

TRUST LAW AMENDMENTS

2003 SECOND SPECIAL SESSION

STATE OF UTAH

Sponsor: David Clark

LONG TITLE

General Description:

This bill makes changes in legislation passed during the 2003 General Session that allowed for the administration of trusts created outside Utah by trustees within Utah, and provided favorable tax provisions.

Highlighted Provisions:

This bill:

- ▶ allows for the creation of spendthrift trusts in which the settlor of the trust is also a beneficiary;
- ▶ defines resident trusts as trusts with property created in this state or trusts that are administered in this state;
- ▶ exempts income of an irrevocable resident trust from state income taxes under certain circumstances; and
- ▶ allows for the administration of a foreign trust in Utah, and the enforcement of its provisions regardless of its initial validity under Utah law.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on December 31, 2003, with the exception of Sections 59-10-114 and 59-10-202, which take effect on January 1, 2004.

Utah Code Sections Affected:

AMENDS:

25-6-14 (Effective 12/31/03), as enacted by Chapter 301, Laws of Utah 2003

59-10-103 (Effective 01/01/04), as last amended by Chapter 301, Laws of Utah 2003

59-10-114, as last amended by Chapters 63 and 299, Laws of Utah 2003

59-10-201 (Effective 01/01/04), as last amended by Chapter 301, Laws of Utah 2003

59-10-202, as last amended by Chapter 345, Laws of Utah 1995

75-2-205 (Effective 12/31/03), as last amended by Chapter 301, Laws of Utah 2003

75-2-1207 (Effective 12/31/03), as last amended by Chapter 301, Laws of Utah 2003

75-7-201 (Effective 12/31/03), as last amended by Chapter 301, Laws of Utah 2003

75-7-202 (Effective 12/31/03), as last amended by Chapter 301, Laws of Utah 2003

75-7-204 (Effective 12/31/03), as last amended by Chapter 301, Laws of Utah 2003

75-7-208 (Effective 12/31/03), as enacted by Chapter 301, Laws of Utah 2003

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

ENACTS:

75-2-1209, Utah Code Annotated 1953

75-7-405.5, Utah Code Annotated 1953

REPEALS:

75-7-601 (Effective 12/31/03), as enacted by Chapter 301, Laws of Utah 2003

75-7-602 (Effective 12/31/03), as enacted by Chapter 301, Laws of Utah 2003

75-7-603 (Effective 12/31/03), as enacted by Chapter 301, Laws of Utah 2003

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

Section 1. Section **25-6-14 (Effective 12/31/03)** is amended to read:

25-6-14 (Effective 12/31/03). Restricting transfers of trust interests.

(1) (a) For trusts created on or after [~~May 5, 2003~~] December 31, 2003, a settlor who in writing irrevocably transfers property in trust to a trust having as trustee a company [~~as~~] defined in Subsection 7-5-1(1)(d) who holds some or all of the trust assets in this state in a savings account described in Subsection 7-1-103(29), a certificate of deposit, a brokerage account, a trust company fiduciary account, or account or deposit located in this state that is similar to such an account 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]~~ as 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) real property; or

(D) interests in real 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]~~ a creditor or other claimant of the settlor may not satisfy a claim, or liability on it, in either law or equity, out of the ~~[settlor or beneficiary's restricted]~~ settlor's transfer or settlor's beneficial 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)]~~ Subsection (2)(a), 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 creditor or person

described in Subsection (2)(a) from satisfying a claim or liability out of the ~~[settlor or beneficiary's restricted]~~ settlor's beneficial interest in or transfer into trust if:

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

~~[(i)]~~ (ii) the settlor's 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)] that creditor;

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

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

~~[(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)]~~ (vi) 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.]~~

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

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

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

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

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

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

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

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

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

~~[(d)]~~ (e) 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 or transfer 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 of the settlor after the date of the transfer into trust, within two years after the date the transfer is made.]~~

~~[(5)]~~ (4) (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)]~~ (4) 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)]~~ (5) 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)]~~ (6) For purposes of this section, the transfer shall be considered to have been made on the date the property was originally transferred in trust.

