

Estate Planning Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Nelson T. Abbott

LONG TITLE

General Description:

This bill addresses issues related to estate planning.

Highlighted Provisions:

This bill:

- creates and amends definitions related to estate planning;
- addresses the requirements for making a will, including the requirements for testamentary capacity;
- amends the rule against perpetuities for a power of appointment;
- clarifies the legal standard of proof for a guardianship;
- removes the requirement that a person alleged to be incapacitated be present at the guardianship hearing;
- allows a trustee to decant a trust in certain circumstances;
- addresses the capacity to make a power of attorney;
- addresses the capacity to appoint an agent for purposes of an advanced health care directive;
- modifies the capacity required for a custodian for Title 75A, Chapter 8, Uniform Transfers to Minors Act;
- recodifies Title 75B, Chapter 1, Part 3, Asset Protection Trust;
- defines asset protection trust to include an irrevocable trust for which the settlor may be made a beneficiary by the act or action of another person;
- provides that an affidavit of solvency for an asset protection trust is discretionary;
- provides that a person may only bring a cause of action or claim for relief regarding a fraudulent or voidable transfer for assets transferred to the asset protection trust within the limitations period;

- provides that, if a trustee makes multiple transfers to an asset protection trust, a distribution is considered to be made from the most recent transfer;
- allows a trustee to convey property held in the asset protection trust to the settlor or beneficiary to secure financing;
- provides that the property has to be reconveyed to the trustee within a certain time period to not be considered a transfer for purposes of the limitations period;
- includes a coordination clause to address a technical conflict with a cross-reference change if this bill and H.B. 334, Guardianships and Supported Decision-Making Agreements Amendments, both pass and become law;
- includes a coordination clause to coordinate technical and substantive changes if this bill and S.B. 100, Estate Planning Recodification, both pass and become law; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides coordination clauses.

Utah Code Sections Affected:**AMENDS:**

- 7-5-1**, as last amended by Laws of Utah 2013, Chapter 364
- 75-1-201**, as last amended by Laws of Utah 2024, Chapter 364
- 75-2-205**, as last amended by Laws of Utah 2024, Chapter 364
- 75-2-501**, as repealed and reenacted by Laws of Utah 1998, Chapter 39
- 75-2-1203**, as last amended by Laws of Utah 2013, Chapter 364
- 75-3-303**, as last amended by Laws of Utah 2013, Chapter 364
- 75-3-308**, as last amended by Laws of Utah 1998, Chapter 39
- 75-5-303**, as last amended by Laws of Utah 2024, Chapter 113
- 75-5-304**, as last amended by Laws of Utah 2022, Chapter 441
- 75-7-103**, as last amended by Laws of Utah 2020, Chapter 348
- 75-7-105**, as last amended by Laws of Utah 2024, Chapter 364
- 75-7-107**, as last amended by Laws of Utah 2024, Chapter 364
- 75-7-301**, as last amended by Laws of Utah 2024, Chapter 364
- 75-7-501**, as last amended by Laws of Utah 2024, Chapter 364
- 75-7-505**, as last amended by Laws of Utah 2024, Chapter 364
- 75-7-816**, as last amended by Laws of Utah 2024, Chapter 364

62 **75A-2-102**, as renumbered and amended by Laws of Utah 2024, Chapter 364

63 **75A-2-105**, as renumbered and amended by Laws of Utah 2024, Chapter 364

64 **75A-3-101**, as renumbered and amended by Laws of Utah 2024, Chapter 364

65 **75A-3-302**, as renumbered and amended by Laws of Utah 2024, Chapter 364

66 **75A-5-203**, as renumbered and amended by Laws of Utah 2024, Chapter 364

67 **75A-5-303**, as renumbered and amended by Laws of Utah 2024, Chapter 364

68 **75A-5-304**, as renumbered and amended by Laws of Utah 2024, Chapter 364

69 **75A-8-102**, as renumbered and amended by Laws of Utah 2024, Chapter 364

70 **75B-1-101**, as enacted by Laws of Utah 2024, Chapter 364

71 **75B-1-301**, as enacted by Laws of Utah 2024, Chapter 364

72 **75B-1-302**, as renumbered and amended by Laws of Utah 2024, Chapter 364

73 ENACTS:

74 **75-7-812.5**, Utah Code Annotated 1953

75 **75B-1-303**, Utah Code Annotated 1953

76 **75B-1-304**, Utah Code Annotated 1953

77 **75B-1-305**, Utah Code Annotated 1953

78 **75B-1-306**, Utah Code Annotated 1953

79 **75B-1-307**, Utah Code Annotated 1953

80 **75B-1-308**, Utah Code Annotated 1953

81 **75B-1-309**, Utah Code Annotated 1953

82 **75B-1-310**, Utah Code Annotated 1953

83 **Utah Code Sections affected by Coordination Clause:**

84 **7-5-1**, as last amended by Laws of Utah 2013, Chapter 364

85 **75-7-105**, as last amended by Laws of Utah 2024, Chapter 364

86 **75-7-301**, as last amended by Laws of Utah 2024, Chapter 364

87 **75-7-501**, as last amended by Laws of Utah 2024, Chapter 364

88 **75-7-505**, as last amended by Laws of Utah 2024, Chapter 364

89 **75-7-812.5**, Utah Code Annotated 1953

90 **75A-5-203**, as renumbered and amended by Laws of Utah 2024, Chapter 364

91 **75A-5-303**, as renumbered and amended by Laws of Utah 2024, Chapter 364

92 **75A-5-304**, as renumbered and amended by Laws of Utah 2024, Chapter 364

93 **75B-1-101**, as enacted by Laws of Utah 2024, Chapter 364

94 **75B-1-302**, as renumbered and amended by Laws of Utah 2024, Chapter 364

95 **75B-1-304**, Utah Code Annotated 1953

96 **75B-1-308**, Utah Code Annotated 1953

97
98 *Be it enacted by the Legislature of the state of Utah:*

99 *The following section is affected by a coordination clause at the end of this bill.*

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

101 **7-5-1 . Definitions -- Allowable trust companies -- Exceptions.**

102 (1) As used in this chapter:

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

107 (b) "Trust business" means, except as provided in Subsection (1)(c), a business in which
108 one acts in any agency or fiduciary capacity, including that of personal
109 representative, executor, administrator, conservator, guardian, assignee, receiver,
110 depository, or trustee under appointment as trustee for any purpose permitted by law[;
111 ~~including the definition of "trust" set forth in Subsection 75-1-201(55)].~~

112 (c) "Trust business" does not include the following means of holding money, assets, or
113 other property:

114 (i) money held in a client trust account by an attorney authorized to practice law in
115 this state;

116 (ii) money held in connection with the purchase or sale of real estate by a person
117 licensed as a principal broker in accordance with Title 61, Chapter 2f, Real Estate
118 Licensing and Practices Act;

119 (iii) money or other assets held in escrow by a person authorized by the department in
120 accordance with Chapter 22, Regulation of Independent Escrow Agents, or by the
121 Utah Insurance Department to act as an escrow agent in this state;

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

124 (v) money held in connection with the collection of debts or payments on loans by a
125 person acting solely as the agent or representative or otherwise at the sole
126 direction of the person to which the debt or payment is owed, including money
127 held by an escrow agent for payment of taxes or insurance;

128 (vi) money and other assets held in trust on an occasional or isolated basis by a
129 person who does not represent that the person is engaged in the trust business in

- 130 Utah;
- 131 (vii) money or other assets found by a court to be held in an implied, resulting, or
- 132 constructive trust;
- 133 (viii) money or other assets held by a court appointed conservator, guardian, receiver,
- 134 trustee, or other fiduciary if:
- 135 (A) the conservator, receiver, guardian, trustee, or other fiduciary is responsible to
- 136 the court in the same manner as a personal representative under Title 75,
- 137 Chapter 3, Part 5, Supervised Administration, or as a receiver under Rule 66,
- 138 Utah Rules of Civil Procedure; and
- 139 (B) the conservator, trustee, or other fiduciary is a certified public accountant or
- 140 has qualified for and received a designation as a certified financial planner,
- 141 chartered financial consultant, certified financial analyst, or similar designation
- 142 suitable to the court, that evidences the conservator's, trustee's, or other
- 143 fiduciary's professional competence to manage financial matters;
- 144 (ix) money or other assets held by a credit services organization operating in
- 145 compliance with Title 13, Chapter 21, Credit Services Organizations Act;
- 146 (x) money, securities, or other assets held in a customer account in connection with
- 147 the purchase or sale of securities by a regulated securities broker, dealer, or
- 148 transfer agent; or
- 149 (xi) money, assets, and other property held in a business trust for the benefit of
- 150 holders of certificates of beneficial interest if the fiduciary activities of the
- 151 business trust are merely incidental to conducting business in the business trust
- 152 form.
- 153 (d) "Trust company" means an institution authorized to engage in the trust business
- 154 under this chapter. Only the following may be a trust company:
- 155 (i) a Utah depository institution or its wholly owned subsidiary;
- 156 (ii) an out-of-state depository institution authorized to engage in business as a
- 157 depository institution in Utah or its wholly owned subsidiary;
- 158 (iii) a corporation, including a credit union service organization, owned entirely by
- 159 one or more federally insured depository institutions as defined in Subsection
- 160 7-1-103(8);
- 161 (iv) a direct or indirect subsidiary of a depository institution holding company that
- 162 also has a direct or indirect subsidiary authorized to engage in business as a
- 163 depository institution in Utah; and

(v) any other corporation continuously and lawfully engaged in the trust business in this state since before July 1, 1981.

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

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

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

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

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

Section 2. Section **75-1-201** is amended to read:

75-1-201 . Title definitions.

As used in this title:

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

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

(3)(a) "Beneficiary," as it relates to trust beneficiaries, includes:

(i) a person who has any present or future interest, vested or contingent; and

(ii) the owner of an interest by assignment or other transfer.

(b) "Beneficiary," as it relates to a charitable trust, includes any person entitled to enforce the trust.

(c) "Beneficiary," as it relates to a beneficiary of a beneficiary designation, means a beneficiary of:

(i) an insurance or annuity policy;

(ii) an account with POD designation;

(iii) a security registered in beneficiary form (TOD);

(iv) a pension, profit-sharing, retirement, or similar benefit plan; or

(v) other nonprobate transfer at death.

(d) "Beneficiary," as it relates to a beneficiary designated in a governing instrument, includes:

- (i) a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of appointment; and
- (ii) a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

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

(5)(a) "Child" includes any individual entitled to take as a child under this title by intestate succession from the parent whose relationship is involved.

(b) "Child" does not include an individual who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

(6)(a) "Claims," in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration.

(b) "Claims" does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(7) "Community property with a right of survivorship" means joint tenants with the right of survivorship.

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

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

(10) "Descendant" means all of an individual's descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this title.

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

(12) "Devisee" means any person designated in a will to receive a devise. For the purposes

of Chapter 3, Probate of Wills and Administration, in the case of a devise to an existing trust or trustee, or to a trustee in trust described by will, the trust or trustee is the devisee, and the beneficiaries are not devisees.

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

(14) "Distributee" means any person who has received property of a decedent from his personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

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

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

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

(18) "Foreign personal representative" means a personal representative of another jurisdiction.

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

(20) "General personal representative" does not include a special administrator.

(21) "General power of appointment" means the same as that term is defined in Section 75A-4-102.

~~[(21)]~~ (22) "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with POD designation, security registered in beneficiary form (TOD), pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.

~~[(22)]~~ (23)(a) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, or by written instrument as provided in Section 75-5-202.5.

(b) "Guardian" does not include a person who is merely a guardian ad litem.

~~[(23)]~~ (24) "Heirs," except as controlled by Section 75-2-711, means persons, including the

surviving spouse and state, who are entitled under the statutes of intestate succession to the property of a decedent.

~~[(24)]~~ (25) "Incapacitated" means ~~[a judicial determination after proof by clear and convincing evidence that]~~ an adult's ability to do the following is functionally impaired to the extent that the individual lacks the ability, even with appropriate technological assistance, to meet the essential requirements for financial protection or physical health, safety, or self-care:

(a) receive and evaluate information;

(b) make and communicate decisions; or

(c) provide for necessities such as food, shelter, clothing, health care, or safety.

~~[(25)]~~ (26) "Incapacity" means ~~[incapacitated]~~ the state of being incapacitated.

~~[(26)]~~ (27) "Informal proceedings" mean a proceeding conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.

~~[(27)]~~ (28)(a) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person. The meaning of interested person as it relates to particular persons may vary from time to time and is determined according to the particular purposes of, and matter involved in, any proceeding.

(b) "Interested person" includes persons having priority for appointment as personal representative, other fiduciaries representing interested persons, a settlor of a trust, if living, or the settlor's legal representative, if any, if the settlor is living but incapacitated.

~~[(28)]~~ (29) "Issue" means a descendant of an individual.

~~[(29)]~~ (30)(a) "Joint tenants with the right of survivorship" includes coowners of property held under circumstances that entitle one or more to the whole of the property on the death of the other.

(b) "Joint tenants with the right of survivorship" does not include forms of coownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

~~[(30)]~~ (31) "Lease" includes an oil, gas, or other mineral lease.

~~[(31)]~~ (32) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

300 ~~[(32)]~~ (33) "Minor" means a person who is under 18 years old.

301 ~~[(33)]~~ (34) "Minor protected person" means a minor for whom a conservator has been

302 appointed because of minority.

303 ~~[(34)]~~ (35) "Minor ward" means a minor for whom a guardian has been appointed solely

304 because of minority.

305 ~~[(35)]~~ (36) "Mortgage" means any conveyance, agreement, or arrangement in which

306 property is used as security.

307 (37) "Nongeneral power of appointment" means the same as that term is defined in Section

308 75A-4-102.

