

Representative David Clark proposes the following substitute bill:

TRUST LAW AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: David Clark

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

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

AMENDS:

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

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

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

75-2-205, as repealed and reenacted by Chapter 39, Laws of Utah 1998

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

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

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

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

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

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

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

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



26 75-7-204, as enacted by Chapter 150, Laws of Utah 1975

27 75-7-402, as last amended by Chapter 179, Laws of Utah 1992

28 ENACTS:

29 25-6-14, Utah Code Annotated 1953

30 75-2-1206.5, Utah Code Annotated 1953

31 75-7-208, Utah Code Annotated 1953

32 75-7-601, Utah Code Annotated 1953

33 75-7-602, Utah Code Annotated 1953

34 75-7-603, Utah Code Annotated 1953

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

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

37 **7-5-1. Definitions -- Allowable trust companies -- Exceptions.**

38 (1) As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

87 (I) profit financially or otherwise from, or receive compensation for acting in that

88 capacity, except for the direct costs of providing guardianship or conservatorship services; or

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

90 (ix) funds or other assets held by a credit services organization operating in compliance
91 with Title 13, Chapter 21, Credit Services Organizations Act;

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

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

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

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

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

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

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

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

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

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

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

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

118 (c) a state agency that is otherwise authorized by statute to act as a conservator,

119 receiver, guardian, trustee, or in any other fiduciary capacity.

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

121 **25-6-14. Restricting transfers of trust interests.**

122 (1) (a) For trusts created on or after May 5, 2003, a settlor who in writing irrevocably
 123 transfers property in trust ~~h~~ **TO A TRUST COMPANY AS DEFINED IN SUBSECTION 7-5-1(1)(d)** ~~h~~ may
 123a provide that the income or principal interest of the settlor as
 124 beneficiary of the trust may not be either voluntarily or involuntarily transferred before
 125 payment or delivery to the settlor or beneficiary by the trustee. The provision shall be
 126 considered to be a restriction on the transfer of the settlor's beneficial interest in the trust that is
 127 enforceable under applicable nonbankruptcy law within the meaning of Section 541(c)(2) of
 128 the Bankruptcy Code or successor provision.

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

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

131 (A) deed;

132 (B) conveyance; or

133 (C) assignment; and

134 (ii) transfers of:

135 (A) real property;

136 (B) personal property; or

137 (C) interests in real or personal property.

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

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

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

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

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

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

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

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

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

161 (iv) at the time of the transfer **h** OR ANY TIME THEREAFTER **h** , the settlor or beneficiary is
 161a in default by 30 or more days

162 of making a payment due under a child support judgment or order; **h [or] h**

163 (v) the transfer renders the settlor or beneficiary insolvent after the transfer **h [:] ;**

163a **(vi) AT THE TIME OF THE TRANSFER, OR AT ANY TIME THEREAFTER, THE PERSON**
 163b **RECEIVES PUBLIC ASSISTANCE AND RECOVERY IS ALLOWED UNDER TITLE 26, CHAPTER 19,**
 163c **MEDICAL BENEFITS RECOVERY ACT; OR**

163d **(vii) AT ANY TIME BEFORE OR AFTER THE TRANSFER IN TRUST IS MADE, THE SETTLOR IS**
 163e **OR BECOMES SUBJECT TO A CLAIM OR TAX OF THE STATE, ITS AGENCIES, OR POLITICAL**
 163f **SUBDIVISIONS. h**

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

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

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

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

172 (iv) the power to appoint nonsubordinate advisers or trust protectors who can remove
 173 and appoint trustees, who can direct, consent to or disapprove distributions, or is the power to
 174 serve as an investment director or appoint an investment director under Subsections
 175 75-7-302(13) and (14).

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

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

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

181 (i) three years after the date the transfer is made; or
 182 (ii) one year after the transfer is or reasonably could have been discovered by the
 183 person; or

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

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

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

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

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

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

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

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

202 **59-10-103. Definitions.**

203 (1) As used in this chapter:

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

- 205 (i) is 18 years of age or older;
- 206 (ii) is eligible for services under Title 62A, Chapter 5, Services to People with
- 207 Disabilities; and

208 (iii) is not enrolled in:

209 (A) an education program for students with disabilities that is authorized under Section
 210 53A-15-301; or

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

212 (b) "Corporation" includes;

213 (i) associations[-];

214 (ii) joint stock companies[-]; and

215 (iii) insurance companies.

