (d) the needs for liquidity, regularity of income, and preservation and appreciation of
162 capital;

163 (e) the assets held in the trust; the extent to which they consist of financial assets,
164 interests in closely held enterprises, tangible and intangible personal property, or real property;
165 the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the
166 trustee or received from the settlor;

167 (f) the net amount allocated to income under the other sections of this chapter and the
168 increase or decrease in the value of the principal assets, which the trustee may estimate as to
169 assets for which market values are not readily available;

170 (g) whether and to what extent the terms of the trust give the trustee the power to
171 invade principal or accumulate income or prohibit the trustee from invading principal or
172 accumulating income, and the extent to which the trustee has exercised a power from time to
173 time to invade principal or accumulate income;

174 (h) the actual and anticipated effect of economic conditions on principal and income
175 and effects of inflation and deflation; and

176 (i) the anticipated tax consequences of an adjustment.

177 (3) A trustee may not make an adjustment:

178 (a) that diminishes the income interest in a trust that requires all of the income to be
179 paid at least annually to a spouse and for which an estate tax or gift tax marital deduction
180 would be allowed, in whole or in part, if the trustee did not have the power to make the

181 adjustment;

182 (b) that reduces the actuarial value of the income interest in a trust to which a person
183 transfers property with the intent to qualify for a gift tax exclusion;

184 (c) that changes the amount payable to a beneficiary as a fixed annuity or a fixed
185 fraction of the value of the trust assets;

186 (d) from any amount that is permanently set aside for charitable purposes under a will
187 or the terms of a trust unless both income and principal are so set aside;

188 (e) if possessing or exercising the power to make an adjustment causes an individual to
189 be treated as the owner of all or part of the trust for income tax purposes, and the individual
190 would not be treated as the owner if the trustee did not possess the power to make an
191 adjustment;

192 (f) if possessing or exercising the power to make an adjustment causes all or part of the
193 trust assets to be included for estate tax purposes in the estate of an individual who has the
194 power to remove a trustee or appoint a trustee, or both, and the assets would not be included in
195 the estate of the individual if the trustee did not possess the power to make an adjustment;

196 (g) if the trustee is a beneficiary of the trust; or

197 (h) if the trustee is not a beneficiary, but the adjustment would benefit the trustee
198 directly or indirectly.

199 (4) If Subsection (3)(e), (f), (g), or (h) applies to a trustee and there is more than one
200 trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the
201 exercise of the power by the remaining trustee or trustees is not permitted by the terms of the
202 trust.

203 (5) A trustee may release the entire power conferred by Subsection (1) or may release
204 only the power to adjust from income to principal or the power to adjust from principal to
205 income if the trustee is uncertain about whether possessing or exercising the power will cause a
206 result described in Subsections (3)(a) through (f) or Subsection (3)(h) or if the trustee
207 determines that possessing or exercising the power will or may deprive the trust of a tax benefit
208 or impose a tax burden not described in Subsection (3). The release may be permanent or for a
209 specified period, including a period measured by the life of an individual.

210 (6) Terms of a trust that limit the power of a trustee to make an adjustment between
211 principal and income do not affect the application of this section unless it is clear from the

212 terms of the trust that the terms are intended to deny the trustee the power of adjustment
213 conferred by Subsection (1).

214 Section 5. Section **22-3-105** is enacted to read:

215 **22-3-105. Judicial control of discretionary power.**

216 (1) The court may not order a fiduciary to change a decision to exercise or not to
217 exercise a discretionary power conferred by this chapter unless it determines that the decision
218 was an abuse of the fiduciary's discretion. A fiduciary's decision is not an abuse of discretion
219 merely because the court would have exercised the power in a different manner or would not
220 have exercised the power.

221 (2) The decisions to which Subsection (1) applies include:

222 (a) A decision under Subsection 22-3-104(1) as to whether and to what extent an
223 amount should be transferred from principal to income or from income to principal.

224 (b) A decision regarding the factors that are relevant to the trust and its beneficiaries,
225 the extent to which the factors are relevant, and the weight, if any, to be given to those factors,
226 in deciding whether and to what extent to exercise the discretionary power conferred by
227 Subsection 22-3-104(1).

228 (3) If the court determines that a fiduciary has abused the fiduciary's discretion, the
229 court may place the income and remainder beneficiaries in the positions they would have
230 occupied if the discretion had not been abused, according to the following rules:

231 (a) To the extent that the abuse of discretion has resulted in no distribution to a
232 beneficiary or in a distribution that is too small, the court shall order the fiduciary to distribute
233 from the trust to the beneficiary an amount that the court determines will restore the
234 beneficiary, in whole or in part, to the beneficiary's appropriate position.

235 (b) To the extent that the abuse of discretion has resulted in a distribution to a
236 beneficiary which is too large, the court shall place the beneficiaries, the trust, or both, in whole
237 or in part, in their appropriate positions by ordering the fiduciary to withhold an amount from
238 one or more future distributions to the beneficiary who received the distribution that was too
239 large or ordering that beneficiary to return some or all of the distribution to the trust.

240 (c) To the extent that the court is unable, after applying Subsections (3)(a) and (b), to
241 place the beneficiaries, the trust, or both, in the positions they would have occupied if the
242 discretion had not been abused, the court may order the fiduciary to pay an appropriate amount

243 from its own funds to one or more of the beneficiaries or the trust or both.