309 ~~[(36)]~~ (38) "Nonresident decedent" means a decedent who was domiciled in another

310 jurisdiction at the time of the decedent's death.

311 ~~[(37)]~~ (39) "Organization" includes a corporation, limited liability company, business trust,

312 estate, trust, partnership, joint venture, association, government or governmental

313 subdivision or agency, or any other legal or commercial entity.

314 ~~[(38)]~~ (40)(a) "Parent" includes any person entitled to take, or who would be entitled to

315 take if the child died without a will, as a parent under this title by intestate succession

316 from the child whose relationship is in question.

317 (b) "Parent" does not include any person who is only a stepparent, foster parent, or

318 grandparent.

319 ~~[(39)]~~ (41) "Payor" means a trustee, insurer, business entity, employer, government,

320 governmental agency or subdivision, or any other person authorized or obligated by law

321 or a governing instrument to make payments.

322 ~~[(40)]~~ (42) "Person" means an individual or an organization.

323 ~~[(41)]~~ (43) "Personal representative" includes executor, administrator, successor personal

324 representative, special administrator, and persons who perform substantially the same

325 function under the law governing their status.

326 ~~[(42)]~~ (44) "Petition" means a written request to the court for an order after notice.

327 (45) "Power of appointment" means the same as that term is defined in Section 75A-4-102.

328 ~~[(43)]~~ (46) "Proceeding" includes action at law and suit in equity.

329 ~~[(44)]~~ (47) "Property" includes both real and personal property or any interest therein and

330 means anything that may be the subject of ownership.

331 ~~[(45)]~~ (48) "Protected person" means a person for whom a conservator has been appointed.

332 ~~[(46)]~~ (49) "Protective proceeding" means a proceeding described in Section 75-5-401.

333 ~~[(47)]~~ (50) "Record" means information that is inscribed on a tangible medium or that is

334 stored in an electronic or other medium and is retrievable in perceivable form.

335 ~~[(48)]~~ (51) "Registrar" means the official of the court designated to perform the functions of
336 registrar as provided in Section 75-1-307.

337 ~~[(49)]~~ (52) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of
338 indebtedness, certificate of interest, or participation in an oil, gas, or mining title or lease
339 or in payments out of production under such a title or lease, collateral trust certificate,
340 transferable share, voting trust certificate, and, in general, any interest or instrument
341 commonly known as a security, or any certificate of interest or participation, any
342 temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or
343 right to subscribe to or purchase, any of the foregoing.

344 ~~[(50)]~~ (53) "Settlement," in reference to a decedent's estate, includes the full process of
345 administration, distribution, and closing.

346 ~~[(51)]~~ (54) "Sign" means, with present intent to authenticate or adopt a record other than a
347 will:

348 (a) to execute or adopt a tangible symbol; or

349 (b) to attach to or logically associate with the record an electronic symbol, sound, or
350 process.

351 ~~[(52)]~~ (55) "Special administrator" means a personal representative as described in Sections
352 75-3-614 through 75-3-618.

353 ~~[(53)]~~ (56) "State" means a state of the United States, the District of Columbia, the
354 Commonwealth of Puerto Rico, any territory or insular possession subject to the
355 jurisdiction of the United States, or a Native American tribe or band recognized by
356 federal law or formally acknowledged by a state.

357 ~~[(54)]~~ (57) "Successor personal representative" means a personal representative, other than a
358 special administrator, who is appointed to succeed a previously appointed personal
359 representative.

360 ~~[(55)]~~ (58) "Successors" means persons, other than creditors, who are entitled to property of
361 a decedent under the decedent's will or this title.

362 ~~[(56)]~~ (59) "Supervised administration" means the proceedings described in Chapter 3, Part 5,
363 Supervised Administration.

364 ~~[(57)]~~ (60)(a) "Survive" means, except for Chapter 6, Part 3, Uniform Transfer on Death
365 Security Registration Act, that an individual has neither predeceased an event,
366 including the death of another individual, nor is considered to have predeceased an
367 event under Section 75-2-104 or 75-2-702.

(b) "Survive" includes its derivatives, such as "survives," "survived," "survivor," and "surviving."

~~[(58)]~~ (61) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

~~[(59)]~~ "Testator" ~~includes an individual of either sex.~~

(62) "Testator" means an individual, of either sex, who has made a will.

~~[(60)]~~ (63)(a) "Trust" includes:

(i) a health savings account, as defined in Section 223 of the Internal Revenue Code;

(ii) an express trust, private or charitable, with additions thereto, wherever and however created; or

(iii) a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust.

(b) "Trust" does not include:

(i) a constructive trust;

(ii) a resulting trust;

(iii) a conservatorship;

(iv) a personal representative;

(v) a trust account as defined in Chapter 6, Nonprobate Transfers;

(vi) a custodial arrangement under Title 75A, Chapter 8, Uniform Transfers To Minors Act;

(vii) a business trust providing for certificates to be issued to beneficiaries;

(viii) a common trust fund;

(ix) a voting trust;

(x) a preneed funeral plan under Title 58, Chapter 9, Funeral Services Licensing Act;

(xi) a security arrangement;

(xii) a liquidation trust;

(xiii) a trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; or

(xiv) any arrangement under which a person is nominee or escrowee for another.

~~[(61)]~~ (64) "Trustee" includes an original, additional, and successor trustee, and cotrustee, whether or not appointed or confirmed by the court.

~~[(62)]~~ (65) "Ward" means a person for whom a guardian has been appointed.

~~[(63)]~~ (66) "Will" includes codicil and any testamentary instrument which merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes

or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

Section 3. Section **75-2-205** is amended to read:

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

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

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

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

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

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

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

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

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

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

(ii) The amount included:

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

- 436 surviving spouse; and
- 437 (B) may not exceed the greater of the cash surrender value of the policy
- 438 immediately prior to the death of the decedent or the amount of premiums paid
- 439 on the policy during the decedent's life.
- 440 (2) Property transferred in any of the forms described in this Subsection (2) by the decedent
- 441 during marriage:
- 442 (a)(i) Any irrevocable transfer in which the decedent retained the right to the
- 443 possession or enjoyment of, or to the income from, the property if and to the
- 444 extent the decedent's right terminated at or continued beyond the decedent's death.
- 445 (ii) An irrevocable transfer in trust which includes a restriction on transfer of the
- 446 decedent's interest as settlor and beneficiary as described in Section [75B-1-302]
- 447 75B-1-303.
- 448 (iii) The amount included is the value of the fraction of the property to which the
- 449 right or restriction related, to the extent the fraction of the property passed outside
- 450 probate to or for the benefit of any person other than the decedent's estate or
- 451 surviving spouse.
- 452 (b)(i) Any transfer in which the decedent created a power over income or property,
- 453 exercisable by the decedent alone or in conjunction with any other person, or
- 454 exercisable by a nonadverse party, to or for the benefit of the decedent, creditors
- 455 of the decedent, the decedent's estate, or creditors of the decedent's estate.
- 456 (ii) The amount included with respect to a power over property is the value of the
- 457 property subject to the power, and the amount included with respect to a power
- 458 over income is the value of the property that produces or produced the income, to
- 459 the extent the power in either case was exercisable at the decedent's death to or for
- 460 the benefit of any person other than the decedent's surviving spouse or to the
- 461 extent the property passed at the decedent's death, by exercise, release, lapse, in
- 462 default, or otherwise, to or for the benefit of any person other than the decedent's
- 463 estate or surviving spouse.
- 464 (iii) If the power is a power over both income and property and Subsection (2)(b)(ii)
- 465 produces different amounts, the amount included is the greater amount.
- 466 (3) Property that passed during marriage and during the two-year period next preceding the
- 467 decedent's death as a result of a transfer by the decedent if the transfer was of any of the
- 468 types described in this Subsection (3).
- 469 (a)(i) Any property that passed as a result of the termination of a right or interest in,

or power over, property that would have been included in the augmented estate under Subsection (1)(a), (b), or (c), or under Subsection (2), if the right, interest, or power had not terminated until the decedent's death.

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

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

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

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

(ii) The amount included:

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

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

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

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

Section 4. Section **75-2-501** is amended to read:

75-2-501 . Who may make will -- Testamentary capacity.

[~~An individual 18 or more years of age who is of sound mind may make a will.~~]

(1) An individual may make a will if the individual:

(a) is 18 years old or older; and

(b) has testamentary capacity at the time that the will is executed.

(2) A testator has testamentary capacity under Subsection (1)(b) if the testator:

(a) can identify the testator's family members or other individuals in the testator's life;

(b) understands the testator's relationship to the individuals described in Subsection (2)(a);

(c) understands the nature and extent of the testator's property; and

(d) can form a plan in the testator's mind for the disposition of the testator's property.

(3) A testator is not required to have any knowledge or understanding of the laws of

inheritance by intestate succession for the testator to have testamentary capacity under
Subsection (2).

(4) There is a rebuttable presumption that testamentary capacity exists at the time that a will
was executed even if the testator is subject to a guardianship or conservatorship or is
otherwise unable to independently manage the testator's affairs.

Section 5. Section **75-2-1203** is amended to read:

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

(1) A nonvested property interest is invalid unless within 1,000 years after the interest's
creation the interest vests or terminates.

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

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

(4) The language in a governing instrument is inoperative to the extent it produces a period
of time that exceeds 1,000 years after if, in measuring a period from the creation of a
trust or other property arrangement, the language:

(a) seeks to disallow the vesting or termination of any interest or trust beyond;

(b) seeks to postpone the vesting or termination of any interest or trust until; or

(c) seeks to operate in effect in any similar fashion upon, the later of:

(i) the expiration of a period of time not exceeding 1,000 years; or

(ii) the expiration of a period of time that exceeds or might exceed 1,000 years.

~~[(5) If a nongeneral power of appointment is exercised to create a new presently exercisable~~

general power of appointment, all property interests subject to that new presently exercisable general power of appointment are invalid unless, within 1,000 years after the creation of the new presently exercisable general power of appointment, the property interests that are subject to the new presently exercisable general power of appointment vest or terminate.]

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

(5) If a power of appointment is exercised to create a new power of appointment, all property interests subject to that new power of appointment are invalid unless the property interests that are subject to the new power of appointment vest or terminate within 1,000 years after the creation of the new power of appointment.

Section 6. Section **75-3-303** is amended to read:

75-3-303 . Informal probate -- Proof and findings required.

- (1) In an informal proceeding for original probate of a will, the registrar shall determine whether:
 - (a) the application is complete;
 - (b) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;
 - (c) the applicant appears from the application to be an interested person[~~as defined in Subsection 75-1-201(24)~~];
 - (d) on the basis of the statements in the application, venue is proper;
 - (e) an original, duly executed and apparently unrevoked will was presented to the court for electronic storage and electronic filing and is now in the possession of the applicant or the applicant's attorney, or is in the registrar's possession;
 - (f) any notice required by Section 75-3-204 has been given and that the application is not within Section 75-3-304; and
 - (g) it appears from the application that the time limit for original probate has not expired.

- (2) The application shall be denied if it indicates that a personal representative has been appointed in another county of this state or except as provided in Subsection (4), if it appears that this or another will of the decedent has been the subject of a previous probate order.
- (3) A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under Section 75-2-502, 75-2-503, or 75-2-506 have been met shall be probated without further proof. In other cases, the registrar may assume execution if the will appears to have been properly executed, or he may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.
- (4) Informal probate of a will which has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.
- (5) A will from a place which does not provide for probate of a will after death and which is not eligible for probate under Subsection (1) above may be probated in this state upon receipt by the registrar of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

Section 7. Section **75-3-308** is amended to read:

75-3-308 . Informal appointment proceedings -- Proof and findings required.

- (1) In informal appointment proceedings, the registrar shall determine whether:
- (a) the application for informal appointment of a personal representative is complete;
 - (b) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;
 - (c) the applicant appears from the application to be an interested person~~[-as defined in Subsection 75-1-201(24)]~~;
 - (d) on the basis of the statements in the application, venue is proper;
 - (e) any will to which the requested appointment relates has been formally or informally probated; but this requirement does not apply to the appointment of a special administrator;
 - (f) any notice required by Section 75-3-204 has been given; and
 - (g) from the statements in the application, the person whose appointment is sought has priority entitling him to the appointment.

- 606 (2) Unless Section 75-3-612 controls, the application shall be denied if it indicates that a
607 personal representative who has not filed a written statement of resignation as provided
608 in Subsection 75-3-610(3) has been appointed in this or another county of this state, that
609 (unless the applicant is the domiciliary personal representative or his nominee) the
610 decedent was not domiciled in this state, and that a personal representative whose
611 appointment has not been terminated has been appointed by a court in the state of
612 domicile, or that other requirements of this section have not been met.

613 Section 8. Section **75-5-303** is amended to read:

614 **75-5-303 . Procedure for court appointment of a guardian of an incapacitated**
615 **person.**

- 616 (1) An incapacitated person or any person interested in the incapacitated person's welfare
617 may petition for a finding of incapacity and appointment of a guardian.
- 618 (2)(a) Upon the filing of a petition, the court shall set a date for hearing on the issues of
619 incapacity.
- 620 (b) Unless the allegedly incapacitated person has counsel of the person's own choice, the
621 court shall appoint an attorney to represent the person in the proceeding the cost of
622 which shall be paid by the person alleged to be incapacitated, unless the allegedly
623 incapacitated person and the allegedly incapacitated person's parents are indigent.
- 624 (c) If the court determines that the petition is without merit, the attorney fees and court
625 costs shall be paid by the person filing the petition.
- 626 (d) If the court appoints the petitioner or the petitioner's nominee as guardian of the
627 incapacitated person, regardless of whether the nominee is specified in the moving
628 petition or nominated during the proceedings, the petitioner shall be entitled to
629 receive from the incapacitated person reasonable attorney fees and court costs
630 incurred in bringing, prosecuting, or defending the petition.
- 631 (3) The legal representation of the incapacitated person by an attorney shall terminate upon
632 the appointment of a guardian, unless:
- 633 (a) there are separate conservatorship proceedings still pending before the court
634 subsequent to the appointment of a guardian;
- 635 (b) there is a timely filed appeal of the appointment of the guardian or the determination
636 of incapacity; or
- 637 (c) upon an express finding of good cause, the court orders otherwise.
- 638 (4) The person alleged to be incapacitated may be examined by a physician or physician
639 assistant appointed by the court who shall submit a report in writing to the court and

may be interviewed by a visitor sent by the court. The visitor also may interview the person seeking appointment as guardian, visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that the person will be detained or reside if the requested appointment is made, conduct other investigations or observations as directed by the court, and submit a report in writing to the court.

