

ESTATE PLANNING RECODIFICATION

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: Brady Brammer

LONG TITLE

General Description:

This bill recodifies estate planning statutes.

Highlighted Provisions:

This bill:

- clarifies statutes regarding payments and deposits by fiduciaries;
- clarifies definitions related to probate, fiduciaries, and trusts;
- recodifies Title 22, Fiduciaries and Trusts, to Title 75A, Fiduciaries, and Title 75B, Trusts;
- recodifies statutes on asset protection trusts to Title 75B, Trusts;
- recodifies chapters in Title 75, Utah Uniform Probate Code, to Title 75A, Fiduciaries;
- includes transition clauses; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

26B-6-201, as renumbered and amended by Laws of Utah 2023, Chapter 308

58-9-602, as last amended by Laws of Utah 2016, Chapter 256

75-1-201, as last amended by Laws of Utah 2013, Chapter 364

75-2-205, as last amended by Laws of Utah 2017, Chapter 204

75-7-105, as last amended by Laws of Utah 2019, Chapter 153

75-7-107, as last amended by Laws of Utah 2017, Chapter 204

28 **75-7-301**, as last amended by Laws of Utah 2017, Chapter 204
29 **75-7-501**, as last amended by Laws of Utah 2017, Chapter 204
30 **75-7-505**, as last amended by Laws of Utah 2023, Chapter 421
31 **75-7-814**, as last amended by Laws of Utah 2010, Chapter 93
32 **75-7-816**, as last amended by Laws of Utah 2017, Chapter 204
33 **76-5-111**, as last amended by Laws of Utah 2022, Chapter 181
34 **76-5-205**, as last amended by Laws of Utah 2022, Chapter 181
35 **76-6-513**, as last amended by Laws of Utah 2023, Chapter 111

36 ENACTS:

37 **75A-1-101**, Utah Code Annotated 1953
38 **75A-1-102**, Utah Code Annotated 1953
39 **75A-2-101**, Utah Code Annotated 1953
40 **75A-4-101**, Utah Code Annotated 1953
41 **75A-5-101**, Utah Code Annotated 1953
42 **75A-6-101**, Utah Code Annotated 1953
43 **75A-7-101**, Utah Code Annotated 1953
44 **75A-8-101**, Utah Code Annotated 1953
45 **75B-1-101**, Utah Code Annotated 1953
46 **75B-1-102**, Utah Code Annotated 1953
47 **75B-1-201**, Utah Code Annotated 1953
48 **75B-1-301**, Utah Code Annotated 1953

49 RENUMBERS AND AMENDS:

50 **75A-1-201**, (Renumbered from 22-1-1, Utah Code Annotated 1953)
51 **75A-1-202**, (Renumbered from 22-1-11, as last amended by Laws of Utah 2011, Chapter
52 297)
53 **75A-1-203**, (Renumbered from 22-1-2, Utah Code Annotated 1953)
54 **75A-1-204**, (Renumbered from 22-1-4, Utah Code Annotated 1953)
55 **75A-1-205**, (Renumbered from 22-1-5, Utah Code Annotated 1953)
56 **75A-1-206**, (Renumbered from 22-1-6, Utah Code Annotated 1953)
57 **75A-1-207**, (Renumbered from 22-1-7, Utah Code Annotated 1953)
58 **75A-1-208**, (Renumbered from 22-1-8, Utah Code Annotated 1953)
59 **75A-1-209**, (Renumbered from 22-1-9, Utah Code Annotated 1953)
60 **75A-1-210**, (Renumbered from 22-1-10, Utah Code Annotated 1953)
61 **75A-2-102**, (Renumbered from 75-9-102, as enacted by Laws of Utah 2016, Chapter

62 256)
63 **75A-2-103**, (Renumbered from 75-9-103, as enacted by Laws of Utah 2016, Chapter
64 256)
65 **75A-2-104**, (Renumbered from 75-9-104, as enacted by Laws of Utah 2016, Chapter
66 256)
67 **75A-2-105**, (Renumbered from 75-9-105, as last amended by Laws of Utah 2022,
68 Chapter 430)
69 **75A-2-106**, (Renumbered from 75-9-106, as enacted by Laws of Utah 2016, Chapter
70 256)
71 **75A-2-107**, (Renumbered from 75-9-107, as enacted by Laws of Utah 2016, Chapter
72 256)
73 **75A-2-108**, (Renumbered from 75-9-108, as last amended by Laws of Utah 2022,
74 Chapter 138)
75 **75A-2-109**, (Renumbered from 75-9-109, as enacted by Laws of Utah 2016, Chapter
76 256)
77 **75A-2-110**, (Renumbered from 75-9-110, as enacted by Laws of Utah 2016, Chapter
78 256)
79 **75A-2-111**, (Renumbered from 75-9-111, as enacted by Laws of Utah 2016, Chapter
80 256)
81 **75A-2-112**, (Renumbered from 75-9-112, as enacted by Laws of Utah 2016, Chapter
82 256)
83 **75A-2-113**, (Renumbered from 75-9-113, as enacted by Laws of Utah 2016, Chapter
84 256)
85 **75A-2-114**, (Renumbered from 75-9-114, as enacted by Laws of Utah 2016, Chapter
86 256)
87 **75A-2-115**, (Renumbered from 75-9-115, as enacted by Laws of Utah 2016, Chapter
88 256)
89 **75A-2-116**, (Renumbered from 75-9-116, as enacted by Laws of Utah 2016, Chapter
90 256)
91 **75A-2-117**, (Renumbered from 75-9-117, as enacted by Laws of Utah 2016, Chapter
92 256)
93 **75A-2-118**, (Renumbered from 75-9-118, as enacted by Laws of Utah 2016, Chapter
94 256)
95 **75A-2-119**, (Renumbered from 75-9-119, as enacted by Laws of Utah 2016, Chapter

96 256)
97 **75A-2-120**, (Renumbered from 75-9-120, as enacted by Laws of Utah 2016, Chapter
98 256)
99 **75A-2-121**, (Renumbered from 75-9-121, as enacted by Laws of Utah 2016, Chapter
100 256)
101 **75A-2-122**, (Renumbered from 75-9-122, as enacted by Laws of Utah 2016, Chapter
102 256)
103 **75A-2-123**, (Renumbered from 75-9-123, as enacted by Laws of Utah 2016, Chapter
104 256)
105 **75A-2-201**, (Renumbered from 75-9-201, as enacted by Laws of Utah 2016, Chapter
106 256)
107 **75A-2-202**, (Renumbered from 75-9-202, as enacted by Laws of Utah 2016, Chapter
108 256)
109 **75A-2-203**, (Renumbered from 75-9-203, as enacted by Laws of Utah 2016, Chapter
110 256)
111 **75A-2-204**, (Renumbered from 75-9-204, as enacted by Laws of Utah 2016, Chapter
112 256)
113 **75A-2-205**, (Renumbered from 75-9-205, as enacted by Laws of Utah 2016, Chapter
114 256)
115 **75A-2-206**, (Renumbered from 75-9-206, as enacted by Laws of Utah 2016, Chapter
116 256)
117 **75A-2-207**, (Renumbered from 75-9-207, as enacted by Laws of Utah 2016, Chapter
118 256)
119 **75A-2-208**, (Renumbered from 75-9-208, as enacted by Laws of Utah 2016, Chapter
120 256)
121 **75A-2-209**, (Renumbered from 75-9-209, as enacted by Laws of Utah 2016, Chapter
122 256)
123 **75A-2-210**, (Renumbered from 75-9-210, as enacted by Laws of Utah 2016, Chapter
124 256)
125 **75A-2-211**, (Renumbered from 75-9-211, as enacted by Laws of Utah 2016, Chapter
126 256)
127 **75A-2-212**, (Renumbered from 75-9-212, as enacted by Laws of Utah 2016, Chapter
128 256)
129 **75A-2-213**, (Renumbered from 75-9-213, as enacted by Laws of Utah 2016, Chapter

130 256)
131 **75A-2-214**, (Renumbered from 75-9-214, as enacted by Laws of Utah 2016, Chapter
132 256)
133 **75A-2-215**, (Renumbered from 75-9-215, as enacted by Laws of Utah 2016, Chapter
134 256)
135 **75A-2-216**, (Renumbered from 75-9-216, as enacted by Laws of Utah 2016, Chapter
136 256)
137 **75A-2-217**, (Renumbered from 75-9-217, as enacted by Laws of Utah 2016, Chapter
138 256)
139 **75A-2-301**, (Renumbered from 75-9-301, as enacted by Laws of Utah 2016, Chapter
140 256)
141 **75A-2-302**, (Renumbered from 75-9-302, as enacted by Laws of Utah 2016, Chapter
142 256)
143 **75A-2-401**, (Renumbered from 75-9-401, as enacted by Laws of Utah 2016, Chapter
144 256)
145 **75A-2-402**, (Renumbered from 75-9-402, as enacted by Laws of Utah 2016, Chapter
146 256)
147 **75A-2-403**, (Renumbered from 75-9-403, as enacted by Laws of Utah 2016, Chapter
148 256)
149 **75A-3-101**, (Renumbered from 75-2a-103, as last amended by Laws of Utah 2023,
150 Chapters 139, 330)
151 **75A-3-102**, (Renumbered from 75-2a-102, as last amended by Laws of Utah 2008,
152 Chapter 107)
153 **75A-3-103**, (Renumbered from 75-2a-122, as last amended by Laws of Utah 2008,
154 Chapter 107)
155 **75A-3-104**, (Renumbered from 75-2a-124, as last amended by Laws of Utah 2008,
156 Chapter 107)
157 **75A-3-105**, (Renumbered from 75-2a-125, as enacted by Laws of Utah 2008, Chapter
158 107)
159 **75A-3-106**, (Renumbered from 75-2a-106, as last amended by Laws of Utah 2023,
160 Chapter 330)
161 **75A-3-107**, (Renumbered from 75-2a-120, as enacted by Laws of Utah 2007, Chapter
162 31)
163 **75A-3-201**, (Renumbered from 75-2a-104, as last amended by Laws of Utah 2009,

164 Chapter 99)
165 **75A-3-202**, (Renumbered from 75-2a-109, as last amended by Laws of Utah 2009,
166 Chapter 99)
167 **75A-3-203**, (Renumbered from 75-2a-108, as last amended by Laws of Utah 2008,
168 Chapter 107)
169 **75A-3-204**, (Renumbered from 75-2a-110, as last amended by Laws of Utah 2008,
170 Chapter 107)
171 **75A-3-205**, (Renumbered from 75-2a-112, as last amended by Laws of Utah 2008,
172 Chapter 107)
173 **75A-3-206**, (Renumbered from 75-2a-111, as last amended by Laws of Utah 2008,
174 Chapter 107)
175 **75A-3-207**, (Renumbered from 75-2a-115, as last amended by Laws of Utah 2008,
176 Chapter 107)
177 **75A-3-208**, (Renumbered from 75-2a-113, as last amended by Laws of Utah 2008,
178 Chapter 107)
179 **75A-3-301**, (Renumbered from 75-2a-107, as last amended by Laws of Utah 2008,
180 Chapter 107)
181 **75A-3-302**, (Renumbered from 75-2a-105, as last amended by Laws of Utah 2008,
182 Chapter 107)
183 **75A-3-303**, (Renumbered from 75-2a-117, as last amended by Laws of Utah 2009,
184 Chapter 99)
185 **75A-3-304**, (Renumbered from 75-2a-116, as enacted by Laws of Utah 2007, Chapter
186 31)
187 **75A-3-305**, (Renumbered from 75-2a-119, as last amended by Laws of Utah 2008,
188 Chapter 107)
189 **75A-3-306**, (Renumbered from 75-2a-123, as last amended by Laws of Utah 2008,
190 Chapter 107)
191 **75A-3-307**, (Renumbered from 75-2a-114, as last amended by Laws of Utah 2008,
192 Chapter 107)
193 **75A-3-308**, (Renumbered from 75-2a-118, as last amended by Laws of Utah 2008,
194 Chapter 107)
195 **75A-3-309**, (Renumbered from 75-2a-121, as last amended by Laws of Utah 2008,
196 Chapter 107)
197 **75A-4-102**, (Renumbered from 75-10-102, as enacted by Laws of Utah 2017, Chapter

198 125)
199 **75A-4-103**, (Renumbered from 75-10-103, as enacted by Laws of Utah 2017, Chapter
200 125)
201 **75A-4-104**, (Renumbered from 75-10-104, as enacted by Laws of Utah 2017, Chapter
202 125)
203 **75A-4-201**, (Renumbered from 75-10-201, as last amended by Laws of Utah 2018,
204 Chapter 244)
205 **75A-4-202**, (Renumbered from 75-10-202, as enacted by Laws of Utah 2017, Chapter
206 125)
207 **75A-4-203**, (Renumbered from 75-10-203, as enacted by Laws of Utah 2017, Chapter
208 125)
209 **75A-4-204**, (Renumbered from 75-10-204, as enacted by Laws of Utah 2017, Chapter
210 125)
211 **75A-4-205**, (Renumbered from 75-10-205, as enacted by Laws of Utah 2017, Chapter
212 125)
213 **75A-4-206**, (Renumbered from 75-10-206, as enacted by Laws of Utah 2017, Chapter
214 125)
215 **75A-4-301**, (Renumbered from 75-10-301, as enacted by Laws of Utah 2017, Chapter
216 125)
217 **75A-4-302**, (Renumbered from 75-10-302, as enacted by Laws of Utah 2017, Chapter
218 125)
219 **75A-4-303**, (Renumbered from 75-10-303, as enacted by Laws of Utah 2017, Chapter
220 125)
221 **75A-4-304**, (Renumbered from 75-10-304, as enacted by Laws of Utah 2017, Chapter
222 125)
223 **75A-4-305**, (Renumbered from 75-10-305, as last amended by Laws of Utah 2019,
224 Chapter 153)
225 **75A-4-306**, (Renumbered from 75-10-306, as enacted by Laws of Utah 2017, Chapter
226 125)
227 **75A-4-307**, (Renumbered from 75-10-307, as enacted by Laws of Utah 2017, Chapter
228 125)
229 **75A-4-308**, (Renumbered from 75-10-308, as enacted by Laws of Utah 2017, Chapter
230 125)
231 **75A-4-309**, (Renumbered from 75-10-309, as enacted by Laws of Utah 2017, Chapter

232 125)
233 **75A-4-310**, (Renumbered from 75-10-310, as enacted by Laws of Utah 2017, Chapter
234 125)
235 **75A-4-311**, (Renumbered from 75-10-311, as enacted by Laws of Utah 2017, Chapter
236 125)
237 **75A-4-312**, (Renumbered from 75-10-312, as enacted by Laws of Utah 2017, Chapter
238 125)
239 **75A-4-313**, (Renumbered from 75-10-313, as enacted by Laws of Utah 2017, Chapter
240 125)
241 **75A-4-314**, (Renumbered from 75-10-314, as enacted by Laws of Utah 2017, Chapter
242 125)
243 **75A-4-401**, (Renumbered from 75-10-401, as enacted by Laws of Utah 2017, Chapter
244 125)
245 **75A-4-402**, (Renumbered from 75-10-402, as enacted by Laws of Utah 2017, Chapter
246 125)
247 **75A-4-403**, (Renumbered from 75-10-403, as enacted by Laws of Utah 2017, Chapter
248 125)
249 **75A-4-404**, (Renumbered from 75-10-404, as enacted by Laws of Utah 2017, Chapter
250 125)
251 **75A-4-405**, (Renumbered from 75-10-405, as enacted by Laws of Utah 2017, Chapter
252 125)
253 **75A-4-406**, (Renumbered from 75-10-406, as enacted by Laws of Utah 2017, Chapter
254 125)
255 **75A-4-407**, (Renumbered from 75-10-407, as enacted by Laws of Utah 2017, Chapter
256 125)
257 **75A-4-501**, (Renumbered from 75-10-501, as enacted by Laws of Utah 2017, Chapter
258 125)
259 **75A-4-502**, (Renumbered from 75-10-502, as enacted by Laws of Utah 2017, Chapter
260 125)
261 **75A-4-503**, (Renumbered from 75-10-503, as enacted by Laws of Utah 2017, Chapter
262 125)
263 **75A-4-601**, (Renumbered from 75-10-601, as enacted by Laws of Utah 2017, Chapter
264 125)
265 **75A-4-602**, (Renumbered from 75-10-602, as enacted by Laws of Utah 2017, Chapter

266 125)
267 **75A-4-603**, (Renumbered from 75-10-603, as enacted by Laws of Utah 2017, Chapter
268 125)
269 **75A-5-102**, (Renumbered from 22-3-102, as last amended by Laws of Utah 2020,
270 Chapter 348)
271 **75A-5-103**, (Renumbered from 22-3-103, as repealed and reenacted by Laws of Utah
272 2019, Chapter 495)
273 **75A-5-104**, (Renumbered from 22-3-104, as last amended by Laws of Utah 2020,
274 Chapter 348)
275 **75A-5-201**, (Renumbered from 22-3-201, as last amended by Laws of Utah 2020,
276 Chapter 348)
277 **75A-5-202**, (Renumbered from 22-3-202, as last amended by Laws of Utah 2020,
278 Chapter 348)
279 **75A-5-203**, (Renumbered from 22-3-203, as last amended by Laws of Utah 2020,
280 Chapter 348)
281 **75A-5-301**, (Renumbered from 22-3-301, as last amended by Laws of Utah 2020,
282 Chapter 348)
283 **75A-5-302**, (Renumbered from 22-3-302, as last amended by Laws of Utah 2020,
284 Chapter 348)
285 **75A-5-303**, (Renumbered from 22-3-303, as last amended by Laws of Utah 2020,
286 Chapter 348)
287 **75A-5-304**, (Renumbered from 22-3-304, as last amended by Laws of Utah 2020,
288 Chapter 348)
289 **75A-5-305**, (Renumbered from 22-3-305, as last amended by Laws of Utah 2020,
290 Chapter 348)
291 **75A-5-306**, (Renumbered from 22-3-306, as enacted by Laws of Utah 2019, Chapter
292 495)
293 **75A-5-307**, (Renumbered from 22-3-307, as last amended by Laws of Utah 2020,
294 Chapter 348)
295 **75A-5-308**, (Renumbered from 22-3-308, as last amended by Laws of Utah 2020,
296 Chapter 348)
297 **75A-5-309**, (Renumbered from 22-3-309, as last amended by Laws of Utah 2020,
298 Chapter 348)
299 **75A-5-401**, (Renumbered from 22-3-401, as last amended by Laws of Utah 2020,

300 Chapter 348)
301 **75A-5-402**, (Renumbered from 22-3-402, as last amended by Laws of Utah 2020,
302 Chapter 348)
303 **75A-5-403**, (Renumbered from 22-3-403, as last amended by Laws of Utah 2020,
304 Chapter 348)
305 **75A-5-404**, (Renumbered from 22-3-404, as last amended by Laws of Utah 2020,
306 Chapter 348)
307 **75A-5-405**, (Renumbered from 22-3-405, as last amended by Laws of Utah 2020,
308 Chapter 348)
309 **75A-5-406**, (Renumbered from 22-3-406, as repealed and reenacted by Laws of Utah
310 2019, Chapter 495)
311 **75A-5-407**, (Renumbered from 22-3-407, as last amended by Laws of Utah 2020,
312 Chapter 348)
313 **75A-5-408**, (Renumbered from 22-3-408, as repealed and reenacted by Laws of Utah
314 2019, Chapter 495)
315 **75A-5-409**, (Renumbered from 22-3-409, as last amended by Laws of Utah 2020,
316 Chapter 348)
317 **75A-5-410**, (Renumbered from 22-3-410, as repealed and reenacted by Laws of Utah
318 2019, Chapter 495)
319 **75A-5-411**, (Renumbered from 22-3-411, as last amended by Laws of Utah 2020,
320 Chapter 348)
321 **75A-5-412**, (Renumbered from 22-3-412, as last amended by Laws of Utah 2020,
322 Chapter 348)
323 **75A-5-413**, (Renumbered from 22-3-413, as repealed and reenacted by Laws of Utah
324 2019, Chapter 495)
325 **75A-5-414**, (Renumbered from 22-3-414, as last amended by Laws of Utah 2020,
326 Chapter 348)
327 **75A-5-415**, (Renumbered from 22-3-415, as last amended by Laws of Utah 2020,
328 Chapter 348)
329 **75A-5-416**, (Renumbered from 22-3-416, as enacted by Laws of Utah 2019, Chapter
330 495)
331 **75A-5-501**, (Renumbered from 22-3-501, as repealed and reenacted by Laws of Utah
332 2019, Chapter 495)
333 **75A-5-502**, (Renumbered from 22-3-502, as repealed and reenacted by Laws of Utah

334 2019, Chapter 495)
335 **75A-5-503**, (Renumbered from 22-3-503, as repealed and reenacted by Laws of Utah
336 2019, Chapter 495)
337 **75A-5-504**, (Renumbered from 22-3-504, as repealed and reenacted by Laws of Utah
338 2019, Chapter 495)
339 **75A-5-505**, (Renumbered from 22-3-505, as last amended by Laws of Utah 2020,
340 Chapter 348)
341 **75A-5-506**, (Renumbered from 22-3-506, as last amended by Laws of Utah 2020,
342 Chapter 348)
343 **75A-5-507**, (Renumbered from 22-3-507, as last amended by Laws of Utah 2020,
344 Chapter 348)
345 **75A-5-601**, (Renumbered from 22-3-601, as last amended by Laws of Utah 2020,
346 Chapter 348)
347 **75A-5-602**, (Renumbered from 22-3-602, as last amended by Laws of Utah 2020,
348 Chapter 348)
349 **75A-5-701**, (Renumbered from 22-3-701, as last amended by Laws of Utah 2020,
350 Chapter 348)
351 **75A-5-702**, (Renumbered from 22-3-702, as last amended by Laws of Utah 2020,
352 Chapter 348)
353 **75A-5-703**, (Renumbered from 22-3-703, as last amended by Laws of Utah 2020,
354 Chapter 348)
355 **75A-5-801**, (Renumbered from 22-3-801, as last amended by Laws of Utah 2020,
356 Chapter 348)
357 **75A-5-802**, (Renumbered from 22-3-802, as enacted by Laws of Utah 2019, Chapter
358 495)
359 **75A-5-803**, (Renumbered from 22-3-803, as last amended by Laws of Utah 2020,
360 Chapter 348)
361 **75A-5-804**, (Renumbered from 22-3-804, as last amended by Laws of Utah 2020,
362 Chapter 348)
363 **75A-6-102**, (Renumbered from 75-11-102, as enacted by Laws of Utah 2017, Chapter
364 16)
365 **75A-6-103**, (Renumbered from 75-11-103, as enacted by Laws of Utah 2017, Chapter
366 16)
367 **75A-6-104**, (Renumbered from 75-11-104, as enacted by Laws of Utah 2017, Chapter

368 16)
369 **75A-6-105**, (Renumbered from 75-11-105, as enacted by Laws of Utah 2017, Chapter
370 16)
371 **75A-6-106**, (Renumbered from 75-11-106, as enacted by Laws of Utah 2017, Chapter
372 16)
373 **75A-6-107**, (Renumbered from 75-11-107, as enacted by Laws of Utah 2017, Chapter
374 16)
375 **75A-6-108**, (Renumbered from 75-11-108, as enacted by Laws of Utah 2017, Chapter
376 16)
377 **75A-6-109**, (Renumbered from 75-11-109, as enacted by Laws of Utah 2017, Chapter
378 16)
379 **75A-6-110**, (Renumbered from 75-11-110, as enacted by Laws of Utah 2017, Chapter
380 16)
381 **75A-6-111**, (Renumbered from 75-11-111, as enacted by Laws of Utah 2017, Chapter
382 16)
383 **75A-6-112**, (Renumbered from 75-11-112, as enacted by Laws of Utah 2017, Chapter
384 16)
385 **75A-6-113**, (Renumbered from 75-11-113, as enacted by Laws of Utah 2017, Chapter
386 16)
387 **75A-6-114**, (Renumbered from 75-11-114, as last amended by Laws of Utah 2018,
388 Chapter 27)
389 **75A-6-115**, (Renumbered from 75-11-115, as enacted by Laws of Utah 2017, Chapter
390 16)
391 **75A-6-116**, (Renumbered from 75-11-116, as enacted by Laws of Utah 2017, Chapter
392 16)
393 **75A-6-117**, (Renumbered from 75-11-117, as enacted by Laws of Utah 2017, Chapter
394 16)
395 **75A-6-118**, (Renumbered from 75-11-118, as enacted by Laws of Utah 2017, Chapter
396 16)
397 **75A-7-102**, (Renumbered from 22-5-2, as last amended by Laws of Utah 1995, Chapter
398 20)
399 **75A-7-103**, (Renumbered from 22-5-3, as enacted by Laws of Utah 1961, Chapter 46)
400 **75A-7-104**, (Renumbered from 22-5-4, as last amended by Laws of Utah 1995, Chapter
401 20)

402 **75A-7-105**, (Renumbered from 22-5-5, as last amended by Laws of Utah 1995, Chapter
403 20)
404 **75A-7-106**, (Renumbered from 22-5-6, as last amended by Laws of Utah 1995, Chapter
405 20)
406 **75A-7-107**, (Renumbered from 22-5-7, as enacted by Laws of Utah 1961, Chapter 46)
407 **75A-7-108**, (Renumbered from 22-5-8, as last amended by Laws of Utah 1995, Chapter
408 20)
409 **75A-7-109**, (Renumbered from 22-5-9, as last amended by Laws of Utah 1995, Chapter
410 20)
411 **75A-7-110**, (Renumbered from 22-5-10, as enacted by Laws of Utah 1961, Chapter 46)
412 **75A-7-111**, (Renumbered from 22-5-11, as enacted by Laws of Utah 1961, Chapter 46)
413 **75A-8-102**, (Renumbered from 75-5a-102, as enacted by Laws of Utah 1990, Chapter
414 272)
415 **75A-8-103**, (Renumbered from 75-5a-103, as enacted by Laws of Utah 1990, Chapter
416 272)
417 **75A-8-104**, (Renumbered from 75-5a-104, as enacted by Laws of Utah 1990, Chapter
418 272)
419 **75A-8-105**, (Renumbered from 75-5a-105, as enacted by Laws of Utah 1990, Chapter
420 272)
421 **75A-8-106**, (Renumbered from 75-5a-106, as enacted by Laws of Utah 1990, Chapter
422 272)
423 **75A-8-107**, (Renumbered from 75-5a-107, as enacted by Laws of Utah 1990, Chapter
424 272)
425 **75A-8-108**, (Renumbered from 75-5a-108, as enacted by Laws of Utah 1990, Chapter
426 272)
427 **75A-8-109**, (Renumbered from 75-5a-109, as enacted by Laws of Utah 1990, Chapter
428 272)
429 **75A-8-110**, (Renumbered from 75-5a-110, as last amended by Laws of Utah 2016,
430 Chapter 15)
431 **75A-8-111**, (Renumbered from 75-5a-111, as enacted by Laws of Utah 1990, Chapter
432 272)
433 **75A-8-112**, (Renumbered from 75-5a-112, as enacted by Laws of Utah 1990, Chapter
434 272)
435 **75A-8-113**, (Renumbered from 75-5a-113, as enacted by Laws of Utah 1990, Chapter

272)

75A-8-114, (Renumbered from 75-5a-114, as enacted by Laws of Utah 1990, Chapter 272)

75A-8-115, (Renumbered from 75-5a-115, as enacted by Laws of Utah 1990, Chapter 272)

75A-8-116, (Renumbered from 75-5a-116, as enacted by Laws of Utah 1990, Chapter 272)

75A-8-117, (Renumbered from 75-5a-117, as enacted by Laws of Utah 1990, Chapter 272)

75A-8-118, (Renumbered from 75-5a-118, as enacted by Laws of Utah 1990, Chapter 272)

75A-8-119, (Renumbered from 75-5a-119, as last amended by Laws of Utah 2005, Chapter 71)

75A-8-120, (Renumbered from 75-5a-120, as enacted by Laws of Utah 1990, Chapter 272)

75A-8-121, (Renumbered from 75-5a-121, as enacted by Laws of Utah 1990, Chapter 272)

75A-8-122, (Renumbered from 75-5a-122, as enacted by Laws of Utah 1990, Chapter 272)

75A-8-123, (Renumbered from 75-5a-123, as enacted by Laws of Utah 1990, Chapter 272)

75B-1-103, (Renumbered from 22-2-1, Utah Code Annotated 1953)

75B-1-202, (Renumbered from 22-6-1, as enacted by Laws of Utah 1961, Chapter 174)

75B-1-203, (Renumbered from 22-6-2, as enacted by Laws of Utah 1961, Chapter 174)

75B-1-302, (Renumbered from 25-6-502, as last amended by Laws of Utah 2019, Chapter 95)

REPEALS:

22-3-101, as repealed and reenacted by Laws of Utah 2019, Chapter 495

22-5-1, as last amended by Laws of Utah 1995, Chapter 20

25-6-501, as enacted by Laws of Utah 2017, Chapter 204

75-2a-101, as enacted by Laws of Utah 2007, Chapter 31

75-5a-101, as enacted by Laws of Utah 1990, Chapter 272

75-9-101, as enacted by Laws of Utah 2016, Chapter 256

75-10-101, as enacted by Laws of Utah 2017, Chapter 125

470 **75-11-101**, as enacted by Laws of Utah 2017, Chapter 16

471

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

473 Section 1. Section **26B-6-201** is amended to read:

474 **26B-6-201 . Definitions.**

475 As used in this part:

- 476 (1) "Abandonment" means any knowing or intentional action or failure to act, including
477 desertion, by a person acting as a caretaker for a vulnerable adult that leaves the
478 vulnerable adult without the means or ability to obtain necessary food, clothing, shelter,
479 or medical or other health care.
- 480 (2) "Abuse" means:
- 481 (a) knowingly or intentionally:
- 482 (i) attempting to cause harm;
- 483 (ii) causing harm; or
- 484 (iii) placing another in fear of harm;
- 485 (b) unreasonable or inappropriate use of physical restraint, medication, or isolation that
486 causes or is likely to cause harm to a vulnerable adult;
- 487 (c) emotional or psychological abuse;
- 488 (d) a sexual offense as described in Title 76, Chapter 5, Offenses Against the Individual;
- 489 or
- 490 (e) deprivation of life sustaining treatment, or medical or mental health treatment, except:
- 491 (i) as provided in [~~Title 75, Chapter 2a, Advance Health Care Directive Act~~] Title
492 75A, Chapter 3, Health Care Decisions; or
- 493 (ii) when informed consent, as defined in Section 76-5-111, has been obtained.
- 494 (3) "Adult" means an individual who is 18 years old or older.
- 495 (4) "Adult protection case file" means a record, stored in any format, contained in a case
496 file maintained by Adult Protective Services.
- 497 (5) "Adult Protective Services" means the unit within the division responsible to investigate
498 abuse, neglect, and exploitation of vulnerable adults and provide appropriate protective
499 services.
- 500 (6) "Capacity to consent" means the ability of an individual to understand and communicate
501 regarding the nature and consequences of decisions relating to the individual, and
502 relating to the individual's property and lifestyle, including a decision to accept or refuse
503 services.