244 (4) Upon petition by the fiduciary, the court having jurisdiction over a trust or estate
245 shall determine whether a proposed exercise or nonexercise by the fiduciary of a discretionary
246 power conferred by this chapter will result in an abuse of the fiduciary's discretion. If the
247 petition describes the proposed exercise or nonexercise of the power and contains sufficient
248 information to inform the beneficiaries of the reasons for the proposal, the facts upon which the
249 fiduciary relies, and an explanation of how the income and remainder beneficiaries will be
250 affected by the proposed exercise or nonexercise of the power, a beneficiary who challenges
251 the proposed exercise or nonexercise has the burden of establishing that it will result in an
252 abuse of discretion.

253 Section 6. Section **22-3-106** is enacted to read:

254 **22-3-106. Adjustments.**

255 Nothing in this chapter is intended to create or imply a duty to make an adjustment, and
256 a trustee is not liable for not considering whether to make an adjustment or for choosing not to
257 make an adjustment.

258 Section 7. Section **22-3-107** is enacted to read:

259 **22-3-107. Notice of proposed action -- Objections by beneficiary -- Liability of**
260 **trustee -- Proceedings.**

261 (1) A trustee may give a notice of proposed action regarding a matter governed by this
262 chapter as provided in this section. For the purpose of this section, a proposed action includes
263 a course of action and a decision not to take action.

264 (2) The trustee shall mail notice of the proposed action to all adult beneficiaries who
265 are receiving, or are entitled to receive, income under the trust or to receive a distribution of
266 principal if the trust were terminated at the time the notice is given.

267 (3) Notice of proposed action need not be given to any person who consents in writing
268 to the proposed action. The consent may be executed at any time before or after the proposed
269 action is taken.

270 (4) The notice of proposed action shall state that it is given pursuant to this section and
271 the following:

272 (a) the name and mailing address of the trustee;

273 (b) the name and telephone number of a person who may be contacted for additional

274 information:

275 (c) a description of the action proposed to be taken and an explanation of the reasons
276 for the action;

277 (d) the time within which objections to the proposed action can be made, which shall
278 be at least 30 days from the mailing of the notice of proposed action; and

279 (e) the date on or after which the proposed action may be taken or is effective.

280 (5) A beneficiary may object to the proposed action by mailing a written objection to
281 the trustee at the address stated in the notice of proposed action within the time period specified
282 in the notice of proposed action.

283 (6) A trustee is not liable to a beneficiary for an action regarding a matter governed by
284 this chapter if the trustee does not receive a written objection to the proposed action from a
285 beneficiary within the applicable period and the other requirements of this section are satisfied.
286 If no beneficiary entitled to notice objects under this section, the trustee is not liable to any
287 current or future beneficiary with respect to the proposed action.

288 (7) If the trustee receives a written objection within the applicable period, either the
289 trustee or a beneficiary may petition the court to have the proposed action taken as proposed,
290 taken with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed
291 action has the burden of proving that the trustee's proposed action should not be taken. A
292 beneficiary who has not objected is not estopped from opposing the proposed action in the
293 proceeding.

294 (8) If the trustee decides not to implement the proposed action, the trustee shall notify
295 the beneficiaries of the decision not to take the action and the reasons for the decision. The
296 trustee's decision not to implement the proposed action does not give rise to liability to any
297 current or future beneficiary.

298 (9) A beneficiary may petition the court to have the action taken, and has the burden of
299 proving that it should be taken.

300 Section 8. Section **22-3-201** is enacted to read:

301 **Part 2. Decedent's Estate or Terminating Income Interest**

302 **22-3-201. Determination and distribution of net income.**

303 After a decedent dies, in the case of an estate, or after an income interest in a trust ends,
304 the following rules apply:

305 (1) A fiduciary of an estate or of a terminating income interest shall determine the
306 amount of net income and net principal receipts received from property specifically given to a
307 beneficiary under the rules in Parts 3 through 5 which apply to trustees and the rules in
308 Subsection (5). The fiduciary shall distribute the net income and net principal receipts to the
309 beneficiary who is to receive the specific property.

310 (2) A fiduciary shall determine the remaining net income of a decedent's estate or a
311 terminating income interest under the rules in Parts 3 through 5 which apply to trustees and by:

312 (a) including in net income all income from property used to discharge liabilities;

313 (b) paying from income or principal, in the fiduciary's discretion, fees of attorneys,
314 accountants, and fiduciaries; court costs and other expenses of administration; and interest on
315 death taxes, but the fiduciary may pay those expenses from income of property passing to a
316 trust for which the fiduciary claims an estate tax marital or charitable deduction only to the
317 extent that the payment of those expenses from income will not cause the reduction or loss of
318 the deduction; and

319 (c) paying from principal all other disbursements made or incurred in connection with
320 the settlement of a decedent's estate or the winding up of a terminating income interest,
321 including debts, funeral expenses, disposition of remains, family allowances, and death taxes
322 and related penalties that are apportioned to the estate or terminating income interest by the
323 will, the terms of the trust, or applicable law.

324 (3) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount
325 outright, the interest or any other amount provided by the will, the terms of the trust, or
326 applicable law from net income determined under Subsection (2) or from principal to the extent
327 that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a
328 trust after an income interest ends and no interest or other amount is provided for by the terms
329 of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which
330 the beneficiary would be entitled under applicable law if the pecuniary amount were required to
331 be paid under a will.