(5)(a)(i) The person alleged to be incapacitated shall be present at the hearing [in person] and see or hear all evidence bearing upon the person's condition.

(ii) If the person seeking the guardianship requests a waiver of presence of the person alleged to be incapacitated, the court shall order an investigation by a court visitor, the costs of which shall be paid by the person seeking the guardianship.

(b) The investigation by a court visitor is not required if there is clear and convincing evidence from a physician that the person alleged to be incapacitated has:

(i) fourth stage Alzheimer's Disease;

(ii) extended comatosis; or

(iii)(A) an intellectual disability; and

(B) an intelligence quotient score under 25.

(c) The person alleged to be incapacitated is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or the person's counsel so requests.

(d) Counsel for the person alleged to be incapacitated [~~as defined in Subsection 75-1-201(22),~~] is not required if:

(i) the person is the biological or adopted child of the petitioner;

(ii) the value of the person's entire estate does not exceed \$20,000 as established by an affidavit of the petitioner in accordance with Section 75-3-1201;

(iii) the person appears in court with the petitioner;

(iv) the person is given the opportunity to communicate, to the extent possible, the person's acceptance of the appointment of petitioner;

(v) no attorney from the state court's list of attorneys who have volunteered to represent respondents in guardianship proceedings is able to provide counsel to the person within 60 days of the date of the appointment described in Subsection (2);

(vi) the court is satisfied that counsel is not necessary in order to protect the interests

- 674 of the person; and
- 675 (vii) the court appoints a visitor under Subsection (4).
- 676 Section 9. Section **75-5-304** is amended to read:
- 677 **75-5-304 . Findings -- Limited guardianship preferred -- Order of appointment.**
- 678 (1) The court may appoint a guardian as requested if the court [~~is satisfied~~] finds, by clear
- 679 and convincing evidence, that:
- 680 (a) the person for whom a guardian is sought is incapacitated; and
- 681 (b) the appointment is necessary or desirable as a means of providing continuing care
- 682 and supervision of the incapacitated person.
- 683 (2)(a)(i) The court shall prefer a limited guardianship and may only grant a full
- 684 guardianship if no other alternative exists.
- 685 (ii) If the court does not grant a limited guardianship, a specific finding shall be made
- 686 that nothing less than a full guardianship is adequate.
- 687 (b)(i) An order of appointment of a limited guardianship shall state the limitations of
- 688 the guardianship.
- 689 (ii) Letters of guardianship for a limited guardianship shall state the limitations of the
- 690 guardianship unless the court determines for good cause shown that a limitation
- 691 should not be listed in the letters.
- 692 (3)(a) Except as provided in Subsection (3)(b), a guardian appointed by will or written
- 693 instrument, under Section 75-5-301, whose appointment has not been prevented or
- 694 nullified under Subsection 75-5-301(4), has priority over any guardian who may be
- 695 appointed by the court.
- 696 (b) Upon a finding that the testamentary or instrumental guardian has failed to accept the
- 697 appointment within 30 days after notice of the guardianship proceeding, the court
- 698 may:
- 699 (i) dismiss the proceeding; or
- 700 (ii) enter any other appropriate order.
- 701 (4) If the court grants a guardian with the power to make or assist with health care decisions
- 702 for an incapacitated person, the court shall include in the order of appointment the name
- 703 of any interested person for whom the guardian must notify of any significant health
- 704 care or treatment received by the incapacitated person.

705 *The following section is affected by a coordination clause at the end of this bill.*

706 Section 10. Section **75-7-103** is amended to read:

707 **75-7-103 . Definitions.**

(1) ~~[H]~~ As used in this chapter:

- (a) "Action," with respect to an act of a trustee, includes a failure to act.
- (b) "Beneficiary" means a person that:
 - (i) has a present or future beneficial interest in a trust, vested or contingent; or
 - (ii) in a capacity other than that of trustee, holds a power of appointment over trust property.
- (c) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in Subsection 75-7-405(1).
- (d) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.
- (e) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.
- (f) "Jurisdiction," with respect to a geographic area, includes a state or country.
- (g) "Power of withdrawal" means a presently exercisable general power of appointment other than a power exercisable only upon consent of the trustee or a person holding an adverse interest.
- (h) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:
 - (i) is a current distributee or permissible distributee of trust income or principal; or
 - (ii) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.
- (i) "Resident estate" ~~[or "resident trust"]~~ means:
 - (i) an estate of a decedent who at death was domiciled in this state;
 - (ii) a trust, or a portion of a trust, consisting of property transferred by will of a decedent who at ~~[his]~~ the time of the decedent's death was domiciled in this state; or
 - (iii) a trust administered in this state.
- ~~(j)~~ "Resident trust" means a resident estate.
- ~~[(j)]~~ (k) "Revocable," as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.
- ~~[(k)]~~ (l) "Settlor" means a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw

that portion.

~~[(h)]~~ (m) "Spendthrift provision" means a term of a trust which restrains both voluntary and involuntary transfer or encumbrance of a beneficiary's interest.

~~[(m)]~~ (n) "Terms of a trust" means:

(i) except as otherwise provided in Subsection ~~[(1)(m)(ii)]~~ (1)(n)(ii), the manifestation of the settlor's intent regarding a trust's provisions as:

(A) expressed in the trust instrument; or

(B) established by other evidence that would be admissible in a judicial proceeding;

(ii) the trust's provisions as established, determined, or amended by:

(A) a trustee or trust director in accordance with the applicable law;

(B) court order; or

(C) a nonjudicial settlement agreement under Section 75-7-110.

~~[(n)]~~ (o) "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.

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

The following section is affected by a coordination clause at the end of this bill.

Section 11. Section **75-7-105** is amended to read:

75-7-105 . Default and mandatory rules.

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

(2) Except as specifically provided in this chapter, the terms of a trust prevail over any provision of this chapter except:

(a) the requirements for creating a trust;

(b) subject to Sections 75-12-109, 75-12-111, and 75-12-112, the duty of a trustee to act in good faith and in accordance with the purposes of the trust;

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

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

(e) the effect of a spendthrift provision, ~~[Section 75B-1-302]~~ Title 75B, Chapter 1, Part 3, Asset Protection Trust, and the rights of certain creditors and assignees to reach a

- trust as provided in Part 5, Creditor's Claims - Spendthrift and Discretionary Trusts;
- (f) the power of the court under Section 75-7-702 to require, dispense with, or modify or terminate a bond;
 - (g) the effect of an exculpatory term under Section 75-7-1008;
 - (h) the rights under Sections 75-7-1010 through 75-7-1013 of a person other than a trustee or beneficiary;
 - (i) periods of limitation for commencing a judicial proceeding; and
 - (j) the jurisdiction and venue requirements for an action involving a trust as described in Sections 75-7-203 and 75-7-205.

Section 12. Section **75-7-107** is amended to read:

75-7-107 . Governing law.

- (1) As used in this section:
 - (a) "Foreign trust" means a trust that is created in another state or country and valid in the state or country in which the trust is created.
 - (b) "State law provision" means a provision that the laws of a named state govern the validity, construction, and administration of a trust.
- (2) If a trust has a state law provision specifying this state, the validity, construction, and administration of the trust are to be governed by the laws of this state if any administration of the trust is done in this state.
- (3) For all trusts created on or after December 31, 2003, if a trust does not have a state law provision, the validity, construction, and administration of the trust are to be governed by the laws of this state if the trust is administered in this state.
- (4) A trust shall be considered to be administered in this state if:
 - (a) the trust states that this state is the place of administration, and any administration of the trust is done in this state; or
 - (b) the place of business where the fiduciary transacts a major portion of its administration of the trust is in this state.
- (5) If a foreign trust is administered in this state as provided in this section, the following provisions are effective and enforceable under the laws of this state:
 - (a) a provision in the trust that restricts the transfer of trust assets in a manner similar to Section ~~[75B-1-302]~~ 75B-1-303;
 - (b) a provision that allows the trust to be perpetual; or
 - (c) a provision that is not expressly prohibited by the law of this state.
- (6) A foreign trust that moves its administration to this state is valid whether or not the trust

810 complied with the laws of this state at the time of the trust's creation or after the trust's
811 creation.

- 812 (7) Unless otherwise designated in the trust instrument, a trust is administered in this state if
813 it meets the requirements of Subsection (4).

814 *The following section is affected by a coordination clause at the end of this bill.*

815 Section 13. Section **75-7-301** is amended to read:

816 **75-7-301 . Basic effect.**

- 817 (1) Notice to a person who may represent and bind another person under this part has the
818 same effect as if notice were given directly to the other person.
- 819 (2) The consent of a person who may represent and bind another person under this part is
820 binding on the person represented unless the person represented objects to the
821 representation before the consent would otherwise have become effective.
- 822 (3) Except as otherwise provided in [~~Sections 75-7-411 and 75B-1-302~~] Section 75-7-411
823 and Title 75B, Chapter 1, Part 3, Asset Protection Trust, a person who under this part
824 may represent a settlor who lacks capacity may receive notice and give a binding
825 consent on the settlor's behalf.

826 *The following section is affected by a coordination clause at the end of this bill.*

827 Section 14. Section **75-7-501** is amended to read:

828 **75-7-501 . Rights of beneficiary's creditor or assignee.**

829 To the extent a beneficiary's interest is not protected by a spendthrift provision or [
830 ~~Section 75B-1-302~~] Title 75B, Chapter 1, Part 3, Asset Protection Trust, the court may
831 authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by
832 attachment of present or future distributions to or for the benefit of the beneficiary or other
833 means. The court may limit the award to relief as is appropriate under the circumstances.

834 *The following section is affected by a coordination clause at the end of this bill.*

835 Section 15. Section **75-7-505** is amended to read:

836 **75-7-505 . Creditor's claim against settlor.**

837 Regardless of whether the terms of a trust contain a spendthrift provision, the following
838 rules apply:

- 839 (1) During the lifetime of the settlor, the property of a revocable trust is subject to the
840 claims of the settlor's creditors. If a revocable trust has more than one settlor, the
841 amount the creditor or assignee of a particular settlor may reach may not exceed the
842 settlor's interest in the portion of the trust attributable to that settlor's contribution.
- 843 (2)(a) With respect to an irrevocable trust other than an irrevocable trust that meets the

requirements of ~~[Section 75B-1-302]~~ Title 75B, Chapter 1, Part 3, Asset Protection Trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit.

- (b) With respect to an irrevocable trust that has more than one settlor, other than an irrevocable trust that meets the requirements of ~~[Section 75B-1-302]~~ Title 75B, Chapter 1, Part 3, Asset Protection Trust, the amount a creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.
- (c) Notwithstanding Subsections (2)(a) and (b), a creditor of a settlor may not satisfy the creditor's claim from an irrevocable trust solely because the trustee may make a discretionary distribution reimbursing the settlor for income tax liability of the settlor attributable to the income of the irrevocable trust, when the distribution is:
- (i) subject to the discretion of a trustee who is not the settlor;
 - (ii) subject to the consent of an advisor who is not the settlor; or
 - (iii) at the direction of an advisor who is not the settlor.

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

The following section is affected by a coordination clause at the end of this bill.

Section 16. Section **75-7-812.5** is enacted to read:

75-7-812.5 . Discretionary power -- Decanting a trust.

- (1) As used in this section:

- (a) "Current income beneficiary" means the same as that term is defined in Section 75A-5-102.
- (b) "Decanting power" means the power of a trustee as described in Subsection (2)(a):
 - (i) to distribute income or principal from a first trust to a second trust; or
 - (ii) to modify the terms of a first trust.
- (c) "First trust" means a trust over which a trustee exercises discretion to distribute income or principal to, or for the benefit of, a beneficiary.

(d) "General power to change the trustees" means a beneficiary may, whether alone or in concert with other persons:

(i) name the beneficiary as a trustee; or

(ii) remove a trustee and replace that trustee with a new trustee who is:

(A) the beneficiary; or

(B) a related or subordinate party, as defined in Section 672(c) of the Internal Revenue Code, of the beneficiary.

(e) "Income" means the same as that term is defined in Section 75A-5-102.

(f) "Principal" means the same as that term is defined in Section 75A-5-102.

(g) "Restricted trustee" means a trustee of the first trust if:

(i) the trustee is also a beneficiary of the first trust; or

(ii) a beneficiary of the first trust holds a general power to change the trustees of the first trust.

(h) "Second trust" means:

(i) a trust to which a distribution of income or principal from a first trust is made to the trustee of the trust under Subsection (2)(a)(i); or

(ii) a trust that is modified under Subsection (2)(a)(ii).

(2)(a) If a trustee has discretion under the terms of a trust instrument to distribute income or principal to, or for the benefit of, a beneficiary of a trust, the trustee may:

(i) distribute part or all of the income or principal to a trust governed by a trust instrument that is separate from the trust instrument of the first trust; or

(ii) modify the terms of the trust instrument of the first trust.

(b) A trustee may not exercise the decanting power if the terms of the trust instrument for the first trust expressly prohibit the trustee from:

(i) distributing part or all of the income or principal to a trust governed by a trust instrument that is separate from the trust instrument of the first trust; or

(ii) modifying the terms of the trust instrument of the first trust.