- (7) "Caretaker" means a person or public institution that is entrusted with or assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing, supervision, medical or other health care, resource management, or other necessities for pecuniary gain, by contract, or as a result of friendship, or who is otherwise in a position of trust and confidence with a vulnerable adult, including a relative, a household member, an attorney-in-fact, a neighbor, a person who is employed or who provides volunteer work, a court-appointed or voluntary guardian, or a person who contracts or is under court order to provide care.
- (8) "Counsel" means an attorney licensed to practice law in this state.
- (9) "Database" means the statewide database maintained by the division under Section 26B-6-210.
- (10) (a) "Dependent adult" means an individual 18 years old or older, who has a physical or mental impairment that restricts the individual's ability to carry out normal activities or to protect the individual's rights.
- (b) "Dependent adult" includes an individual who has physical or developmental disabilities or whose physical or mental capacity has substantially diminished because of age.
- (11) "Elder abuse" means abuse, neglect, or exploitation of an elder adult.
- (12) "Elder adult" means an individual 65 years old or older.
- (13) "Emergency" means a circumstance in which a vulnerable adult is at an immediate risk of death, serious physical injury, or serious physical, emotional, or financial harm.
- (14) "Emergency protective services" means measures taken by Adult Protective Services under time-limited, court-ordered authority for the purpose of remediating an emergency.
- (15) (a) "Emotional or psychological abuse" means knowing or intentional verbal or nonverbal conduct directed at a vulnerable adult that results in the vulnerable adult suffering mental anguish, emotional distress, fear, humiliation, degradation, agitation, or confusion.
- (b) "Emotional or psychological abuse" includes intimidating, threatening, isolating, coercing, or harassing.
- (c) "Emotional or psychological abuse" does not include verbal or non-verbal conduct by a vulnerable adult who lacks the capacity to intentionally or knowingly:
- (i) engage in the conduct; or
- (ii) cause mental anguish, emotional distress, fear, humiliation, degradation, agitation, or confusion.

- (16) "Exploitation" means an offense described in Section 76-5-111.3, 76-5-111.4, or 76-5b-202.
- (17) "Harm" means pain, mental anguish, emotional distress, hurt, physical or psychological damage, physical injury, serious physical injury, suffering, or distress inflicted knowingly or intentionally.
- (18) "Inconclusive" means a finding by the division that there is not a reasonable basis to conclude that abuse, neglect, or exploitation occurred.
- (19) "Intimidation" means communication through verbal or nonverbal conduct which threatens deprivation of money, food, clothing, medicine, shelter, social interaction, supervision, health care, or companionship, or which threatens isolation or abuse.
- (20) (a) "Isolation" means knowingly or intentionally preventing a vulnerable adult from having contact with another person, unless the restriction of personal rights is authorized by court order, by:
- (i) preventing the vulnerable adult from communicating, visiting, interacting, or initiating interaction with others, including receiving or inviting visitors, mail, or telephone calls, contrary to the expressed wishes of the vulnerable adult, or communicating to a visitor that the vulnerable adult is not present or does not want to meet with or talk to the visitor, knowing that communication to be false;
 - (ii) physically restraining the vulnerable adult in order to prevent the vulnerable adult from meeting with a visitor; or
 - (iii) making false or misleading statements to the vulnerable adult in order to induce the vulnerable adult to refuse to receive communication from visitors or other family members.
- (b) "Isolation" does not include an act:
- (i) intended in good faith to protect the physical or mental welfare of the vulnerable adult; or
 - (ii) performed pursuant to the treatment plan or instructions of a physician or other professional advisor of the vulnerable adult.
- (21) "Lacks capacity to consent" is as defined in Section 76-5-111.4.
- (22) (a) "Neglect" means:
- (i) (A) failure of a caretaker to provide necessary care, including nutrition, clothing, shelter, supervision, personal care, or dental, medical, or other health care for a vulnerable adult, unless the vulnerable adult is able to provide or obtain the necessary care without assistance; or

- 572 (B) failure of a caretaker to provide protection from health and safety hazards or
573 maltreatment;
- 574 (ii) failure of a caretaker to provide care to a vulnerable adult in a timely manner and
575 with the degree of care that a reasonable person in a like position would exercise;
- 576 (iii) a pattern of conduct by a caretaker, without the vulnerable adult's informed
577 consent, resulting in deprivation of food, water, medication, health care, shelter,
578 cooling, heating, or other services necessary to maintain the vulnerable adult's
579 well being;
- 580 (iv) knowing or intentional failure by a caretaker to carry out a prescribed treatment
581 plan that causes or is likely to cause harm to the vulnerable adult;
- 582 (v) self-neglect by the vulnerable adult; or
- 583 (vi) abandonment by a caretaker.
- 584 (b) "Neglect" does not include conduct, or failure to take action, that is permitted or
585 excused under [~~Title 75, Chapter 2a, Advance Health Care Directive Act~~] Title 75A,
586 Chapter 3, Health Care Decisions.
- 587 (23) "Physical injury" includes the damage and conditions described in Section 76-5-111.
- 588 (24) "Protected person" means a vulnerable adult for whom the court has ordered protective
589 services.
- 590 (25) "Protective services" means services to protect a vulnerable adult from abuse, neglect,
591 or exploitation.
- 592 (26) "Self-neglect" means the failure of a vulnerable adult to provide or obtain food, water,
593 medication, health care, shelter, cooling, heating, safety, or other services necessary to
594 maintain the vulnerable adult's well being when that failure is the result of the adult's
595 mental or physical impairment. Choice of lifestyle or living arrangements may not, by
596 themselves, be evidence of self-neglect.
- 597 (27) "Serious physical injury" is as defined in Section 76-5-111.
- 598 (28) "Supported" means a finding by the division that there is a reasonable basis to
599 conclude that abuse, neglect, or exploitation occurred.
- 600 (29) "Undue influence" occurs when a person:
- 601 (a) uses influence to take advantage of a vulnerable adult's mental or physical
602 impairment; or
- 603 (b) uses the person's role, relationship, or power:
- 604 (i) to exploit, or knowingly assist or cause another to exploit, the trust, dependency,
605 or fear of a vulnerable adult; or

- (ii) to gain control deceptively over the decision making of the vulnerable adult.
- (30) "Vulnerable adult" means an elder adult, or a dependent adult who has a mental or physical impairment which substantially affects that person's ability to:
- (a) provide personal protection;
 - (b) provide necessities such as food, shelter, clothing, or mental or other health care;
 - (c) obtain services necessary for health, safety, or welfare;
 - (d) carry out the activities of daily living;
 - (e) manage the adult's own financial resources; or
 - (f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

(31) "Without merit" means a finding that abuse, neglect, or exploitation did not occur.

Section 2. Section **58-9-602** is amended to read:

58-9-602 . Determination of control of disposition.

The right and duty to control the disposition of a deceased person, which may include cremation as well as the location, manner and conditions of the disposition, and arrangements for funeral goods and services to be provided, vests in the following degrees of relationship in the order named, provided the person is at least 18 years old and is mentally competent:

- (1) the person designated:
 - (a) in a written instrument, excluding a power of attorney that terminates at death under Section [~~75-9-110~~] 75A-2-110, if the written instrument is acknowledged before a Notary Public or executed with the same formalities required of a will under Section 75-2-502; or
 - (b) by a service member while serving in a branch of the United States Armed Forces as defined in 10 U.S.C. Sec. 1481 in a federal Record of Emergency Data, DD Form 93 or subsequent form;
- (2) the surviving, legally recognized spouse of the decedent, unless a personal representative was nominated by the decedent subsequent to the marriage, in which case the personal representative shall take priority over the spouse;
- (3) the person nominated to serve as the personal representative of the decedent's estate in a will executed with the formalities required in Section 75-2-502;
- (4) (a) the sole surviving child of the decedent, or if there is more than one child of the decedent, the majority of the surviving children; and
 - (b) less than one-half of the surviving children are vested with the rights of this section if

they have used reasonable efforts to notify all other surviving children of their instructions and are not aware of any opposition to those instructions on the part of more than one-half of all surviving children;

(5) the surviving parent or parents of the decedent, however:

(a) if one of the surviving parents is absent, the remaining parent is vested with the rights and duties of this section after reasonable efforts have been unsuccessful in locating the absent surviving parent; or

(b) if the parents are divorced or separated and the decedent was an incapacitated adult, the parent who was designated as the guardian of the decedent is vested with the rights and duties of this section;

(6) (a) the surviving brother or sister of the decedent, or if there is more than one sibling of the decedent, the majority of the surviving siblings; and

(b) less than the majority of surviving siblings, if they have used reasonable efforts to notify all other surviving siblings of their instructions and are not aware of any opposition to those instructions on the part of more than one-half of all surviving siblings;

(7) the person in the classes of the next degree of kinship, in descending order, under the laws of descent and distribution to inherit the estate of the decedent, and if there is more than one person of the same degree, any person of that degree may exercise the right of disposition;

(8) in the absence of any person under Subsections (1) through (7), the person who was the decedent's guardian at the time of death;

(9) any public official charged with arranging the disposition of deceased persons; and

(10) in the absence of any person under Subsections (1) through (9), any other person willing to assume the responsibilities to act and arrange the final disposition of the decedent's remains, including the personal representative of the decedent's estate or the funeral service director with custody of the body, after attesting in writing that a good faith effort has been made to no avail to contact the individuals referred to in Subsections (1) through (9).

Section 3. Section **75-1-201** is amended to read:

75-1-201 . Title definitions.

~~[Subject to additional definitions contained in the subsequent chapters that are applicable to specific chapters, parts, or sections, and unless the context otherwise requires, in this code]~~ As used in this title:

- 674 (1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney,
675 an individual authorized to make decisions concerning another's health care, and an
676 individual authorized to make decisions for another under a natural death act.
- 677 (2) "Application" means a written request to the registrar for an order of informal probate or
678 appointment under ~~[Title 75, Chapter 3, Part 3, Informal Probate and Appointment~~
679 ~~Proceedings]~~ Chapter 3, Part 3, Informal Probate and Appointment Proceedings.
- 680 (3) (a) "Beneficiary," as it relates to trust beneficiaries, includes:
681 (i) a person who has any present or future interest, vested or contingent~~[-and also~~
682 ~~includes]~~ ; and
683 (ii) the owner of an interest by assignment or other transfer~~[:]~~ .
684 (b) "Beneficiary," as it relates to a charitable trust, includes any person entitled to
685 enforce the trust~~[:]~~ .
686 (c) "Beneficiary," as it relates to a ~~["beneficiary of a beneficiary designation," refers to]~~
687 beneficiary of a beneficiary designation, means a beneficiary of:
688 (i) an insurance or annuity policy~~[-of]~~ ;
689 (ii) an account with POD designation~~[-of]~~ ;
690 (iii) a security registered in beneficiary form (TOD)~~[-or of]~~ ;
691 (iv) a pension, profit-sharing, retirement, or similar benefit plan~~[-]~~ ; or
692 (v) other nonprobate transfer at death~~[:and]~~ .
693 (d) "Beneficiary," as it relates to a ~~["]~~beneficiary designated in a governing instrument,~~["]~~
694 includes:
695 (i) a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary
696 designation, a donee, appointee, or taker in default of a power of appointment~~[-and]~~
697 ; and
698 (ii) a person in whose favor a power of attorney or a power held in any individual,
699 fiduciary, or representative capacity is exercised.
- 700 (4) "Beneficiary designation" ~~[refers to-]~~ means a governing instrument naming a
701 beneficiary of an insurance or annuity policy, of an account with POD designation, of a
702 security registered in beneficiary form (TOD), or of a pension, profit-sharing,
703 retirement, or similar benefit plan, or other nonprobate transfer at death.
- 704 (5) (a) "Child" includes any individual entitled to take as a child under this ~~[code-]~~ title
705 by intestate succession from the parent whose relationship is involved~~[-and excludes~~
706 ~~any person]~~ .
707 (b) "Child" does not include an individual who is only a stepchild, a foster child, a

grandchild, or any more remote descendant.

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

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

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

~~[(7)]~~ (8) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

~~[(8)]~~ (9) "Court" means any of the courts of record in this state having jurisdiction in matters relating to the affairs of decedents.

~~[(9)]~~ (10) "Descendant" ~~[of an individual]~~ means all of ~~[his-]~~ an individual's descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this title.

~~[(10)]~~ (11) "Devise," when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.

~~[(11)]~~ (12) "Devisee" means any person designated in a will to receive a devise. For the purposes of ~~[Title 75, Chapter 3, Probate of Wills and Administration]~~ Chapter 3, Probate of Wills and Administration, in the case of a devise to an existing trust or trustee, or to a trustee in trust described by will, the trust or trustee is the devisee, and the beneficiaries are not devisees.

~~[(12)]~~ (13) "Disability" means cause for a protective order as described by Section 75-5-401.

~~[(13)]~~ (14) "Distributee" means any person who has received property of a decedent from his personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

742 [(14)] (15) "Estate" includes the property of the decedent, trust, or other person whose
743 affairs are subject to this title as originally constituted and as it exists from time to time
744 during administration.

745 [(15)] (16) "Exempt property" means that property of a decedent's estate which is described
746 in Section 75-2-403.

747 [(16)] (17) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

748 [(17)] (18) "Foreign personal representative" means a personal representative of another
749 jurisdiction.

750 [(18)] (19) "Formal proceedings" means proceedings conducted before a judge with notice
751 to interested persons.

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

753 [(19)] (21) "Governing instrument" means a deed, will, trust, insurance or annuity policy,
754 account with POD designation, security registered in beneficiary form (TOD), pension,
755 profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a
756 power of appointment or a power of attorney, or a dispositive, appointive, or nominative
757 instrument of any similar type.

758 [(20)] (22) (a) "Guardian" means a person who has qualified as a guardian of a minor or
759 incapacitated person pursuant to testamentary or court appointment, or by written
760 instrument as provided in Section 75-5-202.5~~[-but-excludes-one]~~ .

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

762 [(21)] (23) "Heirs," except as controlled by Section 75-2-711, means persons, including the
763 surviving spouse and state, who are entitled under the statutes of intestate succession to
764 the property of a decedent.

765 [(22)] (24) "Incapacitated" ~~[or "incapacity" is measured by functional limitations and]~~
766 means a judicial determination after proof by clear and convincing evidence that an
767 adult's ability to do the following is impaired to the extent that the individual lacks the
768 ability, even with appropriate technological assistance, to meet the essential
769 requirements for financial protection or physical health, safety, or self-care:

770 (a) receive and evaluate information;

771 (b) make and communicate decisions; or

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

773 (25) "Incapacity" means incapacitated.

774 [(23)] (26) "Informal proceedings" mean ~~[those-]~~ a proceeding conducted without notice to
775 interested persons by an officer of the court acting as a registrar for probate of a will or

776 appointment of a personal representative.

777 [(24)] (27) (a) "Interested person" includes heirs, devisees, children, spouses, creditors,
778 beneficiaries, and any others having a property right in or claim against a trust estate
779 or the estate of a decedent, ward, or protected person. ~~[It also]~~ The meaning of
780 interested person as it relates to particular persons may vary from time to time and is
781 determined according to the particular purposes of, and matter involved in, any
782 proceeding.

783 (b) "Interested person" includes persons having priority for appointment as personal
784 representative, other fiduciaries representing interested persons, a settlor of a trust, if
785 living, or the settlor's legal representative, if any, if the settlor is living but
786 incapacitated. ~~[The meaning as it relates to particular persons may vary from time to~~
787 ~~time and shall be determined according to the particular purposes of, and matter~~
788 ~~involved in, any proceeding.]~~

789 [(25)] (28) "Issue" ~~[of a person]~~ means a descendant [as defined in Subsection (9)] of an
790 individual.

791 [(26)] (29) (a) "Joint tenants with the right of survivorship" ~~[and "community property~~
792 ~~with the right of survivorship"]~~ includes coowners of property held under
793 circumstances that entitle one or more to the whole of the property on the death of the
794 other ~~[or others, but excludes]~~ .

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

798 [(27)] (30) "Lease" includes an oil, gas, or other mineral lease.

799 [(28)] (31) "Letters" includes letters testamentary, letters of guardianship, letters of
800 administration, and letters of conservatorship.

801 [(29)] (32) "Minor" means a person who is under 18 years ~~[of age]~~ old.

802 (33) "Minor protected person" means a minor for whom a conservator has been appointed
803 because of minority.

804 (34) "Minor ward" means a minor for whom a guardian has been appointed solely because
805 of minority.

806 [(30)] (35) "Mortgage" means any conveyance, agreement, or arrangement in which
807 property is used as security.

808 [(31)] (36) "Nonresident decedent" means a decedent who was domiciled in another
809 jurisdiction at the time of ~~[his]~~ the decedent's death.

810 ~~[(32)]~~ (37) "Organization" includes a corporation, limited liability company, business trust,
811 estate, trust, partnership, joint venture, association, government or governmental
812 subdivision or agency, or any other legal or commercial entity.

813 ~~[(33)]~~ (38) (a) "Parent" includes any person entitled to take, or who would be entitled to
814 take if the child died without a will, as a parent under this ~~[code-]~~ title by intestate
815 succession from the child whose relationship is in question~~[-and-excludes]~~ .

816 (b) "Parent" does not include any person who is only a stepparent, foster parent, or
817 grandparent.

818 ~~[(34)]~~ (39) "Payor" means a trustee, insurer, business entity, employer, government,
819 governmental agency or subdivision, or any other person authorized or obligated by law
820 or a governing instrument to make payments.

821 ~~[(35)]~~ (40) "Person" means an individual or an organization.

822 ~~[(36)]~~ (41) ~~[(a)]~~ "Personal representative" includes executor, administrator, successor
823 personal representative, special administrator, and persons who perform substantially
824 the same function under the law governing their status.

825 ~~[(b)] "General personal representative" excludes special administrator.]~~

826 ~~[(37)]~~ (42) "Petition" means a written request to the court for an order after notice.

827 ~~[(38)]~~ (43) "Proceeding" includes action at law and suit in equity.

828 ~~[(39)]~~ (44) "Property" includes both real and personal property or any interest therein and
829 means anything that may be the subject of ownership.

830 ~~[(40)]~~ (45) "Protected person" means a person for whom a conservator has been appointed. [
831 A "minor protected person" means a minor for whom a conservator has been appointed
832 because of minority].

833 ~~[(41)]~~ (46) "Protective proceeding" means a proceeding described in Section 75-5-401.

834 ~~[(42)]~~ (47) "Record" means information that is inscribed on a tangible medium or that is
835 stored in an electronic or other medium and is retrievable in perceivable form.

836 ~~[(43)]~~ (48) "Registrar" ~~[refers to-]~~ means the official of the court designated to perform the
837 functions of registrar as provided in Section 75-1-307.

838 ~~[(44)]~~ (49) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of
839 indebtedness, certificate of interest, or participation in an oil, gas, or mining title or lease
840 or in payments out of production under such a title or lease, collateral trust certificate,
841 transferable share, voting trust certificate, and, in general, any interest or instrument
842 commonly known as a security, or any certificate of interest or participation, any
843 temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or

right to subscribe to or purchase, any of the foregoing.

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

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

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

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

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

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

[(49)] (54) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

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

[(51)] (56) "Supervised administration" ~~[refers to]~~ means the proceedings described in ~~[Title 75, Chapter 3, Part 5, Supervised Administration]~~ Chapter 3, Part 5, Supervised Administration.

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

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

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

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

[(55)] (60) (a) "Trust" includes:

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

- 878 ~~any~~] ;
- 879 (ii) an express trust, private or charitable, with additions thereto, wherever and
- 880 however created~~[- The term also includes]~~ ; or
- 881 (iii) a trust created or determined by judgment or decree under which the trust is to be
- 882 administered in the manner of an express trust. ~~[The term excludes other~~
- 883 constructive trusts, and it excludes resulting trusts, conservatorships, personal
- 884 representatives, trust accounts]
- 885 (b) "Trust" does not include:
- 886 (i) a constructive trust;
- 887 (ii) a resulting trust;
- 888 (iii) a conservatorship;
- 889 (iv) a personal representative;
- 890 (v) a trust account as defined in ~~[Title 75, Chapter 6, Nonprobate Transfers, custodial~~
- 891 arrangements pursuant to any] Chapter 6, Nonprobate Transfers;
- 892 (vi) a custodial arrangement under Title 75A, Chapter 8, Uniform Transfers To
- 893 Minors Act~~[- business trusts]~~ ;
- 894 (vii) a business trust providing for certificates to be issued to beneficiaries~~[-]~~ ;
- 895 (viii) a common trust ~~[funds,-]~~ fund;
- 896 (ix) a voting ~~[trusts,-]~~ trust;
- 897 (x) a preneed funeral ~~[plans-]~~ plan under Title 58, Chapter 9, Funeral Services
- 898 Licensing Act~~[- security arrangements, liquidation trusts, and trusts]~~ ;
- 899 (xi) a security arrangement;
- 900 (xii) a liquidation trust;
- 901 (xiii) a trust for the primary purpose of paying debts, dividends, interest, salaries,
- 902 wages, profits, pensions, or employee benefits of any kind~~[- and]~~ ; or
- 903 (xiv) any arrangement under which a person is nominee or escrowee for another.
- 904 ~~[(56)]~~ (61) "Trustee" includes an original, additional, and successor trustee, and cotrustee,
- 905 whether or not appointed or confirmed by the court.
- 906 ~~[(57)]~~ (62) "Ward" means a person for whom a guardian has been appointed. ~~[A "minor~~
- 907 ward" is a minor for whom a guardian has been appointed solely because of minority.]
- 908 ~~[(58)]~~ (63) "Will" includes codicil and any testamentary instrument which merely appoints
- 909 an executor, revokes or revises another will, nominates a guardian, or expressly excludes
- 910 or limits the right of an individual or class to succeed to property of the decedent passing
- 911 by intestate succession.

Section 4. Section **75-2-205** is amended to read:

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

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

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

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

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

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

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

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

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

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

(ii) The amount included:

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

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

- 946 immediately prior to the death of the decedent or the amount of premiums paid
947 on the policy during the decedent's life.
- 948 (2) Property transferred in any of the forms described in this Subsection (2) by the decedent
949 during marriage:
- 950 (a) (i) Any irrevocable transfer in which the decedent retained the right to the
951 possession or enjoyment of, or to the income from, the property if and to the
952 extent the decedent's right terminated at or continued beyond the decedent's death.
953 (ii) An irrevocable transfer in trust which includes a restriction on transfer of the
954 decedent's interest as settlor and beneficiary as described in Section [25-6-502]
955 75B-1-302.
- 956 (iii) The amount included is the value of the fraction of the property to which the
957 right or restriction related, to the extent the fraction of the property passed outside
958 probate to or for the benefit of any person other than the decedent's estate or
959 surviving spouse.
- 960 (b) (i) Any transfer in which the decedent created a power over income or property,
961 exercisable by the decedent alone or in conjunction with any other person, or
962 exercisable by a nonadverse party, to or for the benefit of the decedent, creditors
963 of the decedent, the decedent's estate, or creditors of the decedent's estate.
964 (ii) The amount included with respect to a power over property is the value of the
965 property subject to the power, and the amount included with respect to a power
966 over income is the value of the property that produces or produced the income, to
967 the extent the power in either case was exercisable at the decedent's death to or for
968 the benefit of any person other than the decedent's surviving spouse or to the
969 extent the property passed at the decedent's death, by exercise, release, lapse, in
970 default, or otherwise, to or for the benefit of any person other than the decedent's
971 estate or surviving spouse.
- 972 (iii) If the power is a power over both income and property and Subsection (2)(b)(ii)
973 produces different amounts, the amount included is the greater amount.
- 974 (3) Property that passed during marriage and during the two-year period next preceding the
975 decedent's death as a result of a transfer by the decedent if the transfer was of any of the
976 types described in this Subsection (3).
- 977 (a) (i) Any property that passed as a result of the termination of a right or interest in,
978 or power over, property that would have been included in the augmented estate
979 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 5. Section **75-7-105** is amended to read:

75-7-105 . Default and mandatory rules.

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

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

provision of this chapter except:

- (a) the requirements for creating a trust;
- (b) subject to Sections 75-12-109, 75-12-111, and 75-12-112, the duty of a trustee to act in good faith and in accordance with the purposes of the trust;
- (c) the requirement that a trust and the terms of the trust be for the benefit of the trust's beneficiaries;
- (d) the power of the court to modify or terminate a trust under Sections 75-7-410 through 75-7-416;
- (e) the effect of a spendthrift provision, Section [25-6-502] 75B-1-302, and the rights of certain creditors and assignees to reach a trust as provided in Part 5, Creditor's Claims - Spendthrift and Discretionary Trusts;
- (f) the power of the court under Section 75-7-702 to require, dispense with, or modify or terminate a bond;
- (g) the effect of an exculpatory term under Section 75-7-1008;
- (h) the rights under Sections 75-7-1010 through 75-7-1013 of a person other than a trustee or beneficiary;
- (i) periods of limitation for commencing a judicial proceeding; and
- (j) the subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in Sections 75-7-203 and 75-7-205.

Section 6. Section **75-7-107** is amended to read:

75-7-107 . Governing law.

- (1) [~~For purposes of~~] As used in this section:

- (a) "Foreign trust" means a trust that is created in another state or country and valid in the state or country in which the trust is created.
- (b) "State law provision" means a provision that the laws of a named state govern the validity, construction, and administration of a trust.

- (2) If a trust has a state law provision specifying this state, the validity, construction, and administration of the trust are to be governed by the laws of this state if any administration of the trust is done in this state.

- (3) For all trusts created on or after December 31, 2003, if a trust does not have a state law provision, the validity, construction, and administration of the trust are to be governed by the laws of this state if the trust is administered in this state.

- (4) A trust shall be considered to be administered in this state if:

- (a) the trust states that this state is the place of administration, and any administration of

the trust is done in this state; or

(b) the place of business where the fiduciary transacts a major portion of its administration of the trust is in this state.

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

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

Section ~~[25-6-502]~~ 75B-1-302;

(b) a provision that allows the trust to be perpetual; or

(c) a provision that is not expressly prohibited by the law of this state.

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

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

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

75-7-301 . Basic effect.

(1) Notice to a person who may represent and bind another person under this part has the same effect as if notice were given directly to the other person.

(2) The consent of a person who may represent and bind another person under this part is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

(3) Except as otherwise provided in Sections 75-7-411 and ~~[25-6-502]~~ 75B-1-302, a person who under this part may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

Section 8. Section **75-7-501** is amended to read:

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

To the extent a beneficiary's interest is not protected by a spendthrift provision or Section ~~[25-6-502]~~ 75B-1-302, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to relief as is appropriate under the circumstances.

Section 9. Section **75-7-505** is amended to read:

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

Regardless of whether the terms of a trust contain a spendthrift provision, the

1082 following rules apply:

- 1083 (1) During the lifetime of the settlor, the property of a revocable trust is subject to the
1084 claims of the settlor's creditors. If a revocable trust has more than one settlor, the
1085 amount the creditor or assignee of a particular settlor may reach may not exceed the
1086 settlor's interest in the portion of the trust attributable to that settlor's contribution.
- 1087 (2) (a) With respect to an irrevocable trust other than an irrevocable trust that meets the
1088 requirements of Section ~~[25-6-502]~~ 75B-1-302, a creditor or assignee of the settlor
1089 may reach the maximum amount that can be distributed to or for the settlor's benefit.
- 1090 (b) With respect to an irrevocable trust that has more than one settlor, other than an
1091 irrevocable trust that meets the requirements of Section ~~[25-6-502]~~ 75B-1-302, the
1092 amount a creditor or assignee of a particular settlor may reach may not exceed the
1093 settlor's interest in the portion of the trust attributable to that settlor's contribution.
- 1094 (c) Notwithstanding Subsections (2)(a) and (b), a creditor of a settlor may not satisfy the
1095 creditor's claim from an irrevocable trust solely because the trustee may make a
1096 discretionary distribution reimbursing the settlor for income tax liability of the settlor
1097 attributable to the income of the irrevocable trust, when the distribution is:
- 1098 (i) subject to the discretion of a trustee who is not the settlor;
1099 (ii) subject to the consent of an advisor who is not the settlor; or
1100 (iii) at the direction of an advisor who is not the settlor.
- 1101 (3) After the death of a settlor, and subject to the settlor's right to direct the source from
1102 which liabilities will be paid, the property of a trust that was revocable at the settlor's
1103 death, but not property received by the trust as a result of the death of the settlor which
1104 is otherwise exempt from the claims of the settlor's creditors, is subject to claims of the
1105 settlor's creditors, costs of administration of the settlor's estate, the expenses of the
1106 settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse
1107 and children to the extent the settlor's probate estate is inadequate to satisfy those claims,
1108 costs, expenses, and allowances.