332 (4) A fiduciary shall distribute the net income remaining after distributions required by
333 Subsection (3) in the manner described in Section 22-3-202 to all other beneficiaries, including
334 a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an
335 unqualified power to withdraw assets from the trust or other presently exercisable general

336 power of appointment over the trust.

337 (5) A fiduciary may not reduce principal or income receipts from property described in
338 Subsection (1) because of a payment described in Section 22-3-501 or 22-3-502 to the extent
339 that the will, the terms of the trust, or applicable law requires the fiduciary to make the
340 payment from assets other than the property or to the extent that the fiduciary recovers or
341 expects to recover the payment from a third party. The net income and principal receipts from
342 the property are determined by including all of the amounts the fiduciary receives or pays with
343 respect to the property, whether those amounts accrued or became due before, on, or after the
344 date of a decedent's death or an income interest's terminating event, and by making a
345 reasonable provision for amounts that the fiduciary believes the estate or terminating income
346 interest may become obligated to pay after the property is distributed.

347 Section 9. Section **22-3-202** is enacted to read:

348 **22-3-202. Distribution to residuary and remainder beneficiaries.**

349 (1) Each beneficiary described in Subsection 22-3-201(4) is entitled to receive a
350 portion of the net income equal to the beneficiary's fractional interest in undistributed principal
351 assets, using values as of the distribution date. If a fiduciary makes more than one distribution
352 of assets to beneficiaries to whom this section applies, each beneficiary, including one who
353 does not receive part of the distribution, is entitled, as of each distribution date, to the net
354 income the fiduciary has received after the date of death or terminating event or earlier
355 distribution date but has not distributed as of the current distribution date.

356 (2) In determining a beneficiary's share of net income, the following rules apply:

357 (a) The beneficiary is entitled to receive a portion of the net income equal to the
358 beneficiary's fractional interest in the undistributed principal assets immediately before the
359 distribution date, including assets that later may be sold to meet principal obligations.

360 (b) The beneficiary's fractional interest in the undistributed principal assets must be
361 calculated without regard to property specifically given to a beneficiary and property required
362 to pay pecuniary amounts not in trust.

363 (c) The beneficiary's fractional interest in the undistributed principal assets must be
364 calculated on the basis of the aggregate value of those assets as of the distribution date without
365 reducing the value by any unpaid principal obligation.

366 (d) The distribution date for purposes of this section may be the date as of which the

367 fiduciary calculates the value of the assets if that date is reasonably near the date on which
368 assets are actually distributed.

369 (3) If a fiduciary does not distribute all of the collected but undistributed net income to
370 each person as of a distribution date, the fiduciary shall maintain appropriate records showing
371 the interest of each beneficiary in that net income.

372 (4) A fiduciary may apply the rules in this section, to the extent that the fiduciary
373 considers it appropriate, to net gain or loss realized after the date of death or terminating event
374 or earlier distribution date from the disposition of a principal asset if this section applies to the
375 income from the asset.

376 Section 10. Section **22-3-301** is enacted to read:

377 **Part 3. Apportionment at Beginning and End of Income Interest**

378 **22-3-301. When right to income begins and ends.**

379 (1) An income beneficiary is entitled to net income from the date on which the income
380 interest begins. An income interest begins on the date specified in the terms of the trust or, if
381 no date is specified, on the date an asset becomes subject to a trust or successive income
382 interest.

383 (2) An asset becomes subject to a trust:

384 (a) on the date it is transferred to the trust in the case of an asset that is transferred to a
385 trust during the transferor's life;

386 (b) on the date of a testator's death in the case of an asset that becomes subject to a trust
387 by reason of a will, even if there is an intervening period of administration of the testator's
388 estate; or

389 (c) on the date of an individual's death in the case of an asset that is transferred to a
390 fiduciary by a third party because of the individual's death.

391 (3) An asset becomes subject to a successive income interest on the day after the
392 preceding income interest ends, as determined under Subsection (4), even if there is an
393 intervening period of administration to wind up the preceding income interest.

394 (4) An income interest ends on the day before an income beneficiary dies or another
395 terminating event occurs, or on the last day of a period during which there is no beneficiary to
396 whom a trustee may distribute income.

397 Section 11. Section **22-3-302** is enacted to read:

398 **22-3-302. Apportionment of receipts and disbursements when decedent dies or**
399 **income interest begins.**

400 (1) A trustee shall allocate an income receipt or disbursement other than one to which
401 Subsection 22-3-201(1) applies to principal if its due date occurs before a decedent dies in the
402 case of an estate or before an income interest begins in the case of a trust or successive income
403 interest.

404 (2) A trustee shall allocate an income receipt or disbursement to income if its due date
405 occurs on or after the date on which a decedent dies or an income interest begins and it is a
406 periodic due date. An income receipt or disbursement must be treated as accruing from day to
407 day if its due date is not periodic or it has no due date. The portion of the receipt or
408 disbursement accruing before the date on which a decedent dies or an income interest begins
409 must be allocated to principal and the balance must be allocated to income.

410 (3) An item of income or an obligation is due on the date the payer is required to make
411 a payment. If a payment date is not stated, there is no due date for the purposes of this chapter.
412 Distributions to shareholders or other owners from an entity to which Section 22-3-401 applies
413 are considered to be due on the date fixed by the entity for determining who is entitled to
414 receive the distribution or, if no date is fixed, on the declaration date for the distribution. A
415 due date is periodic for receipts or disbursements that must be paid at regular intervals under a
416 lease or an obligation to pay interest or if an entity customarily makes distributions at regular
417 intervals.