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

217 who:

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

219 Board of Education as having a disability classified as:

220 (I) autism;

221 (II) deafness;

222 (III) preschool developmental delay;

223 (IV) dual sensory impairment;

224 (V) hearing impairment;

225 (VI) intellectual disability;

226 (VII) multidisability;

227 (VIII) orthopedic impairment;

228 (IX) other health impairment;

229 (X) traumatic brain injury; or

230 (XI) visual impairment;

231 (B) is not receiving residential services from:

232 (I) the Division of Services for People with Disabilities created under Section

233 62A-5-102; or

234 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;

235 and

236 (C) is enrolled in:

237 (I) an education program for students with disabilities that is authorized under Section

238 53A-15-301; or

239 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;

240 or

241 (ii) is identified under guidelines of the Department of Health as qualified for:

242 (A) Early Intervention; or

243 (B) Infant Development Services.

244 (d) "Employer," "employee," and "wages" are defined as provided in Section
245 59-10-401.

246 (e) "Fiduciary" means:

247 (i) a guardian[;];

248 (ii) a trustee[;];

249 (iii) an executor[;];

250 (iv) an administrator[;];

251 (v) a receiver[;];

252 (vi) a conservator[;]; or

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

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

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

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

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

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

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

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

266 (I) a trust [or];

267 (II) an estate; or

268 (III) a corporation.

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

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

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

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

277 (B) an individual who is not domiciled in this state but;

278 (I) maintains a permanent place of abode in this state; and

279 (II) spends in the aggregate 183 or more days of the taxable year in this state.

280 (ii) For purposes of this Subsection (1)(k)~~[(i)]~~(i)(B), a fraction of a calendar day shall
281 be counted as a whole day.

282 (l) (i) "Resident estate" or "resident trust" means:

283 (A) an estate of a decedent who at ~~[his]~~ death was domiciled in this state;

284 (B) a trust, or a portion of a trust, consisting of property transferred by will of a
285 decedent who at his death was domiciled in this state; or

286 (C) a trust administered in this state.

287 (ii) ~~[For purposes of this chapter, a]~~ A trust shall be considered to be administered in
288 this state if:

289 (A) ~~[the place of business where]~~ the fiduciary transacts ~~[a major portion of its]~~ any
290 administration of the trust ~~[is]~~ in this state; ~~[or]~~

291 ~~[(B) the usual place of business of the fiduciary is in this state.]~~

292 ~~[(iii) Where there are two or more fiduciaries, the residency status of the trust shall be~~
293 ~~determined by the situs of the corporate or professional fiduciary with primary responsibility~~
294 ~~for the administration of the trust as defined in the trust instrument.]~~

295 ~~[(iv) The commission may, by rule, provide additional guidelines to determine the~~
296 ~~residency status of a trust.]~~

297 (B) the trust states that it is governed by the laws of this state and any administration of
298 the trust is in this state; or

299 (C) the trust falls within the provisions of Section 75-7-208.

300 (m) "Taxable income" and "state taxable income" are defined as provided in Sections
301 59-10-111, 59-10-112, 59-10-116, 59-10-201.1, and 59-10-204.

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

304 (o) "Uintah and Ouray Reservation" means the lands recognized as being included

305 within the Uintah and Ouray Reservation in:

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

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

308 (p) "Ute tribal member" means a person who is enrolled as a member of the Ute Indian
309 Tribe of the Uintah and Ouray Reservation.