1109 Section 10. Section **75-7-814** is amended to read:

1110 **75-7-814 . Specific powers of trustee.**

- 1111 (1) Without limiting the authority conferred by Section 75-7-813, a trustee may:
- 1112 (a) collect trust property and accept or reject additions to the trust property from a settlor
1113 or any other person;
- 1114 (b) acquire or sell property, for cash or on credit, at public or private sale;
- 1115 (c) exchange, partition, or otherwise change the character of trust property;

- 1116 (d) deposit trust money in an account in a regulated financial service institution;
- 1117 (e) borrow money, with or without security from any financial institution, including a
- 1118 financial institution that is serving as a trustee or one of its affiliates, and mortgage or
- 1119 pledge trust property for a period within or extending beyond the duration of the trust;
- 1120 (f) with respect to an interest in a proprietorship, partnership, limited liability company,
- 1121 business trust, corporation, or other form of business or enterprise, continue the
- 1122 business or other enterprise and take any action that may be taken by shareholders,
- 1123 members, or property owners, including merging, dissolving, or otherwise changing
- 1124 the form of business organization or contributing additional capital;
- 1125 (g) with respect to stocks or other securities, exercise the rights of an absolute owner,
- 1126 including the right to:
- 1127 (i) vote, or give proxies to vote, with or without power of substitution, or enter into or
- 1128 continue a voting trust agreement;
- 1129 (ii) hold a security in the name of a nominee or in other form without disclosure of
- 1130 the trust so that title may pass by delivery;
- 1131 (iii) pay calls, assessments, and other sums chargeable or accruing against the
- 1132 securities, and sell or exercise stock subscription or conversion rights; and
- 1133 (iv) deposit the securities with a depositary or other regulated financial service
- 1134 institution;
- 1135 (h) with respect to an interest in real property, construct, or make ordinary or
- 1136 extraordinary repairs to, alterations to, or improvements in, buildings or other
- 1137 structures, demolish improvements, raze existing or erect new party walls or
- 1138 buildings, subdivide or develop land, dedicate land to public use or grant public or
- 1139 private easements, and make or vacate plats and adjust boundaries;
- 1140 (i) enter into a lease for any purpose as lessor or lessee, including a lease or other
- 1141 arrangement for exploration and removal of natural resources, with or without the
- 1142 option to purchase or renew, for a period within or extending beyond the duration of
- 1143 the trust;
- 1144 (j) grant an option involving a sale, lease, or other disposition of trust property or
- 1145 acquire an option for the acquisition of property, including an option exercisable
- 1146 beyond the duration of the trust, and exercise an option so acquired;
- 1147 (k) insure the property of the trust against damage or loss and insure the trustee, the
- 1148 trustee's agents, and beneficiaries against liability arising from the administration of
- 1149 the trust;

- 1150 (l) abandon or decline to administer property of no value or of insufficient value to
1151 justify its collection or continued administration;
- 1152 (m) with respect to possible liability for violation of environmental law:
- 1153 (i) inspect or investigate property the trustee holds or has been asked to hold, or
1154 property owned or operated by an organization in which the trustee holds or has
1155 been asked to hold an interest, for the purpose of determining the application of
1156 environmental law with respect to the property;
- 1157 (ii) take action to prevent, abate, or otherwise remedy any actual or potential
1158 violation of any environmental law affecting property held directly or indirectly
1159 by the trustee, whether taken before or after the assertion of a claim or the
1160 initiation of governmental enforcement;
- 1161 (iii) decline to accept property into trust or disclaim any power with respect to
1162 property that is or may be burdened with liability for violation of environmental
1163 law;
- 1164 (iv) compromise claims against the trust which may be asserted for an alleged
1165 violation of environmental law; and
- 1166 (v) pay the expense of any inspection, review, abatement, or remedial action to
1167 comply with environmental law;
- 1168 (n) pay or contest any claim, settle a claim by or against the trust, and release, in whole
1169 or in part, a claim belonging to the trust;
- 1170 (o) pay taxes, assessments, compensation of the trustee and of employees and agents of
1171 the trust, and other expenses incurred in the administration of the trust;
- 1172 (p) exercise elections with respect to federal, state, and local taxes;
- 1173 (q) select a mode of payment under any employee benefit or retirement plan, annuity, or
1174 life insurance payable to the trustee, exercise rights thereunder, including exercise of
1175 the right to indemnification for expenses and against liabilities, and take appropriate
1176 action to collect the proceeds;
- 1177 (r) make loans out of trust property, including loans to a beneficiary on terms and
1178 conditions the trustee considers to be fair and reasonable under the circumstances,
1179 and the trustee has a lien on future distributions for repayment of those loans;
- 1180 (s) pledge trust property to guarantee loans made by others to the beneficiary;
- 1181 (t) appoint a trustee to act in another jurisdiction with respect to trust property located in
1182 the other jurisdiction, confer upon the appointed trustee all of the powers and duties
1183 of the appointing trustee, require that the appointed trustee furnish security, and

- 1184 remove any trustee so appointed;
- 1185 (u) pay an amount distributable to a beneficiary who is under a legal disability or who
- 1186 the trustee reasonably believes is incapacitated, by paying it directly to the
- 1187 beneficiary or applying it for the beneficiary's benefit, or by:
- 1188 (i) paying it to the beneficiary's conservator or, if the beneficiary does not have a
- 1189 conservator, the beneficiary's guardian;
- 1190 (ii) paying it to the beneficiary's custodian under [~~Title 75, Chapter 5a, Uniform~~
- 1191 ~~Transfers to Minors Act~~] Title 75A, Chapter 8, Uniform Transfers to Minors Act;
- 1192 (iii) if the trustee does not know of a conservator, guardian, custodian, or custodial
- 1193 trustee, paying it to an adult relative or other person having legal or physical care
- 1194 or custody of the beneficiary, to be expended on the beneficiary's behalf; or
- 1195 (iv) managing it as a separate fund on the beneficiary's behalf, subject to the
- 1196 beneficiary's continuing right to withdraw the distribution;
- 1197 (v) on distribution of trust property or the division or termination of a trust, make
- 1198 distributions in divided or undivided interests, allocate particular assets in
- 1199 proportionate or disproportionate shares, value the trust property for those purposes,
- 1200 and adjust for resulting differences in valuation;
- 1201 (w) resolve a dispute concerning the interpretation of the trust or its administration by
- 1202 mediation, arbitration, or other procedure for alternative dispute resolution;
- 1203 (x) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to
- 1204 protect trust property and the trustee in the performance of the trustee's duties;
- 1205 (y) sign and deliver contracts and other instruments that are useful to achieve or
- 1206 facilitate the exercise of the trustee's powers; and
- 1207 (z) on termination of the trust, exercise the powers appropriate to finalize the
- 1208 administration of the trust and distribute the trust property to the persons entitled to it.
- 1209 (2) A trustee may delegate investment and management functions that a prudent trustee of
- 1210 comparable skills could properly delegate under the circumstances.
- 1211 (a) The trustee shall exercise reasonable care, skill, and caution in:
- 1212 (i) selecting the agent;
- 1213 (ii) establishing the scope and terms of the delegation consistent with the purposes of
- 1214 the trust; and
- 1215 (iii) periodically reviewing the agent's actions to monitor the agent's performance and
- 1216 compliance with the terms of the delegation.
- 1217 (b) In performing a delegated function, an agent has a duty to the trust to exercise

1218 reasonable care to comply with the terms of the delegation.

1219 (c) A trustee who complies with the requirements of this Subsection (2) is not liable to
1220 the beneficiaries or to the trust for the decisions or actions of the agent to whom the
1221 function was delegated.

1222 (3) The trustee may exercise the powers set forth in this section and in the trust either in the
1223 name of the trust or in the name of the trustee as trustee, specifically including the right
1224 to take title, to encumber or convey assets, including real property, in the name of the
1225 trust. This Subsection (3) applies to a trustee's exercise of trust powers. After May 11,
1226 2010, for recording purposes, the name of the trustee, the address of the trustee, and the
1227 name and date of the trust, shall be included on all recorded documents affecting real
1228 property to which the trust is a party in interest.

1229 Section 11. Section **75-7-816** is amended to read:

1230 **75-7-816 . Recitals when title to real property is in trust -- Failure.**

1231 (1) When title to real property is granted to a person as trustee, the terms of the trust may be
1232 given either:

1233 (a) in the deed of transfer; or

1234 (b) in an instrument signed by the grantor and recorded in the same office as the grant to
1235 the trustee.

1236 (2) If the terms of the trust are not made public as required in Subsection (1), a conveyance
1237 from the trustee is absolute in favor of purchasers for value who take the property
1238 without notice of the terms of the trust.

1239 (3) The terms of the trust recited in the deed of transfer or the instrument recorded under
1240 Subsection (1)(b) shall include:

1241 (a) the name of the trustee;

1242 (b) the address of the trustee; and

1243 (c) the name and date of the trust.

1244 (4) Any real property titled in a trust which has a restriction on transfer described in Section [
1245 25-6-502] 75B-1-302 shall include in the title the words "asset protection trust."

1246 Section 12. Section **75A-1-101** is enacted to read:

1247

TITLE 75A. FIDUCIARIES

1248

CHAPTER 1. FIDUCIARIES

1249

Part 1. General Provisions

1250 **75A-1-101 . Reserved for title definitions.**

1251 Reserved.

1252 Section 13. Section **75A-1-102** is enacted to read:

1253 **75A-1-102 . Transition clause.**

1254 If, at the time a power of attorney, a power of appointment, an advanced health
 1255 care directive, or another legal document was executed, the document contained a
 1256 correct citation to a provision in Title 22, Fiduciaries and Trusts, and Title 75, Utah
 1257 Uniform Probate Code, that, after the execution of the document, was renumbered and
 1258 amended for inclusion in this title, that citation is a valid citation to the same provision
 1259 in this title.

1260 Section 14. Section **75A-1-201**, which is renumbered from Section 22-1-1 is renumbered
 1261 and amended to read:

1262 **Part 2. Payments and Deposits by Fiduciaries**

1263 **~~[22-1-1]~~75A-1-201 . Definitions for part.**

1264 ~~[In this chapter unless the context or subject matter otherwise requires:-]~~ As used
 1265 in this part:

1266 (1) "Fiduciary" ~~[includes-]~~ means:

1267 (a) a trustee under any trust, expressed, implied, resulting or constructive[;] ;

1268 (b) an executor[;] ;

1269 (c) an administrator[;] ;

1270 (d) a guardian[;] ;

1271 (e) a conservator[;] ;

1272 (f) a curator[;] ;

1273 (g) a receiver[;] ;

1274 (h) a trustee in bankruptcy[;] ;

1275 (i) an assignee for the benefit of creditors[;] ;

1276 (j) a partner[;] ;

1277 (k) an agent[;] ;

1278 (l) an officer of a corporation, public or private[;] ;

1279 (m) a public officer~~[, and]~~ ; or

1280 (n) any other person acting in a fiduciary capacity for any person, trust, or estate.

1281 ~~["Principal" includes any person to whom a fiduciary as such owes an obligation.~~

1282 ~~A thing is done "in good faith" when it is in fact done honestly, whether it is done~~

negligently or not.]

(2) "Good faith" means something is in fact done honestly regardless of whether it is done negligently or not.

(3) "Principal" means a person to whom a fiduciary owes an obligation.

Section 15. Section **75A-1-202**, which is renumbered from Section 22-1-11 is renumbered and amended to read:

[22-1-11] 75A-1-202. . Transactions prior to May 12, 1925.

The provisions of this [chapter] part do not apply to transactions taking place prior to May 12, 1925.

Section 16. Section **75A-1-203**, which is renumbered from Section 22-1-2 is renumbered and amended to read:

[22-1-2] 75A-1-203. . Payments or transfers made to a fiduciary.

(1) A person who in good faith pays or transfers to a fiduciary any money or other property [which] that the fiduciary [as such] is authorized to receive is not responsible for the proper application [thereof] of the money or property by the fiduciary[; and no] .

(2) A right or title acquired from the fiduciary in consideration of [such] a payment or transfer described in Subsection (1) is not invalid [in] as a consequence of a misapplication by the fiduciary.

Section 17. Section **75A-1-204**, which is renumbered from Section 22-1-4 is renumbered and amended to read:

[22-1-4] 75A-1-204. . Transfer of negotiable instruments by a fiduciary.

~~[If any negotiable instrument payable or indorsed to a fiduciary as such is endorsed by the fiduciary, or if any negotiable instrument payable or endorsed to his principal is endorsed by a fiduciary empowered to endorse such instrument on behalf of his principal, the indorsee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in endorsing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary, unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, such instrument is transferred by the fiduciary in payment of, or as security for, a personal debt of the fiduciary to the actual knowledge of the creditor, or is transferred in any transaction known by the transferee to be for the personal benefit of the fiduciary, the creditor or other transferee is liable to the principal, if the fiduciary in fact commits a breach of his obligation as fiduciary in transferring the instrument].~~

(1) If a fiduciary endorses a negotiable instrument that is payable or endorsed to the fiduciary or the fiduciary's principal, and the fiduciary has authority to endorse the negotiable instrument on behalf of the principal, the person that receives the negotiable instrument through the endorsement:

(a) is not bound to inquire as to whether the fiduciary is committing a breach of the fiduciary's obligation in endorsing or delivering the negotiable instrument; and

(b) is not required to provide notice that the fiduciary is committing a breach of the fiduciary's obligation, unless the person:

(i) takes the negotiable instrument with actual knowledge that the fiduciary is committing a breach of the fiduciary's obligation; or

(ii) knows that taking the negotiable instrument amounts to bad faith.

(2) Notwithstanding Subsection (1), a person is liable to a principal if:

(a) the fiduciary transfers a negotiable instrument to the person and the person knows that the fiduciary is transferring the negotiable instrument:

(i) as payment of, or as a security for, a personal debt of the fiduciary; or

(ii) for the personal benefit of the fiduciary; and

(b) the fiduciary commits a breach of the fiduciary's obligation in transferring the negotiable instrument to the person.

Section 18. Section **75A-1-205**, which is renumbered from Section 22-1-5 is renumbered and amended to read:

[22-1-5] 75A-1-205. . Checks -- Drawn by a fiduciary and payable to a third person.

~~[If a check or other bill of exchange is drawn by a fiduciary as such, or in the name of his principal by a fiduciary empowered to draw such instrument in the name of his principal, the payee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in drawing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary, unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, such instrument is payable to a personal creditor of the fiduciary and delivered to the creditor in payment of, or as security for, a personal debt of the fiduciary to the actual knowledge of the creditor, or is drawn and delivered in any transaction known by the payee to be for the personal benefit of the fiduciary, the creditor or other payee is liable to the principal, if the fiduciary in fact commits a~~

- breach of his obligation as fiduciary in drawing or delivering the instrument.]
- (1) If a fiduciary draws a check or other bill of exchange in the name of the fiduciary's principal and the fiduciary has authority to draw the check or other bill of exchange in the name of the principal, the person to which the check or other bill of exchange is paid:
- (a) is not bound to inquire as to whether the fiduciary is committing a breach of the fiduciary's obligation in drawing the check or other bill of exchange; and
- (b) is not required to provide notice that the fiduciary is committing a breach of the fiduciary's obligation, unless the person:
- (i) takes the check or other bill of exchange with actual knowledge that the fiduciary is committing a breach of the fiduciary's obligation; or
- (ii) knows that taking the check or other bill of exchange amounts to bad faith.
- (2) Notwithstanding Subsection (1), a person is liable to a principal if:
- (a) the fiduciary writes and delivers the check or other bill of exchange to the person;
- (b) the person knows that the fiduciary is drawing and delivering the check or other bill of exchange for:
- (i) payment of, or as a security for, a personal debt of the fiduciary; or
- (ii) the personal benefit of the fiduciary; and
- (c) the fiduciary commits a breach of the fiduciary's obligation in drawing or delivering the check or other bill of exchange to the person.

Section 19. Section **75A-1-206**, which is renumbered from Section 22-1-6 is renumbered and amended to read:

[22-1-6] 75A-1-206. . Checks drawn by or payable to a fiduciary.

[If a check or other bill of exchange is drawn by a fiduciary as such, or in the name of his principal by a fiduciary empowered to draw such instrument in the name of his principal, payable to the fiduciary personally, or payable to a third person and by him transferred to the fiduciary, and is thereafter transferred by the fiduciary, whether in payment of a personal debt of the fiduciary or otherwise, the transferee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in transferring the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary, unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith.] If a fiduciary draws a check or other bill of exchange in the name of the fiduciary's principal and the fiduciary has authority to draw the check or other bill of exchange that is payable to

1385 the fiduciary or a person that transfers the payment to the fiduciary, the person to
1386 which the check or other bill of exchange is paid:

1387 (1) is not bound to inquire as to whether the fiduciary is committing a breach of the
1388 fiduciary's obligation in transferring the check or other bill of exchange to the fiduciary;
1389 and

1390 (2) is not required to provide notice that the fiduciary is committing a breach of the
1391 fiduciary's obligation, unless the person:

1392 (a) takes the check or other bill of exchange with actual knowledge that the fiduciary is
1393 committing a breach of the fiduciary's obligation; or

1394 (b) knows that taking the check or other bill of exchange amounts to bad faith.

1395 Section 20. Section **75A-1-207**, which is renumbered from Section 22-1-7 is renumbered
1396 and amended to read:

1397 **[22-1-7] 75A-1-207. . Bank deposits in the name of a fiduciary.**

1398 [If a deposit is made in a bank to the credit of a fiduciary as such, the bank is
1399 authorized to pay the amount of the deposit or any part thereof upon the check of the
1400 fiduciary, signed with the name in which such deposit is entered, without being liable
1401 to the principal, unless the bank pays the check with actual knowledge that the
1402 fiduciary is committing a breach of his obligation as fiduciary in drawing the check,
1403 or with knowledge of such facts that its action in paying the check amounts to bad
1404 faith. If, however, such a check is payable to the drawee bank and is delivered to it in
1405 payment of, or as security for, a personal debt of the fiduciary to it, the bank is liable
1406 to the principal, if the fiduciary in fact commits a breach of his obligation as fiduciary
1407 in drawing or delivering the check.]

1408 (1) If a fiduciary deposits a check in a bank in the name of the fiduciary's principal and to
1409 the credit of the fiduciary and the bank is authorized to pay the amount of the deposit or
1410 any part of the deposit, the bank is not liable to the principal unless:

1411 (a) the bank pays the check with actual knowledge that the fiduciary is committing a
1412 breach of the fiduciary's obligation in drawing the check; or

1413 (b) the bank knows that paying the check amounts to bad faith.

1414 (2) Notwithstanding Subsection (1), a bank is liable to a principal if:

1415 (a) the fiduciary deposits a check in the name of the principal as payment to the bank for
1416 payment of, or as security for, a personal debt of the fiduciary; and

1417 (b) the fiduciary commits a breach of the fiduciary's obligation in drawing or delivering
1418 the check to the bank.

Section 21. Section **75A-1-208**, which is renumbered from Section 22-1-8 is renumbered and amended to read:

[22-1-8] 75A-1-208. . Checks drawn in name of a principal.

[If a check is drawn upon the account of his principal in a bank by a fiduciary who is empowered to draw checks upon his principal's account, the bank is authorized to pay such check without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing such check, or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such a check is payable to the drawee bank and is delivered to it in payment of, or as security for, a personal debt of the fiduciary to it, the bank is liable to the principal, if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check.]

(1) If a fiduciary draws a check upon the account of the fiduciary's principal in a bank that is authorized to draw checks upon the principal's account and the bank is authorized to pay the check, the bank is not liable to the principal unless:

- (a) the bank pays the check with actual knowledge that the fiduciary is committing a breach of the fiduciary's obligation in drawing the check; or
- (b) the bank knows that paying the check amounts to bad faith.

(2) Notwithstanding Subsection (1), the bank is liable to a principal if:

- (a) the principal's fiduciary deposits a check in the name of the principal as payment to the bank for payment of, or as security for, a personal debt of the fiduciary; and
- (b) the fiduciary commits a breach of the fiduciary's obligation in drawing or delivering the check to the bank.

Section 22. Section **75A-1-209**, which is renumbered from Section 22-1-9 is renumbered and amended to read:

[22-1-9] 75A-1-209. . Deposits in a fiduciary's personal account.

[If a fiduciary makes a deposit in a bank to his personal credit of checks drawn by him upon an account in his own name as fiduciary, or of checks payable to him as fiduciary, or of checks drawn by him upon an account in the name of his principal, if he is empowered to draw checks thereon, or of checks payable to his principal and indorsed by him, if he is empowered to indorse such checks, or if he otherwise makes a deposit of funds held by him as fiduciary, the bank receiving such deposit is not bound to inquire whether the fiduciary is committing thereby a breach of his obligation as fiduciary; and the bank is authorized to pay the amount of the deposit or

1453 any part thereof upon the personal check of the fiduciary without being liable to the
1454 principal, unless the bank receives the deposit or pays the check with actual
1455 knowledge that the fiduciary is committing a breach of his obligation as fiduciary in
1456 making such deposit or in drawing such check, or with knowledge of such facts that
1457 its action in receiving the deposit or paying the check amounts to bad faith.] If a
1458 principal authorizes a fiduciary to write or endorse a check for the principal, and the
1459 fiduciary writes a check payable to the fiduciary and deposits the check in a bank into
1460 the fiduciary's personal account:

- 1461 (1) the bank is not bound to inquire whether a fiduciary is committing a breach of the
1462 fiduciary's obligation to a principal; and
1463 (2) the bank is authorized to pay the amount of the deposit or any part of a personal check
1464 of the fiduciary without being liable to the principal unless:
1465 (a) the bank deposits the check for a fiduciary with actual knowledge that the fiduciary
1466 is committing a breach of the fiduciary's obligation in depositing the check; or
1467 (b) the bank knows that depositing the check for the fiduciary amounts to bad faith.

1468 Section 23. Section **75A-1-210**, which is renumbered from Section 22-1-10 is renumbered
1469 and amended to read:

1470 **[22-1-10] 75A-1-210. . Deposits in name of several trustees.**

1471 When a deposit is made in a bank in the name of two or more persons as trustees
1472 and a check is drawn upon the trust account by [~~any trustee or trustees~~] a trustee
1473 authorized by [~~the other trustee or trustees~~] another trustee to draw checks upon the
1474 trust account[, ~~neither the payee nor other holder nor the bank is~~] :

- 1475 (1) the payee or bank is not bound to inquire whether [it] the deposit is a breach of trust to
1476 authorize [~~such trustee or trustees~~] a trustee to draw checks upon the trust account[~~, and~~] ;
1477 and
1478 (2) the payee or bank is not liable[~~,~~] unless the circumstances are such that the action of the [
1479 payee or other holder or the bank] payee or bank amounts to bad faith.

1480 Section 24. Section **75A-2-101** is enacted to read:

1481 **CHAPTER 2. UNIFORM POWER OF ATTORNEY ACT**

1482 **Part 1. General Provisions**

1483 **75A-2-101 . Reserved.**

1484 Reserved.

1485 Section 25. Section **75A-2-102**, which is renumbered from Section 75-9-102 is renumbered

1486 and amended to read:

1487 **[75-9-102] 75A-2-102. . Definitions for chapter.**

1488 ~~[In]~~ As used in this chapter:

1489 (1) (a) "Agent" means a person granted authority to act for a principal under a power of
1490 attorney, whether denominated an agent, attorney-in-fact, or otherwise. ~~[The term]~~

1491 (b) "Agent" includes an original agent, coagent, successor agent, and person to which an
1492 agent's authority is delegated.

1493 (2) "Beneficiary" means the same as that term is defined in Section 75-1-201.

1494 (3) "Beneficiary designation" means the same as that term is defined in Section 75-1-201.

1495 (4) "Child" means the same as that term is defined in Section 75-1-201.

1496 (5) "Claims" means the same as that term is defined in Section 75-1-201.

1497 (6) "Conservator" means the same as that term is defined in Section 75-1-201.

1498 (7) "Descendant" means the same as that term is defined in Section 75-1-201.

1499 ~~[(2)]~~ (8) "Durable," with respect to a power of attorney, means not terminated by the
1500 principal's incapacity.

1501 ~~[(3)]~~ (9) "Electronic" means relating to technology having electrical, digital, magnetic,
1502 wireless, optical, electromagnetic, or similar capabilities.

1503 (10) "Estate" means the same as that term is defined in Section 75-1-201.

1504 (11) "Fiduciary" means the same as that term is defined in Section 75-1-201.

1505 ~~[(4)]~~ (12) "Good faith" means honesty in fact.

1506 (13) "Guardian" means the same as that term is defined in Section 75-1-201.

1507 ~~[(5)]~~ (14) "Incapacity" means the inability of an individual to manage property or business
1508 affairs because the individual:

1509 (a) has an impairment in the ability to receive and evaluate information or make or
1510 communicate decisions even with the use of technological assistance; or

1511 (b) is:

1512 (i) missing;

1513 (ii) detained, including incarcerated in a penal system; or

1514 (iii) outside the United States and unable to return.

1515 (15) "Lease" means the same as that term is defined in Section 75-1-201.

1516 (16) "Mortgage" means the same as that term is defined in Section 75-1-201.

1517 (17) "Organization" means the same as that term is defined in Section 75-1-201.

1518 ~~[(6)]~~ (18) "Person" means an individual, corporation, business trust, estate, trust,
1519 partnership, limited liability company, association, joint venture, public corporation,

1520 government or governmental subdivision, agency, or instrumentality, or any other legal
1521 or commercial entity.

1522 (19) "Personal representative" means the same as that term is defined in Section 75-1-201.

1523 [(7)] (20) "Power of attorney" means a writing or other record that grants authority to an
1524 agent to act in the place of the principal, whether or not the term power of attorney is
1525 used.

1526 [(8)] (21) (a) "Presently exercisable general power of appointment," with respect to
1527 property or a property interest subject to a power of appointment, means power
1528 exercisable at the time in question to vest absolute ownership in the principal
1529 individually, the principal's estate, the principal's creditors, or the creditors of the
1530 principal's estate. [The term]

1531 (b) "Presently exercisable general power of appointment" includes a power of
1532 appointment not exercisable until the occurrence of a specified event, the satisfaction
1533 of an ascertainable standard, or the passage of a specified period only after the
1534 occurrence of the specified event, the satisfaction of the ascertainable standard, or the
1535 passage of the specified period. [The term]

1536 (c) "Presently exercisable general power of appointment" does not include a power
1537 exercisable in a fiduciary capacity or only by will.

1538 [(9)] (22) "Principal" means an individual who grants authority to an agent in a power of
1539 attorney.

1540 [(10)] (23) "Property" means anything that may be the subject of ownership, whether real or
1541 personal, or legal or equitable, or any interest or right therein.

1542 [(11)] (24) "Record" means information that is inscribed on a tangible medium or that is
1543 stored in an electronic or other medium and is retrievable in perceivable form.

1544 (25) "Security" means the same as that term is defined in Section 75-1-201.

1545 [(12)] (26) "Sign" means, with present intent to authenticate or adopt a record:

1546 (a) to execute or adopt a tangible symbol; or

1547 (b) to attach to or logically associate with the record an electronic sound, symbol, or
1548 process.

1549 [(13)] (27) "State" means a state of the United States, the District of Columbia, Puerto Rico,
1550 the United States Virgin Islands, or any territory or insular possession subject to the
1551 jurisdiction of the United States.

1552 [(14)] (28) (a) "Stocks and bonds" means stocks, bonds, mutual funds, and all other types
1553 of securities and financial instruments, whether held directly, indirectly, or in any

1554 other manner. ~~[The term]~~

1555 (b) "Stocks and bonds" does not include commodity futures contracts and call or put
1556 options on stocks or stock indexes.

1557 (29) "Trust" means the same as that term is defined in Section 75-1-201.

1558 (30) "Trustee" means the same as that term is defined in Section 75-1-201.

1559 (31) "Will" means the same as that term is defined in Section 75-1-201.

1560 Section 26. Section **75A-2-103**, which is renumbered from Section 75-9-103 is renumbered
1561 and amended to read:

1562 **~~[75-9-103]~~ 75A-2-103. . Applicability.**

1563 This chapter applies to all powers of attorney except:

1564 (1) a power to the extent it is coupled with an interest in the subject of the power, including
1565 a power given to or for the benefit of a creditor in connection with a credit transaction;

1566 (2) a power to make health care decisions;

1567 (3) a proxy or other delegation to exercise voting rights or management rights with respect
1568 to an entity; and

1569 (4) a power created on a form prescribed by a government or governmental subdivision,
1570 agency, or instrumentality for a governmental purpose.

1571 Section 27. Section **75A-2-104**, which is renumbered from Section 75-9-104 is renumbered
1572 and amended to read:

1573 **~~[75-9-104]~~ 75A-2-104. . Power of attorney is durable.**

1574 A power of attorney created under this chapter is durable unless it expressly
1575 provides that it is terminated by the incapacity of the principal.

1576 Section 28. Section **75A-2-105**, which is renumbered from Section 75-9-105 is renumbered
1577 and amended to read:

1578 **~~[75-9-105]~~ 75A-2-105. . Execution of power of attorney.**

1579 (1) (a) A power of attorney shall be signed by the principal or in the principal's
1580 conscious presence by another individual directed by the principal to sign the
1581 principal's name on the power of attorney before a notary public or other individual
1582 authorized by the law to take acknowledgments.

1583 (b) A signature on a power of attorney is presumed to be genuine if the principal
1584 acknowledges the signature before a notary public or other individual authorized by
1585 law to take acknowledgments.

1586 (2) If the principal resides or is about to reside in a hospital, assisted living, skilled nursing,
1587 or similar facility, at the time of execution of the power of attorney, the principal may

not name any agent that is the owner, operator, health care provider, or employee of the hospital, assisted living facility, skilled nursing, or similar residential care facility unless:

(a) the agent is the spouse, legal guardian, or next of kin of the principal~~[-or-unless-]~~ ; or

(b) the agent's authority is strictly limited to the purpose of assisting the principal to establish eligibility for Medicaid.

(3) A violation of Subsection (2) is a violation of Section 76-5-111.4.

Section 29. Section **75A-2-106**, which is renumbered from Section 75-9-106 is renumbered and amended to read:

[75-9-106] 75A-2-106. . Validity of power of attorney.

(1) A power of attorney executed in this state on or after May 10, 2016, is valid if its execution complies with Section ~~[75-9-105]~~ 75A-2-105.

(2) A power of attorney executed in this state before May 10, 2016, is valid if its execution complied with the law of this state as it existed at the time of execution.

(3) A power of attorney executed other than in this state is valid in this state if, when the power of attorney was executed, the execution complied with:

(a) the law of the jurisdiction that determines the meaning and effect of the power of attorney pursuant to Section ~~[75-9-107]~~ 75A-2-107; or

(b) the requirements for a military power of attorney pursuant to 10 U.S.C. Sec. 1044b.