418 Section 12. Section **22-3-303** is enacted to read:

419 **22-3-303. Apportionment when income interest ends.**

420 (1) In this section, "undistributed income" means net income received before the date
421 on which an income interest ends. The term does not include an item of income or expense
422 that is due or accrued or net income that has been added or is required to be added to principal
423 under the terms of the trust.

424 (2) When a mandatory income interest ends, the trustee shall pay to a mandatory
425 income beneficiary who survives that date, or the estate of a deceased mandatory income
426 beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed
427 income that is not disposed of under the terms of the trust unless the beneficiary has an
428 unqualified power to revoke more than 5% of the trust immediately before the income interest

429 ends. In the latter case, the undistributed income from the portion of the trust that may be
430 revoked must be added to principal.

431 (3) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of
432 the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by
433 applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate,
434 or other tax requirements.

435 Section 13. Section **22-3-401** is enacted to read:

436 **Part 4. Allocation of Receipts During Administration of Trust**

437 **22-3-401. Receipts from entities -- Character of receipts.**

438 (1) In this section, "entity" means a corporation, partnership, limited liability company,
439 regulated investment company, real estate investment trust, common trust fund, or any other
440 organization in which a trustee has an interest other than a trust or estate to which Section
441 22-3-402 applies, a business or activity to which Section 22-3-403 applies, or an asset-backed
442 security to which Section 22-3-415 applies.

443 (2) Except as otherwise provided in this section, a trustee shall allocate to income
444 money received from an entity.

445 (3) A trustee shall allocate the following receipts from an entity to principal:

446 (a) property other than money;

447 (b) money received in one distribution or a series of related distributions in exchange
448 for part or all of a trust's interest in the entity;

449 (c) money received in total or partial liquidation of the entity; and

450 (d) money received from an entity that is a regulated investment company or a real
451 estate investment trust if the money distributed is a capital gain dividend for federal income tax
452 purposes.

453 (4) Money is received in partial liquidation:

454 (a) to the extent that the entity, at or near the time of a distribution, indicates that it is a
455 distribution in partial liquidation; or

456 (b) if the total amount of money and property received in a distribution or series of
457 related distributions is greater than 20% of the entity's gross assets, as shown by the entity's
458 year-end financial statements immediately preceding the initial receipt.

459 (5) Money is not received in partial liquidation, nor may it be taken into account under

460 Subsection (4)(b), to the extent that it does not exceed the amount of income tax that a trustee
461 or beneficiary must pay on taxable income of the entity that distributes the money.

462 (6) A trustee may rely upon a statement made by an entity about the source or character
463 of a distribution if the statement is made at or near the time of distribution by the entity's board
464 of directors or other person or group of persons authorized to exercise powers to pay money or
465 transfer property comparable to those of a corporation's board of directors.

466 Section 14. Section **22-3-402** is enacted to read:

467 **22-3-402. Receipts from entities -- Distribution from trust or estate.**

468 A trustee shall allocate to income an amount received as a distribution of income from a
469 trust or an estate in which the trust has an interest other than a purchased interest, and shall
470 allocate to principal an amount received as a distribution of principal from such a trust or
471 estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or
472 donor transfers an interest in such a trust to a trustee, Section 22-3-401 or 22-3-415 applies to a
473 receipt from the trust.

474 Section 15. Section **22-3-403** is enacted to read:

475 **22-3-403. Receipts from entities -- Business and other activities conducted by**
476 **trustee.**

477 (1) If a trustee who conducts a business or other activity determines that it is in the best
478 interest of all the beneficiaries to account separately for the business or activity instead of
479 accounting for it as part of the trust's general accounting records, the trustee may maintain
480 separate accounting records for its transactions, whether or not its assets are segregated from
481 other trust assets.

482 (2) A trustee who accounts separately for a business or other activity may determine
483 the extent to which its net cash receipts must be retained for working capital, the acquisition or
484 replacement of fixed assets, and other reasonably foreseeable needs of the business or activity,
485 and the extent to which the remaining net cash receipts are accounted for as principal or
486 income in the trust's general accounting records. If a trustee sells assets of the business or other
487 activity, other than in the ordinary course of the business or activity, the trustee shall account
488 for the net amount received as principal in the trust's general accounting records to the extent
489 the trustee determines that the amount received is no longer required in the conduct of the
490 business.

491 (3) Activities for which a trustee may maintain separate accounting records include:

492 (a) retail, manufacturing, service, and other traditional business activities;

493 (b) farming;

494 (c) raising and selling livestock and other animals;

495 (d) management of rental properties;

496 (e) extraction of minerals and other natural resources;

497 (f) timber operations; and

498 (g) activities to which Section 22-3-414 applies.