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

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

(a) the settlor'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.

(9) If a trust or a property transfer to a trust is voided or set aside under Subsection (2)(c) 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.

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

Section 2. Section **59-10-103 (Effective 01/01/04)** is amended to read:

59-10-103 (Effective 01/01/04). Definitions.

(1) As used in this chapter:

(a) "Adoption expenses" means:

(i) any actual medical and hospital expenses of the mother of the adopted child which are incident to the child's birth;

(ii) any welfare agency fees or costs;

- (iii) any child placement service fees or costs;
- (iv) any legal fees or costs; or
- (v) any other fees or costs relating to an adoption.

(b) "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]~~ for 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.

(c) (i) For purposes of Subsection 59-10-114(2)(m), "capital gain transaction" means a transaction that results in a:

- (A) short-term capital gain; or
- (B) long-term capital gain.

(ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may by rule define the term "transaction."

(d) "Commercial domicile" means the principal place from which the trade or business of a Utah small business corporation is directed or managed.

(e) "Corporation" includes:

- (i) associations;
- (ii) joint stock companies; and
- (iii) insurance companies.

(f) "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.

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

(h) "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.

(i) "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).

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

(k) "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.

(l) For purposes of Subsection 59-10-114(2)(m), "long-term capital gain" is as defined in Section 1222, Internal Revenue Code.

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

(n) "Nonresident trust" or "nonresident estate" means a trust or estate which is not a resident estate or trust.

(o) (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;
- (II) an estate; or
- (III) a corporation.

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

(iii) "Partner" includes a member in a syndicate, group, pool, joint venture, or organization described in Subsection (1)(o)(i).

(p) "Qualifying stock" means stock that is:

(i) (A) common; or

(B) preferred;

(ii) as defined by the commission by rule, originally issued to:

(A) a resident or nonresident individual; or

(B) a partnership if the resident or nonresident individual making a subtraction from federal taxable income in accordance with Subsection 59-10-114(2)(m):

(I) was a partner when the stock was issued; and

(II) remains a partner until the last day of the taxable year for which the resident or nonresident individual makes the subtraction from federal taxable income in accordance with Subsection 59-10-114(2)(m); and

(iii) issued:

(A) by a Utah small business corporation;

(B) on or after January 1, 2003; and

(C) for:

(I) money; or

(II) other property, except for stock or securities.

(q) (i) "Resident individual" means:

(A) an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of 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)(q)(i)(B), a fraction of a calendar day shall be counted as a whole day.

(r) (i) "Resident estate" or "resident trust" means:

(A) an estate of a decedent who at 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) A trust shall be considered to be administered in this state if:

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

(B) the trust states that [~~it is governed by the laws of this state~~] this state is the place of administration, and any administration of the trust is done in this state[~~;~~or].

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

(s) For purposes of Subsection 59-10-114(2)(m), "short-term capital gain" is as defined in Section 1222, Internal Revenue Code.

(t) "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.

(u) "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.

(v) "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).

(w) (i) "Utah small business corporation" means a corporation that:

(A) is a small business corporation as defined in Section 1244(c)(3), Internal Revenue Code;

(B) except as provided in Subsection (1)(w)(ii), meets the requirements of Section 1244(c)(1)(C), Internal Revenue Code; and

(C) has its commercial domicile in this state.

(ii) Notwithstanding Subsection (1)(w)(i)(B), the time period described in Section 1244(c)(1)(C) and Section 1244(c)(2), Internal Revenue Code, for determining the source of a corporation's aggregate gross receipts shall end on the last day of the taxable year for which the

resident or nonresident individual makes a subtraction from federal taxable income in accordance with Subsection 59-10-114(2)(m).

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

(y) "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 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 3. Section **59-10-114** is amended to read:

59-10-114. Additions to and subtractions from federal taxable income of an individual.