(4) Except as otherwise provided by statute other than this chapter, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original. For transactions involving real property, the copy of the power of attorney may be recorded in the county where the transaction lies when attached to an affidavit of the person accepting the power of attorney.

Section 30. Section **75A-2-107**, which is renumbered from Section 75-9-107 is renumbered and amended to read:

[75-9-107] 75A-2-107. . Meaning and effect of power of attorney.

The meaning and effect of a power of attorney is determined by the law of the jurisdiction indicated in the power of attorney and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power of attorney was executed.

Section 31. Section **75A-2-108**, which is renumbered from Section 75-9-108 is renumbered and amended to read:

[75-9-108] 75A-2-108. . Nomination of conservator or guardian -- Adequacy of power of attorney -- Relation of agent to conservator or other fiduciary.

(1) In a power of attorney, a principal may nominate a conservator of the principal's estate

or a guardian of the principal's person for consideration by the court if protective proceedings, as defined in Section 75-1-201, for the principal's estate or person are begun after the principal executes the power of attorney.

- (2) If a principal executes a power of attorney and a petition is filed to appoint a conservator of the principal's estate, the court shall consider whether:
- (a) the provisions in the power of attorney are adequate to manage and protect the principal's estate without appointing a conservator; or
 - (b) the appointment of a conservator is necessary to manage and protect the principal's estate.
- (3) If the court appoints a conservator of the principal's estate or a guardian of the principal's person, the court shall appoint a conservator or a guardian in accordance with the principal's most recent nomination unless there is good cause shown or disqualification.
- (4) If, after a principal executes a power of attorney, the court determines that an appointment of a conservator or other fiduciary is necessary to manage and protect some or all of the principal's estate:
- (a) the agent named in the principal's power of attorney is accountable to the conservator or other fiduciary as well as the principal; and
 - (b) the power of attorney is not terminated and the agent's authority continues unless limited, suspended, or terminated by the court.

Section 32. Section **75A-2-109**, which is renumbered from Section 75-9-109 is renumbered and amended to read:

~~[75-9-109]~~ 75A-2-109. . When power of attorney is effective.

- (1) A power of attorney is effective when executed unless the principal provides in the power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.
- (2) If a power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one or more persons to determine in a writing or other record that the event or contingency has occurred.
- (3) If a power of attorney becomes effective upon the principal's incapacity and the principal has not authorized a person to determine whether the principal is incapacitated, or the person authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination in a writing or other record by:
- (a) a physician that the principal is incapacitated within the meaning of Subsection [

1657 ~~75-9-102(5)(a)]~~ 75A-2-102(14)(a); or

1658 (b) an attorney at law, a judge, or an appropriate governmental official that the principal
1659 is incapacitated within the meaning of Subsection ~~[75-9-102(5)(b)]~~ 75A-2-102(14)(b).

1660 (4) A person authorized by the principal in the power of attorney to determine that the
1661 principal is incapacitated may act as the principal's personal representative pursuant to
1662 the Health Insurance Portability and Accountability Act, Sections 1171 through 1179 of
1663 the Social Security Act, 42 U.S.C. Sec. 1320d, and applicable regulations, to obtain
1664 access to the principal's health care information and communicate with the principal's
1665 health care provider.

1666 Section 33. Section **75A-2-110**, which is renumbered from Section 75-9-110 is renumbered
1667 and amended to read:

1668 ~~[75-9-110]~~ **75A-2-110. . Termination of power of attorney or agent's authority.**

1669 (1) A power of attorney terminates when:

- 1670 (a) the principal dies;
- 1671 (b) the principal becomes incapacitated, if the power of attorney is not durable;
- 1672 (c) the principal revokes the power of attorney;
- 1673 (d) the power of attorney provides that it terminates;
- 1674 (e) the purpose of the power of attorney is accomplished; or
- 1675 (f) the principal revokes the agent's authority or the agent dies, becomes incapacitated,
1676 or resigns, and the power of attorney does not provide for another agent to act under
1677 the power of attorney.

1678 (2) An agent's authority terminates when:

- 1679 (a) the principal revokes the authority;
- 1680 (b) the agent dies, becomes incapacitated, or resigns;
- 1681 (c) an action is filed for the dissolution or annulment of the agent's marriage to the
1682 principal or their legal separation, unless the power of attorney otherwise provides; or
- 1683 (d) the power of attorney terminates.

1684 (3) Unless the power of attorney otherwise provides, an agent's authority is exercisable until
1685 the authority terminates under Subsection (2), notwithstanding a lapse of time since the
1686 execution of the power of attorney.

1687 (4) (a) Termination of an agent's authority or of a power of attorney is not effective as to
1688 the agent or another person that, without actual knowledge of the termination, acts in
1689 good faith under the power of attorney.

1690 (b) An act so performed, unless otherwise invalid or unenforceable, binds the principal

and the principal's successors in interest.

(5) (a) Incapacity of the principal of a power of attorney that is not durable does not revoke or terminate the power of attorney as to an agent or other person that, without actual knowledge of the incapacity, acts in good faith under the power of attorney.

(b) An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(6) The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other powers of attorney are revoked.

(7) The principal may revoke or amend a power of attorney:

(a) by substantial compliance with a method provided in the terms of the power of attorney that expressly excludes all other methods for amending or revoking the power of attorney; or

(b) if the terms of the power of attorney do not provide a method or the method provided in the terms is not expressly made exclusive, by any other method manifesting clear and convincing evidence of the principal's intent.

Section 34. Section **75A-2-111**, which is renumbered from Section 75-9-111 is renumbered and amended to read:

[75-9-111] 75A-2-111. . Coagents and successor agents.

(1) (a) A principal may designate two or more persons to act as coagents.

(b) Unless the power of attorney otherwise provides, each coagent may exercise its authority independently.

(2) (a) A principal may designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve.

(b) A principal may grant authority to designate one or more successor agents to an agent or other person designated by name, office, or function.

(c) Unless the power of attorney otherwise provides, a successor agent:

~~[(a)]~~ (i) has the same authority as that granted to the original agent; and

~~[(b)]~~ (ii) may not act until all predecessor agents have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve.

(3) Except as otherwise provided in the power of attorney and Subsection (4), an agent that does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

(4) (a) An agent that has accepted appointment and that has actual knowledge of a

breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if the principal is incapacitated, take any action reasonably appropriate in the circumstances to safeguard the principal's best interest.

(b) An agent that fails to notify the principal or take action as required by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken action.

Section 35. Section **75A-2-112**, which is renumbered from Section 75-9-112 is renumbered and amended to read:

[75-9-112] 75A-2-112. . Reimbursement and compensation of agent.

Unless the power of attorney otherwise provides, an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal and to compensation that is reasonable under the circumstances.

Section 36. Section **75A-2-113**, which is renumbered from Section 75-9-113 is renumbered and amended to read:

[75-9-113] 75A-2-113. . Agent's acceptance.

Except as otherwise provided in the power of attorney, a person accepts appointment as an agent under a power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance.

Section 37. Section **75A-2-114**, which is renumbered from Section 75-9-114 is renumbered and amended to read:

[75-9-114] 75A-2-114. . Agent's duties.

(1) Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall:

- (a) act in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest;
- (b) act in good faith;
- (c) act only within the scope of authority granted in the power of attorney; and
- (d) comply with the terms of the power of attorney.

(2) (a) Except as otherwise provided in the power of attorney or other provision of this chapter, an agent that has accepted appointment shall have no further obligation to act under the power of attorney.

(b) However, with respect to any action taken by the agent under the power of attorney, the agent shall:

- 1759 ~~[(a)]~~ (i) act loyally for the principal's benefit;
- 1760 ~~[(b)]~~ (ii) act so as not to create a conflict of interest that impairs the agent's ability to
- 1761 act impartially in the principal's best interest;
- 1762 ~~[(c)]~~ (iii) act with the care, competence, and diligence ordinarily exercised by agents
- 1763 in similar circumstances;
- 1764 ~~[(d)]~~ (iv) keep a record of all receipts, disbursements, and transactions made on behalf
- 1765 of the principal;
- 1766 ~~[(e)]~~ (v) cooperate with a person that has authority to make health care decisions for
- 1767 the principal to carry out the principal's reasonable expectations to the extent
- 1768 actually known by the agent and, otherwise, act in the principal's best interest; and
- 1769 ~~[(f)]~~ (vi) attempt to preserve the principal's estate plan, to the extent actually known
- 1770 by the agent, if preserving the plan is consistent with the principal's best interest
- 1771 based on all relevant factors, including:
- 1772 ~~[(i)]~~ (A) the value and nature of the principal's property;
- 1773 ~~[(ii)]~~ (B) the principal's foreseeable obligations and need for maintenance;
- 1774 ~~[(iii)]~~ (C) minimization of taxes, including income, estate, inheritance,
- 1775 generation-skipping transfer, and gift taxes; and
- 1776 ~~[(iv)]~~ (D) eligibility for a benefit, a program, or assistance under a statute, rule, or
- 1777 regulation.
- 1778 (3) An agent that acts in good faith is not liable to any beneficiary of the principal's estate
- 1779 plan for failure to preserve the plan.
- 1780 (4) An agent that acts with care, competence, and diligence for the best interest of the
- 1781 principal is not liable solely because the agent also benefits from the act or has an
- 1782 individual or conflicting interest in relation to the property or affairs of the principal.
- 1783 (5) If an agent is selected by the principal because of special skills or expertise possessed
- 1784 by the agent or in reliance on the agent's representation that the agent has special skills
- 1785 or expertise, the special skills or expertise shall be considered in determining whether
- 1786 the agent has acted with care, competence, and diligence under the circumstances.
- 1787 (6) Absent a breach of duty to the principal, an agent is not liable if the value of the
- 1788 principal's property declines.
- 1789 (7) An agent that exercises authority to delegate to another person the authority granted by
- 1790 the principal or that engages another person on behalf of the principal is not liable for an
- 1791 act, error of judgment, or default of that person if the agent exercises care, competence,
- 1792 and diligence in selecting and monitoring the person.

(8) (a) Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal, an interested person, as defined in ~~[Subsection 75-1-201(24)]~~ Section 75-1-201, after the principal's incapacity, or upon the death of the principal, by the personal representative or successor in interest of the principal's estate.

(b) If so requested, within 30 days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional 30 days.

Section 38. Section **75A-2-115**, which is renumbered from Section 75-9-115 is renumbered and amended to read:

~~[75-9-115]~~ 75A-2-115. . Exoneration of agent.

A provision in a power of attorney relieving an agent of liability for breach of duty is binding on the principal and the principal's successors in interest except to the extent the provision:

- (1) relieves the agent of liability for breach of duty committed dishonestly, with an improper motive, or with reckless indifference to the purposes of the power of attorney or the best interest of the principal; or
- (2) was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.

Section 39. Section **75A-2-116**, which is renumbered from Section 75-9-116 is renumbered and amended to read:

~~[75-9-116]~~ 75A-2-116. . Judicial relief.

(1) The following persons may petition a court to construe a power of attorney or review the agent's conduct and grant appropriate relief:

- (a) the principal or the agent;
- (b) a guardian, conservator, or other fiduciary acting for the principal;
- (c) a person authorized to make health care decisions for the principal;
- (d) the principal's spouse, parent as defined in Section 75-1-201, or descendant;
- (e) an individual who would qualify as a presumptive heir of the principal;
- (f) a person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal

- 1827 that has a financial interest in the principal's estate;
- 1828 (g) a governmental agency having regulatory authority to protect the welfare of the
- 1829 principal;
- 1830 (h) the principal's caregiver or another person that demonstrates sufficient interest in the
- 1831 principal's welfare; and
- 1832 (i) a person asked to accept the power of attorney.

1833 (2) Upon motion by the principal, the court shall dismiss a petition filed under this section,

1834 unless the court finds that the principal lacks capacity to revoke the agent's authority or

1835 the power of attorney.

1836 Section 40. Section **75A-2-117**, which is renumbered from Section 75-9-117 is renumbered

1837 and amended to read:

1838 ~~[75-9-117]~~ **75A-2-117. . Agent's liability.**

1839 An agent that violates this chapter is liable to the principal or the principal's

1840 successors in interest for the amount required to:

- 1841 (1) restore the value of the principal's property to what it would have been had the violation
- 1842 not occurred; and
- 1843 (2) reimburse the principal or the principal's successors in interest for the attorney fees and
- 1844 costs paid on the agent's behalf.

1845 Section 41. Section **75A-2-118**, which is renumbered from Section 75-9-118 is renumbered

1846 and amended to read:

1847 ~~[75-9-118]~~ **75A-2-118. . Agent's resignation -- Notice.**

1848 Unless the power of attorney provides a different method for an agent's

1849 resignation, an agent may resign by giving notice to the principal and, if the principal is

1850 incapacitated:

- 1851 (1) to the guardian, if one has been appointed for the principal, and a coagent or successor
- 1852 agent; or
- 1853 (2) if there is no person described in Subsection (1), to:
- 1854 (a) the principal's caregiver;
- 1855 (b) another person reasonably believed by the agent to have sufficient interest in the
- 1856 principal's welfare; or
- 1857 (c) a governmental agency having authority to protect the welfare of the principal.

1858 Section 42. Section **75A-2-119**, which is renumbered from Section 75-9-119 is renumbered

1859 and amended to read:

1860 ~~[75-9-119]~~ **75A-2-119. . Acceptance of and reliance upon acknowledged power of**

1861 **attorney.**

1862 (1) ~~[For purposes of this section and Section 75-9-120]~~ As used in this section,

1863 "acknowledged" means purportedly verified before a notary public or other individual
1864 authorized to take acknowledgements.

1865 (2) A person that in good faith accepts an acknowledged power of attorney without actual
1866 knowledge that the signature is not genuine may rely upon the presumption under
1867 Section ~~[75-9-105]~~ 75A-2-105 that the signature is genuine.

1868 (3) A person that in good faith accepts an acknowledged power of attorney without actual
1869 knowledge that the power of attorney is void, invalid, or terminated, that the purported
1870 agent's authority is void, invalid, or terminated, or that the agent is exceeding or
1871 improperly exercising the agent's authority may rely upon the power of attorney as if the
1872 power of attorney were genuine, valid, and still in effect, the agent's authority were
1873 genuine, valid, and still in effect, and the agent had not exceeded and had properly
1874 exercised the authority.

1875 (4) A person that is asked to accept an acknowledged power of attorney may request, and
1876 rely upon, without further investigation:

1877 (a) an agent's certification under penalty of perjury of any factual matter concerning the
1878 principal, agent, or power of attorney;

1879 (b) an English translation of the power of attorney if the power of attorney contains, in
1880 whole or in part, language other than English; and

1881 (c) an opinion of counsel as to any matter of law concerning the power of attorney if the
1882 person making the request provides in a writing or other record the reason for the
1883 request.

1884 (5) An English translation or an opinion of counsel requested under this section shall be
1885 provided at the principal's expense unless the request is made more than seven business
1886 days after the power of attorney is presented for acceptance.

1887 (6) For purposes of this section and Section ~~[75-9-120]~~ 75A-2-120, a person that conducts
1888 activities through employees is without actual knowledge of a fact relating to a power of
1889 attorney, a principal, or an agent if the employee conducting the transaction involving
1890 the power of attorney is without actual knowledge of the fact.

1891 Section 43. Section **75A-2-120**, which is renumbered from Section 75-9-120 is renumbered
1892 and amended to read:

1893 ~~[75-9-120]~~ **75A-2-120. . Liability for refusal to accept acknowledged power of**
1894 **attorney.**

- 1895 (1) As used in this section, "acknowledged" means the same as that term is defined in
1896 Section 75A-2-119.
- 1897 (2) Except as otherwise provided in Subsection [~~(2)~~] (3):
- 1898 (a) a person shall either accept an acknowledged power of attorney or request a
1899 certification, a translation, or an opinion of counsel under Subsection [~~75-9-119(4)~~]
1900 75A-2-119(4) no later than seven business days after presentation of the power of
1901 attorney for acceptance;
- 1902 (b) if a person requests a certification, a translation, or an opinion of counsel under
1903 Subsection [~~75-9-119(4)~~] 75A-2-119(4), the person shall accept the power of attorney
1904 no later than five business days after receipt of the certification, translation, or
1905 opinion of counsel; and
- 1906 (c) a person may not require an additional or different form of power of attorney for
1907 authority granted in the power of attorney presented.
- 1908 [~~(2)~~] (3) A person is not required to accept an acknowledged power of attorney if:
- 1909 (a) the person is not otherwise required to engage in a transaction with the principal in
1910 the same circumstances;
- 1911 (b) engaging in a transaction with the agent or the principal in the same circumstances
1912 would be inconsistent with federal law;
- 1913 (c) the person has actual knowledge of the termination of the agent's authority or of the
1914 power of attorney before exercise of the power;
- 1915 (d) a request for a certification, a translation, or an opinion of counsel under Subsection [~~75-9-119(4)~~]
1916 75A-2-119(4) is refused;
- 1917 (e) the person in good faith believes that the power is not valid or that the agent does not
1918 have the authority to perform the act requested, whether or not a certification, a
1919 translation, or an opinion of counsel under Subsection [~~75-9-119(4)~~] 75A-2-119(4)
1920 has been requested or provided; or
- 1921 (f) the person makes, or has actual knowledge that another person has made, a report to
1922 the Division of Aging and Adult Services stating a good faith belief that the principal
1923 may be subject to physical or financial abuse, neglect, exploitation, or abandonment
1924 by the agent or a person acting for or with the agent.
- 1925 [~~(3)~~] (4) A person that refuses in violation of this section to accept an acknowledged power
1926 of attorney is subject to:
- 1927 (a) a court order mandating acceptance of the power of attorney; and
- 1928 (b) liability for reasonable [~~attorney's~~] attorney fees and costs incurred in any action or

1929 proceeding that confirms the validity of the power of attorney or mandates
 1930 acceptance of the power of attorney.

1931 [(4)] (5) Court proceedings under this section shall be conducted pursuant to the terms in the
 1932 Uniform Probate Code governing venue and procedures.

1933 Section 44. Section **75A-2-121**, which is renumbered from Section 75-9-121 is renumbered
 1934 and amended to read:

1935 ~~[75-9-121]~~ **75A-2-121. . Principles of law and equity.**

1936 Unless displaced by a provision of this chapter, the principles of law and equity
 1937 supplement this act.

1938 Section 45. Section **75A-2-122**, which is renumbered from Section 75-9-122 is renumbered
 1939 and amended to read:

1940 ~~[75-9-122]~~ **75A-2-122. . Laws applicable to financial institutions and entities.**

1941 This chapter does not supersede any other law applicable to financial institutions
 1942 or other entities, and the other law controls if inconsistent with this chapter.

1943 Section 46. Section **75A-2-123**, which is renumbered from Section 75-9-123 is renumbered
 1944 and amended to read:

1945 ~~[75-9-123]~~ **75A-2-123. . Remedies under other law.**

1946 The remedies under this chapter are not exclusive and do not abrogate any right or
 1947 remedy under the law of this state other than this chapter.

1948 Section 47. Section **75A-2-201**, which is renumbered from Section 75-9-201 is renumbered
 1949 and amended to read:

1950

Part 2. Authority

1951 ~~[75-9-201]~~ **75A-2-201. . Authority that requires specific grant -- Grant of general authority.**

1952 (1) An agent under a power of attorney may do the following on behalf of the principal or
 1953 with the principal's property only if the power of attorney expressly grants the agent the
 1954 authority, and exercise of the authority is not otherwise prohibited by another agreement
 1955 or instrument to which the authority or property is subject:

1956 (a) create, amend, revoke, or terminate an inter vivos trust;

1957 (b) make a gift;

1958 (c) create or change rights of survivorship;

1959 (d) create or change a beneficiary designation;

1960 (e) delegate authority granted under the power of attorney;

1961 (f) waive the principal's right to be a beneficiary of a joint and survivor annuity,

- 1962 including a survivor benefit under a retirement plan;
- 1963 (g) exercise fiduciary powers that the principal has authority to delegate; or
- 1964 (h) disclaim property or otherwise exercise a power of appointment.
- 1965 (2) Notwithstanding a grant of authority to do an act described in Subsection (1), unless the
- 1966 power of attorney otherwise provides, an agent that is not an ancestor, spouse, or
- 1967 descendant of the principal may not exercise authority under a power of attorney to
- 1968 create in the agent, or in an individual to whom the agent owes a legal obligation of
- 1969 support, an interest in the principal's property, whether by gift, right of survivorship,
- 1970 beneficiary designation, disclaimer, or otherwise.
- 1971 (3) Subject to Subsections (1), (2), (4), and (5), if a power of attorney grants to an agent
- 1972 authority to do all acts that a principal could do, the agent has the general authority
- 1973 described in Sections ~~[75-9-204 through 75-9-216]~~ 75A-2-204 through 75A-2-216.
- 1974 (4) Unless the power of attorney otherwise provides, a grant of authority to make a gift is
- 1975 subject to Section ~~[75-9-217]~~ 75A-2-217.
- 1976 (5) Subject to Subsections (1), (2), and (4), if the subjects over which authority is granted in
- 1977 a power of attorney are similar or overlap, the broadest authority controls.
- 1978 (6) Authority granted in a power of attorney is exercisable with respect to property that the
- 1979 principal has when the power of attorney is executed or acquires later, whether or not the
- 1980 property is located in this state and whether or not the authority is exercised or the power
- 1981 of attorney is executed in this state.
- 1982 (7) An act performed by an agent pursuant to a power of attorney has the same effect,
- 1983 inures to the benefit of, and binds the principal and the principal's successors in interest
- 1984 as if the principal had performed the act.
- 1985 Section 48. Section **75A-2-202**, which is renumbered from Section 75-9-202 is renumbered
- 1986 and amended to read:
- 1987 **~~[75-9-202]~~ 75A-2-202. . Incorporation of authority.**
- 1988 (1) An agent has authority described in this part if the power of attorney refers to general
- 1989 authority with respect to the descriptive term for the subjects stated in Sections ~~[75-9-204~~
- 1990 ~~through 75-9-217]~~ 75A-2-204 through 75A-2-217 or cites the section in which the
- 1991 authority is described.
- 1992 (2) A reference in a power of attorney to general authority with respect to the descriptive
- 1993 term for a subject in Sections ~~[75-9-204 through 75-9-217]~~ 75A-2-204 through
- 1994 75A-2-217 or a citation to a section of Sections ~~[75-9-204 through 75-9-217]~~ 75A-2-204
- 1995 through 75A-2-217 incorporates the entire section as if it were set out in full in the

1996 power of attorney.

1997 (3) A principal may modify authority incorporated by reference.

1998 Section 49. Section **75A-2-203**, which is renumbered from Section 75-9-203 is renumbered
1999 and amended to read:

2000 **[75-9-203] 75A-2-203. . Construction of authority generally.**

2001 Except as otherwise provided in the power of attorney, by executing a power of
2002 attorney that incorporates by reference a subject described in Sections [75-9-204 through
2003 75-9-217] 75A-2-204 through 75A-2-217 or that grants to an agent authority to do all
2004 acts that a principal could do pursuant to Subsection [75-9-201(3)] 75A-2-201(3), a
2005 principal authorizes the agent, with respect to that subject, to:

2006 (1) demand, receive, and obtain, by litigation or otherwise, money or another thing of value
2007 to which the principal is, may become, or claims to be entitled, and conserve, invest,
2008 disburse, or use anything so received or obtained for the purposes intended;

2009 (2) contract in any manner with any person, on terms agreeable to the agent, to accomplish
2010 a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate,
2011 release, or modify the contract or another contract made by or on behalf of the principal;

2012 (3) execute, acknowledge, seal, deliver, file, or record any instrument or communication the
2013 agent considers desirable to accomplish a purpose of a transaction, including creating at
2014 any time a schedule listing some or all of the principal's property and attaching it to the
2015 power of attorney;

2016 (4) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose
2017 or accept a compromise with respect to a claim existing in favor of or against the
2018 principal or intervene in litigation relating to the claim;

2019 (5) seek on the principal's behalf the assistance of a court or other governmental agency to
2020 carry out an act authorized in the power of attorney;

2021 (6) engage, compensate, and discharge an attorney, accountant, discretionary investment
2022 manager, expert witness, or other advisor;

2023 (7) prepare, execute, and file a record, report, or other document to safeguard or promote
2024 the principal's interest under a statute or regulation;

2025 (8) communicate with any representative or employee of a government or governmental
2026 subdivision, agency, or instrumentality on behalf of the principal;

2027 (9) access communications intended for, and communicate on behalf of the principal,
2028 whether by mail, electronic transmission, telephone, or other means; and

2029 (10) do any lawful act with respect to the subject and all property related to the subject.

2030 Section 50. Section **75A-2-204**, which is renumbered from Section 75-9-204 is renumbered
2031 and amended to read:

2032 ~~[75-9-204]~~ **75A-2-204. . Real property.**

2033 Unless the power of attorney otherwise provides, language in a power of attorney
2034 granting general authority with respect to real property authorizes the agent to:

2035 (1) demand, buy, lease, receive, accept as a gift or as security for an extension of credit, or
2036 otherwise acquire or reject an interest in real property or a right incident to real property;

2037 (2) (a) sell;

2038 (b) exchange;

2039 (c) convey with or without covenants, representations, or warranties;

2040 (d) quitclaim;

2041 (e) release;

2042 (f) surrender;

2043 (g) retain title for security;

2044 (h) encumber;

2045 (i) partition;

2046 (j) consent to partitioning;

2047 (k) subject to an easement or covenant;

2048 (l) subdivide;

2049 (m) apply for zoning or other governmental permits;

2050 (n) plat or consent to platting;

2051 (o) develop;

2052 (p) grant an option concerning;

2053 (q) lease;

2054 (r) sublease;

2055 (s) contribute to an entity in exchange for an interest in that entity; or

2056 (t) otherwise grant or dispose of an interest in real property or a right incident to real
2057 property;

2058 (3) pledge or mortgage an interest in real property or right incident to real property as
2059 security to borrow money or pay, renew, or extend the time of payment of a debt of the
2060 principal or a debt guaranteed by the principal;

2061 (4) release, assign, satisfy, or enforce by litigation or otherwise a mortgage, deed of trust,
2062 conditional sale contract, encumbrance, lien, or other claim to real property that exists or
2063 is asserted;

- (5) manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including:
- (a) insuring against liability or casualty or other loss;
 - (b) obtaining or regaining possession of or protecting the interest or right by litigation or otherwise;
 - (c) paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments; and
 - (d) purchasing supplies, hiring assistance or labor, and making repairs or alterations to the real property;
- (6) use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;
- (7) participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, hold, and act with respect to stocks and bonds or other property received in a plan of reorganization, including:
- (a) selling or otherwise disposing of stocks and bonds;
 - (b) exercising or selling an option, right of conversion, or similar right with respect to stocks and bonds; and
 - (c) exercising any voting rights in person or by proxy;
- (8) change the form of title of an interest in or right incident to real property; and
- (9) dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.

Section 51. Section **75A-2-205**, which is renumbered from Section 75-9-205 is renumbered and amended to read:

[75-9-205] 75A-2-205. . Tangible personal property.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to tangible personal property authorizes the agent to:

- (1) demand, buy, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject ownership or possession of tangible personal property or an interest in tangible personal property;
- (2) sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; create a security interest in; grant options concerning; lease; sublease; or otherwise dispose of tangible personal property or an interest in

- 2098 tangible personal property;
- 2099 (3) grant a security interest in tangible personal property or an interest in tangible personal
- 2100 property as security to borrow money or pay, renew, or extend the time of payment of a
- 2101 debt of the principal or a debt guaranteed by the principal;
- 2102 (4) release, assign, satisfy, or enforce by litigation or otherwise, a security interest, lien, or
- 2103 other claim on behalf of the principal, with respect to tangible personal property or an
- 2104 interest in tangible personal property;
- 2105 (5) manage or conserve tangible personal property or an interest in tangible personal
- 2106 property on behalf of the principal, including:
- 2107 (a) insuring against liability, casualty, or other loss;
- 2108 (b) obtaining or regaining possession of or protecting the property or interest, by
- 2109 litigation or otherwise;
- 2110 (c) paying, assessing, compromising, or contesting taxes or assessments or applying for
- 2111 and receiving refunds in connection with taxes or assessments;
- 2112 (d) moving the property from place to place;
- 2113 (e) storing the property for hire or on a gratuitous bailment; and
- 2114 (f) using and making repairs, alterations, or improvements to the property; and
- 2115 (6) change the form of title of an interest in tangible personal property.

2116 Section 52. Section **75A-2-206**, which is renumbered from Section 75-9-206 is renumbered

2117 and amended to read:

2118 **~~[75-9-206]~~ 75A-2-206. . Stocks and bonds.**

2119 Unless the power of attorney otherwise provides, language in a power of attorney

2120 granting general authority with respect to stocks and bonds authorizes the agent to:

- 2121 (1) buy, sell, and exchange stocks and bonds;
- 2122 (2) establish, continue, modify, or terminate an account with respect to stocks and bonds;
- 2123 (3) pledge stocks and bonds as security to borrow, pay, renew, or extend the time of
- 2124 payment of a debt of the principal;
- 2125 (4) receive certificates and other evidences of ownership with respect to stocks and bonds;
- 2126 and
- 2127 (5) exercise voting rights with respect to stocks and bonds in person or by proxy, enter into
- 2128 voting trusts, and consent to limitations on the right to vote.

2129 Section 53. Section **75A-2-207**, which is renumbered from Section 75-9-207 is renumbered

2130 and amended to read:

2131 **~~[75-9-207]~~ 75A-2-207. . Commodities and options.**

2132 Unless the power of attorney otherwise provides, language in a power of attorney
2133 granting general authority with respect to commodities and options authorizes the agent
2134 to:
2135 (1) buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call or
2136 put options on stocks or stock indexes traded on a regulated option exchange; and
2137 (2) establish, continue, modify, and terminate option accounts.