(c) Before a trustee exercises the decanting power to modify the terms of the trust instrument of a first trust, the trustee shall notify all beneficiaries of the trust, in writing, at least 20 days before the day on which the trustee exercises the decanting power.

(3) Before a trustee exercises the decanting power, the trustee shall determine whether distribution or modification is necessary or desirable after taking into account:

(a) the purposes of the first trust;

912 (b) the terms and conditions of the second trust; and

913 (c) the consequences of the distribution.

914 (4) A trustee may only exercise the decanting power if the second trust has a beneficiary
915 that is a beneficiary of the first trust to or for whom:

916 (a) a trustee has discretion to distribute income or principal from the first trust; or

917 (b) a trustee may distribute income or principal in the future from the first trust at a time,
918 or upon the happening of an event, that is specified in the trust instrument of the first
919 trust.

920 (5) Except as provided in Subsection (6), a restricted trustee may not exercise the decanting
921 power if the distribution would have the effect of:

922 (a) benefiting the restricted trustee as a beneficiary of the first trust, unless the
923 distribution is limited to an ascertainable standard based on or related to health,
924 education, maintenance, or support;

925 (b) increasing the distributions that can be made from the second trust to a restricted
926 trustee, or to a beneficiary holding a general power to change the trustees of the first
927 trust, compared to the distributions that can be made to the restricted trustee, or to the
928 beneficiary holding a general power to change the trustees, under the first trust,
929 unless the distribution is limited to an ascertainable standard based on or related to
930 health, education, maintenance, or support; or

931 (c) removing restrictions on a discretionary distribution imposed by the trust instrument
932 of the first trust, unless the trust instrument of the second trust limits distributions of
933 income or principal from the second trust to:

934 (i) an ascertainable standard based on or related to the health, education,
935 maintenance, or support of a beneficiary; or

936 (ii) a trust described in 42 U.S.C. Sec. 1396p(d)(4).

937 (6) Subsection (5) limits a restricted trustee's exercise of the decanting power only if:

938 (a) at least one restricted trustee is a United States citizen or domiciliary under the
939 Internal Revenue Code;

940 (b) at least one beneficiary holding a general power to change the trustees of the first
941 trust is a United States citizen or domiciliary under the Internal Revenue Code; or

942 (c) the first trust owns property that would be subject to United States estate or gift taxes
943 if owned free of the trust by:

944 (i) the restricted trustee of the first trust if there is a restricted trustee of the first trust;
945 or

(ii) the beneficiary holding a general power to change the trustees of the first trust if there is a beneficiary holding a general power to change the trustees of the first trust.

(7) If a trust contribution has been treated as a gift qualifying for the exclusion from the gift tax described in Section 2503(b) of the Internal Revenue Code, the trust instrument for the second trust shall provide that the beneficiary's remainder interest must vest no later than the day on which the remainder interest would have vested under the terms of the trust instrument for the first trust.

(8) A trustee's exercise of the decanting power as described in Subsection (2):

(a) may not reduce an income interest of a current income beneficiary of:

(i) a trust for which a marital deduction has been taken for federal tax purposes under Section 2056 or 2523 of the Internal Revenue Code or for state tax purposes under a comparable state law;

(ii) a charitable remainder trust under Section 664 of the Internal Revenue Code; or

(iii) a grantor retained annuity or unitrust trust under Section 2702 of the Internal Revenue Code;

(b) does not apply to property of a trust that is subject to a power of withdrawal held by a beneficiary of the trust to whom, or for the benefit of whom, the trustee has authority to distribute income or principal, unless after the distribution of income or principal under Subsection (4) the beneficiary's power of withdrawal is unchanged with respect to the property of a trust;

(c) is not prohibited by:

(i) a spendthrift clause in the first trust; or

(ii) a clause in the trust instrument of the first trust that prohibits amendment or revocation of the trust;

(d) is an exercise of a power of appointment; and

(e) may not be exercised in a manner that would cause the decanting power to be a general power of appointment as described in Section 2041 or 2514 of the Internal Revenue Code.

(9)(a) This section does not preclude the trust instrument of a second trust from granting a power of appointment to a beneficiary of the second trust that is a beneficiary of the first trust.

(b) A power of appointment described in Subsection (9)(a) may include the power to appoint trust property to the holder of the power of appointment, the holder's

creditors, the holder's estate, the creditors of the holder's estate, or any other person regardless of whether that person is a beneficiary of the second trust.

(10) This section applies to a trust administered under the laws of this state, including a trust whose governing jurisdiction is transferred to this state.

Section 17. Section **75-7-816** is amended to read:

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

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

(a) in the deed of transfer; or

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

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

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

(a) the name of the trustee;

(b) the address of the trustee; and

(c) the name and date of the trust.

(4) Any real property titled in a trust [~~which~~] that has a restriction on transfer described in Section [~~75B-1-302~~] 75B-1-303 shall include in the title the words "asset protection trust."

Section 18. Section **75A-2-102** is amended to read:

75A-2-102 . Definitions for chapter.

As used in this chapter:

(1)(a) "Agent" means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact, or otherwise.

(b) "Agent" includes an original agent, coagent, successor agent, and person to which an agent's authority is delegated.

(2) "Beneficiary" means the same as that term is defined in Section 75-1-201.

(3) "Beneficiary designation" means the same as that term is defined in Section 75-1-201.

(4) "Child" means the same as that term is defined in Section 75-1-201.

(5) "Claims" means the same as that term is defined in Section 75-1-201.

(6) "Conservator" means the same as that term is defined in Section 75-1-201.

- 1014 (7) "Descendant" means the same as that term is defined in Section 75-1-201.
- 1015 (8) "Durable," with respect to a power of attorney, means not terminated by the principal's
- 1016 incapacity.
- 1017 (9) "Electronic" means relating to technology having electrical, digital, magnetic, wireless,
- 1018 optical, electromagnetic, or similar capabilities.
- 1019 (10) "Estate" means the same as that term is defined in Section 75-1-201.
- 1020 (11) "Fiduciary" means the same as that term is defined in Section 75-1-201.
- 1021 (12) "Good faith" means honesty in fact.
- 1022 (13) "Guardian" means the same as that term is defined in Section 75-1-201.
- 1023 (14) "Incapacity" means the inability of an individual to manage property or business
- 1024 affairs because the individual:
- 1025 (a) has an impairment in the ability to receive and evaluate information or make or
- 1026 communicate decisions even with the use of technological assistance; or
- 1027 (b) is:
- 1028 (i) missing;
- 1029 (ii) detained, including incarcerated in a penal system; or
- 1030 (iii) outside the United States and unable to return.
- 1031 (15) "Lease" means the same as that term is defined in Section 75-1-201.
- 1032 (16) "Mortgage" means the same as that term is defined in Section 75-1-201.
- 1033 (17) "Organization" means the same as that term is defined in Section 75-1-201.
- 1034 (18) "Person" means an individual, corporation, business trust, estate, trust, partnership,
- 1035 limited liability company, association, joint venture, public corporation, government or
- 1036 governmental subdivision, agency, or instrumentality, or any other legal or commercial
- 1037 entity.
- 1038 (19) "Personal representative" means the same as that term is defined in Section 75-1-201.
- 1039 (20) "Power of attorney" means a writing or other record governed by this chapter that
- 1040 grants authority to an agent to act in the place of the principal~~[, whether or not]~~
- 1041 regardless of whether the term power of attorney is used.
- 1042 (21)(a) "Presently exercisable general power of appointment," with respect to property
- 1043 or a property interest subject to a power of appointment, means power exercisable at
- 1044 the time in question to vest absolute ownership in the principal individually, the
- 1045 principal's estate, the principal's creditors, or the creditors of the principal's estate.
- 1046 (b) "Presently exercisable general power of appointment" includes a power of
- 1047 appointment not exercisable until the occurrence of a specified event, the satisfaction

of an ascertainable standard, or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period.

(c) "Presently exercisable general power of appointment" does not include a power exercisable in a fiduciary capacity or only by will.

(22) "Principal" means an individual who grants authority to an agent in a power of attorney.

(23) "Property" means anything that may be the subject of ownership, whether real or personal, or legal or equitable, or any interest or right therein.

(24) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(25) "Security" means the same as that term is defined in Section 75-1-201.

(26) "Sign" means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic sound, symbol, or process.

(27) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(28)(a) "Stocks and bonds" means stocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly, indirectly, or in any other manner.

(b) "Stocks and bonds" does not include commodity futures contracts and call or put options on stocks or stock indexes.

(29) "Trust" means the same as that term is defined in Section 75-1-201.

(30) "Trustee" means the same as that term is defined in Section 75-1-201.

(31) "Will" means the same as that term is defined in Section 75-1-201.

Section 19. Section **75A-2-105** is amended to read:

75A-2-105 . Execution of power of attorney.

~~[(1)(a) A power of attorney shall be signed by the principal or in the principal's conscious presence by another individual directed by the principal to sign the principal's name on the power of attorney before a notary public or other individual authorized by the law to take acknowledgments.]~~

(1)(a) A principal may sign a power of attorney, or direct another individual in the

principal's conscious presence to sign the principal's name on the power of attorney,
if:

- (i) the power of attorney is signed before a notary public or other individual authorized by the law to take acknowledgments; and
- (ii) the principal has sufficient mental capacity at the time that the power of attorney is executed to understand that the principal is appointing an agent to handle the principal's financial affairs.

(b) A signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments.

(c) A principal's understanding of how an agent will manage the principal's affairs is not required for sufficient mental capacity under Subsection (1)(a)(ii).

(2)(a) If the principal resides or is about to reside in a hospital, assisted living, skilled nursing, or similar facility, at the time of execution of the power of attorney, the principal may not name any agent that is the owner, operator, health care provider, or employee of the hospital, assisted living facility, skilled nursing, or similar residential care facility unless:

- ~~[(a)]~~ (i) the agent is the spouse, legal guardian, or next of kin of the principal; or
- ~~[(b)]~~ (ii) the agent's authority is strictly limited to the purpose of assisting the principal to establish eligibility for Medicaid.

~~[(3)]~~ (b) A violation of this Subsection (2) is a violation of Section 76-5-111.4.

Section 20. Section **75A-3-101** is amended to read:

75A-3-101 . Definitions for chapter.

As used in this chapter:

(1) "Adult" means an individual who is:

- (a) at least 18 years old; or
- (b) ~~[an emancipated minor]~~ under 18 years old and is emancipated.

(2) "Advance health care directive":

- (a) includes:
 - (i) a designation of an agent to make health care decisions for an adult when the adult cannot make or communicate health care decisions; or
 - (ii) an expression of preferences about health care decisions;
- (b) may take one of the following forms:
 - (i) a written document, voluntarily executed by an adult in accordance with the

requirements of this chapter; or

(ii) a witnessed oral statement, made in accordance with the requirements of this chapter; and

(c) does not include an order for life sustaining treatment.

(3) "Agent" means an adult designated in an advance health care directive to make health care decisions for the declarant.

(4) "APRN" means an individual who is:

(a) certified or licensed as an advance practice registered nurse under Subsection 58-31b-301(2)(e);

(b) an independent practitioner; and

(c) acting within the scope of practice for that individual, as provided by law, rule, and specialized certification and training in that individual's area of practice.

(5) "Best interest" means that the benefits to the individual resulting from a treatment outweigh the burdens to the individual resulting from the treatment, taking into account:

(a) the effect of the treatment on the physical, emotional, and cognitive functions of the individual;

(b) the degree of physical pain or discomfort caused to the individual by the treatment or the withholding or withdrawal of treatment;

(c) the degree to which the individual's medical condition, the treatment, or the withholding or withdrawal of treatment, result in a severe and continuing impairment of the dignity of the individual by subjecting the individual to humiliation and dependency;

(d) the effect of the treatment on the life expectancy of the individual;

(e) the prognosis of the individual for recovery with and without the treatment;

(f) the risks, side effects, and benefits of the treatment, or the withholding or withdrawal of treatment; and

(g) the religious beliefs and basic values of the individual receiving treatment, to the extent these may assist the decision maker in determining the best interest.

~~[(6) "Capacity to appoint an agent" means that the adult understands the consequences of appointing a particular individual as agent.]~~

~~[(7)]~~ (6) "Child" means the same as that term is defined in Section 75-1-201.

~~[(8)]~~ (7) "Declarant" means an adult who has completed and signed or directed the signing of an advance health care directive.

~~[(9)]~~ (8) "Default surrogate" means the adult who may make decisions for an individual

1150 when either:

1151 (a) an agent or guardian has not been appointed; or

1152 (b) an agent is not able, available, or willing to make decisions for an adult.

1153 ~~[(10)]~~ (9) "Emergency medical services provider" means a person that is licensed,
1154 designated, or certified under Title 53, Chapter 2d, Emergency Medical Services Act.

1155 ~~[(11)]~~ (10) "Estate" means the same as that term is defined in Section 75-1-201.

1156 ~~[(12)]~~ (11) "Generally accepted health care standards":

1157 (a) is defined only for the purpose of:

1158 (i) this chapter and does not define the standard of care for any other purpose under
1159 Utah law; and

1160 (ii) enabling health care providers to interpret the statutory form set forth in Section
1161 75A-3-303; and

1162 (b) means the standard of care that justifies a provider in declining to provide life
1163 sustaining care because the proposed life sustaining care:

1164 (i) will not prevent or reduce the deterioration in the health or functional status of an
1165 individual;

1166 (ii) will not prevent the impending death of an individual; or

1167 (iii) will impose more burden on the individual than any expected benefit to the
1168 individual.

1169 ~~[(13)]~~ (12) "Guardian" means the same as that term is defined in Section 75-1-201.