499 Section 16. Section **22-3-404** is enacted to read:

500 **22-3-404. Receipts not normally apportioned -- Principal receipts.**

501 A trustee shall allocate to principal:

502 (1) to the extent not allocated to income under this chapter, assets received from a
503 transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income
504 interest, or a payer under a contract naming the trust or its trustee as beneficiary;

505 (2) money or other property received from the sale, exchange, liquidation, or change in
506 form of a principal asset, including realized profit, subject to this part;

507 (3) amounts recovered from third parties to reimburse the trust because of
508 disbursements described in Subsection 22-3-502(1)(g) or for other reasons to the extent not
509 based on the loss of income;

510 (4) proceeds of property taken by eminent domain, but a separate award made for the
511 loss of income with respect to an accounting period during which a current income beneficiary
512 had a mandatory income interest is income;

513 (5) net income received in an accounting period during which there is no beneficiary to
514 whom a trustee may or must distribute income; and

515 (6) other receipts as provided in Sections 22-3-408 through 22-3-415.

516 Section 17. Section **22-3-405** is enacted to read:

517 **22-3-405. Receipts not normally apportioned -- Rental property.**

518 To the extent that a trustee accounts for receipts from rental property pursuant to this
519 section, the trustee shall allocate to income an amount received as rent of real or personal
520 property, including an amount received for cancellation or renewal of a lease. An amount
521 received as a refundable deposit, including a security deposit or a deposit that is to be applied

522 as rent for future periods, must be added to principal and held subject to the terms of the lease
523 and is not available for distribution to a beneficiary until the trustee's contractual obligations
524 have been satisfied with respect to that amount.

525 Section 18. Section **22-3-406** is enacted to read:

526 **22-3-406. Receipts not normally apportioned -- Obligation to pay money.**

527 (1) An amount received as interest, whether determined at a fixed, variable, or floating
528 rate, on an obligation to pay money to the trustee, including an amount received as
529 consideration for prepaying principal, must be allocated to income without any provision for
530 amortization of premium.

531 (2) A trustee shall allocate to principal an amount received from the sale, redemption,
532 or other disposition of an obligation to pay money to the trustee more than one year after it is
533 purchased or acquired by the trustee, including an obligation whose purchase price or value
534 when it is acquired is less than its value at maturity. If the obligation matures within one year
535 after it is purchased or acquired by the trustee, an amount received in excess of its purchase
536 price or its value when acquired by the trust must be allocated to income.

537 (3) This section does not apply to an obligation to which Section 22-3-409, 22-3-410,
538 22-3-411, 22-3-412, 22-3-414, or 22-3-415 applies.

539 Section 19. Section **22-3-407** is enacted to read:

540 **22-3-407. Receipts not normally apportioned -- Insurance policies and similar**
541 **contracts.**

542 (1) Except as otherwise provided in Subsection (2), a trustee shall allocate to principal
543 the proceeds of a life insurance policy or other contract in which the trust or its trustee is
544 named as beneficiary, including a contract that insures the trust or its trustee against loss for
545 damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on
546 an insurance policy to income if the premiums on the policy are paid from income, and to
547 principal if the premiums are paid from principal.

548 (2) A trustee shall allocate to income proceeds of a contract that insures the trustee
549 against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to
550 Section 22-3-403, loss of profits from a business.

551 (3) This section does not apply to a contract to which Section 22-3-409 applies.

552 Section 20. Section **22-3-408** is enacted to read:

553 **22-3-408. Receipts normally apportioned -- Insubstantial allocations not required.**

554 If a trustee determines that an allocation between principal and income required by
555 Section 22-3-409, 22-3-410, 22-3-411, 22-3-412, or 22-3-415 is insubstantial, the trustee may
556 allocate the entire amount to principal unless one of the circumstances described in Subsection
557 22-3-104(3) applies to the allocation. This power may be exercised by a cotrustee in the
558 circumstances described in Subsection 22-3-104(4) and may be released for the reasons and in
559 the manner described in Subsection 22-3-104(5). An allocation is presumed to be insubstantial
560 if:

561 (1) the amount of the allocation would increase or decrease net income in an
562 accounting period, as determined before the allocation, by less than 10%; or

563 (2) the value of the asset producing the receipt for which the allocation would be made
564 is less than 10% of the total value of the trust's assets at the beginning of the accounting period.

565 Section 21. Section **22-3-409** is enacted to read:

566 **22-3-409. Receipts normally apportioned -- Deferred compensation, annuities,**
567 **and similar payments.**

568 (1) In this section, "payment" means a payment that a trustee may receive over a fixed
569 number of years or during the life of one or more individuals because of services rendered or
570 property transferred to the payer in exchange for future payments. The term includes a
571 payment made in money or property from the payer's general assets or from a separate fund
572 created by the payer, including a private or commercial annuity, an individual retirement
573 account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

574 (2) To the extent that a payment is characterized as interest or a dividend or a payment
575 made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall
576 allocate to principal the balance of the payment and any other payment received in the same
577 accounting period that is not characterized as interest, a dividend, or an equivalent payment.

578 (3) If no part of a payment is characterized as interest, a dividend, or an equivalent
579 payment, and all or part of the payment is required to be made, a trustee shall allocate to
580 income 10% of the part that is required to be made during the accounting period and the
581 balance to principal. If no part of a payment is required to be made or the payment received is
582 the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to
583 principal. For purposes of this Subsection (3), a payment is not "required to be made" to the

584 extent that it is made because the trustee exercises a right of withdrawal.

585 (4) If, to obtain an estate tax marital deduction for a trust, a trustee must allocate more
586 of a payment to income than provided for by this section, the trustee shall allocate to income
587 the additional amount necessary to obtain the marital deduction.

588 (5) This section does not apply to payments to which Section 22-3-410 applies.