2138 Section 54. Section **75A-2-208**, which is renumbered from Section 75-9-208 is renumbered
2139 and amended to read:

2140 **[75-9-208] 75A-2-208. . Banks and other financial institutions.**

2141 Unless the power of attorney otherwise provides, language in a power of attorney
2142 granting general authority with respect to banks and other financial institutions
2143 authorizes the agent to:
2144 (1) continue, modify, and terminate an account or other banking arrangement made by or
2145 on behalf of the principal;
2146 (2) establish, modify, and terminate an account or other banking arrangement with a bank,
2147 trust company, savings and loan association, credit union, thrift company, brokerage
2148 firm, or other financial institution selected by the agent;
2149 (3) contract for services available from a financial institution, including renting or closing a
2150 safe deposit box or space in a vault;
2151 (4) withdraw, by check, order, electronic funds transfer, or otherwise, money or property of
2152 the principal deposited with or left in the custody of a financial institution;
2153 (5) receive statements of account, vouchers, notices, and similar documents from a financial
2154 institution and act with respect to them;
2155 (6) enter a safe deposit box or vault and withdraw or add to the contents;
2156 (7) borrow money and pledge as security personal property of the principal necessary to
2157 borrow money or pay, renew, or extend the time of payment of a debt of the principal or
2158 a debt guaranteed by the principal;
2159 (8) make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes,
2160 checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to
2161 the principal or the principal's order, transfer money, receive the cash or other proceeds
2162 of those transactions, and accept a draft drawn by a person upon the principal and pay it
2163 when due;
2164 (9) receive for the principal and act upon a sight draft, warehouse receipt, or other
2165 document of title whether tangible or electronic, or other negotiable or nonnegotiable

- 2166 instrument;
- 2167 (10) apply for, receive, and use letters of credit, credit and debit cards, electronic
- 2168 transaction authorizations, and traveler's checks from a financial institution and give an
- 2169 indemnity or other agreement in connection with letters of credit; and
- 2170 (11) consent to an extension of the time of payment with respect to commercial paper or a
- 2171 financial transaction with a financial institution.

2172 Section 55. Section **75A-2-209**, which is renumbered from Section 75-9-209 is renumbered

2173 and amended to read:

2174 **[75-9-209] 75A-2-209. . Operation of entity or business.**

2175 Subject to the terms of a document or an agreement governing an entity or an

2176 entity ownership interest, and unless the power of attorney otherwise provides, language

2177 in a power of attorney granting general authority with respect to operation of an entity or

2178 business authorizes the agent to:

- 2179 (1) operate, buy, sell, enlarge, reduce, or terminate an ownership interest;
- 2180 (2) perform a duty or discharge a liability and exercise in person or by proxy a right, power,
- 2181 privilege, or option that the principal has, may have, or claims to have;
- 2182 (3) enforce the terms of an ownership agreement;
- 2183 (4) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose
- 2184 or accept a compromise with respect to litigation to which the principal is a party
- 2185 because of an ownership interest;
- 2186 (5) exercise in person or by proxy, or enforce by litigation or otherwise, a right, power,
- 2187 privilege, or option the principal has or claims to have as the holder of stocks and bonds;
- 2188 (6) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose
- 2189 or accept a compromise with respect to litigation to which the principal is a party
- 2190 concerning stocks and bonds;
- 2191 (7) with respect to an entity or business owned solely by the principal:
- 2192 (a) continue, modify, renegotiate, extend, and terminate a contract made by or on behalf
- 2193 of the principal with respect to the entity or business before execution of the power of
- 2194 attorney;
- 2195 (b) determine:
- 2196 (i) the location of its operation;
- 2197 (ii) the nature and extent of its business;
- 2198 (iii) the methods of manufacturing, selling, merchandising, financing, accounting,
- 2199 and advertising employed in its operation;

- 2200 (iv) the amount and types of insurance carried; and
2201 (v) the mode of engaging, compensating, and dealing with its employees and
2202 accountants, attorneys, or other advisors;
2203 (c) change the name or form of organization under which the entity or business is
2204 operated and enter into an ownership agreement with other persons to take over all or
2205 part of the operation of the entity or business; and
2206 (d) demand and receive money due or claimed by the principal or on the principal's
2207 behalf in the operation of the entity or business and control and disburse the money in
2208 the operation of the entity or business;
2209 (8) put additional capital into an entity or business in which the principal has an interest;
2210 (9) join in a plan of reorganization, consolidation, conversion, domestication, or merger of
2211 the entity or business;
2212 (10) sell or liquidate all or part of an entity or business;
2213 (11) establish the value of an entity or business under a buy-out agreement to which the
2214 principal is a party;
2215 (12) prepare, sign, file, and deliver reports, compilations of information, returns, or other
2216 papers with respect to an entity or business and make related payments; and
2217 (13) pay, compromise, or contest taxes, assessments, fines, or penalties and perform any
2218 other act to protect the principal from illegal or unnecessary taxation, assessments, fines,
2219 or penalties, with respect to an entity or business, including attempts to recover, in any
2220 manner permitted by law, money paid before or after the execution of the power of
2221 attorney.

2222 Section 56. Section **75A-2-210**, which is renumbered from Section 75-9-210 is renumbered
2223 and amended to read:

2224 **[75-9-210] 75A-2-210. . Insurance and annuities.**

2225 Unless the power of attorney otherwise provides, language in a power of attorney
2226 granting general authority with respect to insurance and annuities authorizes the agent to:

- 2227 (1) continue, pay the premium or make a contribution on, modify, exchange, rescind,
2228 release, or terminate a contract procured by or on behalf of the principal that insures or
2229 provides an annuity to either the principal or another person, whether or not the principal
2230 is a beneficiary under the contract;
2231 (2) procure new, different, and additional contracts of insurance and annuities for the
2232 principal and the principal's spouse, ~~[children]~~ child, and other dependents, and select the
2233 amount, type of insurance or annuity, and mode of payment;

- 2234 (3) pay the premium or make a contribution on, modify, exchange, rescind, release, or
2235 terminate a contract of insurance or annuity procured by the agent;
- 2236 (4) apply for and receive a loan secured by a contract of insurance or annuity;
- 2237 (5) surrender and receive the cash surrender value on a contract of insurance or annuity;
- 2238 (6) exercise an election;
- 2239 (7) exercise investment powers available under a contract of insurance or annuity;
- 2240 (8) change the manner of paying premiums on a contract of insurance or annuity;
- 2241 (9) change or convert the type of insurance or annuity with respect to which the principal
2242 has or claims to have authority described in this section;
- 2243 (10) apply for and procure a benefit or assistance under a statute or regulation to guarantee
2244 or pay premiums of a contract of insurance on the life of the principal;
- 2245 (11) collect, sell, assign, hypothecate, borrow against, or pledge the interest of the principal
2246 in a contract of insurance or annuity;
- 2247 (12) select the form and timing of the payment of proceeds from a contract of insurance or
2248 annuity; and
- 2249 (13) pay, from proceeds or otherwise, compromise or contest, and apply for refunds in
2250 connection with a tax or assessment levied by a taxing authority with respect to a
2251 contract of insurance or annuity or its proceeds or liability accruing by reason of the tax
2252 or assessment.

2253 Section 57. Section **75A-2-211**, which is renumbered from Section 75-9-211 is renumbered
2254 and amended to read:

2255 **[75-9-211] 75A-2-211. . Estates, trusts, and other beneficial interests.**

- 2256 (1) ~~[In this section]~~ As used in this section, "estate, trust, or other beneficial interest" means
2257 a trust, probate estate, guardianship, conservatorship, escrow, custodianship, or fund
2258 from which the principal is, may become, or claims to be entitled to a share or payment.
- 2259 (2) Unless the power of attorney otherwise provides, language in a power of attorney
2260 granting general authority with respect to estates, trusts, and other beneficial interests
2261 authorizes the agent to:
- 2262 (a) accept, receive, receipt for, sell, assign, pledge, or exchange a share in or payment
2263 from an estate, trust, or other beneficial interest;
- 2264 (b) demand or obtain money or another thing of value to which the principal is, may
2265 become, or claims to be entitled by reason of an estate, trust, or other beneficial
2266 interest, by litigation or otherwise;
- 2267 (c) exercise for the benefit of the principal a presently exercisable general power of

- 2268 appointment held by the principal;
- 2269 (d) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or
- 2270 propose or accept a compromise with respect to litigation to ascertain the meaning,
- 2271 validity, or effect of a deed, will, declaration of trust, or other instrument or
- 2272 transaction affecting the interest of the principal;
- 2273 (e) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or
- 2274 propose or accept a compromise with respect to litigation to remove, substitute, or
- 2275 surcharge a fiduciary;
- 2276 (f) conserve, invest, disburse, or use anything received for an authorized purpose;
- 2277 (g) transfer an interest of the principal in real property, stocks and bonds, accounts with
- 2278 financial institutions or securities intermediaries, insurance, annuities, and other
- 2279 property to the trustee of a revocable trust created by the principal as settlor; and
- 2280 (h) reject, renounce, disclaim, release, or consent to a reduction in or modification of a
- 2281 share in or payment from an estate, trust, or other beneficial interest.

2282 Section 58. Section **75A-2-212**, which is renumbered from Section 75-9-212 is renumbered

2283 and amended to read:

2284 **[75-9-212] 75A-2-212. . Claims and litigation.**

- 2285 Unless the power of attorney otherwise provides, language in a power of attorney
- 2286 granting general authority with respect to claims and litigation authorizes the agent to:
- 2287 (1) assert and maintain before a court or administrative agency a claim, claim for relief,
- 2288 cause of action, counterclaim, offset, recoupment, or defense, including an action to
- 2289 recover property or other thing of value, recover damages sustained by the principal,
- 2290 eliminate or modify tax liability, or seek an injunction, specific performance, or other
- 2291 relief;
- 2292 (2) bring an action to determine adverse claims or intervene or otherwise participate in
- 2293 litigation;
- 2294 (3) seek an attachment, garnishment, order of arrest, or other preliminary, provisional, or
- 2295 intermediate relief and use an available procedure to effect or satisfy a judgment, order,
- 2296 or decree;
- 2297 (4) make or accept a tender, offer of judgment, or admission of facts, submit a controversy
- 2298 on an agreed statement of facts, consent to examination, and bind the principal in
- 2299 litigation;
- 2300 (5) submit to alternative dispute resolution, settle, and propose or accept a compromise;
- 2301 (6) waive the issuance and service of process upon the principal, accept service of process,

2302 appear for the principal, designate persons upon which process directed to the principal
2303 may be served, execute and file or deliver stipulations on the principal's behalf, verify
2304 pleadings, seek appellate review, procure and give surety and indemnity bonds, contract
2305 and pay for the preparation and printing of records and briefs, receive, execute, and file
2306 or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment,
2307 notice, agreement, or other instrument in connection with the prosecution, settlement, or
2308 defense of a claim or litigation;

2309 (7) act for the principal with respect to bankruptcy or insolvency, whether voluntary or
2310 involuntary, concerning the principal or some other person, or with respect to a
2311 reorganization, receivership, or application for the appointment of a receiver or trustee
2312 that affects an interest of the principal in property or other thing of value;

2313 (8) pay a judgment, award, or order against the principal or a settlement made in connection
2314 with a claim or litigation; and

2315 (9) receive money or other thing of value paid in settlement of or as proceeds of a claim or
2316 litigation.

2317 Section 59. Section **75A-2-213**, which is renumbered from Section 75-9-213 is renumbered
2318 and amended to read:

2319 **[75-9-213] 75A-2-213. . Personal and family maintenance.**

2320 (1) Unless the power of attorney otherwise provides, language in a power of attorney
2321 granting general authority with respect to personal and family maintenance authorizes
2322 the agent to:

2323 (a) perform the acts necessary to maintain the customary standard of living of the
2324 principal, the principal's spouse, and the following individuals, whether living when
2325 the power of attorney is executed or later born:

2326 (i) ~~[the principal's children]~~ a child of the principal;

2327 (ii) other individuals legally entitled to be supported by the principal; and

2328 (iii) the individuals whom the principal has customarily supported or indicated the
2329 intent to support;

2330 (b) make periodic payments of child support and other family maintenance required by a
2331 court or governmental agency or an agreement to which the principal is a party;

2332 (c) provide living quarters for the individuals described in Subsection (1)(a) by:

2333 (i) purchase, lease, or other contract; or

2334 (ii) paying the operating costs, including interest, amortization payments, repairs,
2335 improvements, and taxes, for premises owned by the principal or occupied by

- 2336 those individuals;
- 2337 (d) provide normal domestic help, usual vacations and travel expenses, and funds for
- 2338 shelter, clothing, food, appropriate education, including postsecondary and vocational
- 2339 education, and other current living costs for the individuals described in Subsection
- 2340 (1)(a);
- 2341 (e) pay expenses for necessary health care and custodial care on behalf of the individuals
- 2342 described in Subsection (1)(a);
- 2343 (f) act as the principal's personal representative pursuant to the Health Insurance
- 2344 Portability and Accountability Act, Sections 1171 through 1179 of the Social
- 2345 Security Act, 42 U.S.C. Sec. 1320d, and applicable regulations, in making decisions
- 2346 related to the past, present, or future payment for the provision of health care
- 2347 consented to by the principal or anyone authorized under the law of this state to
- 2348 consent to health care on behalf of the principal;
- 2349 (g) continue any provision made by the principal for automobiles or other means of
- 2350 transportation, including registering, licensing, insuring, and replacing them, for the
- 2351 individuals described in Subsection (1)(a);
- 2352 (h) maintain credit and debit accounts and open new accounts for the convenience of the
- 2353 individuals described in Subsection (1)(a); and
- 2354 (i) continue payments incidental to the membership or affiliation of the principal in a
- 2355 religious institution, club, society, order, or other organization or to continue
- 2356 contributions to those organizations.
- 2357 (2) Authority with respect to personal and family maintenance is neither dependent upon,
- 2358 nor limited by, authority that an agent may or may not have with respect to gifts under
- 2359 this chapter.
- 2360 Section 60. Section **75A-2-214**, which is renumbered from Section 75-9-214 is renumbered
- 2361 and amended to read:
- 2362 **[75-9-214] 75A-2-214. . Benefits from governmental programs or civil or military**
- 2363 **service.**
- 2364 (1) ~~[In this section]~~ As used in this section, "benefits from governmental programs or civil
- 2365 or military service" means any benefit, program, or assistance provided under a statute
- 2366 or regulation, including social security, Medicare, and Medicaid.
- 2367 (2) Unless the power of attorney otherwise provides, language in a power of attorney
- 2368 granting general authority with respect to benefits from governmental programs or civil
- 2369 or military service authorizes the agent to:

- 2370 (a) execute vouchers in the name of the principal for allowances and reimbursements
 2371 payable by the United States or a foreign government or by a state or subdivision of a
 2372 state to the principal, including allowances and reimbursements for transportation of
 2373 the individuals described in Subsection [75-9-213(1)(a)] 75A-2-213(1)(a), and for
 2374 shipment of their household effects;
- 2375 (b) take possession and order the removal and shipment of property of the principal from
 2376 a post, warehouse, depot, dock, or other place of storage or safekeeping, either
 2377 governmental or private, and execute and deliver a release, voucher, receipt, bill of
 2378 lading, shipping ticket, certificate, or other instrument for that purpose;
- 2379 (c) enroll in, apply for, select, reject, change, amend, or discontinue, on the principal's
 2380 behalf, a benefit or program;
- 2381 (d) prepare, file, and maintain a claim of the principal for a benefit or assistance,
 2382 financial or otherwise, to which the principal may be entitled under a statute or
 2383 regulation;
- 2384 (e) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or
 2385 propose or accept a compromise with respect to litigation concerning any benefit or
 2386 assistance the principal may be entitled to receive under a statute or regulation; and
- 2387 (f) receive the financial proceeds of a claim described in Subsection (2)(d) and conserve,
 2388 invest, disburse, or use for a lawful purpose anything received.

2389 Section 61. Section **75A-2-215**, which is renumbered from Section 75-9-215 is renumbered
 2390 and amended to read:

2391 **[75-9-215] 75A-2-215. . Retirement plans.**

- 2392 (1) ~~[In this section]~~ As used in this section, "retirement plan" means a plan or account
 2393 created by an employer, the principal, or another individual to provide retirement
 2394 benefits or deferred compensation of which the principal is a participant, beneficiary, or
 2395 owner, including a plan or account under the following sections of the Internal Revenue
 2396 Code:
- 2397 (a) an individual retirement account under Section 408, Internal Revenue Code;
- 2398 (b) a Roth individual retirement account under Section 408A, Internal Revenue Code;
- 2399 (c) a deemed individual retirement account under Section 408(q), Internal Revenue
 2400 Code;
- 2401 (d) an annuity or mutual fund custodial account under Section 403(b), Internal Revenue
 2402 Code;
- 2403 (e) a pension, profit-sharing, stock bonus, or other retirement plan qualified under

2404 Section 401(a), Internal Revenue Code;
2405 (f) a plan under Section 457(b), Internal Revenue Code; and
2406 (g) a nonqualified deferred compensation plan under Section 409A, Internal Revenue
2407 Code.

2408 (2) Unless the power of attorney otherwise provides, language in a power of attorney
2409 granting general authority with respect to retirement plans authorizes the agent to:
2410 (a) select the form and timing of payments under a retirement plan and withdraw
2411 benefits from a plan;
2412 (b) make a rollover, including a direct trustee-to-trustee rollover, of benefits from one
2413 retirement plan to another;
2414 (c) establish a retirement plan in the principal's name;
2415 (d) make contributions to a retirement plan;
2416 (e) exercise investment powers available under a retirement plan; and
2417 (f) borrow from, sell assets to, or purchase assets from a retirement plan.

2418 Section 62. Section **75A-2-216**, which is renumbered from Section 75-9-216 is renumbered
2419 and amended to read:

2420 **~~[75-9-216]~~ 75A-2-216. . Taxes.**

2421 Unless the power of attorney otherwise provides, language in a power of attorney
2422 granting general authority with respect to taxes authorizes the agent to:
2423 (1) prepare, sign, and file federal, state, local, and foreign income, gift, payroll, property,
2424 Federal Insurance Contributions Act, and other tax returns, claims for refunds, requests
2425 for extension of time, petitions regarding tax matters, and any other tax-related
2426 documents, including receipts, offers, waivers, consents, including consents and
2427 agreements under Section 2032A, Internal Revenue Code, closing agreements, and any
2428 power of attorney required by the Internal Revenue Service or other taxing authority
2429 with respect to a tax year upon which the statute of limitations has not run and the
2430 following 25 tax years;
2431 (2) pay taxes due, collect refunds, post bonds, receive confidential information, and contest
2432 deficiencies determined by the Internal Revenue Service or other taxing authority;
2433 (3) exercise any election available to the principal under federal, state, local, or foreign tax
2434 law; and
2435 (4) act for the principal in all tax matters for all periods before the Internal Revenue Service
2436 or other taxing authority.

2437 Section 63. Section **75A-2-217**, which is renumbered from Section 75-9-217 is renumbered

2438 and amended to read:

2439 ~~[75-9-217]~~ **75A-2-217. . Gifts.**

- 2440 (1) ~~[In this section, a gift "for the benefit of" a person]~~ As used in this section, "for the
2441 benefit of" includes a gift to a trust, an account under ~~[the Uniform Transfers to Minors~~
2442 Act (1983/1986)] Chapter 8, Uniform Transfers to Minors Act, and a tuition savings
2443 account or prepaid tuition plan as defined under Section 529, Internal Revenue Code.
- 2444 (2) Unless the power of attorney otherwise provides, language in a power of attorney
2445 granting general authority with respect to gifts authorizes the agent only to:
- 2446 (a) make outright to, or for the benefit of, a person a gift of any of the principal's
2447 property, including by the exercise of a presently exercisable general power of
2448 appointment held by the principal, in an amount per donee not to exceed the annual
2449 dollar limits of the federal gift tax exclusion under Section 2503(b), Internal Revenue
2450 Code, without regard to whether the federal gift tax exclusion applies to the gift, or if
2451 the principal's spouse agrees to consent to a split gift pursuant to Section 2513,
2452 Internal Revenue Code, in an amount per donee not to exceed twice the annual
2453 federal gift tax exclusion limit; and
- 2454 (b) consent, pursuant to Section 2513, Internal Revenue Code, to the splitting of a gift
2455 made by the principal's spouse in an amount per donee not to exceed the aggregate
2456 annual gift tax exclusions for both spouses.
- 2457 (3) An agent may make a gift of the principal's property only as the agent determines is
2458 consistent with the principal's objectives if actually known by the agent and, if unknown,
2459 as the agent determines is consistent with the principal's best interest based on all
2460 relevant factors, including:
- 2461 (a) the value and nature of the principal's property;
2462 (b) the principal's foreseeable obligations and need for maintenance;
2463 (c) minimization of taxes, including income, estate, inheritance, generation-skipping
2464 transfer, and gift taxes;
2465 (d) eligibility for a benefit, program, or assistance under a statute or regulation; and
2466 (e) the principal's personal history of making or joining in making gifts.

2467 Section 64. Section **75A-2-301**, which is renumbered from Section 75-9-301 is renumbered
2468 and amended to read:

2469

Part 3. Statutory Forms

2470 ~~[75-9-301]~~ **75A-2-301. . Statutory form power of attorney.**

2471 A document substantially in the following form may be used to create a statutory
2472 form power of attorney that has the meaning and effect prescribed by this chapter.

2473 STATUTORY FORM POWER OF ATTORNEY

2474 IMPORTANT INFORMATION

2475 This power of attorney authorizes another person (your agent) to make decisions
2476 concerning your property for you (the principal). Your agent will be able to make
2477 decisions and act with respect to your property (including your money) whether or
2478 not you are able to act for yourself. The meaning of authority over subjects listed on
2479 this form is explained in [~~Title 75, Chapter 9, Uniform Power of Attorney Act~~] Title
2480 75A, Chapter 2, Uniform Power of Attorney Act.

2481 This power of attorney does not authorize the agent to make health care decisions
2482 for you.

2483 You should select someone you trust to serve as your agent. Unless you specify
2484 otherwise, generally the agent's authority will continue until you die or revoke the
2485 power of attorney, or the agent resigns or is unable to act for you.

2486 Your agent is entitled to reasonable compensation unless you state otherwise in
2487 the Special Instructions.

2488 This form provides for designation of one agent. If you wish to name more than
2489 one agent you may name a coagent in the Special Instructions. Coagents are not
2490 required to act together unless you include that requirement in the Special
2491 Instructions.

2492 If your agent is unable or unwilling to act for you, your power of attorney will end
2493 unless you have named a successor agent. You may also name a second successor
2494 agent.

2495 This power of attorney becomes effective immediately unless you state otherwise
2496 in the Special Instructions.

2497 If you have questions about the power of attorney or the authority you are granting
2498 to your agent, you should seek legal advice before signing this form.

2499 DESIGNATION OF AGENT

2500 I _____ name the
2501 following

2502 (Name of Principal)

2503 person as my agent:

2504 Name of

2505 Agent: _____

2506 Agent's

2507 Address: _____

2508 Agent's Telephone

2509 Number: _____

2510 DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

2511 If my agent is unable or unwilling to act for me, I name as my successor agent:

2512 Name of Successor Agent: _____

2513 Successor Agent's Address: _____

2514 Successor Agent's Telephone Number: _____

2515 If my successor agent is unable or unwilling to act for me, I name as my second

2516 successor agent:

2517 Name of Second Successor Agent: _____

2518 Second Successor Agent's Address: _____

2519 Second Successor Agent's Telephone Number: _____

2520 GRANT OF GENERAL AUTHORITY

2521 I grant my agent and any successor agent general authority to act for me with respect

2522 to the following subjects as defined in [~~Title 75, Chapter 9, Uniform Power of~~

2523 ~~Attorney Act~~] Title 75A, Chapter 2, Uniform Power of Attorney Act:

2524 (INITIAL each subject you want to include in the agent's general authority. If you

2525 wish to grant general authority over all of the subjects you may initial "All Preceding

2526 Subjects" instead of initialing each subject.)

2527 (____) Real Property

2528 (____) Tangible Personal Property

2529 (____) Stocks and Bonds

2530 (____) Commodities and Options

2531 (____) Banks and Other Financial Institutions

2532 (____) Operation of Entity or Business

2533 (____) Insurance and Annuities

2534 (____) Estates, Trusts, and Other Beneficial Interests

2535 (____) Claims and Litigation

2536 (____) Personal and Family Maintenance

2537 (____) Benefits from Governmental Programs or Civil or Military Service

2538 (____) Retirement Plans

2539 ☐ Taxes

2540 ☐ All Preceding Subjects

2541 GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

2542 My agent MAY NOT do any of the following specific acts for me UNLESS I have

2543 INITIALED the specific authority listed below:

2544 (CAUTION: Granting any of the following will give your agent the authority to take

2545 actions that could significantly reduce your property or change how your property is

2546 distributed at your death. INITIAL ONLY the specific authority you WANT to give

2547 your agent.)

2548 ☐ Create, amend, revoke, or terminate an inter vivos trust

2549 ☐ Make a gift, subject to the limitations of Section [75-9-217] 75A-2-217, and any

2550 special instructions in this power of attorney

2551 ☐ Create or change rights of survivorship

2552 ☐ Create or change a beneficiary designation

2553 ☐ Authorize another person to exercise the authority granted under this power of

2554 attorney

2555 ☐ Waive the principal's right to be a beneficiary of a joint and survivor annuity,

2556 including a survivor benefit under a retirement plan

2557 ☐ Exercise fiduciary powers that the principal has authority to delegate

2558 ☐ Disclaim or refuse an interest in property, including a power of appointment

2559 LIMITATION ON AGENT'S AUTHORITY

2560 An agent that is not my ancestor, spouse, or descendant MAY NOT use my property

2561 to benefit the agent or a person to whom the agent owes an obligation of support

2562 unless I have included that authority in the Special Instructions.

2563 SPECIAL INSTRUCTIONS (OPTIONAL)

2564 You may give special instructions on the following lines:

2565

2566

2567

2568

2569

2570

2571

2572

2573 EFFECTIVE DATE

2574 This power of attorney is effective immediately unless I have stated otherwise in the
2575 Special Instructions.

2576 NOMINATION OF CONSERVATOR OR GUARDIAN (OPTIONAL)

2577 If it becomes necessary for a court to appoint a conservator of my estate or guardian
2578 of my person, I nominate the following person(s) for appointment:

2579 Name of Nominee for conservator of my estate:

2580 _____

2581 Nominee's

2582 Address:_____

2583 Nominee's Telephone

2584 Number:_____

2585 Name of Nominee for guardian of my person:

2586 _____

2587 Nominee's Address:

2588 _____

2589 Nominee's Telephone

2590 Number:_____

2591 RELIANCE ON THIS POWER OF ATTORNEY

2592 Any person, including my agent, may rely upon the validity of this power of attorney
2593 or a copy of it unless that person knows it has terminated or is invalid.

2594 SIGNATURE AND ACKNOWLEDGMENT

2595 _____

2596 Your Signature Date

2597 _____

2598 Your Name Printed

2599 _____

2600 _____

2601 Your Address

2602 _____

2603 Your Telephone Number

2604 State of _____

2605 County of _____

2606 This document was acknowledged before me on _____,

2607 (Date)

2608 by_____.

2609 (Name of Principal)

2610 _____ (Seal, if any)

2611 Signature of Notary

2612 My commission expires: _____

2613 [This document prepared by:

2614 _____

2615 _____]

2616 IMPORTANT INFORMATION FOR AGENT

2617 Agent's Duties

2618 When you accept the authority granted under this power of attorney, a special legal
2619 relationship is created between you and the principal. This relationship imposes upon
2620 you legal duties that continue until you resign or the power of attorney is terminated
2621 or revoked. You shall:

2622 (1) do what you know the principal reasonably expects you to do with the
2623 principal's property or, if you do not know the principal's expectations, act in the
2624 principal's best interest;

2625 (2) act in good faith;

2626 (3) do nothing beyond the authority granted in this power of attorney; and

2627 (4) disclose your identity as an agent whenever you act for the principal by
2628 writing or printing the name of the principal and signing your own name as "agent" in
2629 the following manner:

2630 (Principal's Name) by (Your Signature) as Agent

2631 Unless the Special Instructions in this power of attorney state otherwise, you must
2632 also:

2633 (1) act loyally for the principal's benefit;

2634 (2) avoid conflicts that would impair your ability to act in the principal's best
2635 interest;

2636 (3) act with care, competence, and diligence;

2637 (4) keep a record of all receipts, disbursements, and transactions made on behalf
2638 of the principal;

2639 (5) cooperate with any person that has authority to make health care decisions for
2640 the principal to do what you know the principal reasonably expects or, if you do not

2641 know the principal's expectations, to act in the principal's best interest; and
2642 (6) attempt to preserve the principal's estate plan if you know the plan and
2643 preserving the plan is consistent with the principal's best interest.

2644 Termination of Agent's Authority

2645 You must stop acting on behalf of the principal if you learn of any event that
2646 terminates this power of attorney or your authority under this power of attorney.

2647 Events that terminate a power of attorney or your authority to act under a power of
2648 attorney include:

- 2649 (1) death of the principal;
- 2650 (2) the principal's revocation of the power of attorney or your authority;
- 2651 (3) the occurrence of a termination event stated in the power of attorney;
- 2652 (4) the purpose of the power of attorney is fully accomplished; or
- 2653 (5) if you are married to the principal, a legal action is filed with a court to end
2654 your marriage, or for your legal separation, unless the Special Instructions in this
2655 power of attorney state that such an action will not terminate your authority.

2656 Liability of Agent

2657 The meaning of the authority granted to you is defined in [~~Title 75, Chapter 9,~~
2658 ~~Uniform Power of Attorney Act~~] Title 75A, Chapter 2, Uniform Power of Attorney
2659 Act. If you violate [~~Title 75, Chapter 9, Uniform Power of Attorney Act~~] Title 75A,
2660 Chapter 2, Uniform Power of Attorney Act, or act outside the authority granted, you
2661 may be liable for any damages caused by your violation.

2662 If there is anything about this document or your duties that you do not understand,
2663 you should seek legal advice.

2664 Section 65. Section **75A-2-302**, which is renumbered from Section 75-9-302 is renumbered
2665 and amended to read:

2666 **[75-9-302] 75A-2-302. . Agent's certification.**

2667 The following optional form may be used by an agent to certify facts concerning a
2668 power of attorney.

2669 AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER
2670 OF ATTORNEY AND AGENT'S AUTHORITY

2671 State of _____

2672 [County] of _____

2673 I, _____ (Name of Agent), certify

2674 under penalty of perjury that

2675 _____(Name of Principal) granted me
2676 authority as an agent or successor agent in a power of attorney dated
2677 _____.