(1) There shall be added to federal taxable income of a resident or nonresident individual:

(a) the amount of any income tax imposed by this or any predecessor Utah individual income tax law and the amount of any income tax imposed by the laws of another state, the District of Columbia, or a possession of the United States, to the extent deducted from federal adjusted gross income, as defined by Section 62, Internal Revenue Code, in determining federal taxable income;

(b) a lump sum distribution that the taxpayer does not include in adjusted gross income on the taxpayer's federal individual income tax return for the taxable year;

(c) for taxable years beginning on or after January 1, 2002, the amount of a child's

income calculated under Subsection (5) that:

(i) a parent elects to report on the parent's federal individual income tax return for the taxable year; and

(ii) the parent does not include in adjusted gross income on the parent's federal individual income tax return for the taxable year;

(d) 25% of the personal exemptions, as defined and calculated in the Internal Revenue Code;

(e) a withdrawal from a medical care savings account and any penalty imposed in the taxable year if:

(i) the taxpayer did not deduct or include the amounts on the taxpayer's federal individual income tax return pursuant to Section 220, Internal Revenue Code; and

(ii) the withdrawal is subject to Subsections 31A-32a-105(1) and (2);

(f) the amount refunded to a participant under Title 53B, Chapter 8a, Higher Education Savings Incentive Program, in the year in which the amount is refunded; ~~and~~

(g) except as provided in Subsection (6), for taxable years beginning on or after January 1, 2003, for bonds, notes, and other evidences of indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness issued by one or more of the following entities:

(i) a state other than this state;

(ii) the District of Columbia;

(iii) a political subdivision of a state other than this state; or

(iv) an agency or instrumentality of an entity described in Subsections (1)(g)(i) through (iii)~~[-]~~;

(h) any distribution received by a resident beneficiary of a resident trust of income that was taxed at the trust level for federal tax purposes, but was subtracted from state taxable income of the trust pursuant to Subsection 59-10-202(2)(c); and

(i) any distribution received by a resident beneficiary of a nonresident trust of income that was taxed at the trust level for federal tax purposes, but was not taxed at the trust level by

any state.

(2) There shall be subtracted from federal taxable income of a resident or nonresident individual:

(a) the interest or dividends on obligations or securities of the United States and its possessions or of any authority, commission, or instrumentality of the United States, to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States, but the amount subtracted under this Subsection (2)(a) shall be reduced by any interest on indebtedness incurred or continued to purchase or carry the obligations or securities described in this Subsection (2)(a), and by any expenses incurred in the production of interest or dividend income described in this Subsection (2)(a) to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income;

(b) (i) except as provided in Subsection (2)(b)(ii), 1/2 of the net amount of any income tax paid or payable to the United States after all allowable credits, as reported on the United States individual income tax return of the taxpayer for the same taxable year; and

(ii) notwithstanding Subsection (2)(b)(i), for taxable years beginning on or after January 1, 2001, the amount of a credit or an advance refund amount reported on a resident or nonresident individual's United States individual income tax return allowed as a result of the acceleration of the income tax rate bracket benefit for 2001 in accordance with Section 101, Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, may not be used in calculating the amount described in Subsection (2)(b)(i);

(c) the amount of adoption expenses for one of the following taxable years as elected by the resident or nonresident individual:

(i) regardless of whether a court issues an order granting the adoption, the taxable year in which the adoption expenses are:

(A) paid; or

(B) incurred;

(ii) the taxable year in which a court issues an order granting the adoption; or

(iii) any year in which the resident or nonresident individual may claim the federal adoption expenses credit under Section 23, Internal Revenue Code;

(d) amounts received by taxpayers under age 65 as retirement income which, for purposes of this section, means pensions and annuities, paid from an annuity contract purchased by an employer under a plan which meets the requirements of Section 404(a)(2), Internal Revenue Code, or purchased by an employee under a plan which meets the requirements of Section 408, Internal Revenue Code, or paid by the United States, a state, or political subdivision thereof, or the District of Columbia, to the employee involved or the surviving spouse;