589 Section 22. Section **22-3-410** is enacted to read:

590 **22-3-410. Receipts normally apportioned -- Liquidating asset.**

591 (1) In this section, "liquidating asset" means an asset whose value will diminish or
592 terminate because the asset is expected to produce receipts for a period of limited duration.
593 The term includes a leasehold, patent, copyright, royalty right, and right to receive payments
594 during a period of more than one year under an arrangement that does not provide for the
595 payment of interest on the unpaid balance. The term does not include a payment subject to
596 Section 22-3-409, resources subject to Section 22-3-411, timber subject to Section 22-3-412,
597 an activity subject to Section 22-3-414, an asset subject to Section 22-3-415, or any asset for
598 which the trustee establishes a reserve for depreciation under Section 22-3-503.

599 (2) A trustee shall allocate to income 10% of the receipts from a liquidating asset and
600 the balance to principal.

601 Section 23. Section **22-3-411** is enacted to read:

602 **22-3-411. Receipts normally apportioned -- Minerals, water, and other natural**
603 **resources.**

604 (1) To the extent that a trustee accounts for receipts from an interest in minerals or
605 other natural resources pursuant to this section, the trustee shall allocate them as follows:

606 (a) If received as nominal delay rental or nominal annual rent on a lease, a receipt must
607 be allocated to income.

608 (b) If received from a production payment, a receipt must be allocated to income if and
609 to the extent that the agreement creating the production payment provides a factor for interest
610 or its equivalent. The balance must be allocated to principal.

611 (c) If an amount received as a royalty, shut-in-well payment, take-or-pay payment,
612 bonus, or delay rental is more than nominal, 90% must be allocated to principal and the balance
613 to income.

614 (d) If an amount is received from a working interest or any other interest not provided

615 for in Subsection (1)(a), (b), or (c), 90% of the net amount received must be allocated to
616 principal and the balance to income.

617 (2) An amount received on account of an interest in water that is renewable must be
618 allocated to income. If the water is not renewable, 90% of the amount must be allocated to
619 principal and the balance to income.

620 (3) This chapter applies whether or not a decedent or donor was extracting minerals,
621 water, or other natural resources before the interest became subject to the trust.

622 (4) If a trust owns an interest in minerals, water, or other natural resources on May 3,
623 2004, the trustee may allocate receipts from the interest as provided in this chapter or in the
624 manner used by the trustee before May 3, 2004. If the trust acquires an interest in minerals,
625 water, or other natural resources after May 3, 2004, the trustee shall allocate receipts from the
626 interest as provided in this chapter.

627 Section 24. Section **22-3-412** is enacted to read:

628 **22-3-412. Receipts normally apportioned -- Timber.**

629 (1) To the extent that a trustee accounts for receipts from the sale of timber and related
630 products pursuant to this section, the trustee shall allocate the net receipts:

631 (a) to income to the extent that the amount of timber removed from the land does not
632 exceed the rate of growth of the timber during the accounting periods in which a beneficiary
633 has a mandatory income interest;

634 (b) to principal to the extent that the amount of timber removed from the land exceeds
635 the rate of growth of the timber or the net receipts are from the sale of standing timber;

636 (c) to or between income and principal if the net receipts are from the lease of
637 timberland or from a contract to cut timber from land owned by a trust, by determining the
638 amount of timber removed from the land under the lease or contract and applying the rules in
639 Subsections 22-3-411(1)(a) and (b); or

640 (d) to principal to the extent that advance payments, bonuses, and other payments are
641 not allocated pursuant to Subsection 22-3-411(1)(a), (b), or (c).

642 (2) In determining net receipts to be allocated pursuant to Subsection 22-3-411(1), a
643 trustee shall deduct and transfer to principal a reasonable amount for depletion.

644 (3) This chapter applies whether or not a decedent or transferor was harvesting timber
645 from the property before it became subject to the trust.

646 (4) If a trust owns an interest in timberland on May 3, 2004, the trustee may allocate
647 net receipts from the sale of timber and related products as provided in this chapter or in the
648 manner used by the trustee before May 3, 2004. If the trust acquires an interest in timberland
649 after May 3, 2004, the trustee shall allocate net receipts from the sale of timber and related
650 products as provided in this chapter.

651 Section 25. Section **22-3-413** is enacted to read:

652 **22-3-413. Receipts normally apportioned -- Property not productive of income.**

653 (1) If a marital deduction is allowed for all or part of a trust whose assets consist
654 substantially of property that does not provide the spouse with sufficient income from or use of
655 the trust assets, and if the amounts that the trustee transfers from principal to income under
656 Section 22-3-104 and distributes to the spouse from principal pursuant to the terms of the trust
657 are insufficient to provide the spouse with the beneficial enjoyment required to obtain the
658 marital deduction, the spouse may require the trustee to make property productive of income,
659 convert property within a reasonable time, or exercise the power conferred by Subsection
660 22-3-104(1). The trustee may decide which action or combination of actions to take.

661 (2) In cases not governed by Subsection (1), proceeds from the sale or other disposition
662 of an asset are principal without regard to the amount of income the asset produces during any
663 accounting period.

664 Section 26. Section **22-3-414** is enacted to read:

665 **22-3-414. Receipts normally apportioned -- Derivatives and options.**

666 (1) In this section, "derivative" means a contract or financial instrument or a
667 combination of contracts and financial instruments which gives a trust the right or obligation to
668 participate in some or all changes in the price of a tangible or intangible asset or group of
669 assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or
670 a group of assets.