1170 ~~[(14)]~~ (13) "Health care" means any care, treatment, service, or procedure to improve,
1171 maintain, diagnose, or otherwise affect an individual's physical or mental condition.

1172 ~~[(15)]~~ (14) "Health care decision":

1173 (a) means a decision about an adult's health care made by, or on behalf of, an adult, that
1174 is communicated to a health care provider;

1175 (b) includes:

1176 (i) selection and discharge of a health care provider and a health care facility;

1177 (ii) approval or disapproval of diagnostic tests, procedures, programs of medication,
1178 and orders not to resuscitate; and

1179 (iii) directions to provide, withhold, or withdraw artificial nutrition and hydration and
1180 all other forms of health care; and

1181 (c) does not include decisions about an adult's financial affairs or social interactions
1182 other than as indirectly affected by the health care decision.

1183 ~~[(16)]~~ (15) "Health care decision making capacity" means an adult's ability to make an

informed decision about receiving or refusing health care, including:

- (a) the ability to understand the nature, extent, or probable consequences of health status and health care alternatives;
- (b) the ability to make a rational evaluation of the burdens, risks, benefits, and alternatives of accepting or rejecting health care; and
- (c) the ability to communicate a decision.

[(17)] (16) "Health care facility" means:

- (a) a health care facility as defined in Title 26B, Chapter 2, Part 2, Health Care Facility Licensing and Inspection; and
- (b) private offices of physicians, dentists, and other health care providers licensed to provide health care under Title 58, Occupations and Professions.

[(18)] (17) "Health care provider" means the same as that term is defined in Section 78B-3-403, except that "health care provider" does not include an emergency medical services provider.

[(19)] (18) "Incapacitated" means the same as that term is defined in Section 75-1-201.

[(20)] (19) "Incapacity" means the same as that term is defined in Section 75-1-201.

[(21)] (20)(a) "Life sustaining care" means any medical intervention, including procedures, administration of medication, or use of a medical device, that maintains life by sustaining, restoring, or supplanting a vital function.

(b) "Life sustaining care" does not include care provided for the purpose of keeping an individual comfortable.

[(22)] (21) "Minor" means an individual who:

- (a) is under 18 years old; and
- (b) is not ~~[an emancipated minor]~~ emancipated.

[(23)] (22) "Order for life sustaining treatment" means an order related to life sustaining treatment, on a form designated by the Department of Health and Human Services under Section 75-3-106, that gives direction to health care providers, health care facilities, and emergency medical services providers regarding the specific health care decisions of the individual to whom the order relates.

[(24)] (23) "Parent" means the same as that term is defined in Section 75-1-201.

[(25)] (24) "Personal representative" means the same as that term is defined in Section 75-1-201.

[(26)] (25) "Physician" means a physician and surgeon or osteopathic surgeon licensed under Title 58, Chapter 67, Utah Medical Practice Act or Chapter 68, Utah Osteopathic

Medical Practice Act.

[(27)] (26) "Physician assistant" means an individual licensed as a physician assistant under Title 58, Chapter 70a, Utah Physician Assistant Act.

[(28)] (27) "Reasonably available" means:

- (a) readily able to be contacted without undue effort; and
- (b) willing and able to act in a timely manner considering the urgency of the circumstances.

(28) "Sign" means the same as that term is defined in Section 75-1-201.

(29) "State" means the same as that term is defined in Section 75-1-201.

(30) "Substituted judgment" means the standard to be applied by a surrogate when making a health care decision for an adult who previously had the capacity to make health care decisions, which requires the surrogate to consider:

- (a) specific preferences expressed by the adult:
 - (i) when the adult had the capacity to make health care decisions; and
 - (ii) at the time the decision is being made;
- (b) the surrogate's understanding of the adult's health care preferences;
- (c) the surrogate's understanding of what the adult would have wanted under the circumstances; and
- (d) to the extent that the preferences described in Subsections (30)(a) through (c) are unknown, the best interest of the adult.

(31) "Surrogate" means a health care decision maker who is:

- (a) an appointed agent;
- (b) a default surrogate under the provisions of Section 75A-3-203; or
- (c) a guardian.

(32) "Trust" means the same as that term is defined in Section 75-1-201.

(33) "Will" means the same as that term is defined in Section 75-1-201.

Section 21. Section **75A-3-302** is amended to read:

75A-3-302 . Capacity to complete an advance health care directive.

(1) An adult is presumed to have the capacity to complete an advance health care directive.

(2) An adult who is found to lack health care decision making capacity under the provisions of Section 75A-3-201:

- (a) lacks the capacity to give an advance health care directive, including Part II of the form created in Section 75A-3-303, or any other substantially similar form expressing a health care preference; and

(b) may ~~[retain the capacity to]~~ appoint an agent and complete Part I of the form created in Section 75A-3-303[:] if the adult understands that the adult is appointing an agent to handle the adult's health care decisions at the time that the adult appoints the agent.

(3) ~~[The following factors shall be considered by a health care provider, attorney, or court when determining whether an adult described in Subsection (2)(b) has retained the capacity to appoint an agent]~~ A health care provider, an attorney, or a court when determining whether the adult understands that the adult is appointing an agent to handle the adult's health care decisions shall consider:

- (a) whether the adult has expressed over time an intent to appoint the same person as agent;
- (b) whether the choice of agent is consistent with past relationships and patterns of behavior between the adult and the prospective agent, or, if inconsistent, whether there is a reasonable justification for the change; and
- (c) whether the adult's expression of the intent to appoint the agent occurs at times when, or in settings where, the adult has the greatest ability to make and communicate decisions.

(4) An adult's understanding of how the agent will manage the adult's health care decisions is not required for the adult to appoint an agent under Subsection (2)(b).

The following section is affected by a coordination clause at the end of this bill.

Section 22. Section **75A-5-203** is amended to read:

75A-5-203 . Fiduciary's power to adjust.

- (1) Except as otherwise provided in the terms of a trust or this section, a fiduciary, in a record, without court approval, may adjust between income and principal if the fiduciary determines the exercise of the power to adjust will assist the fiduciary to administer the trust or estate impartially.
- (2) This section does not create a duty to exercise or consider the power to adjust under Subsection (1) or to inform a beneficiary about the applicability of this section.
- (3) A fiduciary that in good faith exercises or fails to exercise the power to adjust under Subsection (1) is not liable to a person affected by the exercise or failure to exercise.
- (4) In deciding whether and to what extent to exercise the power to adjust under Subsection (1), a fiduciary shall consider all factors the fiduciary considers relevant, including the relevant factors in Subsection 75A-5-201(5) and the application of Subsection 75A-5-401(9), Section 75A-5-408, and Section 75A-5-413.
- (5) A fiduciary may not exercise the power to make an adjustment under Subsection (1) or

the power to make a determination that an allocation is insubstantial under Section 75A-5-408 if:

- (a) the adjustment or determination would reduce the amount payable to a current income beneficiary from a trust that qualifies for a special tax benefit, except to the extent the adjustment is made to provide for a reasonable apportionment of the total return of the trust between the current income beneficiary and successor beneficiaries;
- (b) the adjustment or determination would change the amount payable to a beneficiary, as a fixed annuity or a fixed fraction of the value of the trust assets, under the terms of the trust;
- (c) the adjustment or determination would reduce an amount that is permanently set aside for a charitable purpose under the terms of the trust, unless both income and principal are set aside for the charitable purpose;
- (d) possessing or exercising the power would cause a person to be treated as the owner of all or part of the trust for federal income tax purposes;
- (e) possessing or exercising the power would cause all or part of the value of the trust assets to be included in the gross estate of an individual for federal estate tax purposes;
- (f) possessing or exercising the power would cause an individual to be treated as making a gift for federal gift tax purposes;
- (g) the fiduciary is not an independent person;
- (h) the trust is irrevocable and provides for income to be paid to the settlor and possessing or exercising the power would cause the adjusted principal or income to be considered an available resource or available income under a public-benefit program; or
- (i) the trust is a unitrust under Part 3, Unitrust.

(6) If Subsection (5)(d), (e), (f), or (g) applies to a fiduciary:

- (a) a co-fiduciary to which Subsections (5)(d) through (g) do not apply may exercise the power to adjust, unless the exercise of the power to adjust by the remaining co-fiduciary or co-fiduciaries is not permitted by the terms of the trust or law other than this chapter; or
- (b)(i) if there is no co-fiduciary to which Subsections (5)(d) through (g) do not apply:
 - (A) except as otherwise provided in Subsection (6)(b)(ii)(A), the fiduciary may appoint a co-fiduciary to which Subsections (5)(d) through (g) do not apply;
 - (B) except as otherwise provided in Subsection (6)(b)(ii)(B), the appointed

- 1320 co-fiduciary may exercise the power to adjust under Subsection (1); and
1321 (C) the appointed co-fiduciary may be a special fiduciary with limited powers.
- 1322 (ii)(A) If the appointment of a co-fiduciary is not permitted by the terms of the
1323 trust or by a provision of law outside this chapter, a fiduciary may not appoint
1324 a co-fiduciary.
- 1325 (B) If the exercise of the power to adjust by a co-fiduciary is not permitted by the
1326 terms of the trust or by a provision of law outside this chapter, the co-fiduciary
1327 may not exercise the power to adjust under Subsection (1).
- 1328 (7) A fiduciary may release or delegate to a co-fiduciary the power to adjust under
1329 Subsection (1) if the fiduciary determines that the fiduciary's possession or exercise of
1330 the power to adjust will or may:
- 1331 (a) cause a result described in Subsections (5)(a) through (f) or (h); or
1332 (b) deprive the trust of a tax benefit or impose a tax burden not described in Subsections
1333 (5)(a) through (f).
- 1334 (8) A fiduciary's release or delegation to a co-fiduciary under Subsection (7) of the power to
1335 adjust under Subsection (1):
- 1336 (a) must be in a record;
1337 (b) applies to the entire power to adjust, unless the release or delegation provides a
1338 limitation, which may be a limitation to the power to adjust:
- 1339 (i) from income to principal;
1340 (ii) from principal to income;
1341 (iii) for specified property; or
1342 (iv) in specified circumstances;
- 1343 (c) for a delegation, may be modified by a redelegation under this subsection by the
1344 co-fiduciary to which the delegation is made; and
- 1345 (d) subject to Subsection (8)(c), is permanent, unless the release or delegation provides a
1346 specified period, including a period measured by the life of an individual or the lives
1347 of more than one individual.
- 1348 (9) Terms of a trust that deny or limit the power to adjust between income and principal do
1349 not affect the application of this section, unless the terms of the trust expressly deny or
1350 limit the power to adjust under Subsection (1).
- 1351 (10) The exercise of the power to adjust under Subsection (1) in any accounting period may
1352 apply to the current accounting period, the immediately preceding accounting period,
1353 and one or more subsequent accounting periods.

- (11) A description of the exercise of the power to adjust under Subsection (1) shall be:
- (a) included in a report, if any, sent to beneficiaries under Subsection 75-7-811(3); or
 - (b) communicated at least annually to the qualified beneficiaries determined under Subsection ~~[75-7-103(1)(h)]~~ 75-7-103(1)(i).

The following section is affected by a coordination clause at the end of this bill.

Section 23. Section **75A-5-303** is amended to read:

75A-5-303 . Authority of fiduciary.

- (1) A fiduciary, without court approval, by complying with Subsections (2) and (6), may:
- (a) convert an income trust to a unitrust if the fiduciary adopts, in a record, a unitrust policy for the trust providing:
 - (i) that, in administering the trust, the net income of the trust will be a unitrust amount rather than net income determined without regard to this part; and
 - (ii) the percentage and method used to calculate the unitrust amount;
 - (b) change the percentage or method used to calculate a unitrust amount for a unitrust if the fiduciary adopts in a record a unitrust policy or an amendment or replacement of a unitrust policy providing changes in the percentage or method used to calculate the unitrust amount; or
 - (c) convert a unitrust to an income trust if the fiduciary adopts, in a record, a determination that, in administering the trust, the net income of the trust will be net income determined without regard to this part rather than a unitrust amount.
- (2) A fiduciary may take an action under Subsection (1) if:
- (a) the fiduciary determines that the action will assist the fiduciary to administer a trust impartially;
 - (b) the fiduciary sends a notice in a record, in the manner required by Section 75A-5-304, describing and proposing to take the action;
 - (c) the fiduciary sends a copy of the notice under Subsection (2)(b) to each settlor of the trust which is:
 - (i) if an individual, living; or
 - (ii) if not an individual, in existence;
 - (d) at least one member of each class of the qualified beneficiaries determined under Subsection ~~[75-7-103(1)(h)]~~ 75-7-103(1)(i) receiving the notice under Subsection (2)(b) is:
 - (i) if an individual, legally competent;
 - (ii) if not an individual, in existence; or

- 1388 (iii) represented in the manner provided in Subsection 75A-5-304(2); and
- 1389 (e) the fiduciary does not receive, by the date specified in the notice under Subsection
- 1390 75A-5-304(4)(e), an objection in a record to the action proposed under Subsection
- 1391 (2)(b) from a person to which the notice under Subsection (2)(b) is sent.
- 1392 (3)(a) If a fiduciary receives, not later than the date stated in the notice under Subsection
- 1393 75A-5-304(4)(e), an objection in a record described in Subsection 75A-5-304(4)(d) to
- 1394 a proposed action, the fiduciary or a beneficiary may request that the court:
- 1395 (i) require the fiduciary to take the proposed action;
- 1396 (ii) require the fiduciary to take the proposed action with modifications; or
- 1397 (iii) prevent the proposed action.
- 1398 (b) A person described in Subsection 75A-5-304(1) may oppose the proposed action in
- 1399 the proceeding under Subsection (3)(a), regardless of whether the person:
- 1400 (i) consented under Subsection 75A-5-304(3); or
- 1401 (ii) objected under Subsection 75A-5-304(4)(d).
- 1402 (4) If, after sending a notice under Subsection (2)(b), a fiduciary decides not to take the
- 1403 action proposed in the notice, the fiduciary shall notify each person described in
- 1404 Subsection 75A-5-304(1) in a record of the decision not to take the action and the
- 1405 reasons for the decision.
- 1406 (5) If a beneficiary requests in a record that a fiduciary take an action described in
- 1407 Subsection (1) and the fiduciary declines to act or does not act within 90 days after
- 1408 receiving the request, the beneficiary may request the court to direct the fiduciary to take
- 1409 the action requested.
- 1410 (6) In deciding whether and how to take an action authorized by Subsection (1), or whether
- 1411 and how to respond to a request by a beneficiary under Subsection (5), a fiduciary shall
- 1412 consider all factors relevant to the trust and the beneficiaries, including the relevant
- 1413 factors in Subsection 75A-5-201(5).
- 1414 (7) For a reason described in Subsection 75A-5-203(7), and in the manner described in
- 1415 Subsection 75A-5-203(8), a fiduciary may:
- 1416 (a) release or delegate the power to convert an income trust to a unitrust under
- 1417 Subsection (1)(a);
- 1418 (b) change the percentage or method used to calculate a unitrust amount under
- 1419 Subsection (1)(b); or
- 1420 (c) convert a unitrust to an income trust under Subsection (1)(c).