(e) for each taxpayer age 65 or over before the close of the taxable year, a \$7,500 personal retirement exemption;

(f) 75% of the amount of the personal exemption, as defined and calculated in the Internal Revenue Code, for each dependent child with a disability and adult with a disability who is claimed as a dependent on a taxpayer's return;

(g) any amount included in federal taxable income that was received pursuant to any federal law enacted in 1988 to provide reparation payments, as damages for human suffering, to United States citizens and resident aliens of Japanese ancestry who were interned during World War II;

(h) subject to the limitations of Subsection (3)(e), amounts a taxpayer pays during the taxable year for health care insurance, as defined in Title 31A, Chapter 1, General Provisions:

(i) for:

(A) the taxpayer;

(B) the taxpayer's spouse; and

(C) the taxpayer's dependents; and

(ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or 213, Internal Revenue Code, in determining federal taxable income for the taxable year;

(i) (i) except as otherwise provided in this Subsection (2)(i), the amount of a contribution made during the taxable year on behalf of the taxpayer to a medical care savings account and interest earned on a contribution to a medical care savings account established pursuant to Title

31A, Chapter 32a, Medical Care Savings Account Act, to the extent the contribution is accepted by the account administrator as provided in the Medical Care Savings Account Act, and if the taxpayer did not deduct or include amounts on the taxpayer's federal individual income tax return pursuant to Section 220, Internal Revenue Code; and

(ii) a contribution deductible under this Subsection (2)(i) may not exceed either of the following:

(A) the maximum contribution allowed under the Medical Care Savings Account Act for the tax year multiplied by two for taxpayers who file a joint return, if neither spouse is covered by health care insurance as defined in Section 31A-1-301 or self-funded plan that covers the other spouse, and each spouse has a medical care savings account; or

(B) the maximum contribution allowed under the Medical Care Savings Account Act for the tax year for taxpayers:

(I) who do not file a joint return; or

(II) who file a joint return, but do not qualify under Subsection (2)(i)(ii)(A);

(j) the amount included in federal taxable income that was derived from money paid by the taxpayer to the program fund under Title 53B, Chapter 8a, Higher Education Savings Incentive Program, not to exceed amounts determined under Subsection 53B-8a-106(1)(d), and investment income earned on participation agreements under Subsection 53B-8a-106(1) that is included in federal taxable income, but only when the funds are used for qualified higher education costs of the beneficiary;

(k) for taxable years beginning on or after January 1, 2000, any amounts paid for premiums for long-term care insurance as defined in Section 31A-1-301 to the extent the amounts paid for long-term care insurance were not deducted under Section 213, Internal Revenue Code, in determining federal taxable income;

(l) for taxable years beginning on or after January 1, 2000, if the conditions of Subsection (4)(a) are met, the amount of income derived by a Ute tribal member:

(i) during a time period that the Ute tribal member resides on homesteaded land diminished from the Uintah and Ouray Reservation; and

(ii) from a source within the Uintah and Ouray Reservation; and

(m) (i) for taxable years beginning on or after January 1, 2003, the total amount of a resident or nonresident individual's short-term capital gain or long-term capital gain on a capital gain transaction:

(A) that occurs on or after January 1, 2003;

(B) if 70% or more of the gross proceeds of the capital gain transaction are expended:

(I) to purchase qualifying stock in a Utah small business corporation; and

(II) within a 12-month period after the day on which the capital gain transaction occurs;

and

(C) if, prior to the purchase of the qualifying stock described in Subsection (2)(m)(i)(B)(I), the resident or nonresident individual did not have an ownership interest in the Utah small business corporation that issued the qualifying stock; and

(ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules:

(A) defining the term "gross proceeds"; and

(B) for purposes of Subsection (2)(m)(i)(C), prescribing the circumstances under which a resident or nonresident individual has an ownership interest in a Utah small business corporation.