2678 I further certify that to my knowledge:

2679 (1) the principal is alive and has not revoked the power of attorney or my authority to act
2680 under the power of attorney and the power of attorney and my authority to act under the
2681 power of attorney have not terminated;

2682 (2) if the power of attorney was drafted to become effective upon the happening of an event
2683 or contingency, the event or contingency has occurred;

2684 (3) if I was named as a successor agent, the prior agent is no longer able or willing to serve;
2685 and

2686 (4) _____

2687 _____

2688 _____

2689 _____

2690 (Insert other relevant statements)

2691 SIGNATURE AND ACKNOWLEDGMENT

2692 _____

2693 Agent's Signature Date

2694 _____

2695 Agent's Name Printed

2696 _____

2697 _____

2698 Agent's Address

2699 _____

2700 Agent's Telephone Number

2701 This document was acknowledged before me on _____,

2702 (Date)

2703 by _____.

2704 (Name of Agent)

2705

2706 _____ (Seal, if any)

2707 Signature of Notary

2708 My commission expires: _____

2709 This document prepared by:

2710

2711 Section 66. Section **75A-2-401**, which is renumbered from Section 75-9-401 is renumbered
2712 and amended to read:

2713

Part 4. Applicability Provisions

2714 ~~[75-9-401]~~ **75A-2-401. . Uniformity of application and construction.**

2715 In applying and construing this uniform act, consideration shall be given to the
2716 need to promote uniformity of the law with respect to its subject matter among the states that
2717 enact [it-] this uniform act.

2718 Section 67. Section **75A-2-402**, which is renumbered from Section 75-9-402 is renumbered
2719 and amended to read:

2720 ~~[75-9-402]~~ **75A-2-402. . Relation to Electronic Signatures in Global and National**
2721 **Commerce Act.**

2722 This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global
2723 and National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or
2724 supersede Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery
2725 of any of the notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

2726 Section 68. Section **75A-2-403**, which is renumbered from Section 75-9-403 is renumbered
2727 and amended to read:

2728 ~~[75-9-403]~~ **75A-2-403. . Effect on existing powers of attorney.**

2729 Except as otherwise provided:

- 2730 (1) this chapter applies to a power of attorney created before, on, or after May 10, 2016;
- 2731 (2) this chapter applies to a judicial proceeding concerning a power of attorney commenced
2732 on or after May 10, 2016;
- 2733 (3) this chapter applies to a judicial proceeding concerning a power of attorney commenced
2734 before May 10, 2016, unless the court finds that application of a provision of this
2735 chapter would substantially interfere with the effective conduct of the judicial
2736 proceeding or prejudice the rights of a party, in which case that provision does not apply
2737 and the superseded law applies; and
- 2738 (4) an act done before May 10, 2016, is not affected by this chapter.

2739 Section 69. Section **75A-3-101**, which is renumbered from Section 75-2a-103 is renumbered
2740 and amended to read:

2741

CHAPTER 3. HEALTH CARE DECISIONS

Part 1. General Provisions

~~[75-2a-103]~~ 75A-3-101. . Definitions for chapter.

As used in this chapter:

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

- (a) at least 18 years old; or
- (b) an emancipated minor.

(2) "Advance health care directive":

(a) includes:

- (i) a designation of an agent to make health care decisions for an adult when the adult cannot make or communicate health care decisions; or
- (ii) an expression of preferences about health care decisions;

(b) may take one of the following forms:

- (i) a written document, voluntarily executed by an adult in accordance with the requirements of this chapter; or
- (ii) a witnessed oral statement, made in accordance with the requirements of this chapter; and

(c) does not include a POLST order.

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

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

- (a) certified or licensed as an advance practice registered nurse under Subsection 58-31b-301(2)(e);
- (b) an independent practitioner;
- (c) acting under a consultation and referral plan with a physician; and
- (d) acting within the scope of practice for that individual, as provided by law, rule, and specialized certification and training in that individual's area of practice.

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

- (a) the effect of the treatment on the physical, emotional, and cognitive functions of the person;
- (b) the degree of physical pain or discomfort caused to the person by the treatment or the withholding or withdrawal of treatment;
- (c) the degree to which the person's medical condition, the treatment, or the withholding

- 2775 or withdrawal of treatment, result in a severe and continuing impairment of the
2776 dignity of the person by subjecting the person to humiliation and dependency;
2777 (d) the effect of the treatment on the life expectancy of the person;
2778 (e) the prognosis of the person for recovery with and without the treatment;
2779 (f) the risks, side effects, and benefits of the treatment, or the withholding or withdrawal
2780 of treatment; and
2781 (g) the religious beliefs and basic values of the person receiving treatment, to the extent
2782 these may assist the decision maker in determining the best interest.
- 2783 (6) "Capacity to appoint an agent" means that the adult understands the consequences of
2784 appointing a particular person as agent.
- 2785 (7) "Child" means the same as that term is defined in Section 75-1-201.
- 2786 ~~[(7)]~~ (8) "Declarant" means an adult who has completed and signed or directed the signing
2787 of an advance health care directive.
- 2788 ~~[(8)]~~ (9) "Default surrogate" means the adult who may make decisions for an individual
2789 when either:
2790 (a) an agent or guardian has not been appointed; or
2791 (b) an agent is not able, available, or willing to make decisions for an adult.
- 2792 ~~[(9)]~~ (10) "Emergency medical services provider" means a person that is licensed,
2793 designated, or certified under Title 26B, Chapter 4, Part 1, Utah Emergency Medical
2794 Services System.
- 2795 (11) "Estate" means the same as that term is defined in Section 75-1-201.
- 2796 ~~[(10)]~~ (12) "Generally accepted health care standards":
2797 (a) is defined only for the purpose of:
2798 (i) this chapter and does not define the standard of care for any other purpose under
2799 Utah law; and
2800 (ii) enabling health care providers to interpret the statutory form set forth in Section [
2801 ~~75-2a-117]~~ 75A-3-303; and
2802 (b) means the standard of care that justifies a provider in declining to provide life
2803 sustaining care because the proposed life sustaining care:
2804 (i) will not prevent or reduce the deterioration in the health or functional status of an
2805 individual;
2806 (ii) will not prevent the impending death of an individual; or
2807 (iii) will impose more burden on the individual than any expected benefit to the
2808 individual.

- 2809 (13) "Guardian" means the same as that term is defined in Section 75-1-201.
- 2810 ~~[(11)]~~ (14) "Health care" means any care, treatment, service, or procedure to improve,
- 2811 maintain, diagnose, or otherwise affect an individual's physical or mental condition.
- 2812 ~~[(12)]~~ (15) "Health care decision":
- 2813 (a) means a decision about an adult's health care made by, or on behalf of, an adult, that
- 2814 is communicated to a health care provider;
- 2815 (b) includes:
- 2816 (i) selection and discharge of a health care provider and a health care facility;
- 2817 (ii) approval or disapproval of diagnostic tests, procedures, programs of medication,
- 2818 and orders not to resuscitate; and
- 2819 (iii) directions to provide, withhold, or withdraw artificial nutrition and hydration and
- 2820 all other forms of health care; and
- 2821 (c) does not include decisions about an adult's financial affairs or social interactions
- 2822 other than as indirectly affected by the health care decision.
- 2823 ~~[(13)]~~ (16) "Health care decision making capacity" means an adult's ability to make an
- 2824 informed decision about receiving or refusing health care, including:
- 2825 (a) the ability to understand the nature, extent, or probable consequences of health status
- 2826 and health care alternatives;
- 2827 (b) the ability to make a rational evaluation of the burdens, risks, benefits, and
- 2828 alternatives of accepting or rejecting health care; and
- 2829 (c) the ability to communicate a decision.
- 2830 ~~[(14)]~~ (17) "Health care facility" means:
- 2831 (a) a health care facility as defined in Title 26B, Chapter 2, Part 2, Health Care Facility
- 2832 Licensing and Inspection; and
- 2833 (b) private offices of physicians, dentists, and other health care providers licensed to
- 2834 provide health care under Title 58, Occupations and Professions.
- 2835 ~~[(15)]~~ (18) "Health care provider" means the same as that term is defined in Section
- 2836 78B-3-403, except that "health care provider" does not include an emergency medical
- 2837 services provider.
- 2838 ~~[(16)]~~ (19) (a) "Life sustaining care" means any medical intervention, including
- 2839 procedures, administration of medication, or use of a medical device, that maintains
- 2840 life by sustaining, restoring, or supplanting a vital function.
- 2841 (b) "Life sustaining care" does not include care provided for the purpose of keeping an
- 2842 individual comfortable.

- 2843 (20) "Incapacitated" means the same as that term is defined in Section 75-1-201.
- 2844 (21) "Incapacity" means the same as that term is defined in Section 75-1-201.
- 2845 ~~[(17)]~~ (22) "Minor" means an individual who:
- 2846 (a) is under 18 years old; and
- 2847 (b) is not an emancipated minor.
- 2848 (23) "Parent" means the same as that term is defined in Section 75-1-201.
- 2849 (24) "Personal representative" means the same as that term is defined in Section 75-1-201.
- 2850 ~~[(18)]~~ (25) "Physician" means a physician and surgeon or osteopathic surgeon licensed
- 2851 under Title 58, Chapter 67, Utah Medical Practice Act or Chapter 68, Utah Osteopathic
- 2852 Medical Practice Act.
- 2853 ~~[(19)]~~ (26) "Physician assistant" means an individual licensed as a physician assistant under
- 2854 Title 58, Chapter 70a, Utah Physician Assistant Act.
- 2855 ~~[(20)]~~ (27) "POLST order" means an order, on a form designated by the Department of
- 2856 Health and Human Services under Section ~~[75-2a-106]~~ 75A-3-106, that gives direction to
- 2857 health care providers, health care facilities, and emergency medical services providers
- 2858 regarding the specific health care decisions of the individual to whom the order relates.
- 2859 ~~[(21)]~~ (28) "Reasonably available" means:
- 2860 (a) readily able to be contacted without undue effort; and
- 2861 (b) willing and able to act in a timely manner considering the urgency of the
- 2862 circumstances.
- 2863 (29) "State" means the same as that term is defined in Section 75-1-201.
- 2864 ~~[(22)]~~ (30) "Substituted judgment" means the standard to be applied by a surrogate when
- 2865 making a health care decision for an adult who previously had the capacity to make
- 2866 health care decisions, which requires the surrogate to consider:
- 2867 (a) specific preferences expressed by the adult:
- 2868 (i) when the adult had the capacity to make health care decisions; and
- 2869 (ii) at the time the decision is being made;
- 2870 (b) the surrogate's understanding of the adult's health care preferences;
- 2871 (c) the surrogate's understanding of what the adult would have wanted under the
- 2872 circumstances; and
- 2873 (d) to the extent that the preferences described in ~~[Subsections (22)(a) through (e)]~~
- 2874 Subsections (30)(a) through (c) are unknown, the best interest of the adult.
- 2875 ~~[(23)]~~ (31) "Surrogate" means a health care decision maker who is:
- 2876 (a) an appointed agent;

- 2877 (b) a default surrogate under the provisions of Section ~~[75-2a-108]~~ 75A-3-203; or
2878 (c) a guardian.

2879 (32) "Trust" means the same as that term is defined in Section 75-1-201.

2880 (33) "Will" means the same as that term is defined in Section 75-1-201.

2881 Section 70. Section **75A-3-102**, which is renumbered from Section 75-2a-102 is renumbered
2882 and amended to read:

2883 ~~[75-2a-102]~~ **75A-3-102. . Intent statement.**

2884 (1) The Legislature finds:

2885 (a) developments in health care technology make possible many alternatives for treating
2886 medical conditions and make possible the unnatural prolongation of life;

2887 (b) an adult should have the clear legal choice to:

2888 (i) accept or reject health care, even if rejecting health care will result in death sooner
2889 than death would be expected to occur if rejected health care were started or
2890 continued;

2891 (ii) be spared unwanted procedures; and

2892 (iii) be permitted to die with a maximum of dignity and function and a minimum of
2893 pain;

2894 (c) Utah law should:

2895 (i) provide an adult with a legal tool to designate a health care agent and express
2896 preferences about health care options to go into effect only after the adult loses the
2897 ability to make or communicate health care decisions, including decisions about
2898 end-of-life care; and

2899 (ii) promote an advance health care directive system that can be administered
2900 effectively within the health care system;

2901 (d) surrogate decisions made on behalf of an adult who previously had capacity to make
2902 health care decisions, but who has lost health care decision making capacity should
2903 be based on:

2904 (i) input from the incapacitated adult, to the extent possible under the circumstances;

2905 (ii) specific preferences expressed by the adult prior to the loss of health care
2906 decision making capacity;

2907 (iii) the surrogate's understanding of the adult's health care preferences; and

2908 (iv) the surrogate's understanding of what the adult would have wanted under the
2909 circumstances; and

2910 (e) surrogate decisions made on behalf of an adult who has never had health care

2911 decision making capacity should be made on the basis of the adult's best interest.

2912 (2) In recognition of the dignity and privacy that each adult is entitled to expect, and to
2913 protect the right of an adult to refuse to be treated without the adult's consent, the
2914 Legislature declares that this state recognizes the right to make binding advance health
2915 care directives directing health care providers to:

2916 (a) provide life sustaining medically indicated health care;

2917 (b) withhold or withdraw health care; or

2918 (c) provide health care only to the extent set forth in an advance health care directive.

2919 Section 71. Section **75A-3-103**, which is renumbered from Section 75-2a-122 is renumbered
2920 and amended to read:

2921 **[75-2a-122] 75A-3-103. . Effect of chapter.**

2922 ~~[The Advance Health Care Directive Act created in this]~~ This chapter does not:

2923 (1) create a presumption concerning the intention of an adult who has not made or who has
2924 revoked an advance health care directive;

2925 (2) authorize mercy killing, assisted suicide, or euthanasia; or

2926 (3) authorize the provision, withholding, or withdrawal of health care, to the extent
2927 prohibited by the laws of this state.

2928 Section 72. Section **75A-3-104**, which is renumbered from Section 75-2a-124 is renumbered
2929 and amended to read:

2930 **[75-2a-124] 75A-3-104. . Provisions cumulative with existing law.**

2931 The provisions of this chapter are cumulative with existing law regarding a
2932 person's right to consent or refuse to consent to medical treatment and do not impair any
2933 existing rights or responsibilities that a health care provider, a person, including a minor
2934 or incapacitated person, or a person's family or surrogate may have in regard to the
2935 provision, withholding or withdrawal of life sustaining procedures under the common
2936 law or statutes of the state.

2937 Section 73. Section **75A-3-105**, which is renumbered from Section 75-2a-125 is renumbered
2938 and amended to read:

2939 **[75-2a-125] 75A-3-105. . Severability.**

2940 (1) If any one or more provision, section, subsection, sentence, clause, phrase, or word of
2941 this chapter, or the application of this chapter to any person or circumstance, is found to
2942 be unconstitutional, the same is hereby declared to be severable and the balance of this
2943 chapter shall remain effective notwithstanding such unconstitutionality.

2944 (2) The Legislature hereby declares that it would have passed this chapter, and each

provision, section, subsection, sentence, clause, phrase, or word of this chapter, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase, or word be declared unconstitutional.

Section 74. Section **75A-3-106**, which is renumbered from Section 75-2a-106 is renumbered and amended to read:

~~[75-2a-106]~~ 75A-3-106. . Emergency medical services -- POLST order.

(1) A POLST order may be created by or on behalf of a person as described in this section.

(2) A POLST order shall, in consultation with the person authorized to consent to the order pursuant to this section, be prepared by:

(a) the physician, APRN, or, subject to Subsection (11), physician assistant of the person to whom the POLST order relates; or

(b) a health care provider who:

(i) is acting under the supervision of a person described in Subsection (2)(a); and

(ii) is:

(A) a nurse, licensed under Title 58, Chapter 31b, Nurse Practice Act;

(B) a physician assistant, licensed under Title 58, Chapter 70a, Utah Physician Assistant Act;

(C) a mental health professional, licensed under Title 58, Chapter 60, Mental Health Professional Practice Act; or

(D) another health care provider, designated by rule as described in Subsection (10).

(3) A POLST order shall be signed:

(a) personally, by the physician, APRN, or, subject to Subsection (11), physician assistant of the person to whom the POLST order relates; and

(b) (i) if the person to whom the POLST order relates is an adult with health care decision making capacity, by:

(A) the person; or

(B) an adult who is directed by the person to sign the POLST order on behalf of the person;

(ii) if the person to whom the POLST order relates is an adult who lacks health care decision making capacity, by:

(A) the surrogate with the highest priority under Section ~~[75-2a-111]~~ 75A-3-206;

(B) the majority of the class of surrogates with the highest priority under Section ~~[75-2a-111]~~ 75A-3-206; or

- 2979 (C) a person directed to sign the POLST order by, and on behalf of, the persons
2980 described in Subsection (3)(b)(ii)(A) or (B); or
2981 (iii) if the person to whom the POLST order relates is a minor, by a parent or
2982 guardian of the minor.
- 2983 (4) If a POLST order relates to a minor and directs that life sustaining treatment be
2984 withheld or withdrawn from the minor, the order shall include a certification by two
2985 physicians that, in their clinical judgment, an order to withhold or withdraw life
2986 sustaining treatment is in the best interest of the minor.
- 2987 (5) A POLST order:
- 2988 (a) shall be in writing, on a form designated by the Department of Health and Human
2989 Services;
- 2990 (b) shall state the date on which the POLST order was made;
- 2991 (c) may specify the level of life sustaining care to be provided to the person to whom the
2992 order relates; and
- 2993 (d) may direct that life sustaining care be withheld or withdrawn from the person to
2994 whom the order relates.
- 2995 (6) A health care provider or emergency medical service provider, licensed or certified
2996 under Title 26B, Chapter 4, Part 1, Utah Emergency Medical Services System, is
2997 immune from civil or criminal liability, and is not subject to discipline for
2998 unprofessional conduct, for:
- 2999 (a) complying with a POLST order in good faith; or
- 3000 (b) providing life sustaining treatment to a person when a POLST order directs that the
3001 life sustaining treatment be withheld or withdrawn.
- 3002 (7) To the extent that the provisions of a POLST order described in this section conflict
3003 with the provisions of an advance health care directive made under Section [75-2a-107]
3004 75A-3-301, the provisions of the POLST order take precedence.
- 3005 (8) An adult, or a parent or guardian of a minor, may revoke a POLST order by:
- 3006 (a) orally informing emergency service personnel;
- 3007 (b) writing "void" across the POLST order form;
- 3008 (c) burning, tearing, or otherwise destroying or defacing:
- 3009 (i) the POLST order form; or
- 3010 (ii) a bracelet or other evidence of the POLST order;
- 3011 (d) asking another adult to take the action described in this Subsection (8) on the
3012 person's behalf;

- 3013 (e) signing or directing another adult to sign a written revocation on the person's behalf;
3014 (f) stating, in the presence of an adult witness, that the person wishes to revoke the
3015 order; or
3016 (g) completing a new POLST order.
- 3017 (9) (a) Except as provided in Subsection (9)(c), a surrogate for an adult who lacks health
3018 care decision making capacity may only revoke a POLST order if the revocation is
3019 consistent with the substituted judgment standard.
- 3020 (b) Except as provided in Subsection (9)(c), a surrogate who has authority under this
3021 section to sign a POLST order may revoke a POLST order, in accordance with
3022 Subsection (9)(a), by:
3023 (i) signing a written revocation of the POLST order; or
3024 (ii) completing and signing a new POLST order.
- 3025 (c) A surrogate may not revoke a POLST order during the period of time beginning
3026 when an emergency service provider is contacted for assistance, and ending when the
3027 emergency ends.
- 3028 (10) (a) The Department of Health and Human Services shall make rules, in accordance
3029 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:
3030 (i) create the forms and systems described in this section; and
3031 (ii) develop uniform instructions for the form established in Section ~~[75-2a-117]~~
3032 75A-3-303.
- 3033 (b) The Department of Health and Human Services may make rules, in accordance with
3034 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to designate health care
3035 professionals, in addition to those described in Subsection (2)(b)(ii), who may
3036 prepare a POLST order.
- 3037 (c) The Department of Health and Human Services may assist others with training of
3038 health care professionals regarding this chapter.
- 3039 (11) A physician assistant may not prepare or sign a POLST order, unless the physician
3040 assistant is permitted to prepare or sign the POLST order under the physician assistant's
3041 delegation of services agreement~~[-as defined in Section 58-70a-102]~~.
- 3042 (12) (a) Notwithstanding any other provision of this section:
3043 (i) the provisions of Title 46, Chapter 4, Uniform Electronic Transactions Act, apply
3044 to any signature required on the POLST order; and
3045 (ii) a verbal confirmation satisfies the requirement for a signature from an individual
3046 under Subsection (3)(b)(ii) or (iii), if:

3047 (A) requiring the individual described in Subsection (3)(b)(i)(B), (ii), or (iii) to
 3048 sign the POLST order in person or electronically would require significant
 3049 difficulty or expense; and

3050 (B) a licensed health care provider witnesses the verbal confirmation and signs the
 3051 POLST order attesting that the health care provider witnessed the verbal
 3052 confirmation.

3053 (b) The health care provider described in Subsection (12)(a)(ii)(B):

3054 (i) may not be the same individual who signs the POLST order under Subsection
 3055 (3)(a); and

3056 (ii) shall verify, in accordance with HIPAA as defined in Section 26B-3-126, the
 3057 identity of the individual who is providing the verbal confirmation.

3058 Section 75. Section **75A-3-107**, which is renumbered from Section 75-2a-120 is renumbered
 3059 and amended to read:

3060 **~~[75-2a-120]~~ 75A-3-107. . Judicial relief.**

3061 A district court may enjoin or direct a health care decision, or order other
 3062 equitable relief based on a petition filed by:

3063 (1) a patient;

3064 (2) an agent of a patient;

3065 (3) a guardian of a patient;

3066 (4) a default surrogate of a patient;

3067 (5) a health care provider of a patient;

3068 (6) a health care facility providing care for a patient; or

3069 (7) an individual who meets the requirements of Section ~~[75-2a-108]~~ 75A-3-203.

3070 Section 76. Section **75A-3-201**, which is renumbered from Section 75-2a-104 is renumbered
 3071 and amended to read:

3072 **Part 2. Health Care Decisions for Adult**

3073 **~~[75-2a-104]~~ 75A-3-201. . Capacity to make health care decisions -- Presumption --**
 3074 **Overcoming**

presumption.

3075 (1) An adult is presumed to have:

3076 (a) health care decision making capacity; and

3077 (b) capacity to make or revoke an advance health care directive.

3078 (2) To overcome the presumption of capacity described in Subsection (1)(a), a physician, an

- 3079 APRN, or, subject to Subsection (6), a physician assistant who has personally examined
3080 the adult and assessed the adult's health care decision making capacity must:
- 3081 (a) find that the adult lacks health care decision making capacity;
- 3082 (b) record the finding in the adult's medical chart including an indication of whether the
3083 adult is likely to regain health care decision making capacity; and
- 3084 (c) make a reasonable effort to communicate the determination to:
- 3085 (i) the adult;
- 3086 (ii) other health care providers or health care facilities that the person who makes the
3087 finding would routinely inform of such a finding; and
- 3088 (iii) if the adult has a surrogate, any known surrogate.
- 3089 (3) (a) An adult who is found to lack health care decision making capacity in accordance
3090 with Subsection (2) may, at any time, challenge the finding by:
- 3091 (i) submitting to a health care provider a written notice stating that the adult disagrees
3092 with the physician's finding; or
- 3093 (ii) orally informing the health care provider that the adult disagrees with the finding.
- 3094 (b) A health care provider who is informed of a challenge under Subsection (3)(a), shall,
3095 if the adult has a surrogate, promptly inform the surrogate of the adult's challenge.
- 3096 (c) A surrogate informed of a challenge to a finding under this section, or the adult if no
3097 surrogate is acting on the adult's behalf, shall inform the following of the adult's
3098 challenge:
- 3099 (i) any other health care providers involved in the adult's care; and
- 3100 (ii) the health care facility, if any, in which the adult is receiving care.
- 3101 (d) Unless otherwise ordered by a court, a finding, under Subsection (2), that the adult
3102 lacks health care decision making capacity, is not in effect if the adult challenges the
3103 finding under Subsection (3)(a).
- 3104 (e) If an adult does not challenge the finding described in Subsection (2), the health care
3105 provider and health care facility may rely on a surrogate, pursuant to the provisions
3106 of this chapter, to make health care decisions for the adult.
- 3107 (4) A health care provider or health care facility that relies on a surrogate to make decisions
3108 on behalf of an adult has an ongoing obligation to consider whether the adult continues
3109 to lack health care decision making capacity.
- 3110 (5) If at any time a health care provider finds, based on an examination and assessment, that
3111 the adult has regained health care decision making capacity, the health care provider
3112 shall record the results of the assessment in the adult's medical record, and the adult can

3113 direct the adult's own health care.

3114 (6) A physician assistant may not make a finding described in Subsection (2), unless the
3115 physician assistant is permitted to make the finding under the physician assistant's
3116 delegation of services agreement~~[as defined in Section 58-70a-102]~~.

3117 Section 77. Section **75A-3-202**, which is renumbered from Section 75-2a-109 is renumbered
3118 and amended to read:

3119 ~~[75-2a-109]~~ **75A-3-202. . Effect of current health care preferences -- Health care**
3120 **decision making.**

3121 (1) (a) An adult with health care decision making capacity retains the right to make
3122 health care decisions as long as the adult has health care decision making capacity[
3123 as defined in Section 75-2a-103].

3124 (b) For purposes of this chapter, the inability to communicate through speech does not
3125 mean that the adult lacks health care decision making capacity.

3126 (2) An adult's current health care decisions, however expressed or indicated, always
3127 supersede an adult's prior decisions or health care directives.

3128 (3) Unless otherwise directed in an advance health care directive, an advance health care
3129 directive or the authority of a surrogate to make health care decisions on behalf of an
3130 adult:

3131 (a) is effective only after a physician, physician assistant, or APRN makes a
3132 determination of incapacity as provided in Section ~~[75-2a-104]~~ **75A-3-201**;

3133 (b) remains in effect during any period of time in which the declarant lacks capacity to
3134 make health care decisions; and

3135 (c) ceases to be effective when:

3136 (i) a declarant disqualifies a surrogate or revokes the advance health care directive;

3137 (ii) a health care provider finds that the declarant has health care decision making
3138 capacity;

3139 (iii) a court issues an order invalidating a health care directive; or

3140 (iv) the declarant has challenged the finding of incapacity under the provisions of
3141 Subsection ~~[75-2a-104(3)]~~ **75A-3-201(3)**.

3142 Section 78. Section **75A-3-203**, which is renumbered from Section 75-2a-108 is renumbered
3143 and amended to read:

3144 ~~[75-2a-108]~~ **75A-3-203. . Default surrogates.**

3145 (1) (a) Any member of the class described in Subsection (1)(b) may act as an adult's
3146 surrogate if:

- 3147 (i) (A) the adult has not appointed an agent;
3148 (B) an appointed agent is not reasonably available; or
3149 (C) a guardian has not been appointed; and
3150 (ii) the member of the class described in Subsection (1)(b) is:
3151 (A) over 18 years [~~of age~~] old;
3152 (B) has health care decision making capacity;
3153 (C) is reasonably available; and
3154 (D) has not been disqualified by the adult or a court.
- 3155 (b) Except as provided in Subsection (1)(a), and subject to Subsection (1)(c), the
3156 following classes of the adult's family, in descending order of priority, may act as the
3157 adult's surrogate:
3158 (i) the adult's spouse, unless the adult is divorced or legally separated; or
3159 (ii) the following family members:
3160 (A) a child;
3161 (B) a parent;
3162 (C) a sibling;
3163 (D) a grandchild; or
3164 (E) a grandparent.
- 3165 (c) A person described in Subsection (1)(b), may not direct an adult's care if a person of
3166 a higher priority class is able and willing to act as a surrogate for the adult.
- 3167 (d) A court may disqualify a person described in Subsection (1)(b) from acting as a
3168 surrogate if the court finds that the person has acted in a manner that is inconsistent
3169 with the position of trust in which a surrogate is placed.
- 3170 (2) If the family members designated in Subsection (1)(b) are not reasonably available to
3171 act as a surrogate, a person who is 18 years [~~of age~~] old or older, other than those
3172 designated in Subsection (1) may act as a surrogate if the person:
3173 (a) has health care decision making capacity;
3174 (b) has exhibited special care and concern for the patient;
3175 (c) knows the patient and the patient's personal values; and
3176 (d) is reasonably available to act as a surrogate.
- 3177 (3) The surrogate shall communicate the surrogate's assumption of authority as promptly as
3178 practicable to the members of a class who:
3179 (a) have an equal or higher priority and are not acting as surrogate; and
3180 (b) can be readily contacted.

3181 (4) A health care provider shall comply with the decision of a majority of the members of
3182 the highest priority class who have communicated their views to the provider if:
3183 (a) more than one member of the highest priority class assumes authority to act as
3184 default surrogate;
3185 (b) the members of the class do not agree on a health care decision; and
3186 (c) the health care provider is informed of the disagreement among the members of the
3187 class.

3188 (5) (a) An adult may at any time disqualify a default surrogate, including a member of
3189 the adult's family, from acting as the adult's surrogate by:
3190 (i) a signed writing;
3191 (ii) personally informing a witness of the disqualification; or
3192 (iii) informing the surrogate of the disqualification.
3193 (b) Disqualification of a surrogate is effective even if the adult has been found to lack
3194 health care decision making capacity.

3195 (6) If reasonable doubt exists regarding the status of an adult claiming the right to act as a
3196 default surrogate, the health care provider may:
3197 (a) require the person to provide a sworn statement giving facts and circumstances
3198 reasonably sufficient to establish the claimed authority; or
3199 (b) seek a ruling from the court under Section ~~[75-2a-120]~~ 75A-3-107.

3200 (7) A health care provider may seek a ruling from a court pursuant to Section ~~[75-2a-120]~~
3201 75A-3-107 if the health care provider has evidence that a surrogate is making decisions
3202 that are inconsistent with an adult patient's wishes or preferences.