671 (2) To the extent that a trustee does not account under Section 22-3-403 for
672 transactions in derivatives, the trustee shall allocate to principal receipts from and
673 disbursements made in connection with those transactions.

674 (3) If a trustee grants an option to buy property from the trust, whether or not the trust
675 owns the property when the option is granted, grants an option that permits another person to
676 sell property to the trust, or acquires an option to buy property for the trust or an option to sell

677 an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the
678 asset if the option is exercised, an amount received for granting the option must be allocated to
679 principal. An amount paid to acquire the option must be paid from principal. A gain or loss
680 realized upon the exercise of an option, including an option granted to a settlor of the trust for
681 services rendered, must be allocated to principal.

682 Section 27. Section **22-3-415** is enacted to read:

683 **22-3-415. Receipts normally apportioned -- Asset-backed securities.**

684 (1) In this section, "asset-backed security" means an asset whose value is based upon
685 the right it gives the owner to receive distributions from the proceeds of financial assets that
686 provide collateral for the security. The term includes an asset that gives the owner the right to
687 receive from the collateral financial assets only the interest or other current return or only the
688 proceeds other than interest or current return. The term does not include an asset to which
689 Section 22-3-401 or 22-3-409 applies.

690 (2) If a trust receives a payment from interest or other current return and from other
691 proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the
692 payment which the payer identifies as being from interest or other current return and shall
693 allocate the balance of the payment to principal.

694 (3) If a trust receives one or more payments in exchange for the trust's entire interest in
695 an asset-backed security in one accounting period, the trustee shall allocate the payments to
696 principal. If a payment is one of a series of payments that will result in the liquidation of the
697 trust's interest in the security over more than one accounting period, the trustee shall allocate
698 10% of the payment to income and the balance to principal.

699 Section 28. Section **22-3-501** is enacted to read:

700 **Part 5. Allocation of Disbursements During Administration of Trust**

701 **22-3-501. Disbursements from income.**

702 A trustee shall make the following disbursements from income to the extent that they
703 are not disbursements to which Subsection 22-3-201(2)(b) or (c) applies:

704 (1) 1/2 of the regular compensation of the trustee and of any person providing
705 investment advisory or custodial services to the trustee;

706 (2) 1/2 of all expenses for accountings, judicial proceedings, or other matters that
707 involve both the income and remainder interests;

708 (3) all of the other ordinary expenses incurred in connection with the administration,
709 management, or preservation of trust property and the distribution of income, including
710 interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a
711 proceeding or other matter that concerns primarily the income interest; and

712 (4) recurring premiums on insurance covering the loss of a principal asset or the loss of
713 income from or use of the asset.

714 Section 29. Section **22-3-502** is enacted to read:

715 **22-3-502. Disbursements from principal.**

716 (1) A trustee shall make the following disbursements from principal:

717 (a) the remaining 1/2 of the disbursements described in Subsections 22-3-501(1) and
718 (2);

719 (b) all of the trustee's compensation calculated on principal as a fee for acceptance,
720 distribution, or termination, and disbursements made to prepare property for sale;

721 (c) payments on the principal of a trust debt;

722 (d) expenses of a proceeding that concerns primarily principal, including a proceeding
723 to construe the trust or to protect the trust or its property;

724 (e) premiums paid on a policy of insurance not described in Subsection 22-3-501(4) of
725 which the trust is the owner and beneficiary;

726 (f) estate, inheritance, and other transfer taxes, including penalties, apportioned to the
727 trust; and

728 (g) disbursements related to environmental matters, including reclamation, assessing
729 environmental conditions, remedying and removing environmental contamination, monitoring
730 remedial activities and the release of substances, preventing future releases of substances,
731 collecting amounts from persons liable or potentially liable for the costs of those activities,
732 penalties imposed under environmental laws or regulations and other payments made to
733 comply with those laws or regulations, statutory or common law claims by third parties, and
734 defending claims based on environmental matters.

735 (2) If a principal asset is encumbered with an obligation that requires income from that
736 asset to be paid directly to the creditor, the trustee shall transfer from principal to income an
737 amount equal to the income paid to the creditor in reduction of the principal balance of the
738 obligation.

739 Section 30. Section **22-3-503** is enacted to read:

740 **22-3-503. Transfers from income to principal for depreciation.**

741 (1) In this section, "depreciation" means a reduction in value due to wear, tear, decay,
742 corrosion, or gradual obsolescence of a fixed asset having a useful life of more than one year.

743 (2) A trustee may transfer to principal a reasonable amount of the net cash receipts
744 from a principal asset that is subject to depreciation, but may not transfer any amount for
745 depreciation:

746 (a) of that portion of real property used or available for use by a beneficiary as a
747 residence or of tangible personal property held or made available for the personal use or
748 enjoyment of a beneficiary;

749 (b) during the administration of a decedent's estate; or

750 (c) under this section if the trustee is accounting under Section 22-3-403 for the
751 business or activity in which the asset is used.

752 (3) An amount transferred to principal need not be held as a separate fund.

753 Section 31. Section **22-3-504** is enacted to read:

754 **22-3-504. Transfers from income to reimburse principal.**

755 (1) If a trustee makes or expects to make a principal disbursement described in this
756 section, the trustee may transfer an appropriate amount from income to principal in one or
757 more accounting periods to reimburse principal or to provide a reserve for future principal
758 disbursements.