(3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted for taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or \$4,800, except that:

(i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income earned over \$32,000, the amount of the retirement income exemption that may be subtracted shall be reduced by 50 cents;

(ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income earned over \$16,000, the amount of the retirement income exemption that may be subtracted shall be reduced by 50 cents; and

(iii) for individual taxpayers, for each \$1 of adjusted gross income earned over \$25,000, the amount of the retirement income exemption that may be subtracted shall be reduced by 50

cents.

(b) For purposes of Subsection (2)(e), the amount of the personal retirement exemption shall be further reduced according to the following schedule:

(i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income earned over \$32,000, the amount of the personal retirement exemption shall be reduced by 50 cents;

(ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income earned over \$16,000, the amount of the personal retirement exemption shall be reduced by 50 cents; and

(iii) for individual taxpayers, for each \$1 of adjusted gross income earned over \$25,000, the amount of the personal retirement exemption shall be reduced by 50 cents.

(c) For purposes of Subsections (3)(a) and (b), adjusted gross income shall be calculated by adding to federal adjusted gross income any interest income not otherwise included in federal adjusted gross income.

(d) For purposes of determining ownership of items of retirement income common law doctrine will be applied in all cases even though some items may have originated from service or investments in a community property state. Amounts received by the spouse of a living retiree because of the retiree's having been employed in a community property state are not deductible as retirement income of such spouse.

(e) For purposes of Subsection (2)(h), a subtraction for an amount paid for health care insurance as defined in Title 31A, Chapter 1, General Provisions, is not allowed:

(i) for an amount that is reimbursed or funded in whole or in part by the federal government, the state, or an agency or instrumentality of the federal government or the state; and

(ii) for a taxpayer who is eligible to participate in a health plan maintained and funded in whole or in part by the taxpayer's employer or the taxpayer's spouse's employer.

(4) (a) A subtraction for an amount described in Subsection (2)(l) is allowed only if:

(i) the taxpayer is a Ute tribal member; and

(ii) the governor and the Ute tribe execute and maintain an agreement meeting the requirements of this Subsection (4).

- (b) The agreement described in Subsection (4)(a):
 - (i) may not:
 - (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;
 - (B) provide a subtraction under this section greater than or different from the subtraction described in Subsection (2)(1); or
 - (C) affect the power of the state to establish rates of taxation; and
 - (ii) shall:
 - (A) provide for the implementation of the subtraction described in Subsection (2)(1);
 - (B) be in writing;
 - (C) be signed by:
 - (I) the governor; and
 - (II) the chair of the Business Committee of the Ute tribe;
 - (D) be conditioned on obtaining any approval required by federal law; and
 - (E) state the effective date of the agreement.
- (c) (i) The governor shall report to the commission by no later than February 1 of each year regarding whether or not an agreement meeting the requirements of this Subsection (4) is in effect.
 - (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the subtraction permitted under Subsection (2)(1) is not allowed for taxable years beginning on or after the January 1 following the termination of the agreement.
- (d) For purposes of Subsection (2)(1) and in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules:
 - (i) for determining whether income is derived from a source within the Uintah and Ouray Reservation; and
 - (ii) that are substantially similar to how federal adjusted gross income derived from Utah sources is determined under Section 59-10-117.
- (5) (a) For purposes of this Subsection (5), "Form 8814" means:
 - (i) the federal individual income tax Form 8814, Parents' Election To Report Child's

Interest and Dividends; or

(ii) (A) for taxable years beginning on or after January 1, 2002, a form designated by the commission in accordance with Subsection (5)(a)(ii)(B) as being substantially similar to 2000 Form 8814 if for purposes of federal individual income taxes the information contained on 2000 Form 8814 is reported on a form other than Form 8814; and

(B) for purposes of Subsection (5)(a)(ii)(A) and in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules designating a form as being substantially similar to 2000 Form 8814 if for purposes of federal individual income taxes the information contained on 2000 Form 8814 is reported on a form other than Form 8814.