310 (q) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

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

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

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

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

322 **59-10-201. Taxation of resident trusts and estates.**

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

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

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

333a **h (4)(a) INCOME IN A TRUST CONSISTING OF INTEREST, CAPITAL GAINS, AND DIVIDENDS**
333b **WILL NOT BE SUBJECT TO THE TAX SPECIFIED IN THIS SECTION IF:**

333c **(i) THE TRUST FIRST BECAME A RESIDENT TRUST ON OR AFTER JANUARY 1, 2004; AND**

333d **(ii) THE TRUSTEE OF THE TRUST IS A TRUST COMPANY AS DEFINED IN SUBSECTION**

333e **7-5-1(1)(d). h**

333f h (b) FOR THE PURPOSES OF THIS SECTION, INTEREST, CAPITAL GAINS, AND DIVIDENDS

333g DO NOT INCLUDE:

333h (i) SUBCHAPTER S DIVIDENDS THAT REPRESENT ORDINARY INCOME;

333i (ii) INVESTMENT INCOME FROM A PASS-THROUGH ENTITY;

333j (iii) RENTS; AND

333k (iv) ROYALTIES. h

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

335 **75-2-205. Decedent's nonprobate transfers to others.**

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

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

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

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

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

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

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

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

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

362 (ii) The amount included:

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

366 (B) may not exceed the greater of the cash surrender value of the policy immediately

367 prior to the death of the decedent or the amount of premiums paid on the policy during the
368 decedent's life.

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

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

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

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

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

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

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

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

396 (a) (i) Any property that passed as a result of the termination of a right or interest in, or
397 power over, property that would have been included in the augmented estate under Subsection

398 (1)(a), (b), or (c), or under Subsection (2), if the right, interest, or power had not terminated
399 until the decedent's death.

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

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

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

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

415 (ii) The amount included:

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

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

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

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

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

427 **75-2-702. Requirement of survival by 120 hours -- Under probate code or**
428 **governing instrument -- Co-owners -- Exceptions -- Protection of payors, third parties,**

429 **and bona fide purchasers -- Personal liability of recipient.**

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

433 (2) Except as provided in Subsection (4), for purposes of a provision of a governing
434 instrument that relates to an individual surviving an event, including the death of another
435 individual, an individual who is not established by clear and convincing evidence to have
436 survived the event by 120 hours is considered to have predeceased the event.

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

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

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

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

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

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

454 (c) the imposition of a 120-hour requirement of survival would cause a nonvested
455 property interest or a power of appointment to fail to qualify for validity under [~~Subsection~~
456 Section 75-2-1203[(1)(a), (2)(a), or (3)(a)] or to become invalid under [~~Subsection~~ Section
457 75-2-1203[(1)(b), (2)(b), or (3)(b)]]; but survival shall be established by clear and convincing
458 evidence; or

459 (d) the application of a 120-hour requirement of survival to multiple governing

460 instruments would result in an unintended failure or duplication of a disposition; but survival
461 shall be established by clear and convincing evidence.

462 (5) (a) A payor or other third party is not liable for having made a payment or
463 transferred an item of property or any other benefit to a beneficiary designated in a governing
464 instrument who, under this section, is not entitled to the payment or item of property, or for
465 having taken any other action in good faith reliance on the beneficiary's apparent entitlement
466 under the terms of the governing instrument, before the payor or other third party received
467 written notice of a claimed lack of entitlement under this section. A payor or other third party
468 is liable for a payment made or other action taken after the payor or other third party received
469 written notice of a claimed lack of entitlement under this section.

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

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

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

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

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

500 **75-2-1201. Statutory Rule Against Perpetuities.**

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

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

503 **75-2-1203. Validity of nonvested property interest -- Validity of general power of**
504 **appointment subject to a condition precedent -- Validity of nongeneral or testamentary**
505 **power of appointment -- Effect of certain "later-of" type language.**

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

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

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

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

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

517 [~~(b) the condition precedent either is satisfied or becomes impossible to satisfy within~~
518 ~~90 years after its creation.]~~

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

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

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

526 ~~[(4) In determining whether a nonvested property interest or a power of appointment is~~
527 ~~valid under Subsection (1)(a), (2)(a), or (3)(a), the possibility that a child will be born to an~~
528 ~~individual after the individual's death is disregarded.]~~

529 [(5)] (4) The language in a governing instrument is inoperative to the extent it produces
530 a period of time that exceeds 21 years after the death of the survivor of the specified lives, if, in
531 measuring a period from the creation of a trust or other property arrangement, the language:

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

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

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

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

554 **75-2-1205. Reformation.**

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

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

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

563 (3) a nonvested property interest that is not validated by [~~Subsection~~] Section
564 75-2-1203[~~(1)(a)~~] can vest but not within [90] 1,000 years after its creation.