1421 *The following section is affected by a coordination clause at the end of this bill.*

Section 24. Section **75A-5-304** is amended to read:

75A-5-304 . Notice.

- (1) A fiduciary shall send a notice required by Subsection 75A-5-303(2)(b) in a manner authorized under Section 75-7-109 to:
- (a) the qualified beneficiaries determined under Subsection [~~75-7-103(1)(h)~~]
75-7-103(1)(i);
 - (b) each person acting, in accordance with Title 75, Chapter 12, Uniform Directed Trust Act, as trust director of the trust; and
 - (c) each person that is granted a power by the terms of the trust to appoint or remove a trustee or person described in Subsection (1)(b), to the extent the power is exercisable when the person that exercises the power is not then serving as trustee or is a person described in Subsection (1)(b).
- (2) The representation provisions of Sections 75-7-301 through 75-7-305 apply to notice under this section.
- (3)(a) A person may consent in a record at any time to action proposed under Subsection 75A-5-303(2)(b).
- (b) If a person required to receive a notice under Subsection (1) consents under Subsection (3)(a) to not receive the notice, the fiduciary is not required to send the person the notice.
- (4) A notice required by Subsection 75A-5-303(2)(b) shall include:
- (a) the action proposed under Subsection 75A-5-303(2)(b);
 - (b) for a conversion of an income trust to a unitrust, a copy of the unitrust policy adopted under Subsection 75A-5-303(1)(a);
 - (c) for a change in the percentage or method used to calculate the unitrust amount, a copy of the unitrust policy or amendment or replacement of the unitrust policy adopted under Subsection 75A-5-303(1)(b);
 - (d) a statement that the person to which the notice is sent may object to the proposed action by stating in a record the basis for the objection and sending or delivering the record to the fiduciary;
 - (e) the date by which the fiduciary shall receive an objection under Subsection (4)(d), which shall be at least 30 days after the date the notice is sent;
 - (f) the date on which the action is proposed to be taken and the date on which the action is proposed to take effect;
 - (g) the name and contact information of the fiduciary; and

(h) the name and contact information of a person that may be contacted for additional information.

Section 25. Section **75A-8-102** is amended to read:

CHAPTER 8. UNIFORM TRANSFERS TO MINORS ACT

75A-8-102 . Definitions for chapter.

As used in this chapter:

- (1) "Adult" means an individual who is 21 years old or older.
- (2) "Beneficiary" means the same as that term is defined in Section 75-1-201.
- (3) "Benefit plan" means an employer's plan for the benefit of an employee or partner.
- (4) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the accounts of others.
- (5) "Conservator" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.
- (6) "Court" means a court with jurisdiction under Title 78A, Judiciary and Judicial Administration.
- (7) "Custodial property" means:
 - (a) any interest in property transferred to a custodian under this chapter; and
 - (b) the income from and proceeds of that interest in property.
- (8) "Custodian" means a person so designated under Section 75A-8-110 or a successor or substitute custodian designated under Section 75A-8-119.
- (9) "Estate" means the same as that term is defined in Section 75-1-201.
- (10) "Fiduciary" means the same as that term is defined in Section 75-1-201.
- (11) "Financial institution" means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.
- (12) "Guardian" means the same as that term is defined in Section 75-1-201.
- ~~[(13) "Incapacitated" means the same as that term is defined in Section 75-1-201.]~~
- (13) "Incapacitated" means the inability of the individual to manage the property or business affairs of the minor because the individual:
 - (a) lacks the ability to receive or evaluate information, make decisions, or communicate decisions even with the use of technological assistance;
 - (b) is missing;
 - (c) is detained or incarcerated; or
 - (d) is outside the United States and is unable to return.

(14) "Incapacity" means the ~~[same as that term is defined in Section 75-1-201]~~ state of being incapacitated.

(15) "Interested person" means the same as that term is defined in Section 75-1-201.

(16) "Legal representative" means an individual's personal representative or conservator.

(17) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(18) "Minor" means an individual who is under 21 years old.

(19) "Parent" means the same as that term is defined in Section 75-1-201.

(20) "Payor" means the same as that term is defined in Section 75-1-201.

(21) "Person" means an individual, corporation, organization as defined in Section 75-1-201, or other legal entity.

(22) "Personal representative" means an executor, administrator, successor personal representative as defined in Section 75-1-201, or special administrator as defined in Section 75-1-201, of a decedent's estate or a person legally authorized to perform substantially the same functions.

(23) "Petition" means the same as that term is defined in Section 75-1-201.

(24) "Property" means the same as that term is defined in Section 75-1-201.

(25) "Record" means the same as that term is defined in Section 75-1-201.

(26) "Security" means the same as that term is defined in Section 75-1-201.

(27) "State" includes any state of the United States, the district of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(28) "Testator" means the same as that term is defined in Section 75-1-201.

(29) "Transfer" means a transaction that creates custodial property under Section 75A-8-109.

(30) "Transferor" means a person who makes a transfer under this chapter.

(31) "Trust" means the same as that term is defined in Section 75-1-201.

(32) "Trust company" means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

(33) "Trustee" means the same as that term is defined in Section 75-1-201.

(34) "Will" means the same as that term is defined in Section 75-1-201.

The following section is affected by a coordination clause at the end of this bill.

Section 26. Section **75B-1-101** is amended to read:

75B-1-101 . Definitions for title.

[Reserved.] As used in this title:

- (1) "Income" means the same as that term is defined in Section 75A-5-102.
- (2) "Nongeneral power of appointment" means the same as that term is defined in Section 75A-4-102.
- (3) "Principal" means the same as that term is defined in Section 75A-5-102.
- (4) "Property" means the same as that term is defined in Section 75-1-201.
- (5) "Settlor" means the same as that term is defined in Section 75-7-102.
- (6) "Sign" means the same as that term is defined in Section 75-1-201.
- (7) "Trust company" means the same as that term is defined in Section 7-5-1.
- (8) "Trustee" means the same as that term is defined in Section 75-1-201.

Section 27. Section **75B-1-301** is amended to read:

Part 3. Asset Protection Trust

75B-1-301 . Definitions for part.

As used in this part:

- (1) "Asset protection trust" means a trust:
 - (a) that is irrevocable;
 - (b) of which the settlor:
 - (i) is a beneficiary; or
 - (ii) may be made a beneficiary by the act or action of a person other than the settlor;
 - and
 - (c) meets the requirements of this part.
- [~~(1)~~] (2) "Creditor" means:
 - (a) a creditor or other claimant of the settlor existing when the asset protection trust is created; or
 - (b) a person who subsequently becomes a creditor of the settlor, including whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured:
 - (i) holding or seeking to enforce a judgment entered by a court or other body having adjudicative authority; or
 - (ii) with a right to payment.
- [~~(2)~~] (3) "Domestic support obligation" means:
 - (a) a child support judgment or order;
 - (b) a spousal support judgment or order; or
 - (c) an unsatisfied claim arising from a property division in a divorce proceeding.

1558 ~~[(3)]~~ (4) "Insolvent" means:

- 1559 (a) having generally ceased to pay debts in the ordinary course of business other than as
1560 a result of a bona fide dispute;
1561 (b) being unable to pay debts as they become due; or
1562 (c) being insolvent within the meaning of federal bankruptcy law.

1563 ~~[(4)]~~ (5) "Paid and delivered" does not include the settlor's use or occupancy, as a
1564 beneficiary, of real property or personal property owned by the asset protection trust if
1565 the use or occupancy is in accordance with the trustee's discretionary authority under the
1566 trust instrument.

1567 ~~[(5)]~~ (6) "Personal property" includes intangible and tangible personal property.

1568 ~~[(6) "Property" means real property, personal property, and interests in real or personal~~
1569 ~~property.]~~

1570 ~~[(7) "Settlor" means a person who transfers property in trust.]~~

1571 ~~[(8)]~~ (7) "Transfer" means any form of transfer of property, including gratuitous transfers,
1572 whether by deed, conveyance, or assignment.

1573 ~~[(9) "Trust" means the same as that term is defined in Section 75-1-201.]~~

1574 *The following section is affected by a coordination clause at the end of this bill.*

1575 Section 28. Section **75B-1-302** is amended to read:

1576 **75B-1-302 . Asset protection trust -- Governing law.**

1577 (1) ~~[If the settlor of an irrevocable trust is also a beneficiary of the trust, and if the~~
1578 ~~requirements of Subsection (3) are satisfied, a]~~ A creditor of [the] a settlor of an asset
1579 protection trust may not:

- 1580 (a) satisfy a claim or liability of the settlor in either law or equity out of the settlor's
1581 transfer to the asset protection trust or the settlor's beneficial interest in the asset
1582 protection trust;
1583 (b) force or require the trustee to make a distribution to the settlor, as beneficiary; or
1584 (c) require the trustee to pay any distribution directly to the creditor, or otherwise attach
1585 the distribution before [it] the distribution has been paid or delivered by the trustee to
1586 the settlor, as beneficiary.

1587 (2) Notwithstanding Subsection (1), ~~[nothing in this section]~~ this part does not:

- 1588 (a) ~~[prohibits]~~ prohibit a creditor from satisfying a claim or liability from the distribution
1589 once [it] the distribution has been paid or delivered by the trustee to the settlor, as
1590 beneficiary; or
1591 (b) ~~[nullifies or impairs]~~ nullify or impair a security interest that was granted by a settlor

or a trustee with respect to property that is transferred to the asset protection trust.

(3) A trust is subject to this part if:

(a) the trust is governed by the laws of this state as described in Section 75-7-107; and

(b) the trust meets the requirements of this part.

(4) Notwithstanding Subsection 25-6-402(2), a court of this state has exclusive jurisdiction over an action or claim for relief that is based on a transfer of property to an asset protection trust.

~~[(3)(a) In order for Subsection (1) to apply, the conditions in this Subsection (3) shall be satisfied.]~~

~~[(b) Where this Subsection (3) requires that a provision be included in the trust instrument, no particular language need be used in the trust instrument if the meaning of the trust provision otherwise complies with this Subsection (3).]~~

~~[(c) An agreement or understanding, express or implied, between the settlor and the trustee that attempts to grant or permit the retention by the settlor of greater rights or authority than is stated in the trust instrument is void.]~~

~~[(d) The trust instrument shall provide that the trust is governed by Utah law and is established pursuant to this section.]~~

~~[(e) The trust instrument shall require that at all times at least one trustee shall be a Utah resident or Utah trust company, as the term "trust company" is defined in Section 7-5-1.]~~

~~[(f)(i) The trust instrument shall provide that neither the interest of the settlor, as beneficiary, nor the income or principal of the trust may be voluntarily or involuntarily transferred by the settlor, as beneficiary.]~~

~~[(ii) The provision shall be considered to be a restriction on the transfer of the settlor's beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within the meaning of 11 U.S.C. Sec. 541(c)(2).]~~

~~[(g) The settlor may not have the ability under the trust instrument, without the consent of a person who has a substantial beneficial interest in the trust, which interest would be adversely affected by the exercise of the power held by the settlor:]~~

~~[(i) to revoke, amend, or terminate all or any part of the trust; or]~~

~~[(ii) to withdraw any property from the trust, except that the settlor, without the approval or consent of any person, may be given the power, under the trust agreement, to substitute assets of substantially equivalent value.]~~

~~[(h) The trust instrument may not provide for any mandatory distributions of either~~

- 1626 income or principal to the settlor, as beneficiary, except as provided in Subsection
1627 (5)(g).]
- 1628 [(i)(i) The trust instrument shall require that, at least 30 days before paying and
1629 delivering any distribution to the settlor, as beneficiary, the trustee notify in
1630 writing every person who has a domestic support obligation against the settlor.]
- 1631 [(ii) The trust instrument shall require that the notice state the date the distribution
1632 will be paid and delivered and the amount of the distribution.]
- 1633 [(j) At the time that the settlor transfers any assets to the trust, the settlor may not be in
1634 default of making a payment due under a domestic support obligation.]
- 1635 [(k) A transfer of assets to the trust may not render the settlor insolvent.]
- 1636 [(l) At the time the settlor transfers any assets to the trust, the settlor may not intend to
1637 hinder, delay, or defraud a known creditor by transferring the assets to the trust. A
1638 settlor's expressed intention to protect trust assets from the settlor's potential future
1639 creditors is not evidence of an intent to hinder, delay, or defraud a known creditor.]
- 1640 [(m) Assets transferred to the trust may not be derived from unlawful activities.]
- 1641 [(nn) With respect to each transfer of assets to the trust, the settlor shall sign a sworn
1642 affidavit stating that at the time of the transfer of the assets to the trust:]
- 1643 [(i) the settlor has full right, title, and authority to transfer the assets to the trust;]
- 1644 [(ii) the transfer of the assets to the trust will not render the settlor insolvent;]
- 1645 [(iii) the settlor does not intend to hinder, delay, or defraud a known creditor by
1646 transferring the assets to the trust;]
- 1647 [(iv) there is no pending or threatened court action against the settlor, except for a
1648 court action identified by the settlor on an attachment to the affidavit;]
- 1649 [(v) the settlor is not involved in an administrative proceeding that is reasonably
1650 expected to have a material adverse effect on the financial condition of the settlor,
1651 except an administrative proceeding identified on an attachment to the affidavit;]
- 1652 [(vi) at the time of the transfer of the assets to the trust, the settlor is not in default of
1653 a domestic support obligation;]
- 1654 [(vii) the settlor does not contemplate filing for relief under the provisions of United
1655 States Code, Title 11, Bankruptcy; and]
- 1656 [(viii) the assets being transferred to the trust were not derived from unlawful
1657 activities.]
- 1658 [(4) Failure to satisfy the requirements of Subsection (3) shall result in the consequences
1659 described in this Subsection (4).]