(b) The amount of a child's income added to adjusted gross income under Subsection (1)(c) is equal to the difference between:

(i) the lesser of:

(A) the base amount specified on Form 8814; and

(B) the sum of the following reported on Form 8814:

(I) the child's taxable interest;

(II) the child's ordinary dividends; and

(III) the child's capital gain distributions; and

(ii) the amount not taxed that is specified on Form 8814.

(6) Notwithstanding Subsection (1)(g), interest from bonds, notes, and other evidences of indebtedness issued by an entity described in Subsections (1)(g)(i) through (iv) may not be added to federal taxable income of a resident or nonresident individual if, as annually determined by the commission:

(a) for an entity described in Subsection (1)(g)(i) or (ii), the entity and all of the political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

(b) for an entity described in Subsection (1)(g)(iii) or (iv), the following do not impose a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of this state:

- (i) the entity; or
- (ii) (A) the state in which the entity is located; or
(B) the District of Columbia, if the entity is located within the District of Columbia.

Section 4. Section **59-10-201 (Effective 01/01/04)** is amended to read:

59-10-201 (Effective 01/01/04). 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 **59-10-202** is amended to read:

59-10-202. Additions to and subtractions from state taxable income of resident or nonresident estate or trust.

(1) There shall be added to federal taxable income of a resident or nonresident estate or trust:

(a) the amount of any income tax imposed by this or any predecessor Utah individual income tax law and the amount of any income tax imposed by the laws of another state, the District of Columbia, or a possession of the United States, to the extent deducted from federal adjusted total income as defined in Section 62, Internal Revenue Code, in determining federal taxable income;

(b) a lump sum distribution allowable as a deduction under Section 402(d)(3) of the Internal Revenue Code, to the extent deductible under Section 62(a)(8) of the Internal Revenue Code in determining federal adjusted gross income; and

(c) the amount of any gain as defined in Section 644(b) of the Internal Revenue Code, to the extent deductible under Section 641(c) of the Internal Revenue Code in determining the federal taxable income of a trust.

(2) There shall be subtracted from federal taxable income of a resident or nonresident estate or trust:

(a) the interest or dividends on obligations or securities of the United States and its possessions or of any authority, commission, or instrumentality of the United States, to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States, but the amount subtracted under this Subsection (2) shall be reduced by any interest on indebtedness incurred or continued to purchase or carry the obligations or securities described in this Subsection (2), and by any expenses incurred in the production of interest or dividend income described in this Subsection (2) to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income; [~~and~~]

(b) 1/2 of the net amount of any income tax paid or payable to the United States after all allowable credits, as per the United States fiduciary income tax return of the taxpayer for the same taxable year[:]; and

(c) income of an irrevocable resident trust if:

- (i) the income would not be treated as state taxable income derived from Utah sources under Section 59-10-204 if received by a nonresident trust;
- (ii) the trust first became a resident trust on or after January 1, 2004;
- (iii) no assets of the trust were held, at any time after January 1, 2003, in another resident irrevocable trust created by the same settlor or the spouse of the same settlor;
- (iv) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d);
- (v) the amount subtracted under this Subsection (2) is reduced to the extent the settlor or any other person is treated as an owner of any portion of the trust under Subtitle A, Subchapter J, Subpart E of the Internal Revenue Code; and
- (vi) the amount subtracted under this Subsection (2) is reduced by any interest on indebtedness incurred or continued to purchase or carry the assets generating the income described in this Subsection (2), and by any expenses incurred in the production of income described in this Subsection (2), to the extent that those expenses, including amortizable bond premiums, are deductible in determining federal taxable income.

Section 6. Section **75-2-205 (Effective 12/31/03)** is amended to read:

75-2-205 (Effective 12/31/03). Decedent's nonprobate transfers to others.