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

566 **75-2-1206.5. Savings provision.**

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

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

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

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

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

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

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

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

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

584 **75-2-1207. Prospective application.**

585 (1) (a) Except as extended by Subsection (2), this section applies to a nonvested
586 property interest or a power of appointment that is created on or after [~~July 1, 1998~~] May 5,
587 2003.

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

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

591 (ii) a revocable exercise becomes irrevocable.

592 (2) If a nonvested property interest or a power of appointment was created before [~~July~~
593 ~~1, 1998~~] May 5, 2003, and is determined in a judicial proceeding, commenced on or after [~~July~~
594 ~~1, 1998~~] May 5, 2003, to violate Utah's rule against perpetuities as that rule existed before [~~July~~
595 ~~1, 1998~~] May 5, 2003, a court upon the petition of an interested person may reform the
596 disposition:

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

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

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

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

606 **75-2-1208. Rule against perpetuities does not apply.**

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

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

610 **75-7-201. Court -- Exclusive jurisdiction of trusts.**

611 (1) (a) The court has exclusive jurisdiction of proceedings initiated by interested parties
612 concerning [~~the internal affairs of trusts. Proceedings~~] trusts administered in this state under
613 Subsection 59-10-103(1)(l), trusts described in Section 75-7-208 and ~~h~~ [Subsection]
613a SUBSECTIONS ~~h~~ 75-7-601 ~~h~~ (2) AND ~~h~~ (3),
614 and proceedings under Section 25-6-14.

615 (b) Proceedings which may be maintained under this section [~~are those concerning~~
616 include:

617 (i) the administration and distribution of trusts[;];

618 (ii) the declaration of rights[;]; and

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

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

621 (c) This Subsection (1) applies to proceedings to:

622 (i) appoint or remove a trustee[~~-(b) Review trustees'~~];

623 (ii) review a trustee's fees [~~and~~];

624 (iii) review and settle interim or final accounts[~~-(c) Ascertain~~];

625 (iv) ascertain beneficiaries[;];

626 (v) determine any question arising in the administration or distribution of any trust,

627 including questions of construction of trust instruments[;];

628 (vi) instruct trustees [~~and~~];

629 (vii) determine the existence or nonexistence of any immunity, power, privilege, duty,

630 or right[~~-(d) Order~~]; and

631 (viii) order transfer of administration of the trust to another state upon appropriate

632 conditions as may be determined by the court or accept transfer of administration of a trust

633 from another state to this state [~~upon such conditions as may be imposed by the supervising~~

634 ~~court of the other state, unless the court in this state determines that these conditions are~~

635 ~~incompatible with its own rules and procedures].~~

636 (2) (a) A proceeding under this section does not result in continuing supervision by the

637 court over the administration of the trust.

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

639 reports to beneficiaries, payment of trustee's fees and other obligations of a trust, acceptance

640 and change of trusteeship, and other aspects of the administration of a trust shall proceed

641 expeditiously consistent with the terms of the trust, free of judicial intervention and without

642 order, approval or other action of any court, subject to the jurisdiction of the court as invoked

643 by interested parties or as otherwise exercised as provided by law.

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

645 **75-7-202. Effect of administration in this state -- Consent to jurisdiction.**

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

649 (1) The trustee submits personally to the jurisdiction of the courts of this state [in any
 650 proceeding under Section 75-7-201 as to any matter relating to the trust arising while the
 651 principal place of administration is located in this state.] regarding any matter involving the
 652 trust if:

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

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

655 (c) the trustee is a trustee of a trust described in ~~h~~ [Subsection] SUBSECTIONS ~~h~~ 75-7-601

655a ~~h~~ (2) AND ~~h~~ (3).

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

662 (3) Unless otherwise designated in the trust instrument, [the principal place of
 663 administration of a trust is the trustee's usual place of business where the records pertaining to
 664 the trust are kept or at the trustee's residence if the trustee has no such place of business. In the
 665 case of co-trustees, the principal place of administration, if not otherwise designated in the trust
 666 instrument, is:] a trust is administered in this state if it meets the requirements of Subsection
 667 59-10-103(1)(1).

