

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 December 31, 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- 75-2-205**, as repealed and reenacted by Chapter 39, Laws of Utah 1998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
- 75-7-204**, as enacted by Chapter 150, Laws of Utah 1975

ENACTS:

- 25-6-14**, Utah Code Annotated 1953
- 75-2-1206.5**, Utah Code Annotated 1953

75-7-208, Utah Code Annotated 1953

75-7-601, Utah Code Annotated 1953

75-7-602, Utah Code Annotated 1953

75-7-603, Utah Code Annotated 1953

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

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

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

(1) As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(I) profit financially or otherwise from, or receive compensation for acting in that capacity, except for the direct costs of providing guardianship or conservatorship services; or

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

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

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

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

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

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

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

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

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

~~[(iv)]~~ (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 **25-6-14** is enacted to read:

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

(1) (a) For trusts created on or after May 5, 2003, a settlor who in writing irrevocably transfers property in trust to a trust company as defined in Subsection 7-5-1(1)(d) may provide that the income or principal interest of the settlor as beneficiary of the trust may not be either voluntarily or involuntarily transferred before payment or delivery to the settlor or beneficiary by the trustee. 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 Section 541(c)(2) of the Bankruptcy Code or successor provision.

(b) This Subsection (1) applies to:

(i) any form of transfer into trust including:

(A) conveyance; or

(B) assignment; and

(ii) transfers of:

(A) personal property; or

(B) interests in personal property.

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

(2) (a) Except as provided in Subsection (2)(c), if a trust has a restriction as provided in Subsection (1)(a), the following may not satisfy a claim, or liability on it, in either law or equity, out of the settlor or beneficiary's restricted interest in the trust:

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

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

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

the trust.

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

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

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

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

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

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

(v) the transfer renders the settlor or beneficiary insolvent after the transfer;

(vi) at the time of the transfer, or at any time thereafter, the person receives public assistance and recovery is allowed under Title 26, Chapter 19, Medical Benefits Recovery Act; or

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

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

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

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

(iii) the right to receive a distribution of income, principal, or both in the discretion of

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

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

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

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

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

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

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

or

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

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

(i) conspiracy to commit a fraudulent conveyance;

(ii) aiding and abetting a fraudulent conveyance; or

(iii) participating in the trust transaction.

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

(i) the trust assets; or

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

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

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

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

59-10-103. Definitions.

(1) As used in this chapter:

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

(i) is 18 years of age or older;

(ii) is eligible for services under Title 62A, Chapter 5, Services to People with Disabilities; and

(iii) is not enrolled in:

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

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

(b) "Corporation" includes:

(i) associations[;];

(ii) joint stock companies[;]; and

(iii) insurance companies.

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

(i) (A) is diagnosed by a school district representative under rules adopted by the State Board of Education as having a disability classified as:

(I) autism;

(II) deafness;

(III) preschool developmental delay;

(IV) dual sensory impairment;

- (V) hearing impairment;
- (VI) intellectual disability;
- (VII) multidisability;
- (VIII) orthopedic impairment;
- (IX) other health impairment;
- (X) traumatic brain injury; or
- (XI) visual impairment;

(B) is not receiving residential services from:

- (I) the Division of Services for People with Disabilities created under Section 62A-5-102; or
 - (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;
- and

(C) is enrolled in:

- (I) an education program for students with disabilities that is authorized under Section 53A-15-301; or
 - (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind; or
- (ii) is identified under guidelines of the Department of Health as qualified for:
- (A) Early Intervention; or
 - (B) Infant Development Services.
- (d) "Employer," "employee," and "wages" are defined as provided in Section 59-10-401.
- (e) "Fiduciary" means:
- (i) a guardian[;];
 - (ii) a trustee[;];
 - (iii) an executor[;];
 - (iv) an administrator[;];
 - (v) a receiver[;];
 - (vi) a conservator[;]; or
 - (vii) any person acting in any fiduciary capacity for any individual.