759 (2) Principal disbursements to which Subsection (1) applies include the following, but
760 only to the extent that the trustee has not been and does not expect to be reimbursed by a third
761 party:

762 (a) an amount chargeable to income but paid from principal because it is unusually
763 large, including extraordinary repairs;

764 (b) a capital improvement to a principal asset, whether in the form of changes to an
765 existing asset or the construction of a new asset, including special assessments;

766 (c) disbursements made to prepare property for rental, including tenant allowances,
767 leasehold improvements, and broker's commissions;

768 (d) periodic payments on an obligation secured by a principal asset to the extent that
769 the amount transferred from income to principal for depreciation is less than the periodic

770 payments; and

771 (e) disbursements described in Subsection 22-3-502(1)(g).

772 (3) If the asset whose ownership gives rise to the disbursements becomes subject to a
773 successive income interest after an income interest ends, a trustee may continue to transfer
774 amounts from income to principal as provided in Subsection (1).

775 Section 32. Section **22-3-505** is enacted to read:

776 **22-3-505. Income taxes.**

777 (1) A tax required to be paid by a trustee based on receipts allocated to income must be
778 paid from income.

779 (2) A tax required to be paid by a trustee based on receipts allocated to principal must
780 be paid from principal, even if the tax is called an income tax by the taxing authority.

781 (3) A tax required to be paid by a trustee on the trust's share of an entity's taxable
782 income must be paid proportionately:

783 (a) from income to the extent that receipts from the entity are allocated to income; and

784 (b) from principal to the extent that:

785 (i) receipts from the entity are allocated to principal; and

786 (ii) the trust's share of the entity's taxable income exceeds the total receipts described in
787 Subsections (3)(a) and (3)(b)(i).

788 (4) For purposes of this section, receipts allocated to principal or income must be
789 reduced by the amount distributed to a beneficiary from principal or income for which the trust
790 receives a deduction in calculating the tax.

791 Section 33. Section **22-3-506** is enacted to read:

792 **22-3-506. Adjustments between principal and income because of taxes.**

793 (1) A fiduciary may make adjustments between principal and income to offset the
794 shifting of economic interests or tax benefits between income beneficiaries and remainder
795 beneficiaries which arise from:

796 (a) elections and decisions, other than those described in Subsection (2), that the
797 fiduciary makes from time to time regarding tax matters;

798 (b) an income tax or any other tax that is imposed upon the fiduciary or a beneficiary as
799 a result of a transaction involving or a distribution from the estate or trust; or

800 (c) the ownership by an estate or trust of an interest in an entity whose taxable income,

801 whether or not distributed, is includable in the taxable income of the estate, trust, or a
802 beneficiary.

803 (2) If the amount of an estate tax marital deduction or charitable contribution deduction
804 is reduced because a fiduciary deducts an amount paid from principal for income tax purposes
805 instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal
806 are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each
807 estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the
808 principal from which the increase in estate tax is paid. The total reimbursement must equal the
809 increase in the estate tax to the extent that the principal used to pay the increase would have
810 qualified for a marital deduction or charitable contribution deduction but for the payment. The
811 proportionate share of the reimbursement for each estate, trust, or beneficiary whose income
812 taxes are reduced must be the same as its proportionate share of the total decrease in income
813 tax. An estate or trust shall reimburse principal from income.

814 Section 34. Section **22-3-601** is enacted to read:

815 **Part 6. Miscellaneous Provisions**

816 **22-3-601. Uniformity of application and construction.**

817 In applying and construing this chapter, consideration must be given to the need to
818 promote uniformity of the law with respect to its subject matter among states that enact it.

819 Section 35. Section **22-3-602** is enacted to read:

820 **22-3-602. Severability clause.**

821 If any provision of this chapter or its application to any person or circumstance is held
822 invalid, the invalidity does not affect other provisions or applications of this chapter which can
823 be given effect without the invalid provision or application, and to this end the provisions of
824 this chapter are severable.

825 Section 36. Section **22-3-603** is enacted to read:

826 **22-3-603. Application of chapter to existing trusts and estates.**

827 This chapter applies to every trust or decedent's estate existing on May 3, 2004 except
828 as otherwise expressly provided in the will or terms of the trust or in this chapter.

829 Section 37. **Repealer.**

830 This bill repeals:

831 Section **22-3-1, Short title.**

- 832 Section **22-3-2, Definitions.**
- 833 Section **22-3-3, Duty of trustee as to receipts and expenditures.**
- 834 Section **22-3-4, Income -- Principal -- Charges.**
- 835 Section **22-3-5, When right to income arises -- Apportionment of income.**
- 836 Section **22-3-6, Income earned during administration of a decedent's estate.**
- 837 Section **22-3-7, Corporate distributions.**
- 838 Section **22-3-8, Bond premium and discount.**
- 839 Section **22-3-9, Business and farming operations.**
- 840 Section **22-3-10, Disposition of natural resources.**
- 841 Section **22-3-11, Timber.**
- 842 Section **22-3-12, Other property subject to depletion.**
- 843 Section **22-3-13, Underproductive property.**
- 844 Section **22-3-14, Charges against income and principal.**
- 845 Section **22-3-15, Application of chapter.**
- 846 Section **22-3-16, Uniformity of interpretation.**