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

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

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

674 (4) By accepting the delegation of a trust function from the trustee of a trust [of which
 675 the principal place of administration is] administered in this state, the agent submits to the
 676 jurisdiction of the courts of this state [for purposes of proceedings under Section 75-7-201]

677 regarding any matter involving the trust.

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

679 **75-7-204. Trust proceedings -- Dismissal of matters relating to foreign trusts.**

680 (1) ~~[The] Except as provided in Subsection (2), the court [with] may not, over the~~
681 ~~objection of a party, entertain proceedings [under Section 75-7-204] involving a trust which:~~

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

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

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

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

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

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

693 (c) the trust is a trust described in Subsection 75-7-601(3), Section 75-7-208, or the
694 proceeding is a proceeding under Section 25-6-14, or a trust is administered in this state as set
695 forth in Subsection 59-10-103(1)(1).

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

697 **75-7-208. Governing law.**

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

702 (2) If a trust does not specify a governing state law, the meaning and effect of the terms
703 of the trust are to be governed by the laws of this state if the trust is administered in this state
704 under Subsection 59-10-103(1)(1) or is a trust described in ~~h~~ [Subsection] **SUBSECTIONS h**
75-7-60104a ~~h~~ (2) AND ~~h~~ (3).

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

- 708 (a) some or all the trust assets are deposited in this state in:
709 (i) a transaction account described in Subsection 7-1-103(34);
710 (ii) a savings described in Subsection 7-1-103(29);
711 (iii) a certificate of deposit;
712 (iv) a brokerage account;
713 (v) a trust company fiduciary account; or
714 (vi) account or deposit located in this state that is similar to an account listed in this
715 Subsection (3)(a);
716 (b) the trust is being administered by at least one qualified trustee; and
717 (c) any administration of the trust occurs in this state, including:
718 (i) physically maintaining trust records in this state; and
719 (ii) preparing or arranging for the preparation of an income tax return that must be filed
720 by the trust.
721 (4) The validity, construction, and administration of a trust with a state jurisdiction
722 provision is determined by the laws of this state, including provisions concerning the:
723 (a) capacity of the settlor;
724 (b) powers, obligations, liabilities, and rights of the trustee;
725 (c) appointment and removal of the trustees; and
726 (d) existence and extent of powers, conferred or retained, including:
727 (i) a trustee's discretionary powers;
728 (ii) the powers retained by a beneficiary of the trust; and
729 (iii) the validity of the exercise of a power.
730 Section 17. Section **75-7-402** is amended to read:
731 **75-7-402. Powers of trustees conferred by this part.**
732 (1) From time of creation of the trust until final distribution of the assets of the trust, a
733 trustee has the power to perform, without court authorization, every act which a prudent man
734 would perform for the purposes of the trust, including the powers specified in Subsection (3).
735 (2) In the exercise of his powers, including the powers granted by this part, a trustee
736 has a duty to act with due regard to his obligation as a fiduciary, according to the standard set
737 forth in Section 75-7-302.
738 (3) A trustee has the power, subject to Subsections (1) and (2) to:

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

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

743 (c) continue or participate in the operation of any business or other enterprise and
744 effect incorporation, dissolution, or other change in the form of the organization of the business
745 or enterprise;

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

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

751 (f) invest and reinvest trust assets in securities of an open-end or closed-end type
752 management investment company or investment trust which is registered under the Investment
753 Company Act of 1940, as amended, including securities of any investment company or
754 investment trust that is affiliated with or a subsidiary of the trustee, or to which the trustee or
755 its affiliate or subsidiary provides a service such as that of an investment advisor, custodian,
756 transfer agent, registrar, sponsor, distributor, manager, or otherwise, for which it receives
757 reasonable remuneration for such service;