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

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

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

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

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

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

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

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

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

(ii) The amount included:

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

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

(2) Property transferred in any of the 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~~] restriction on transfer [on] of the decedent's[~~, settlor's, or beneficiary's interest~~] interest as settlor and beneficiary 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 or restriction 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 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 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 Subsection (1)(a), (b), (c), or Subsection (2) if the property were valued at the time the right, interest, or power terminated, and is included only to the extent the property passed upon termination to or for the benefit of any person other than the decedent or the decedent's estate, spouse, or surviving spouse.

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

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

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

(ii) The amount included:

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

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

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

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

Section 7. Section **75-2-1207 (Effective 12/31/03)** is amended to read:

75-2-1207 (Effective 12/31/03). 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 ~~May 5, 2003~~ December 31, 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

(ii) a revocable exercise becomes irrevocable.

(2) If a nonvested property interest or a power of appointment was created before ~~[May 5, 2003]~~ December 31, 2003, and is determined in a judicial proceeding, commenced on or after ~~[May 5, 2003]~~ December 31, 2003, to violate Utah's rule against perpetuities as that rule existed before ~~[May 5, 2003]~~ December 31, 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]~~ December 31, 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 8. Section **75-2-1209** is enacted to read:

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

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

Section 9. Section **75-7-201 (Effective 12/31/03)** is amended to read:

75-7-201 (Effective 12/31/03). Court -- Exclusive jurisdiction of trusts.

(1) (a) The court has exclusive jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts ~~[administered in this state under Subsection 59-10-103(1)(r), 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 ~~[include]~~ are those

concerning:

- (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.
- (c) [~~This Subsection (1) applies~~] These include, but are not limited to proceedings to:
 - (i) appoint or remove a trustee;
 - (ii) review a trustee's fees;
 - (iii) review and settle interim or final accounts;
 - (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;
 - (vii) determine the existence or nonexistence of any immunity, power, privilege, duty, or right; 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 10. Section **75-7-202 (Effective 12/31/03)** is amended to read:

75-7-202 (Effective 12/31/03). Effect of administration in this state -- Consent to jurisdiction.

(1) The trustee submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust if ~~[(a)]~~ the trustee ~~[accepts the trusteeship]~~ acts as trustee 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 administered in this state, the beneficiaries of the trust are subject to the jurisdiction of the courts of this state 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) By accepting the delegation of a trust function from the trustee of a trust administered in this state, the agent submits to the jurisdiction of the courts of this state regarding any matter involving the trust.

~~[(3)]~~ (4) Unless otherwise designated in the trust instrument, a trust is administered in this state if it meets the requirements of Subsection 59-10-103(1)(r)(ii).

~~[(4) By accepting the delegation of a trust function from the trustee of a trust administered in this state, the agent submits to the jurisdiction of the courts of this state regarding any matter involving the trust.]~~

Section 11. Section **75-7-204 (Effective 12/31/03)** is amended to read:

75-7-204 (Effective 12/31/03). Trust proceedings -- Dismissal of matters relating to foreign trusts.

(1) ~~[Except as provided in Subsection (2), the]~~ The court 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

(c) has a fiduciary which transacts a major portion of its trust administration in another state.

(2) Notwithstanding Subsection (1), ~~[a]~~ the 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;

or

(b) the interests of justice would be seriously impaired~~[-or]~~.

~~[(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)(r).]~~

(3) 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.

Section 12. Section **75-7-208 (Effective 12/31/03)** is amended to read:

75-7-208 (Effective 12/31/03). Governing law.

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

~~[(1)]~~ (2) If a trust [provides by its terms that it is governed by the laws of] has a state law provision specifying this state, the [meaning and effect of the terms] validity, construction, and administration of the trust are to be governed by the laws of this state if any administration of the trust is done in this state[-including without limitation items listed in Subsection (3)(a) or (c)].

~~[(2) If]~~ (3) For all trusts created on or after December 31, 2003, if a trust does not [specify a governing state law, the meaning and effect of the terms] have a state law provision, the validity, construction, and administration of the trust are to be governed by the laws of this state if the trust is administered in this state [under Subsection 59-10-103(1)(r) 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;]~~

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

(a) a provision in the trust that restricts the transfer of trust assets in a manner similar to Section 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.