- 1660 [(a) If any requirement of Subsections (3)(b) through (g) is not satisfied, none of the
1661 property held in the trust will at any time have the benefit of the protections described
1662 in Subsection (1).]
- 1663 [(b) If the trustee does not send the notice required under Subsection (3)(g), the court
1664 may authorize any person with a domestic support obligation against the settlor to
1665 whom notice was not sent to attach the distribution or future distributions, but the
1666 person may not:]
- 1667 [(i) satisfy a claim or liability in either law or equity out of the settlor's transfer to the
1668 trust or the settlor's beneficial interest in the trust; or]
- 1669 [(ii) force or require the trustee to make a distribution to the settlor, as beneficiary.]
- 1670 [(c) If any requirement described in Subsections (3)(i) through (l) is not satisfied, the
1671 property transferred to the trust that does not satisfy the requirement may not have
1672 the benefit of the protections described in Subsection (1).]
- 1673 [(d) If the requirement described in Subsection (3)(h) is not satisfied, the property
1674 transferred to the trust that does not satisfy the requirement does not have the benefit
1675 of the protections described in Subsection (1) with respect to any person with a
1676 domestic support obligation.]
- 1677 [(e) A creditor of the settlor has the burden of proving that the requirement in Subsection
1678 (3)(i) or (j) is not satisfied by clear and convincing evidence.]
- 1679 [(5) The provisions of Subsection (1) may apply to a trust even if:]
- 1680 [(a) the settlor serves as a cotrustee or as an advisor to the trustee, except that the settlor
1681 may not determine whether a discretionary distribution will be made;]
- 1682 [(b) the settlor participates in a determination regarding whether a discretionary
1683 distribution is made to the settlor by:]
- 1684 [(i) requesting a distribution from the trust;]
- 1685 [(ii) consulting with the trustees regarding whether a discretionary distribution will be
1686 made;]
- 1687 [(iii) exercising a right to consent to or veto the distribution under a power described
1688 in Subsection (5)(e);]
- 1689 [(iv) signing documentation in the settlor's capacity as a cotrustee that implements a
1690 distribution when the other trustees use discretionary power to independently
1691 authorize a distribution; or]
- 1692 [(v) participating in an action authorizing a distribution if the other trustees can
1693 authorize the distribution without the settlor's participation.]

- 1694 ~~[(e) the settlor has the authority under the terms of the trust instrument to appoint a~~
1695 ~~nonsubordinate advisor or a trust protector who can remove and appoint trustees and~~
1696 ~~who can direct, consent to, or disapprove distributions;]~~
- 1697 ~~[(d) the settlor has the power under the terms of the trust instrument to serve as an~~
1698 ~~investment director or to appoint an investment director under Section 75-7-906;]~~
- 1699 ~~[(e) the trust instrument gives the settlor the power to consent to or veto a distribution~~
1700 ~~from the trust;]~~
- 1701 ~~[(f) the trust instrument gives the settlor an inter vivos or a testamentary nongeneral~~
1702 ~~power of appointment or similar power;]~~
- 1703 ~~[(g) the trust instrument gives the settlor the right to receive the following types of~~
1704 ~~distributions:]~~
- 1705 ~~[(i) income, principal, or both in the discretion of a person, including a trustee, other~~
1706 ~~than the settlor;]~~
- 1707 ~~[(ii) principal, subject to an ascertainable standard set forth in the trust;]~~
- 1708 ~~[(iii) income or principal from a charitable remainder annuity trust or charitable~~
1709 ~~remainder unitrust, as defined in 26 U.S.C. Sec. 664;]~~
- 1710 ~~[(iv) a percentage of the value of the trust each year as determined under the trust~~
1711 ~~instrument, but not exceeding the amount that may be defined as income under 26~~
1712 ~~U.S.C. Sec. 643(b);]~~
- 1713 ~~[(v) the transferor's potential or actual use of real property held under a qualified~~
1714 ~~personal residence trust, or potential or actual possession of a qualified annuity~~
1715 ~~interest, within the meaning of 26 U.S.C. Sec. 2702 and the accompanying~~
1716 ~~regulations;]~~
- 1717 ~~[(vi) income or principal from a grantor retained annuity trust or grantor retained~~
1718 ~~unitrust that is allowed under 26 U.S.C. Sec. 2702; and]~~
- 1719 ~~[(vii) income from a trust intended to qualify for the federal estate tax or gift tax~~
1720 ~~marital deduction under 26 U.S.C. Sec. 2056(b)(7) or 2523(f);]~~
- 1721 ~~[(h) the trust instrument authorizes the settlor to use real or personal property owned by~~
1722 ~~the trust; or]~~
- 1723 ~~[(i) with respect to the property held in the trust, the settlor may:]~~
- 1724 ~~[(i) give a personal guarantee on a debt or obligation secured by the property;]~~
- 1725 ~~[(ii) make payments, directly or indirectly, on a debt or obligation secured by the~~
1726 ~~property;]~~
- 1727 ~~[(iii) pay property taxes, casualty and liability insurance premiums, homeowner~~

association dues, maintenance expenses, or other similar expenses on the property;
or]

[(iv) pay income tax on income attributable to the portion of property held in the trust, of which the settlor is considered to be the owner under 26 U.S.C. Secs. 671 through 678, which payments will not be considered additional transfers to the trust for purposes of this section.]

[(6)(a) If a trust instrument contains the provisions described in Subsections (3)(b) through (g), the transfer restrictions prevent a creditor or other person from asserting any cause of action or claim for relief against a trustee of the trust or against others involved in the counseling, drafting, preparation, execution, or funding of the trust for conspiracy to commit fraudulent conveyance or another voidable transfer, aiding and abetting a fraudulent conveyance or another voidable transfer, participation in the trust transaction, or similar cause of action or claim for relief.]

[(b) For purposes of this Subsection (6), counseling, drafting, preparation, execution, or funding of the trust includes the preparation and funding of a limited partnership, a limited liability company, or other entity if interests in the entity are subsequently transferred to the trust.]

[(c) The creditor and other person prevented from asserting a cause of action or claim for relief may assert a cause of action against, and are limited to recourse against, only:]

[(i) the trust and the trust assets; and]

[(ii) the settlor, to the extent otherwise allowed in this section.]

[(7)(a) A cause of action or claim for relief under Subsection (3)(i) or (j) is a cause of action or claim for relief under Section 25-6-202 or 25-6-203.]

[(b) Except as provided in Subsection (7)(a), a cause of action or claim for relief under this section is not a cause of action or claim for relief under Sections 25-6-101 through 25-6-407.]

[(c) Notwithstanding Section 25-6-305, a cause of action or claim for relief regarding a fraudulent conveyance or other voidable transfer of a settlor's assets under this section is extinguished unless the action is brought by a creditor of the settlor who was a creditor of the settlor before the assets in question were transferred to the trust and the action is brought within the earlier of:]

[(i) the later of two years after the transfer is made, or one year after the transfer is or reasonably could have been discovered by the creditor if the creditor:]

1762 ~~[(A) can demonstrate, by clear and convincing evidence, that the creditor asserted~~
1763 ~~a specific claim against the settlor before the transfer; or]~~

1764 ~~[(B) files another action, other than an action alleging a fraudulent conveyance or~~
1765 ~~other voidable transfer against the settlor that asserts a claim based on an act or~~
1766 ~~omission of the settlor that occurred before the transfer, and the action~~
1767 ~~described in Subsection (7)(c) is filed within two years after the transfer; or]~~

1768 ~~[(ii)(A) with respect to a creditor known to the settlor, 120 days after the date on~~
1769 ~~which notice of the transfer is mailed to the creditor, which notice shall state~~
1770 ~~the name and address of the settlor or the settlor's representative, the name and~~
1771 ~~address of the trustee or the trustee's representative, and also describe the assets~~
1772 ~~that were transferred, but does not need to state the value of those assets if the~~
1773 ~~assets are other than cash, and which shall inform the creditor that the creditor~~
1774 ~~is required to bring the creditor's cause of action or claim for relief against the~~
1775 ~~settlor and the trustee within 120 days from the mailing of the notice or be~~
1776 ~~forever barred; or]~~

1777 ~~[(B) with respect to a creditor not known to the settlor, 120 days after the date on~~
1778 ~~which notice of the transfer is first published in a newspaper of general~~
1779 ~~circulation in the county in which the settlor then resides, or is published on a~~
1780 ~~public legal notice website as defined in Section 45-1-101, which notice shall~~
1781 ~~state the name of the settlor or the settlor's representative, the address of the~~
1782 ~~settlor or the settlor's representative, the name of the trustee or the trustee's~~
1783 ~~representative, the address of the trustee or the trustee's representative, and also~~
1784 ~~describe the assets that were transferred, but does not need to state the value of~~
1785 ~~those assets.]~~

1786 ~~[(8)(a) The notice required in Subsection (7)(c)(ii)(B) shall be published in accordance~~
1787 ~~with the provisions of Section 45-1-101 for three consecutive weeks and inform~~
1788 ~~creditors that they are required to bring a cause of action or claim for relief within~~
1789 ~~120 days from the first publication of the notice or be forever barred.]~~

1790 ~~[(b) Failure to give the notice required in Subsection (7)(c)(ii) to a creditor does not~~
1791 ~~prevent the shortening of the limitations period under Subsection (7)(c)(ii) with~~
1792 ~~respect to another creditor who properly received notice by mail or publication.]~~

1793 ~~[(9)(a) A trust is subject to this section if it is governed by Utah law, as provided in~~
1794 ~~Section 75-7-107, and if it otherwise meets the requirements of this section.]~~

1795 ~~[(b) A court of this state has exclusive jurisdiction over an action or claim for relief that~~

is based on a transfer of property to a trust that is the subject of this section.]

[(10)(a) With respect to a trust that is subject to this section, a claim brought by a creditor of a beneficiary who is not the settlor is subject to Section 75-7-501 et. seq.]

[(b) With respect to an irrevocable trust that is not subject to this section, a claim brought by a creditor of a beneficiary who is the settlor is subject to the provisions of Subsection 75-7-505(2).]

[(11) If a provision in this section conflicts with a provision in Sections 25-6-101 through 25-6-407, the provision of this section shall supersede the conflicting provision in Sections 25-6-101 through 25-6-407.]

[(12) Nothing in this section alters rights vested or created under this section before May 14, 2019.]

Section 29. Section **75B-1-303** is enacted to read:

75B-1-303 . Requirements for asset protection trust.

(1) For the protections described in Subsection 75B-1-302(1) to apply to an asset protection trust, the asset protection trust shall comply with this section.

(2)(a) The trust instrument shall:

(i) provide that the trust is governed by Utah law and is established in accordance with this part;

(ii) require that at all times at least one trustee be a Utah resident or Utah trust company;

(iii) provide that the settlor, as a beneficiary, may not voluntarily or involuntarily transfer:

(A) the income or principal of the asset protection trust; or

(B) any other beneficial interest of the settlor;

(iv) require that the trustee notify in writing every person who has a domestic support obligation against the settlor at least 30 days before paying and delivering any distribution to the settlor as a beneficiary; and

(v) require that the notice described in Subsection (2)(a)(iv) state the date that the distribution will be paid and delivered and the amount of the distribution.

(b) The provision described in Subsection (2)(a)(iii) is considered a restriction on the transfer of the settlor's beneficial interest in the asset protection trust that is enforceable under applicable nonbankruptcy law within the meaning of 11 U.S.C. Sec. 541(c)(2).

(c)(i) If the trustee does not send the notice required under Subsections (2)(a)(iv) and

(v), the court may authorize any person with a domestic support obligation against the settlor to whom notice was not sent to attach the distribution or future distributions.

(ii) Notwithstanding Subsection (2)(c)(i), the person described in Subsection (2)(c)(i) may not:

(A) satisfy a claim or liability in either law or equity out of the settlor's transfer to the trust or the settlor's beneficial interest in the trust; or

(B) force or require the trustee to make a distribution to the settlor as a beneficiary.

(d) This Subsection (2) does not require particular language to be used in the trust instrument if the meaning of the trust provision otherwise complies with this section.

(3) The settlor may not have the ability under the trust instrument, without the consent of a person who has a substantial beneficial interest in the trust and whose interest would be adversely affected by the exercise of the power held by the settlor:

(a) to revoke, amend, or terminate all or any part of the trust; or

(b) to withdraw any property from the trust, except that the settlor, without the approval or consent of any person, may be given the power under the trust instrument to substitute assets of substantially equivalent value.

(4) Except as provided in Subsections 75B-1-304(5)(c) and (6), the trust instrument may not provide for any mandatory distributions of either income or principal to the settlor, as a beneficiary.