3203 Section 79. Section **75A-3-204**, which is renumbered from Section 75-2a-110 is renumbered
3204 and amended to read:

3205 **~~[75-2a-110]~~ 75A-3-204. . Surrogate decision making -- Scope of authority.**

3206 (1) A surrogate acting under the authority of ~~[either Section 75-2a-107 or 75-2a-108]~~
3207 Section 75A-3-203 or 75A-3-301 shall make health care decisions in accordance with:

3208 (a) the adult's current preferences, to the extent possible;
3209 (b) the adult's written or oral health care directions, if any; or
3210 (c) the substituted judgment standard.

3211 (2) A surrogate acting under the authority of ~~[Sections 75-2a-107 and 75-2a-108]~~ Section
3212 75A-3-203 or 75A-3-301:

3213 (a) may not admit the adult to a licensed health care facility for long-term custodial
3214 placement other than for assessment, rehabilitative, or respite care over the objection

3215 of the adult; and

3216 (b) may make health care decisions, including decisions to terminate life sustaining
3217 treatment for the adult patient in accordance with Subsection (1).

3218 (3) A surrogate acting under authority of this section is not subject to civil or criminal
3219 liability or claims of unprofessional conduct for surrogate health care decisions made:

3220 (a) in accordance with this section; and

3221 (b) in good faith.

3222 Section 80. Section **75A-3-205**, which is renumbered from Section 75-2a-112 is renumbered
3223 and amended to read:

3224 ~~[75-2a-112]~~ **75A-3-205. . Health care decisions by guardian.**

3225 (1) A court-appointed guardian shall comply with an adult's advance health care directive
3226 and may not revoke the adult's advance health care directive unless the court, for cause,
3227 expressly revokes the adult's directive.

3228 (2) A health care decision of an agent takes precedence over that of a guardian, in the
3229 absence of a court order to the contrary.

3230 (3) Except as provided in Subsections (1) and (2), a health care decision made by a
3231 guardian for the adult patient is effective without judicial approval.

3232 (4) A guardian is not subject to civil or criminal liability or to claims of unprofessional
3233 conduct for a surrogate health care decision made:

3234 (a) in good faith; and

3235 (b) in accordance with Section ~~[75-2a-110]~~ 75A-3-204.

3236 Section 81. Section **75A-3-206**, which is renumbered from Section 75-2a-111 is renumbered
3237 and amended to read:

3238 ~~[75-2a-111]~~ **75A-3-206. . Priority of decision makers.**

3239 (1) The following is the order of priority of those authorized to make health care decisions
3240 on behalf of an adult who has been found to lack health care decision making capacity
3241 under Section ~~[75-2a-104]~~ 75A-3-201:

3242 (a) a health care agent appointed by an adult under the provisions of Section ~~[75-2a-107]~~
3243 75A-3-301 unless the agent has been disqualified by:

3244 (i) the adult; or

3245 (ii) a court of law;

3246 (b) a court-appointed guardian; or

3247 (c) the highest priority default surrogate acting under authority of Section ~~[75-2a-108]~~

3248 75A-3-203.

3249 (2) A health care provider or health care facility obtaining consent for health care from a
3250 surrogate shall make a reasonable effort to identify and obtain consent from the
3251 surrogate with the highest priority.

3252 Section 82. Section **75A-3-207**, which is renumbered from Section 75-2a-115 is renumbered
3253 and amended to read:

3254 **~~[75-2a-115]~~ 75A-3-207. . Notification to health care provider -- Obligations of**
3255 **health care providers -- Liability.**

3256 (1) It is the responsibility of the declarant or surrogate, to the extent that the responsibility
3257 is not assigned to a health care provider or health care facility by state or federal law, to
3258 notify or provide for notification to a health care provider and a health care facility of:

- 3259 (a) the existence of a health care directive;
3260 (b) the revocation of a health care directive;
3261 (c) the existence or revocation of appointment of an agent or default surrogate;
3262 (d) the disqualification of a default surrogate; or
3263 (e) the appointment or revocation of appointment of a guardian.

3264 (2) (a) A health care provider or health care facility is not subject to civil or criminal
3265 liability or to claims of unprofessional conduct for failing to act upon a health care
3266 directive, a revocation of a health care directive, or a disqualification of a surrogate
3267 until the health care provider or health care facility has received an oral directive
3268 from an adult or a copy of a written directive or revocation of the health care
3269 directive, or the disqualification of the surrogate.

3270 (b) A health care provider and health care facility that is notified under Subsection (1)
3271 shall include in the adult patient's medical record:

- 3272 (i) the health care directive or a copy of it, a revocation of a health care directive, or a
3273 disqualification of a surrogate; and
3274 (ii) the date, time, and place in which any written or oral notice of the document
3275 described in this Subsection (2)(b) is received.

3276 (3) A health care provider or health care facility acting in good faith and in accordance with
3277 generally accepted health care standards is not subject to civil or criminal liability or to
3278 discipline for unprofessional conduct for:

- 3279 (a) complying with a health care decision made by an adult with health care decision
3280 making capacity;
3281 (b) complying with a health care decision made by a surrogate apparently having
3282 authority to make a health care decision for a person, including a decision to withhold

- 3283 or withdraw health care;
- 3284 (c) declining to comply with a health care decision of a surrogate based on a belief that
- 3285 the surrogate then lacked authority;
- 3286 (d) declining to comply with a health care decision of an adult who lacks decision
- 3287 making capacity;
- 3288 (e) seeking a judicial determination, or requiring a surrogate to obtain a judicial
- 3289 determination, under Section ~~[75-2a-120]~~ 75A-3-107 of:
- 3290 (i) the validity of a health care directive;
- 3291 (ii) the validity of directions from a surrogate or guardian;
- 3292 (iii) the decision making capacity of an adult who challenges a physician's finding of
- 3293 incapacity; or
- 3294 (iv) the authority of a guardian or surrogate; or
- 3295 (f) complying with an advance health care directive and assuming that the directive was
- 3296 valid when made, and has not been revoked or terminated.
- 3297 (4) (a) Health care providers and health care facilities shall:
- 3298 (i) cooperate with a person authorized under this chapter to make written directives
- 3299 concerning health care;
- 3300 (ii) unless the provisions of Subsection (4)(b) apply, comply with:
- 3301 (A) a health care decision of an adult; and
- 3302 (B) a health care decision made by the highest ranking surrogate then authorized
- 3303 to make health care decisions for an adult, to the same extent as if the decision
- 3304 had been made by the adult;
- 3305 (iii) before implementing a health care decision made by a surrogate, make a
- 3306 reasonable attempt to communicate to the adult on whose behalf the decision is
- 3307 made:
- 3308 (A) the decision made; and
- 3309 (B) the identity of the surrogate making the decision.
- 3310 (b) A health care provider or health care facility may decline to comply with a health
- 3311 care decision if:
- 3312 (i) in the opinion of the health care provider:
- 3313 (A) the adult who made the decision lacks health care decision making capacity;
- 3314 (B) the surrogate who made the decision lacks health care decision making
- 3315 capacity;
- 3316 (C) the health care provider has evidence that the surrogate's instructions are

- 3317 inconsistent with the adult's health care instructions, or, for a person who has
3318 always lacked health care decision making capacity, that the surrogate's
3319 instructions are inconsistent with the best interest of the adult; or
- 3320 (D) there is reasonable doubt regarding the status of a person claiming the right to
3321 act as a default surrogate, in which case the health care provider shall comply
3322 with Subsection [~~75-2a-108(6)~~] 75A-3-203(6); or
- 3323 (ii) the health care provider declines to comply for reasons of conscience.
- 3324 (c) A health care provider or health care facility that declines to comply with a health
3325 care decision in accordance with Subsection (4)(b) must:
- 3326 (i) promptly inform the adult and any acting surrogate of the reason for refusing to
3327 comply with the health care decision;
- 3328 (ii) make a good faith attempt to resolve the conflict; and
- 3329 (iii) provide continuing care to the patient until the issue is resolved or until a transfer
3330 can be made to a health care provider or health care facility that will implement
3331 the requested instruction or decision.
- 3332 (d) A health care provider or health care facility that declines to comply with a health
3333 care instruction, after meeting the obligations set forth in Subsection (4)(c) may
3334 transfer the adult to a health care provider or health care facility that will carry out the
3335 requested health care decisions.
- 3336 (e) A health care facility may decline to follow a health care decision for reasons of
3337 conscience under Subsection (4)(b)(ii) if:
- 3338 (i) the health care decision is contrary to a policy of the facility that is expressly
3339 based on reasons of conscience;
- 3340 (ii) the policy was timely communicated to the adult and an adult's surrogate;
- 3341 (iii) the facility promptly informs the adult, if possible, and any surrogate then
3342 authorized to make decisions for the adult;
- 3343 (iv) the facility provides continuing care to the adult until a transfer can be made to a
3344 health care facility that will implement the requested instruction or decision; and
- 3345 (v) unless an adult or surrogate then authorized to make health care decisions for the
3346 adult refuses assistance, immediately make all reasonable efforts to assist in the
3347 transfer of the adult to another health care facility that will carry out the
3348 instructions or decisions.
- 3349 (5) A health care provider and health care facility:
- 3350 (a) may not require or prohibit the creation or revocation of an advance health care

3351 directive as a condition for providing health care; and
 3352 (b) shall comply with all state and federal laws and regulations governing advance
 3353 health care directives.

3354 Section 83. Section **75A-3-208**, which is renumbered from Section 75-2a-113 is renumbered
 3355 and amended to read:

3356 **[75-2a-113] 75A-3-208. . Personal representative status.**

3357 A surrogate becomes a personal representative for an adult under the Health
 3358 Insurance Portability and Accountability Act of 1996 when:

- 3359 (1) the adult has been found to lack health care decision making capacity under Section [
 3360 ~~75-2a-104~~] 75A-3-201;
- 3361 (2) the adult grants current authority to the surrogate either:
- 3362 (a) in writing; or
- 3363 (b) by other expression before a witness who is not the surrogate or agent; or
- 3364 (3) the court appoints a guardian authorized to make health care decisions on behalf of the
 3365 adult.

3366 Section 84. Section **75A-3-301**, which is renumbered from Section 75-2a-107 is renumbered
 3367 and amended to read:

3368 **Part 3. Advance Health Care Directive for Adult**

3369 **[75-2a-107] 75A-3-301. . Advance health care directive -- Appointment of agent -- Powers of**
agent.

- 3370 (1) (a) An adult may make an advance health care directive in which the adult may:
- 3371 (i) appoint a health care agent or choose not to appoint a health care agent;
- 3372 (ii) give directions for the care of the adult after the adult loses health care decision
 3373 making capacity;
- 3374 (iii) choose not to give directions;
- 3375 (iv) state conditions that must be met before life sustaining treatment may be
 3376 withheld or withdrawn;
- 3377 (v) authorize an agent to consent to the adult's participation in medical research;
- 3378 (vi) nominate a guardian;
- 3379 (vii) authorize an agent to consent to organ donation;
- 3380 (viii) expand or limit the powers of a health care agent; and
- 3381 (ix) designate the agent's access to the adult's medical records.
- 3382 (b) An advance health care directive may be oral or written.

- 3383 (c) An advance health care directive shall be witnessed by a disinterested adult. The
3384 witness may not be:
- 3385 (i) the person who signed the directive on behalf of the declarant;
3386 (ii) related to the declarant by blood or marriage;
3387 (iii) entitled to any portion of the declarant's estate according to the laws of intestate
3388 succession of this state or under any will or codicil of the declarant;
3389 (iv) the beneficiary of any of the following that are held, owned, made, or established
3390 by, or on behalf of, the declarant:
- 3391 (A) a life insurance policy;
3392 (B) a trust;
3393 (C) a qualified plan;
3394 (D) a pay on death account; or
3395 (E) a transfer on death deed;
- 3396 (v) entitled to benefit financially upon the death of the declarant;
3397 (vi) entitled to a right to, or interest in, real or personal property upon the death of the
3398 declarant;
3399 (vii) directly financially responsible for the declarant's medical care;
3400 (viii) a health care provider who is:
- 3401 (A) providing care to the declarant; or
3402 (B) an administrator at a health care facility in which the declarant is receiving
3403 care; or
3404 (ix) the appointed agent.

- 3405 (d) The witness to an oral advance health care directive shall state the circumstances
3406 under which the directive was made.

- 3407 (2) An agent appointed under the provisions of this section may not be a health care
3408 provider for the declarant, or an owner, operator, or employee of the health care facility
3409 at which the declarant is receiving care unless the agent is related to the declarant by
3410 blood, marriage, or adoption.

3411 Section 85. Section **75A-3-302**, which is renumbered from Section 75-2a-105 is renumbered
3412 and amended to read:

3413 **[75-2a-105] 75A-3-302. . Capacity to complete an advance health care directive.**

- 3414 (1) An adult is presumed to have the capacity to complete an advance health care directive.
3415 (2) An adult who is found to lack health care decision making capacity under the provisions
3416 of Section ~~[75-2a-104]~~ 75A-3-201:

- 3417 (a) lacks the capacity to give an advance health care directive, including Part II of the
 3418 form created in Section [75-2a-117] 75A-3-303, or any other substantially similar
 3419 form expressing a health care preference; and
- 3420 (b) may retain the capacity to appoint an agent and complete Part I of the form created in
 3421 Section [75-2a-117] 75A-3-303.
- 3422 (3) The following factors shall be considered by a health care provider, attorney, or court
 3423 when determining whether an adult described in Subsection (2)(b) has retained the
 3424 capacity to appoint an agent:
- 3425 (a) whether the adult has expressed over time an intent to appoint the same person as
 3426 agent;
- 3427 (b) whether the choice of agent is consistent with past relationships and patterns of
 3428 behavior between the adult and the prospective agent, or, if inconsistent, whether
 3429 there is a reasonable justification for the change; and
- 3430 (c) whether the adult's expression of the intent to appoint the agent occurs at times when,
 3431 or in settings where, the adult has the greatest ability to make and communicate
 3432 decisions.

3433 Section 86. Section **75A-3-303**, which is renumbered from Section 75-2a-117 is renumbered
 3434 and amended to read:

3435 **[75-2a-117] 75A-3-303. . Optional form for advance health care directive.**

- 3436 (1) The form created in Subsection (2), or a substantially similar form, is presumed valid
 3437 under this chapter.
- 3438 (2) The following form is presumed valid under Subsection (1):

3439

Utah Advance Health Care Directive

3440

(Pursuant to Utah Code Section [75-2a-117] 75A-3-303)

3441 Part I: Allows you to name another person to make health care decisions for you when you
 3442 cannot make decisions or speak for yourself.

3443 Part II: Allows you to record your wishes about health care in writing.

3444 Part III: Tells you how to revoke or change this directive.

3445 Part IV: Makes your directive legal.

3446

3447

My Personal Information

3448 Name: _____
3449 Street Address: _____
3450 City, State, Zip Code:
3451 _____
3452 Telephone: _____ Cell Phone: _____
3453 Birth date: _____
3454 _____
3455

Part I: My Agent (Health Care Power of Attorney)

3456 A. No Agent

3457 If you do not want to name an agent: initial the box below, then go to Part II; do not name an
3458 agent in B or C below. No one can force you to name an agent.

3459 _____ I do not want to choose an agent.

3460 B. My Agent

3461 Agent's Name:

3462 _____

3463 Street Address:

3464 _____

3465 City, State, Zip Code:

3466 _____

3467 Home Phone: () _____ Cell Phone: () _____ Work Phone: () _____

3468 C. My Alternate Agent

3469 This person will serve as your agent if your agent, named above, is unable or unwilling to
3470 serve.

3471 Alternate Agent's Name:

3472 _____

3473 Street Address:

3474 _____

3475 City, State, Zip Code:

3476 _____

3477 Home Phone: () _____ Cell Phone: () _____ Work Phone: () _____

3478 D. Agent's Authority

3479 If I cannot make decisions or speak for myself (in other words, after my physician or another
3480 authorized provider finds that I lack health care decision making capacity under Section [

75-2a-104] 75A-3-201 of the Advance Health Care Directive Act), my agent has the power to make any health care decision I could have made such as, but not limited to:

- Consent to, refuse, or withdraw any health care. This may include care to prolong my life such as food and fluids by tube, use of antibiotics, CPR (cardiopulmonary resuscitation), and dialysis, and mental health care, such as convulsive therapy and psychoactive medications. This authority is subject to any limits in paragraph F of Part I or in Part II of this directive.

- Hire and fire health care providers.
- Ask questions and get answers from health care providers.
- Consent to admission or transfer to a health care provider or health care facility, including a mental health facility, subject to any limits in paragraphs E and F of Part I.
- Get copies of my medical records.
- Ask for consultations or second opinions.

My agent cannot force health care against my will, even if a physician has found that I lack health care decision making capacity.

E. Other Authority

My agent has the powers below ONLY IF I initial the "yes" option that precedes the statement. I authorize my agent to:

YES _____ NO _____ Get copies of my medical records at any time, even when I can speak for myself.

YES _____ NO _____ Admit me to a licensed health care facility, such as a hospital, nursing home, assisted living, or other facility for long-term placement other than convalescent or recuperative care.

F. Limits/Expansion of Authority

I wish to limit or expand the powers of my health care agent as follows:

G. Nomination of Guardian

Even though appointing an agent should help you avoid a guardianship, a guardianship may still be necessary. Initial the "YES" option if you want the court to appoint your agent or, if your agent is unable or unwilling to serve, your alternate agent, to serve as your guardian, if a guardianship is ever necessary.

YES _____ NO _____ I, being of sound mind and not acting under duress, fraud, or other undue influence, do hereby nominate my agent, or if my agent is unable or unwilling to serve, I hereby nominate my alternate agent, to serve as my guardian in the event that, after the date

3515 of this instrument, I become incapacitated.

3516 H. Consent to Participate in Medical Research

3517 YES _____ NO _____ I authorize my agent to consent to my participation in medical
3518 research or clinical trials, even if I may not benefit from the results.

3519 I. Organ Donation

3520 YES _____ NO _____ If I have not otherwise agreed to organ donation, my agent may
3521 consent to the donation of my organs for the purpose of organ transplantation.

3522 _____

3523

Part II: My Health Care Wishes (Living Will)

3524 I want my health care providers to follow the instructions I give them when I am being treated,
3525 even if my instructions conflict with these or other advance directives. My health care
3526 providers should always provide health care to keep me as comfortable and functional as
3527 possible.

3528 Choose only one of the following options, numbered Option 1 through Option 4, by placing
3529 your initials before the numbered statement. Do not initial more than one option. If you do
3530 not wish to document end-of-life wishes, initial Option 4. You may choose to draw a line
3531 through the options that you are not choosing.

3532 Option 1

3533 _____ Initial

3534 I choose to let my agent decide. I have chosen my agent carefully. I have talked with my
3535 agent about my health care wishes. I trust my agent to make the health care decisions for me
3536 that I would make under the circumstances.

3537 Additional Comments:

3538 _____

3539 Option 2

3540 _____ Initial

3541 I choose to prolong life. Regardless of my condition or prognosis, I want my health care team
3542 to try to prolong my life as long as possible within the limits of generally accepted health care
3543 standards.

3544 Other:

3545 _____

3546 Option 3

3547 _____ Initial

3548 I choose not to receive care for the purpose of prolonging life, including food and fluids by
3549 tube, antibiotics, CPR, or dialysis being used to prolong my life. I always want comfort care
3550 and routine medical care that will keep me as comfortable and functional as possible, even if
3551 that care may prolong my life.

3552 If you choose this option, you must also choose either (a) or (b), below.

3553 _____ Initial

3554 (a) I put no limit on the ability of my health care provider or agent to withhold or withdraw
3555 life-sustaining care.

3556 If you selected (a), above, do not choose any options under (b).

3557 _____ Initial

3558 (b) My health care provider should withhold or withdraw life-sustaining care if at least one of
3559 the following initialed conditions is met:

3560 _____ I have a progressive illness that will cause death.

3561 _____ I am close to death and am unlikely to recover.

3562 _____ I cannot communicate and it is unlikely that my condition will improve.

3563 _____ I do not recognize my friends or family and it is unlikely that my condition will
3564 improve.

3565 _____ I am in a persistent vegetative state.

3566 Other:

3567 _____

3568 Option 4

3569 _____ Initial

3570 I do not wish to express preferences about health care wishes in this directive.

3571 Other:

3572 _____

3573 Additional instructions about your health care wishes:

3574 _____

3575 _____

3576 _____

3577 If you do not want emergency medical service providers to provide CPR or other life
3578 sustaining measures, you must work with a physician or APRN to complete an order that
3579 reflects your wishes on a form approved by the Utah Department of Health.

3580

3581 I may revoke or change this directive by:

3582 1. Writing "void" across the form, or burning, tearing, or otherwise destroying or defacing this
3583 document or directing another person to do the same on my behalf;

3584 2. Signing a written revocation of the directive, or directing another person to sign a
3585 revocation on my behalf;

3586 3. Stating that I wish to revoke the directive in the presence of a witness who: is 18 years of
3587 age or older; will not be appointed as my agent in a substitute directive; will not become a
3588 default surrogate if the directive is revoked; and signs and dates a written document
3589 confirming my statement; or

3590 4. Signing a new directive. (If you sign more than one Advance Health Care Directive, the
3591 most recent one applies.)
3592

Part IV: Making My Directive Legal

3593 I sign this directive voluntarily. I understand the choices I have made and declare that I am
3594 emotionally and mentally competent to make this directive. My signature on this form revokes
3595 any living will or power of attorney form, naming a health care agent, that I have completed in
3596 the past.

3597 _____

3598 Date

3599 _____

3600 Signature

3601 _____

3602 City, County, and State of Residence

3603 I have witnessed the signing of this directive, I am 18 years of age or older, and I am not:

3604 1. related to the declarant by blood or marriage;

3605 2. entitled to any portion of the declarant's estate according to the laws of intestate succession
3606 of any state or jurisdiction or under any will or codicil of the declarant;

3607 3. a beneficiary of a life insurance policy, trust, qualified plan, pay on death account, or
3608 transfer on death deed that is held, owned, made, or established by, or on behalf of, the
3609 declarant;

3610 4. entitled to benefit financially upon the death of the declarant;

3611 5. entitled to a right to, or interest in, real or personal property upon the death of the declarant;

3612 6. directly financially responsible for the declarant's medical care;

3613 7. a health care provider who is providing care to the declarant or an administrator at a health

care facility in which the declarant is receiving care; or

8. the appointed agent or alternate agent.

Signature of Witness

Printed Name of Witness

Street Address

City

State

Zip Code

If the witness is signing to confirm an oral directive, describe below the circumstances under which the directive was made.

Section 87. Section **75A-3-304**, which is renumbered from Section 75-2a-116 is renumbered and amended to read:

~~[75-2a-116]~~ 75A-3-304. . Presumption of validity of advance health care directive.

(1) [A] An advance health care directive executed under this chapter is presumed valid and binding.

(2) ~~[Health care providers and health care facilities]~~ A health care provider and a health care facility, in the absence of notice to the contrary, shall presume that a declarant who executed [a] an advance health care directive, whether or not in the presence of a health care provider, had the required decision making capacity at the time the declarant signed the directive.

(3) The fact that a declarant executed [a] an advance health care directive shall not be construed as an indication that the declarant was suffering from mental illness or lacked decision making capacity.

Section 88. Section **75A-3-305**, which is renumbered from Section 75-2a-119 is renumbered and amended to read:

~~[75-2a-119]~~ 75A-3-305. . Advance health care directive effect on insurance policies.

(1) If an adult makes [a] an advance health care directive under this chapter, the advance health care directive does not affect in any manner:

- (a) the obligation of any life or medical insurance company regarding any policy of life or medical insurance;
- (b) the sale, procurement, or issuance of any policy of life or health insurance; or
- (c) the terms of any existing policy.

3648 (2) (a) Notwithstanding any terms of an insurance policy to the contrary, an insurance
3649 policy is not legally impaired or invalidated in any manner by:
3650 (i) withholding or withdrawing life sustaining procedures; or
3651 (ii) following directions in [a] an advance health care directive executed as provided
3652 in this chapter.
3653 (b) Following health care instructions in [a] an advance health care directive does not
3654 constitute legal cause for failing to pay life or health insurance benefits.
3655 (c) Death that occurs after following the instructions of an advance health care directive
3656 or a surrogate's instructions does not for any purpose constitute a suicide or homicide
3657 or legally impair or invalidate a policy of insurance or an annuity providing a death
3658 benefit.

3659 (3) (a) The following may not require an adult to execute [~~a directive~~] an advance health
3660 care directive or to make any particular choices or entries in [~~a directive~~] an advance
3661 health care directive under this chapter as a condition for being insured for or
3662 receiving health care or life insurance contract services:

3663 (i) a health care provider;
3664 (ii) a health care facility;
3665 (iii) a health maintenance organization;
3666 (iv) an insurer issuing disability, health, or life insurance;
3667 (v) a self-insured employee welfare or benefit plan;
3668 (vi) a nonprofit medical service corporation or mutual nonprofit hospital service
3669 corporation; or
3670 (vii) any other person, firm, or entity.

3671 (b) Nothing in this chapter:
3672 (i) may be construed to require an insurer to insure risks otherwise considered by the
3673 insurer as not a covered risk;
3674 (ii) is intended to impair or supersede any other legal right or legal responsibility
3675 which an adult may have to effect the withholding or withdrawal of life sustaining
3676 procedures in any lawful manner; or
3677 (iii) creates any presumption concerning the intention of an adult who has not
3678 executed [a] an advance health care directive.

3679 Section 89. Section **75A-3-306**, which is renumbered from Section 75-2a-123 is renumbered
3680 and amended to read:

3681 **[75-2a-123] 75A-3-306. . Advance health care directive effect during pregnancy.**

(1) [A] An advance health care directive that provides for the withholding or withdrawal of life sustaining procedures has no force during the course of a declarant's pregnancy.

(2) Subsection (1) does not negate the appointment of a health care agent during the course of a declarant's pregnancy.

Section 90. Section **75A-3-307**, which is renumbered from Section 75-2a-114 is renumbered and amended to read:

~~[75-2a-114]~~ 75A-3-307. . Revocation of advance health care directive.

(1) An advance health care directive may be revoked at any time by the declarant by:

(a) writing "void" across the document;

(b) obliterating, burning, tearing, or otherwise destroying or defacing the document in any manner indicating an intent to revoke;

(c) instructing another to do one of the acts described in Subsection (1)(a) or (b);

(d) a written revocation of the directive signed and dated by:

(i) the declarant; or

(ii) an adult:

(A) signing on behalf of the declarant; and

(B) acting at the direction of the declarant; or

(e) an oral expression of an intent to revoke the directive in the presence of a witness who is age 18 years old or older and who is not:

(i) related to the declarant by blood or marriage;

(ii) entitled to any portion of the declarant's estate according to the laws of intestate succession of this state or under any will or codicil of the declarant;

(iii) the beneficiary of any of the following that are held, owned, made, or established by, or on behalf of, the declarant:

(A) a life insurance policy;

(B) a trust;

(C) a qualified plan;

(D) a pay on death account; or

(E) a transfer on death deed;

(iv) entitled to benefit financially upon the death of the declarant;

(v) entitled to a right to, or interest in, real or personal property upon the death of the declarant;

(vi) directly financially responsible for the declarant's medical care;

(vii) a health care provider who is:

- 3716 (A) providing care to the declarant; or
3717 (B) an administrator at a health care facility in which the declarant is receiving
3718 care; or
3719 (viii) the adult who will become agent or default surrogate after the revocation.
3720 (2) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes the
3721 designation of a spouse as an agent, unless:
3722 (a) otherwise specified in the decree; or
3723 (b) the declarant has affirmed the intent to retain the agent subsequent to the annulment,
3724 divorce, or legal separation.

- 3725 (3) An advance health care directive that conflicts with an earlier advance health care
3726 directive revokes the earlier directive to the extent of the conflict.

3727 Section 91. Section **75A-3-308**, which is renumbered from Section 75-2a-118 is renumbered
3728 and amended to read:

3729 **~~[75-2a-118]~~ 75A-3-308. . Illegal destruction or falsification of advance health care**
3730 **directive.**

- 3731 (1) A person is guilty of a class B misdemeanor if the person:
3732 (a) willfully conceals, cancels, defaces, obliterates, or damages [a] an advance health care
3733 directive of another without the declarant's consent; or
3734 (b) falsifies, forges, or alters a health care directive or a revocation of the advance health
3735 care directive of another person.
3736 (2) A person is guilty of criminal homicide if:
3737 (a) the person:
3738 (i) falsifies or forges the advance health care directive of an adult; or
3739 (ii) willfully conceals or withholds personal knowledge of:
3740 (A) the existence of [a] an advance health care directive;
3741 (B) the revocation of [a] an advance health care directive; or
3742 (C) the disqualification of a surrogate; and
3743 (b) the actions described in Subsection (2)(a) cause a withholding or withdrawal of life
3744 sustaining procedures contrary to the wishes of a declarant resulting in the death of
3745 the declarant.

3746 Section 92. Section **75A-3-309**, which is renumbered from Section 75-2a-121 is renumbered
3747 and amended to read:

3748 **~~[75-2a-121]~~ 75A-3-309. . Reciprocity of advance health care directive --**
3749 **Application of former provisions of law.**

3750 Unless otherwise provided in the advance health care directive:

3751 (1) a health care provider or health care facility may, in good faith, rely on any advance
3752 health care directive, power of attorney, or similar instrument:

3753 (a) executed in another state; or

3754 (b) executed prior to January 1, 2008, in this state~~[under the provisions of Chapter 2,~~
3755 ~~Part 11, Personal Choice and Living Will Act]~~;

3756 (2) [a] an advance health care directive executed under the provisions of this chapter shall be
3757 governed pursuant to the provisions of this chapter that were in effect at that time, unless
3758 it appears from the directive that the declarant intended the current provisions of this
3759 chapter to apply; and

3760 (3) the advance health care directive described in Subsection (1) is presumed to comply
3761 with the requirements of this chapter.