(5) A foreign trust that moves its administration 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.

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

Section 13. Section **75-7-402** is amended to read:

75-7-402. Powers of trustees conferred by this part.

(1) From time of creation of the trust until final distribution of the assets of the trust, a trustee has the power to perform, without court authorization, every act which a prudent man would perform for the purposes of the trust, including the powers specified in Subsection (3).

(2) In the exercise of his powers, including the powers granted by this part, a trustee has a duty to act with due regard to his obligation as a fiduciary, according to the standard set forth in Section 75-7-302.

(3) A trustee has the power, subject to Subsections (1) and (2) to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) dedicate easements to public use without consideration;

(k) enter, for any purpose into a lease as lessor or lessee with or without an option to purchase or renew for a term within or extending beyond the term of the trust;

(l) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(m) grant an option involving disposition of a trust asset, or take an option for the acquisition of any asset;

(n) vote a security, in person or by general or limited proxy;

(o) pay calls, assessments, and any other sums chargeable or accruing against or on

account of securities;

(p) sell or exercise stock subscription or conversion rights, consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(q) hold property in the name of a nominee or in other form without disclosure of the trust so that title to the property may pass by delivery, but the trustee is liable for any act of the nominee in connection with the property so held;

(r) insure the assets of the trust against damage or loss and the trustee against liability with respect to third persons;

(s) (i) borrow money to be repaid from trust assets or otherwise;

(ii) advance money to be repaid from trust assets or otherwise; or

(iii) advance money for the protection of the trust, and for all expenses, losses, and liabilities sustained in the administration of the trust or because of the holding or ownership of any trust assets, for which advances with any interest the trustee has a lien on the trust assets as against the beneficiary;

(t) (i) pay or contest any claim;

(ii) settle a claim by or against the trust by compromise, arbitration, or otherwise; and

(iii) release, in whole or in part, any claim belonging to the trust to the extent that the claim is uncollectible;

(u) pay taxes, assessments, compensation of the trustee, and other expenses incurred in the collection, care, administration, and protection of the trust;

(v) allocate items of income or expense to either trust income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, amortization, or for depletion in mineral or timber properties;

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

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

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

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

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

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

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

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

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

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

(5) The trustee may exercise the powers set forth in this section and in the trust either in the name of the trust or in the name of the trustee as trustee, specifically including the right to take title to encumber or convey assets, including real property, in the name of the trust. This Subsection (5) applies to a trustee's exercise of trust powers both prior to and after the effective date of this Subsection (5). After the effective date of this Subsection (5), for recording purposes, the name and address of at least one trustee must be included on all recorded documents affecting

real property to which the trust is a party in interest.

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

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

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

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

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

(b) The existence of a spendthrift or similar provision shall not effect the trustee's powers under this Subsection (6) unless the trust instrument specifically provides that the trustee shall not have the power to terminate the trust.

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

Section 14. Section **75-7-405.5** is enacted to read:

75-7-405.5. Vacancy in trusteeship -- Appointment of successor.

(1) A vacancy in a trusteeship occurs if:

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

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

(c) a trustee resigns;

(d) a trustee is disqualified or removed;

(e) a trustee dies; or

(f) a guardian or conservator is appointed for an individual serving as trustee.

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

(3) A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

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

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

(c) by a person appointed by the court.

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

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

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

(c) by a person appointed by the court.

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

Section 15. Repealer.

This bill repeals:

Section 75-7-601 (Effective 12/31/03), Situs.

Section 75-7-602 (Effective 12/31/03), Challenge to trusts.

Section 75-7-603 (Effective 12/31/03), Nonqualified persons serving as trustee.

Section 16. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect on December 31, 2003, except Sections 59-10-114 and 59-10-202 take effect on January 1, 2004.