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

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

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

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

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

~~(j)~~ (k) (i) "Partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization~~;~~:

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

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

(I) a trust ~~[or]~~;

(II) an estate; or

(III) a corporation.

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

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

~~(k)~~ (l) (i) "Resident individual" means:

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

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

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

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

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

~~[(H)]~~ (m) (i) "Resident estate" or "resident trust" means:

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

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

(C) a trust administered in this state.

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

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

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

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

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

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

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

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

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

~~[(o)]~~ (p) "Uintah and Ouray Reservation" means the lands recognized as being included within the Uintah and Ouray Reservation in:

- (i) Hagen v. Utah, 510 U.S. 399 (1994); and
- (ii) Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997).

~~[(p)]~~ (q) "Ute tribal member" means a person who is enrolled as a member of the Ute Indian Tribe of the Uintah and Ouray Reservation.

~~[(q)]~~ (r) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

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

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

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

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

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

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

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

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

(4) (a) Income in an irrevocable trust consisting of interest, capital gains, and dividends

will not be subject to the tax specified in this section if:

- (i) the trust first became a resident trust on or after January 1, 2004; and
- (ii) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d).
- (b) For the purposes of this section, interest, capital gains, and dividends do not include:
 - (i) Subchapter S dividends that represent ordinary income;
 - (ii) noninvestment income from a pass-through entity;
 - (iii) rents; and
 - (iv) royalties.

Section 5. 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 ~~[following]~~ 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 surviving spouse~~[-, however, the amount included]; 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.

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

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

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

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

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

estate, or creditors of the decedent's estate.

(ii) The amount included with respect to a power over property is the value of the property subject to the power, and the amount included with respect to a power over income is the value of the property that produces or produced the income, to the extent the power in either case was exercisable at the decedent's death to or for the benefit of any person other than the decedent's surviving spouse or 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.

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

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

(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 ~~[those subsections]~~ 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~~[-, but, with]~~.

(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~~[, however, the amount included]~~; 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 6. Section **75-2-702** is amended to read:

75-2-702. Requirement of survival by 120 hours -- Under probate code or governing instrument -- Co-owners -- Exceptions -- Protection of payors, third parties, and bona fide purchasers -- Personal liability of recipient.

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

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

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

(a) it is not established by clear and convincing evidence that one of two co-owners with

right of survivorship survived the other co-owner by 120 hours, 1/2 of the property passes as if one had survived by 120 hours and 1/2 as if the other had survived by 120 hours; and

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

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

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

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

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

(d) the application of a 120-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition; but survival shall be established by clear and convincing evidence.

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

lack of entitlement under this section. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed lack of entitlement under this section.

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

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

(b) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is

personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

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

Part 12. Statutory Rule Against Perpetuities

75-2-1201. Statutory Rule Against Perpetuities.

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

Section 8. 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.

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

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

(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.

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

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

(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.

~~[(a) when the power is created, it is certain to be irrevocably exercised or otherwise to~~

~~terminate no later than 21 years after the death of an individual then alive; or]~~

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

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

~~[(5)]~~ (4) The language in a governing instrument is inoperative to the extent it produces a period of time that exceeds 21 years after the death of the survivor of the specified lives, 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 21 years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement; or

(ii) the expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement.

(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.

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

75-2-1205. Reformation.

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

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

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

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

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

75-2-1206.5. Savings provision.

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

(1) If the property interest is payable to one person, it shall be distributed to that person.

If the property interest is payable to more than one person, it shall be distributed to the persons to whom the property interest is then payable:

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

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

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

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

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

(3) When there is no person then living to whom a property interest may be distributed under Subsection (1) or (2), it shall be payable to one or more organizations described in 26

U.S.C. 2055(a) Internal Revenue Code, or successor provisions and in the shares or proportions that the trustee or trustees then acting may determine.

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

75-2-1207. Prospective application.

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

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

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

(ii) a revocable exercise becomes irrevocable.