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

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

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

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

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

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

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

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

- 770 (iv) dedicate easements to public use without consideration;
- 771 (k) enter, for any purpose into a lease as lessor or lessee with or without an option to
772 purchase or renew for a term within or extending beyond the term of the trust;
- 773 (l) enter into a lease or arrangement for exploration and removal of minerals or other
774 natural resources or enter into a pooling or unitization agreement;
- 775 (m) grant an option involving disposition of a trust asset, or take an option for the
776 acquisition of any asset;
- 777 (n) vote a security, in person or by general or limited proxy;
- 778 (o) pay calls, assessments, and any other sums chargeable or accruing against or on
779 account of securities;
- 780 (p) sell or exercise stock subscription or conversion rights, consent, directly or through
781 a committee or other agent, to the reorganization, consolidation, merger, dissolution, or
782 liquidation of a corporation or other business enterprise;
- 783 (q) hold property in the name of a nominee or in other form without disclosure of the
784 trust so that title to the property may pass by delivery, but the trustee is liable for any act of the
785 nominee in connection with the property so held;
- 786 (r) insure the assets of the trust against damage or loss and the trustee against liability
787 with respect to third persons;
- 788 (s) (i) borrow money to be repaid from trust assets or otherwise;
- 789 (ii) advance money to be repaid from trust assets or otherwise; or
- 790 (iii) advance money for the protection of the trust, and for all expenses, losses, and
791 liabilities sustained in the administration of the trust or because of the holding or ownership of
792 any trust assets, for which advances with any interest the trustee has a lien on the trust assets as
793 against the beneficiary;
- 794 (t) (i) pay or contest any claim;
- 795 (ii) settle a claim by or against the trust by compromise, arbitration, or otherwise; and
- 796 (iii) release, in whole or in part, any claim belonging to the trust to the extent that the
797 claim is uncollectible;
- 798 (u) pay taxes, assessments, compensation of the trustee, and other expenses incurred in
799 the collection, care, administration, and protection of the trust;
- 800 (v) allocate items of income or expense to either trust income or principal, as provided

801 by law, including creation of reserves out of income for depreciation, obsolescence,
802 amortization, or for depletion in mineral or timber properties;

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

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

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

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

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

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

817 (aa) execute and deliver all instruments which will accomplish or facilitate the exercise
818 of the powers vested in the trustee.

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

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

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

829 (5) The trustee may exercise the powers set forth in this section and in the trust either
830 in the name of the trust or in the name of the trustee as trustee, specifically including the right
831 to take title to, encumber, or convey assets, including real property, in the name of the trust. If

832 the trust contains a restriction on transfer described in Section 25-6-14, any titling of property
833 using the trust's name shall indicate in the name that the trust contains such a restriction or is an
834 asset protection trust. This subsection applies to a trustee's exercise of trust powers both prior
835 to and after the effective date of this subsection. After the effective date of this subsection, for
836 recording purposes, the name and address of at least one trustee must be included on all
837 recorded documents affecting real property to which the trust is a party in interest.

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

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

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

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

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

851 (b) The existence of a spendthrift or similar provision shall not effect the trustee's
852 powers under this subsection unless the trust instrument specifically provides that the trustee
853 shall not have the power to terminate the trust.

854 Section 18. Section **75-7-601** is enacted to read:

855 **75-7-601. Situs.**

856 (1) (a) For purposes of this section:

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

859 (ii) "State jurisdiction provision" means a provision that the laws of this state govern
860 the validity, construction, and administration of a trust and the trust is subject to the jurisdiction
861 of this state.

862 (iii) "Qualified trustee" means a person other than a settlor or beneficiary of a trust

894 defeats a right, claim, or interest conferred by law on a person by reason of a personal or
 895 business relationship with the settlor or by way of a marital or similar right.

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

897 (i) (A) a trust that is described in ~~h~~ [Subsection] **SUBSECTIONS h 75-7-601 h (2) AND h**

(3);

897a or

898 (B) is administered in this state and provides that it is governed by the laws of this
 899 state; or

900 (ii) (A) a property transfer to a trust if the trust is described in ~~h~~ [Subsection]

900a **SUBSECTIONS h 75-7-601 h (2) AND h (3);**

901 or

902 (B) is administered in this state and provides that it is governed by the laws of this
 903 state.

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

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

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

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

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

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

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

923 Section 20. Section **75-7-603** is enacted to read:

924 **75-7-603. Nonqualified persons serving as trustee.**

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

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

933 Section 21. **Effective date.**

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

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

AMENDED BILL

State Impact

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

Individual and Business Impact

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

Office of the Legislative Fiscal Analyst