(5)(a) At the time the settlor transfers any assets to the asset protection trust, the settlor may not:

(i) be in default of making a payment due under a domestic support obligation; or

(ii) intend to hinder, delay, or defraud a known creditor by transferring the assets to the trust.

(b) A settlor's expressed intention to protect assets in the asset protection trust from the settlor's potential future creditors is not evidence of an intent to hinder, delay, or defraud a known creditor under Subsection (5)(a)(ii).

(6) A transfer of assets to the asset protection trust may not:

(a) render the settlor insolvent; or

(b) be derived from unlawful activities.

(7) A creditor of the settlor has the burden of proving that the requirement in Subsection (5)(a)(ii) or (6)(a) is not satisfied by clear and convincing evidence.

(8)(a) If an asset protection trust does not comply with a requirement described in

Subsection (2)(a)(i), (2)(a)(ii), (2)(a)(iii), (3), or (4), none of the property held in the asset protection trust will at any time have the benefit of the protections described in Subsection 75B-1-302(1).

(b) If a transfer of assets to an asset protection trust does not comply with the requirement described in Subsection (5)(a)(i), the property transferred to the asset protection trust that does not comply with the requirement does not have the benefit of the protections described in Subsection 75B-1-302(1) with respect to any person with the domestic support obligation.

(c) If a transfer of assets to an asset protection trust does not comply with the requirement described in Subsection (5)(a)(ii) or (6), the property transferred to the trust that does not satisfy the requirement may not have the benefit of the protections described in Subsection 75B-1-302(1).

The following section is affected by a coordination clause at the end of this bill.

Section 30. Section **75B-1-304** is enacted to read:

75B-1-304 . Application of asset protection trust.

The protections described in Subsection 75B-1-302(1) may apply to an asset protection trust even if:

- (1) the settlor serves as a cotrustee or as an advisor to the trustee, except that the settlor may not determine whether a discretionary distribution will be made;
- (2) the settlor participates in a determination regarding whether a discretionary distribution is made to the settlor by:
 - (a) requesting a distribution from the trust;
 - (b) consulting with the trustees regarding whether a discretionary distribution will be made;
 - (c) exercising a right to consent to or veto the distribution under a power described in Subsection (5)(a);
 - (d) signing documentation in the settlor's capacity as a cotrustee that implements a distribution when the other trustees use discretionary power to independently authorize a distribution; or
 - (e) participating in an action authorizing a distribution if the other trustees can authorize the distribution without the settlor's participation;
- (3) the settlor has the authority under the terms of the trust instrument to appoint a nonsubordinate advisor or a trust protector who can remove and appoint trustees and who can direct, consent to, or disapprove distributions;

- 1898 (4) the settlor has the power under the terms of the trust instrument to serve as an
1899 investment director or to appoint an investment director under Section 75-7-906;
- 1900 (5) the trust instrument gives the settlor:
- 1901 (a) the power to consent to or veto a distribution from the trust;
1902 (b) an inter vivos or a testamentary nongeneral power of appointment or similar power;
1903 or
1904 (c) the right to receive the following types of distributions:
- 1905 (i) income, principal, or both in the discretion of a person, including a trustee other
1906 than the settlor;
1907 (ii) principal, subject to an ascertainable standard set forth in the trust;
1908 (iii) income or principal from a charitable remainder annuity trust or charitable
1909 remainder unitrust, as defined in 26 U.S.C. Sec. 664;
1910 (iv) a percentage of the value of the trust each year as determined under the trust
1911 instrument, but not exceeding the amount that may be defined as income under 26
1912 U.S.C. Sec. 643(b);
1913 (v) the transferor's potential or actual use of real property held under a qualified
1914 personal residence trust, or potential or actual possession of a qualified annuity
1915 interest, within the meaning of 26 U.S.C. Sec. 2702 and the accompanying
1916 regulations;
1917 (vi) income or principal from a grantor retained annuity trust or grantor retained
1918 unitrust that is allowed under 26 U.S.C. Sec. 2702; and
1919 (vii) income from a trust intended to qualify for the federal estate tax or gift tax
1920 marital deduction under 26 U.S.C. Sec. 2056(b)(7) or 2523(f);
- 1921 (6) the trust instrument authorizes the settlor, as a beneficiary, to use real or personal
1922 property owned by the trust; or
- 1923 (7) with respect to the property held in the trust, the settlor may:
- 1924 (a) give a personal guarantee on a debt or obligation secured by the property;
1925 (b) make payments, directly or indirectly, on a debt or obligation secured by the
1926 property;
1927 (c) pay property taxes, casualty and liability insurance premiums, homeowner
1928 association dues, maintenance expenses, or other similar expenses on the property; or
1929 (d) pay income tax on income attributable to the portion of property held in the trust, of
1930 which the settlor is considered to be the owner under 26 U.S.C. Secs. 671 through
1931 678, which payments will not be considered additional transfers to the trust for

purposes of this part.

Section 31. Section **75B-1-305** is enacted to read:

75B-1-305 . Illusory agreement.

An agreement or understanding, express or implied, between a settlor and a trustee of an asset protection trust is void if that agreement or understanding attempts to grant or permit the retention by the settlor of greater rights or authority than is stated in the trust instrument.

Section 32. Section **75B-1-306** is enacted to read:

75B-1-306 . Affidavit of solvency.

With respect to a transfer of assets to an asset protection trust, a settlor may sign a sworn affidavit stating that at the time of the transfer of the assets to the trust:

- (1) the settlor has full right, title, and authority to transfer the assets to the trust;
- (2) the transfer of the assets to the trust will not render the settlor insolvent;
- (3) the settlor does not intend to hinder, delay, or defraud a known creditor by transferring the assets to the trust;
- (4) there is no pending or threatened court action against the settlor, except for a court action identified by the settlor on an attachment to the affidavit;
- (5) the settlor is not involved in an administrative proceeding that is reasonably expected to have a material adverse effect on the financial condition of the settlor, except an administrative proceeding identified on an attachment to the affidavit;
- (6) at the time of the transfer of the assets to the trust, the settlor is not in default of a domestic support obligation;
- (7) the settlor does not contemplate filing for relief under the provisions of United States Code, Title 11, Bankruptcy; and
- (8) the assets being transferred to the trust were not derived from unlawful activities.

Section 33. Section **75B-1-307** is enacted to read:

75B-1-307 . Limitations on cause of action for asset protection trust.

- (1)(a) Except as provided in Subsection (1)(b), a cause of action or claim for relief under this part is not a cause of action or claim for relief under Title 25, Chapter 6, Uniform Voidable Transfers Act.
- (b) A cause of action or claim for relief under Subsections 75B-1-303(5)(a) and (6)(a) is a cause of action or claim for relief under Section 25-6-202 or 25-6-203.
- (c) A person, including a creditor, may only bring a cause of action under Subsection 75B-1-303(5)(a) or (6)(a) with regard to the portion of the assets transferred to the trustee of the asset protection trust within the time period described in Subsection (2).

- (2) Notwithstanding Section 25-6-305, a cause of action or claim for relief regarding a fraudulent conveyance or other voidable transfer of a settlor's assets under this part is extinguished unless the action is brought by a creditor of the settlor who was a creditor of the settlor before the assets in question were transferred to the asset protection trust and the action is brought within the earlier of:
- (a) the later of two years after the transfer is made, or one year after the transfer is or reasonably could have been discovered by the creditor if the creditor:
 - (i) can demonstrate, by clear and convincing evidence, that the creditor asserted a specific claim against the settlor before the transfer; or
 - (ii) files another action, other than an action alleging a fraudulent conveyance or other voidable transfer against the settlor that asserts a claim based on an act or omission of the settlor that occurred before the transfer, and the action described in this Subsection (2) is filed within two years after the transfer; or
 - (b)(i) with respect to a creditor known to the settlor, 120 days after the date on which notice of the transfer is mailed to the creditor; or
 - (ii) with respect to a creditor not known to the settlor, 120 days after the date on which notice of the transfer is first published in a newspaper of general circulation in the county in which the settlor then resides, or is published on a public legal notice website as defined in Section 45-1-101.
- (3) A notice described in Subsection (2)(b)(i) shall:
- (a) state the name and address of the settlor or the settlor's representative;
 - (b) state the name and address of the trustee or the trustee's representative;
 - (c) describe the assets that were transferred, except that the notice does not need to state the value of the assets if the assets are other than cash; and
 - (d) inform the creditor that the creditor is required to bring the creditor's cause of action or claim for relief against the settlor and the trustee within 120 days from the mailing of the notice or be forever barred.
- (4) A notice described in Subsection (2)(b)(ii) shall:
- (a) state the name and address of the settlor or the settlor's representative;
 - (b) state the name and address of the trustee or the trustee's representative;
 - (c) describe the assets that were transferred, except that the notice does not need to state the value of the assets;
 - (d) be published in accordance with the provisions of Section 45-1-101 for three consecutive weeks; and

(e) inform creditors that they are required to bring a cause of action or claim for relief within 120 days from the first publication of the notice or be forever barred.

(5) Failure to give the notice required in Subsection (2)(b) to a creditor does not prevent the shortening of the limitations period under Subsection (2)(b) with respect to another creditor who properly received notice by mail or publication.

The following section is affected by a coordination clause at the end of this bill.

Section 34. Section **75B-1-308** is enacted to read:

75B-1-308 . Claims against beneficiaries of asset protection trust.

(1) With respect to an asset protection trust, a claim brought by a creditor of a beneficiary who is not the settlor is subject to Title 75, Chapter 7, Part 5, Creditor's Claims - Spendthrift and Discretionary Trusts.

(2) With respect to an irrevocable trust that is not subject to this part, a claim brought by a creditor of a beneficiary who is the settlor is subject to the provisions of Subsection 75-7-505(2).

Section 35. Section **75B-1-309** is enacted to read:

75B-1-309 . Liability of participant in asset protection trust.

(1) If the settlor signs an affidavit described in Section 75B-1-306, a person, including a creditor, may not assert a cause of action or claim for relief against a trustee of the asset protection trust, or against a person that was involved in the counseling, drafting, preparation, execution, or funding of the asset protection trust, for:

(a) conspiracy to engage in a voidable transfer;

(b) aiding and abetting a voidable transfer;

(c) participation in the trust transaction; or

(d) a similar cause of action or claim for relief described in Subsections (1)(a) through (c).

(2) For purposes of Subsection (1), the counseling, drafting, preparation, execution, or funding of the trust includes the preparation and funding of a limited partnership, a limited liability company, or other entity if interests in the entity are subsequently transferred to the trust.

(3) The creditor or other person prevented from asserting a cause of action or claim for relief described in Subsection (1) may only assert a cause of action against, and is limited to recourse against:

(a) the trust and the trust assets; and

(b) the settlor to the extent otherwise allowed under this part.

Section 36. Section **75B-1-310** is enacted to read:

75B-1-310 . Distributions from asset protection trust.

- (1) If the settlor makes more than one transfer to an asset protection trust, a distribution by the trustee is considered to be made from the most recent transfer to the trust.
- (2) A trustee of an asset protection trust may convey property that is held in trust to a beneficiary of the trust, including the settlor, for the beneficiary to secure financing with a lien or other encumbrance against the property.
- (3) If the property described in Subsection (2) is reconveyed to the trustee of the asset protection trust within 60 days after the day on which the lien or other encumbrance is attached, the reconveyance is not considered a transfer to the asset protection trust for purposes of calculating the limitations period under Subsection 75B-1-307(2) or for any other purpose.

Section 37. **Effective Date.**

This bill takes effect on May 7, 2025.

Section 38. **Coordinating S.B. 206 with H.B. 334.**

If S.B. 206, Estate Planning Amendments, and H.B. 334, Guardianships and Supported Decision-Making Agreements Amendments, both pass and become law, the Legislature intends that, on May 7, 2025, the changes in H.B. 334 to Subsection 7-5-1(1)(b) not be made.

Section 39. **Coordinating S.B. 206 with S.B. 100.**

If S.B. 206, Estate Planning Amendments, and S.B. 100, Estate Planning Recodification, both pass and become law, the Legislature intends that, on May 7, 2025:

- (1) the references in Subsection 75-7-105(2)(e), Subsections 75-7-505(2)(a) and (b), and Section 75-7-501 in S.B. 206 be changed from "Title 75B, Chapter 1, Part 3, Asset Protection Trust," to "Chapter 1, Part 3, Asset Protection Trust";
- (2) the reference in Subsection 75-7-301(3) in S.B. 206 be changed from "Section 75-7-411 and Title 75B, Chapter 1, Part 3, Asset Protection Trust," to "Section 75B-2-411 and Chapter 1, Part 3, Asset Protection Trust";
- (3) Section 75-7-812.5 enacted in S.B. 206 be renumbered to Section 75B-2-812.5;
- (4) Subsections 75-7-812.5(e) and (f) enacted in S.B. 206 be deleted and the remaining subsections be renumbered accordingly;
- (5) the references in Subsections 75A-5-203(11)(b), 75A-5-303(2)(d), and 75A-5-304(1)(a) in S.B. 206 be changed from "Section 75-7-103(1)(i)" to "Subsection 75B-2-103(8)";
- (6) Subsections 75B-1-101(5) and (8) enacted in S.B. 206 be deleted and the remaining subsections be renumbered accordingly;

- 2068 (7) the reference in Subsection 75B-1-302(3) in S.B. 206 be changed from "Section
2069 75-7-107" to "Section 75B-2-107";
2070 (8) the reference in Subsection 75B-1-304(4) in S.B. 206 be changed from "Section
2071 75-7-906" to "Section 75B-2-906"; and
2072 (9) the reference in Subsection 75B-1-308(2) in S.B. 206 be changed from "Subsection
2073 75-7-505(2)" to "Subsection 75B-2-505(2)."