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

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

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

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

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

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

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

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

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

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

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

- (i) the administration and distribution of trusts~~[-];~~
- (ii) the declaration of rights~~[-];~~ and
- (iii) the determination of other matters involving trustees and beneficiaries of trusts.

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

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

- (i) appoint or remove a trustee~~[- (b) Review trustees'];~~
- (ii) review a trustee's fees [and];
- (iii) review and settle interim or final accounts[- (c) Ascertain];
- (iv) ascertain beneficiaries~~[-];~~
- (v) determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments~~[-];~~
- (vi) instruct trustees ~~[and];~~
- (vii) determine the existence or nonexistence of any immunity, power, privilege, duty, or right~~[- (d) Order];~~ and
- (viii) order transfer of administration of the trust to another state upon appropriate conditions as may be determined by the court or accept transfer of administration of a trust from another state to this state ~~[upon such conditions as may be imposed by the supervising court of the other state, unless the court in this state determines that these conditions are incompatible with its own rules and procedures].~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

75-7-208. Governing law.

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

(2) If a trust does not specify a governing state law, the meaning and effect of the terms of the trust are to be governed by the laws of this state if the trust is administered in this state under Subsection 59-10-103(1)(m) or is a trust described in Subsections 75-7-601(2) and (3).

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

(a) some or all the trust assets are deposited in this state in:

(i) a transaction account described in Subsection 7-1-103(34);

(ii) a savings described in Subsection 7-1-103(29);

(iii) a certificate of deposit;

(iv) a brokerage account;

(v) a trust company fiduciary account; or

(vi) account or deposit located in this state that is similar to an account listed in this

Subsection (3)(a);

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

(c) any administration of the trust occurs in this state, including:

(i) physically maintaining trust records in this state; and

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

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

(a) capacity of the settlor;

- (b) powers, obligations, liabilities, and rights of the trustee;
- (c) appointment and removal of the trustees; and
- (d) existence and extent of powers, conferred or retained, including:
 - (i) a trustee's discretionary powers;
 - (ii) the powers retained by a beneficiary of the trust; and
 - (iii) the validity of the exercise of a power.

Section 17. Section **75-7-601** is enacted to read:

75-7-601. Situs.

(1) For purposes of 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 jurisdiction provision" means a provision that the laws of this state govern the validity, construction, and administration of a trust and the trust is subject to the jurisdiction of this state.

(c) "Qualified trustee" means a person other than a settlor or beneficiary of a trust who is an allowable trust company under Title 7, Chapter 5, Trust Business, that exercises trust powers and has a place of business in this state.

(2) The situs of any trust is this state when a qualified trustee serves, and:

(a) the trust satisfies the provisions of Section 75-7-208; or

(b) any administration of the trust occurs in this state.

(3) If the situs of a foreign trust is moved to 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 25-6-14;

(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.

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

(5) If a qualified trustee ceases to be a qualified trustee, the successor qualified trustee appointed in the trust shall serve, but if none is appointed, the courts of this state shall appoint a qualified trustee.

Section 18. Section **75-7-602** is enacted to read:

75-7-602. Challenge to trusts.

(1) (a) Except as provided in Section 25-6-14, a trust or transfer described in Subsection (1)(b) is not void, voidable, liable to be set aside, defective in any fashion, or questionable as to the settlor's capacity, on the grounds that the trust or transfer avoids or defeats a right, claim, or interest conferred by law on a person by reason of a personal or business relationship with the settlor or by way of a marital or similar right.

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

(i) (A) a trust that is described in Subsections 75-7-601(2) and (3); or

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

or

(ii) (A) a property transfer to a trust if the trust is described in Subsections 75-7-601(2) and (3); or

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

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

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

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

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

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

fees;

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

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

Section 19. Section 75-7-603 is enacted to read:

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

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

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

Section 20. Effective date.

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

(2) All other provisions in this act take effect on December 31, 2003.