3762 Section 93. Section **75A-4-101** is enacted to read:

3763

CHAPTER 4. UNIFORM POWERS OF APPOINTMENT ACT

3764 **75A-4-101 . Reserved.**

3765 Reserved.

3766 Section 94. Section **75A-4-102**, which is renumbered from Section 75-10-102 is renumbered
3767 and amended to read:

3768 **[75-10-102] 75A-4-102. . Definitions for chapter.**

3769 As used in this chapter:

3770 (1) "Appointee" means a person to which a powerholder makes an appointment of
3771 appointive property.

3772 (2) "Appointive property" means the property or property interest subject to a power of
3773 appointment.

3774 (3) (a) "Blanket-exercise clause" means a clause in an instrument that exercises a power
3775 of appointment and is not a specific-exercise clause. ~~[The term]~~

3776 (b) "Blanket-exercise clause" includes a clause that:

3777 ~~[(a)]~~ (i) expressly uses the words "any power" in exercising any power of appointment
3778 the powerholder has;

3779 ~~[(b)]~~ (ii) expressly uses the words "any property" in appointing any property over
3780 which the powerholder has a power of appointment; or

3781 ~~[(c)]~~ (iii) disposes of all property subject to disposition by the powerholder.

3782 (4) "Descendant" means the same as that term is defined in Section 75-1-201.

3783 ~~[(4)]~~ (5) "Donor" means a person that creates a power of appointment.
3784 ~~(6)~~ "Estate" means the same as that term is defined in Section 75-1-201.
3785 ~~[(5)]~~ (7) "Exclusionary power of appointment" means a power of appointment exercisable in
3786 favor of any one or more of the permissible appointees to the exclusion of the other
3787 permissible appointees.
3788 ~~[(6)]~~ (8) "General power of appointment" means a power of appointment exercisable in
3789 favor of the powerholder, the powerholder's estate, a creditor of the powerholder, or a
3790 creditor of the powerholder's estate.
3791 ~~[(7)]~~ (9) "Gift-in-default clause" means a clause identifying a taker in default of appointment.
3792 ~~[(8)]~~ (10) "Impermissible appointee" means a person that is not a permissible appointee.
3793 ~~[(9)]~~ (11) "Instrument" means a record.
3794 ~~[(10)]~~ (12) (a) "Nongeneral power of appointment" means a power of appointment that is
3795 not a general power of appointment. ~~[The terms "special power of appointment,"~~
3796 ~~"limited power of appointment,"]~~
3797 (b) "Nongeneral power of appointment" includes a special power of appointment, a
3798 limited power of appointment, or similar terminology that is used in an instrument
3799 creating a power that does not grant powers making it a general power of appointment[
3800 ~~as defined in this chapter mean the same as and may be used interchangeably with~~
3801 ~~the term nongeneral power of appointment].~~
3802 ~~[(11)]~~ (13) "Permissible appointee" means a person in whose favor a powerholder may
3803 exercise a power of appointment.
3804 ~~[(12)]~~ (14) "Person" means an individual, estate, trust, business or nonprofit entity, public
3805 corporation, government or governmental subdivision, agency, instrumentality, or other
3806 legal entity.
3807 ~~[(13)]~~ (15) "Powerholder" means a person in whom a donor creates a power of appointment.
3808 ~~[(14)]~~ (16) (a) "Power of appointment" means a power that enables a powerholder acting
3809 in a nonfiduciary capacity to designate a recipient of an interest in, or another power
3810 of appointment over, the appointive property. ~~[The term]~~
3811 (b) "Power of appointment" does not include a power of attorney.
3812 ~~[(15)]~~ (17) (a) "Presently exercisable power of appointment" means a power of
3813 appointment exercisable by the powerholder at a relevant time. ~~[The term:]~~
3814 ~~[(a)]~~ (b) "Presently exercisable power of appointment" includes a power of appointment
3815 not exercisable until the occurrence of a specified event, the satisfaction of an
3816 ascertainable standard, or the passage of a specified time only after:

- 3817 (i) the occurrence of the specified event;
- 3818 (ii) the satisfaction of the ascertainable standard; or
- 3819 (iii) the passage of the specified time~~;~~ and] .
- 3820 ~~[(b)]~~ (c) "Presently exercisable power of appointment" does not include a power
- 3821 exercisable only at the powerholder's death.
- 3822 (18) "Property" means the same as that term is defined in Section 75-1-201.
- 3823 ~~[(16)]~~ (19) "Record" means information that is inscribed on a tangible medium or that is
- 3824 stored in an electronic or other medium and is retrievable in perceivable form.
- 3825 ~~[(17)]~~ (20) "Specific-exercise clause" means a clause in an instrument that specifically refers
- 3826 to and exercises a particular power of appointment.
- 3827 ~~[(18)]~~ (21) "Taker in default of appointment" means a person that takes all or part of the
- 3828 appointive property to the extent the powerholder does not effectively exercise the
- 3829 power of appointment.
- 3830 ~~[(19)]~~ (22) "Terms of the instrument" means the manifestation of the intent of the maker of
- 3831 the instrument regarding the instrument's provisions as expressed in the instrument or as
- 3832 may be established by other evidence that would be admissible in a legal proceeding.
- 3833 (23) "Trust" means the same as that term is defined in Section 75-1-201.
- 3834 (24) "Will" means the same as that term is defined in Section 75-1-201.
- 3835 Section 95. Section **75A-4-103**, which is renumbered from Section 75-10-103 is renumbered
- 3836 and amended to read:
- 3837 **~~[75-10-103]~~ 75A-4-103. . Governing law.**
- 3838 (1) Unless the terms of the instrument creating a power of appointment manifest a contrary
- 3839 intent:
- 3840 (a) the creation, revocation, amendment, interpretation and definition of terms, or the
- 3841 determination of the rights of the appointee of the power is governed by the law of
- 3842 the donor's domicile at the relevant time; and
- 3843 (b) the formalities for the exercise, release, or disclaimer of the power, or the revocation
- 3844 or amendment of the exercise, release, or disclaimer of the power is governed by the
- 3845 law of the powerholder's state of domicile at the relevant time.
- 3846 (2) The law of the powerholder's state of domicile may not govern the interpretation and
- 3847 definition of terms, or the determination of the rights of the appointee of the power,
- 3848 which shall be governed by the law of the donor's domicile at the relevant time.
- 3849 (3) Claims of creditors, including creditor claims regarding a power not created by a
- 3850 powerholder as set forth in Section ~~[75-10-502]~~ 75A-4-502, and other parties claiming an

3851 interest in property or rights subject to a power will be governed by the laws of the
3852 donor's domicile at the time of the creation of the power and not the powerholder's state
3853 of domicile either at the time of the creation of the power or at the time of exercise of the
3854 power.

3855 Section 96. Section **75A-4-104**, which is renumbered from Section 75-10-104 is renumbered
3856 and amended to read:

3857 **~~[75-10-104]~~ 75A-4-104. . Common law and principles of equity.**

3858 The common law and principles of equity supplement this chapter, except to the
3859 extent modified by this chapter or laws of this state other than this chapter.

3860 Section 97. Section **75A-4-201**, which is renumbered from Section 75-10-201 is renumbered
3861 and amended to read:

3862 **Part 2. Creation, Revocation, and Amendment of Power of Appointment**

3863 **~~[75-10-201]~~ 75A-4-201. . Creation of power of appointment.**

3864 (1) A power of appointment is created only if:

3865 (a) the instrument creating the power is valid under applicable law; and

3866 (b) the terms of the instrument creating the power manifest the donor's intent to create in
3867 a powerholder a power of appointment over the appointive property exercisable in
3868 favor of a permissible appointee.

3869 (2) A power of appointment may be created by the exercise of a power of appointment.

3870 (3) A power of appointment may not be created in a deceased individual.

3871 (4) Subject to an applicable rule against perpetuities, a power of appointment may be
3872 created in an unborn or unascertained powerholder.

3873 Section 98. Section **75A-4-202**, which is renumbered from Section 75-10-202 is renumbered
3874 and amended to read:

3875 **~~[75-10-202]~~ 75A-4-202. . Nontransferability.**

3876 (1) A powerholder may not transfer a power of appointment.

3877 (2) If a powerholder dies without exercising or releasing a power, the power lapses.

3878 Section 99. Section **75A-4-203**, which is renumbered from Section 75-10-203 is renumbered
3879 and amended to read:

3880 **~~[75-10-203]~~ 75A-4-203. . Presumption of unlimited authority.**

3881 Subject to Section ~~[75-10-205]~~ 75A-4-205, and unless the terms of the instrument
3882 creating a power of appointment manifest a contrary intent, the power is:

3883 (1) presently exercisable;

3884 (2) exclusionary; and

3885 (3) except as otherwise provided in Section ~~[75-10-204]~~ 75A-4-204, general.

3886 Section 100. Section **75A-4-204**, which is renumbered from Section 75-10-204 is renumbered
3887 and amended to read:

3888 **~~[75-10-204]~~ 75A-4-204. . Exception to presumption of unlimited authority.**

3889 Unless the terms of the instrument creating a power of appointment manifest a
3890 contrary intent, the power is nongeneral if:

3891 (1) the power is exercisable only at the powerholder's death; and

3892 (2) the permissible appointees of the power are a defined and limited class that does not
3893 include the powerholder's estate, the powerholder's creditors, or the creditors of the
3894 powerholder's estate.

3895 Section 101. Section **75A-4-205**, which is renumbered from Section 75-10-205 is renumbered
3896 and amended to read:

3897 **~~[75-10-205]~~ 75A-4-205. . Rules of classification.**

3898 (1) ~~[In this section]~~ As used in this section, "adverse party" means a person with a
3899 substantial beneficial interest in property that would be affected adversely by a
3900 powerholder's exercise or nonexercise of a power of appointment in favor of the
3901 powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the
3902 powerholder's estate.

3903 (2) If a powerholder may exercise a power of appointment only with the consent or joinder
3904 of an adverse party, the power is nongeneral.

3905 (3) If the permissible appointees of a power of appointment are not defined and limited, the
3906 power is exclusionary.

3907 Section 102. Section **75A-4-206**, which is renumbered from Section 75-10-206 is renumbered
3908 and amended to read:

3909 **~~[75-10-206]~~ 75A-4-206. . Donor's power to revoke or amend.**

3910 A donor may revoke or amend a power of appointment unless or to the extent the
3911 instrument creating the power is made irrevocable by the donor or the exercise of a
3912 presently exercisable power has been irrevocably made or effected.

3913 Section 103. Section **75A-4-301**, which is renumbered from Section 75-10-301 is renumbered
3914 and amended to read:

3915

Part 3. Exercise of Power of Appointment

3916 **~~[75-10-301]~~ 75A-4-301. . Requisites for exercise of power of appointment.**

3917 A power of appointment is exercised only:

3918 (1) if the instrument exercising the power is valid under applicable law;

3919 (2) if the terms of the instrument exercising the power:

3920 (a) manifest the powerholder's intent to exercise the power; and

3921 (b) satisfy the requirements of exercise, if any, imposed by the donor; and

3922 (3) to the extent the appointment is a permissible exercise of the power.

3923 Section 104. Section **75A-4-302**, which is renumbered from Section 75-10-302 is renumbered
3924 and amended to read:

3925 **[75-10-302] 75A-4-302. . Intent to exercise -- Determining intent from residuary**
3926 **clause.**

3927 (1) As used in this section:

3928 (a) "Residuary clause" does not include a residuary clause containing a blanket-exercise
3929 clause or a specific-exercise clause.

3930 (b) "Will" includes a codicil and a testamentary instrument that revises another will.

3931 (2) A residuary clause in a powerholder's will, or a comparable clause in the powerholder's
3932 revocable trust, manifests the powerholder's intent to exercise a power of appointment
3933 only if:

3934 (a) the terms of the instrument containing the residuary clause do not manifest a contrary
3935 intent;

3936 (b) the power is a general power exercisable in favor of the powerholder's estate;

3937 (c) there is no gift-in-default clause or the clause is ineffective; and

3938 (d) the powerholder did not release the power.

3939 Section 105. Section **75A-4-303**, which is renumbered from Section 75-10-303 is renumbered
3940 and amended to read:

3941 **[75-10-303] 75A-4-303. . Intent to exercise -- After-acquired power.**

3942 Unless the terms of the instrument exercising a power of appointment manifest a
3943 contrary intent:

3944 (1) except as otherwise provided in Subsection (2), a blanket-exercise clause extends to a
3945 power acquired by the powerholder after executing the instrument containing the clause;
3946 and

3947 (2) if the powerholder is also the donor of the power, the clause does not extend to the
3948 power unless there is no gift-in-default clause or the gift-in-default clause is ineffective.

3949 Section 106. Section **75A-4-304**, which is renumbered from Section 75-10-304 is renumbered
3950 and amended to read:

~~[75-10-304]~~ 75A-4-304. . Compliance with donor-imposed formal requirements.

- (1) (a) A powerholder's compliance with formal requirements of appointment imposed by the donor is sufficient only if the powerholder substantially complies with the conditions, requirements, and formalities set forth in the power of appointment, including complying with all the requirements for making specific reference to the power, that the power shall be exercised in a specific document such as a will, or that the document exercising the power shall be witnessed or notarized.
- (b) If the donor limited the powerholder's exercise to a validly executed will, substantial compliance may not include the exercise of the power by a trust or another document not meeting the requirements of a properly executed will.
- (2) Unless required by the instrument creating the power, the probate of a properly executed will is not required for the exercise of a power to be valid and complete.

Section 107. Section **75A-4-305**, which is renumbered from Section 75-10-305 is renumbered and amended to read:

~~[75-10-305]~~ 75A-4-305. . Permissible appointment.

- (1) A powerholder of a general power of appointment that permits appointment to the powerholder or the powerholder's estate may make any appointment, including an appointment in trust or creating a new power of appointment, that the powerholder could make in disposing of the powerholder's own property.
- (2) A powerholder of a general power of appointment that permits appointment only to the creditors of the powerholder or of the powerholder's estate may appoint only to those creditors.
- (3) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the powerholder of a nongeneral power may:
- (a) make an appointment in any form, including an appointment in trust, in favor of a permissible appointee;
 - (b) create a general power in a permissible appointee;
 - (c) create a nongeneral power in any person to appoint one or more of the permissible appointees of the original nongeneral power; or
 - (d) create a nongeneral power in a permissible appointee to appoint one or more persons if the permissible appointees of the new nongeneral power include the permissible appointees of the original nongeneral power.

Section 108. Section **75A-4-306**, which is renumbered from Section 75-10-306 is renumbered and amended to read:

~~[75-10-306]~~ 75A-4-306. . Appointment to deceased appointee or permissible appointee's descendant.

(1) Subject to Sections 75-2-603 and 75-2-604, an appointment to a deceased appointee is ineffective.

(2) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, a powerholder of a nongeneral power may exercise the power in favor of, or create a new power of appointment in, a descendant of a deceased permissible appointee whether or not the descendant is described by the donor as a permissible appointee.

Section 109. Section **75A-4-307**, which is renumbered from Section 75-10-307 is renumbered and amended to read:

~~[75-10-307]~~ 75A-4-307. . Impermissible appointment.

(1) Except as otherwise provided in Section ~~[75-10-306]~~ 75A-4-306, an exercise of a power of appointment in favor of an impermissible appointee is ineffective.

(2) An exercise of a power of appointment in favor of a permissible appointee is ineffective to the extent the appointment is a fraud on the power.

Section 110. Section **75A-4-308**, which is renumbered from Section 75-10-308 is renumbered and amended to read:

~~[75-10-308]~~ 75A-4-308. . Elective allocation doctrine.

If a powerholder exercises a power of appointment in a disposition that also disposes of property the powerholder owns, the owned property and the appointive property shall be allocated in the permissible manner that best carries out the powerholder's intent.

Section 111. Section **75A-4-309**, which is renumbered from Section 75-10-309 is renumbered and amended to read:

~~[75-10-309]~~ 75A-4-309. . Capture doctrine -- Disposition of ineffectively appointed property under general power.

To the extent a powerholder of a general power of appointment, other than a power to withdraw property from, revoke, or amend a trust, makes an ineffective appointment:

(1) the gift-in-default clause controls the disposition of the ineffectively appointed property;

or

(2) if there is no gift-in-default clause or to the extent the clause is ineffective, the ineffectively appointed property:

(a) passes to:

(i) the powerholder if the powerholder is a permissible appointee and is living; or

- 4019 (ii) if the powerholder is an impermissible appointee or is deceased, the
4020 powerholder's estate if the estate is a permissible appointee; or
4021 (b) if there is no taker under Subsection (2)(a), passes under a reversionary interest to the
4022 donor or the donor's transferee or successor in interest.

4023 Section 112. Section **75A-4-310**, which is renumbered from Section 75-10-310 is renumbered
4024 and amended to read:

4025 **~~[75-10-310]~~ 75A-4-310. . Disposition of unappointed property under released or**
4026 **unexercised general power.**

4027 To the extent a powerholder releases or fails to exercise a general power of
4028 appointment other than a power to withdraw property from, revoke, or amend a trust:

- 4029 (1) the gift-in-default clause controls the disposition of the unappointed property; or
4030 (2) if there is no gift-in-default clause or to the extent the clause is ineffective:
4031 (a) except as otherwise provided in Subsection (2)(b), the unappointed property passes
4032 to:
4033 (i) the powerholder if the powerholder is a permissible appointee and is living; or
4034 (ii) if the powerholder is an impermissible appointee or is deceased, the
4035 powerholder's estate if the estate is a permissible appointee; or
4036 (b) to the extent the powerholder released the power, or if there is no taker under
4037 Subsection (2)(a), the unappointed property passes under a reversionary interest to
4038 the donor or the donor's transferee or successor in interest.

4039 Section 113. Section **75A-4-311**, which is renumbered from Section 75-10-311 is renumbered
4040 and amended to read:

4041 **~~[75-10-311]~~ 75A-4-311. . Disposition of unappointed property under released or**
4042 **unexercised nongeneral power.**

4043 To the extent a powerholder releases, ineffectively exercises, or fails to exercise a
4044 nongeneral power of appointment:

- 4045 (1) the gift-in-default clause controls the disposition of the unappointed property; or
4046 (2) if there is no gift-in-default clause or to the extent the clause is ineffective, the
4047 unappointed property:
4048 (a) passes to the permissible appointees if:
4049 (i) the permissible appointees are defined and limited; and
4050 (ii) the terms of the instrument creating the power do not manifest a contrary intent; or
4051 (b) if there is no taker under Subsection (2)(a), passes under a reversionary interest to the
4052 donor or the donor's transferee or successor in interest.

4053 Section 114. Section **75A-4-312**, which is renumbered from Section 75-10-312 is renumbered
4054 and amended to read:

4055 **~~[75-10-312]~~ 75A-4-312. . Disposition of unappointed property if partial**
4056 **appointment to taker in default.**

4057 Unless the terms of the instrument creating or exercising a power of appointment
4058 manifest a contrary intent, if the powerholder makes a valid partial appointment to a
4059 taker in default of appointment, the taker in default of appointment may share fully in
4060 unappointed property.

4061 Section 115. Section **75A-4-313**, which is renumbered from Section 75-10-313 is renumbered
4062 and amended to read:

4063 **~~[75-10-313]~~ 75A-4-313. . Appointment to taker in default.**

4064 If a powerholder makes an appointment to a taker in default of appointment and
4065 the appointee would have taken the property under a gift-in-default clause had the
4066 property not been appointed, the power of appointment is considered not to have
4067 been exercised and the appointee takes under the clause.

4068 Section 116. Section **75A-4-314**, which is renumbered from Section 75-10-314 is renumbered
4069 and amended to read:

4070 **~~[75-10-314]~~ 75A-4-314. . Powerholder's authority to revoke or amend exercise.**

4071 Unless the terms of the instrument creating the power of appointment or the
4072 instrument exercising the power of appointment provide that the exercise is
4073 irrevocable or unamendable, a powerholder may revoke or amend an exercise of a
4074 power of appointment made by an instrument effective during the life of the
4075 powerholder where the exercise is to become effective at some future time or
4076 contingency and where that future time and contingency has not yet occurred, as long
4077 as the revocation or amendment is done with the same formality as the original
4078 exercise of the power of appointment.

4079 Section 117. Section **75A-4-401**, which is renumbered from Section 75-10-401 is renumbered
4080 and amended to read:

4081 **Part 4. Disclaimer or Release - Contract to Appoint or Not to Appoint**

4082 **~~[75-10-401]~~ 75A-4-401. . Disclaimer.**

4083 As provided by Section 75-2-801:

4084 (1) A powerholder may disclaim all or part of a power of appointment.

4085 (2) A permissible appointee, an appointee, or a taker in default of appointment may

4086 disclaim all or part of an interest in appointive property.

4087 Section 118. Section **75A-4-402**, which is renumbered from Section 75-10-402 is renumbered
4088 and amended to read:

4089 **[75-10-402] 75A-4-402. . Authority to release.**

4090 A powerholder may release a power of appointment, in whole or in part, except to
4091 the extent the terms of the instrument creating the power prevent the release.

4092 Section 119. Section **75A-4-403**, which is renumbered from Section 75-10-403 is renumbered
4093 and amended to read:

4094 **[75-10-403] 75A-4-403. . Method of release.**

4095 A powerholder of a releasable power of appointment may release the power in
4096 whole or in part:

- 4097 (1) by substantial compliance with a method provided in the terms of the instrument
4098 creating the power; or
4099 (2) if the terms of the instrument creating the power do not provide a method or the method
4100 provided in the terms of the instrument is not expressly made exclusive, by a record
4101 manifesting the powerholder's intent by clear and convincing evidence.

4102 Section 120. Section **75A-4-404**, which is renumbered from Section 75-10-404 is renumbered
4103 and amended to read:

4104 **[75-10-404] 75A-4-404. . Revocation or amendment of release.**

4105 A powerholder may revoke or amend a release of a power of appointment only to
4106 the extent that:

- 4107 (1) the instrument of release is revocable by the powerholder; or
4108 (2) the powerholder reserves a power of revocation or amendment in the instrument of
4109 release.

4110 Section 121. Section **75A-4-405**, which is renumbered from Section 75-10-405 is renumbered
4111 and amended to read:

4112 **[75-10-405] 75A-4-405. . Power to contract -- Presently exercisable power of**
4113 **appointment.**

4114 A powerholder of a presently exercisable power of appointment may contract:

- 4115 (1) not to exercise the power; or
4116 (2) to exercise the power if the contract when made does not confer a benefit on an
4117 impermissible appointee.

4118 Section 122. Section **75A-4-406**, which is renumbered from Section 75-10-406 is renumbered
4119 and amended to read:

4120 ~~[75-10-406]~~ 75A-4-406. . Power to contract -- Power of appointment not presently
4121 exercisable.

4122 A powerholder of a power of appointment that is not presently exercisable may
4123 contract to exercise or not to exercise the power only if the powerholder:

4124 (1) is also the donor of the power; and

4125 (2) has reserved the power in a revocable trust.

4126 Section 123. Section **75A-4-407**, which is renumbered from Section 75-10-407 is renumbered
4127 and amended to read:

4128 ~~[75-10-407]~~ 75A-4-407. . Remedy for breach of contract to appoint or not to
4129 appoint.

4130 The remedy for a powerholder's breach of a contract to appoint or not to appoint
4131 appointive property is limited to damages payable out of the appointive property or, if
4132 appropriate, specific performance of the contract.

4133 Section 124. Section **75A-4-501**, which is renumbered from Section 75-10-501 is renumbered
4134 and amended to read:

4135 **Part 5. Rights of Powerholder's Creditors in Appointive Property**

4136 ~~[75-10-501]~~ 75A-4-501. . Creditor claim -- General power created by powerholder.

4137 (1) ~~[In this section]~~ As used in this section, "power of appointment created by the
4138 powerholder" includes a power of appointment created in a transfer by another person to
4139 the extent the powerholder contributed value to the transfer.

4140 (2) Appointive property subject to a general power of appointment created by the
4141 powerholder is subject to a claim of a creditor of the powerholder or of the
4142 powerholder's estate to the extent provided in Title 25, Chapter 6, Uniform Voidable
4143 Transactions Act.

4144 (3) Subject to Subsection (2), appointive property subject to a general power of
4145 appointment created by the powerholder is not subject to a claim of a creditor of the
4146 powerholder or the powerholder's estate to the extent the powerholder irrevocably
4147 appointed the property in favor of a person other than the powerholder or the
4148 powerholder's estate.

4149 (4) Subject to Subsections (2) and (3), and notwithstanding the presence of a spendthrift
4150 provision or whether the claim arose before or after the creation of the power of
4151 appointment, appointive property subject to a general power of appointment created by
4152 the powerholder is subject to a claim of a creditor of:

- 4153 (a) the powerholder, to the same extent as if the powerholder owned the appointive
4154 property, if the power is presently exercisable; and
- 4155 (b) the powerholder's estate, to the extent the estate is insufficient to satisfy the claim
4156 and subject to the right of a decedent to direct the source from which liabilities are
4157 paid, if the power is exercisable at the powerholder's death.

4158 Section 125. Section **75A-4-502**, which is renumbered from Section 75-10-502 is renumbered
4159 and amended to read:

4160 **[75-10-502] 75A-4-502. . Creditor claim -- Power not created by powerholder.**

- 4161 (1) (a) The property subject to a general or a nongeneral power of appointment not
4162 created by the powerholder, including a presently exercisable general or nongeneral
4163 power of appointment, is exempt from a claim of a creditor of the powerholder or the
4164 powerholder's estate.
- 4165 (b) The powerholder of such a power may not be compelled to exercise the power and
4166 the powerholder's creditors may not acquire the power, any rights thereto, or reach
4167 the trust property or beneficial interests by any other means.
- 4168 (c) A court may not exercise or require the powerholder to exercise the power of
4169 appointment.
- 4170 (2) As set forth in Section ~~[75-10-103]~~ **75A-4-103**, the law of the donor's domicile at the
4171 time of creation shall govern claims of creditors and other parties claiming an interest in
4172 property or rights subject to a power of appointment.

4173 Section 126. Section **75A-4-503**, which is renumbered from Section 75-10-503 is renumbered
4174 and amended to read:

4175 **[75-10-503] 75A-4-503. . Power to withdraw.**

- 4176 (1) For purposes of this part, and except as otherwise provided in Subsection (2), a power to
4177 withdraw property from a trust is treated, during the time the power may be exercised, as
4178 a presently exercisable general power of appointment to the extent of the property
4179 subject to the power to withdraw.
- 4180 (2) On the lapse, release, or waiver of a power to withdraw property from a trust, the power
4181 is treated as a presently exercisable general power of appointment only to the extent the
4182 value of the property affected by the lapse, release, or waiver exceeds the greater of the
4183 amount specified in 26 U.S.C. Sec. 2041(b)(2) and 26 U.S.C. Sec. 2514(e) or the amount
4184 specified in 26 U.S.C. Sec. 2503(b).

4185 Section 127. Section **75A-4-601**, which is renumbered from Section 75-10-601 is renumbered
4186 and amended to read:

4187

Part 6. Applicability Provisions

4188

~~[75-10-601]~~ 75A-4-601. . Uniformity of application and construction.

4189

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact ~~[it-]~~ this uniform law.

4191

4192

Section 128. Section **75A-4-602**, which is renumbered from Section 75-10-602 is renumbered and amended to read:

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4194

~~[75-10-602]~~ 75A-4-602. . Relation to Electronic Signatures in Global and National Commerce Act.

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4196

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

4200

4201

Section 129. Section **75A-4-603**, which is renumbered from Section 75-10-603 is renumbered and amended to read:

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4203

~~[75-10-603]~~ 75A-4-603. . Application to existing relationships.

4204

(1) Except as otherwise provided in this chapter, on and after May 9, 2017:

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(a) this chapter applies to a power of appointment created before, on, or after May 9, 2017;

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4207

(b) this chapter applies to a judicial proceeding concerning a power of appointment commenced on or after May 9, 2017;

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4209

(c) this chapter applies to a judicial proceeding concerning a power of appointment commenced before May 9, 2017, unless the court finds that application of a particular provision of this chapter would interfere substantially with the effective conduct of the judicial proceeding or prejudice a right of a party, in which case the particular provision of this chapter does not apply and the superseded law applies; and

4213

4214

(d) a rule of construction or presumption provided in this chapter applies to an instrument executed before May 9, 2017, unless there is a clear indication of a contrary intent in the terms of the instrument.

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4217

(2) Except as otherwise provided in Subsections (1)(a) through (d), an action done before May 9, 2017, is not affected by this chapter.

4218

4219

(3) If a right is acquired, extinguished, or barred on the expiration of a prescribed period

that commenced under law of this state other than this chapter before May 9, 2017, the law continues to apply to the right.

Section 130. Section **75A-5-101** is enacted to read:

CHAPTER 5. UNIFORM FIDUCIARY INCOME AND PRINCIPAL ACT

Part 1. General Provisions

75A-5-101 . Reserved.

Reserved.

Section 131. Section **75A-5-102**, which is renumbered from Section 22-3-102 is renumbered and amended to read:

[22-3-102] 75A-5-102. . Definitions for chapter.

[H] As used in this chapter:

- (1) (a) "Accounting period" means a calendar year, unless a fiduciary selects another period of 12 calendar months or approximately 12 calendar months.
- (b) "Accounting period" includes a part of a calendar year or another period of 12 calendar months or approximately 12 calendar months that begins when an income interest begins or ends when an income interest ends.
- (2) (a) "Asset-backed security" means a security that is serviced primarily by the cash flows of a discrete pool of fixed or revolving receivables or other financial assets that by the financial assets' terms convert into cash within a finite time.
- (b) "Asset-backed security" includes rights or other assets that ensure the servicing or timely distribution of proceeds to the holder of the asset-backed security.
- (c) "Asset-backed security" does not include an asset to which Section ~~[22-3-401, 22-3-409, or 22-3-414]~~ 75A-5-401, 75A-5-409, or 75A-5-414 applies.
- (3) "Beneficiary" includes:
 - (a) for a trust:
 - (i) a current beneficiary, including a current income beneficiary and a beneficiary that may receive only principal;
 - (ii) a remainder beneficiary; and
 - (iii) any other successor beneficiary;
 - (b) for an estate, an heir and devisee; and
 - (c) for a life estate or term interest, a person that holds a life estate, term interest, or remainder, or other interest following a life estate or term interest.
- (4) "Court" means a court in this state with jurisdiction over a trust or estate, or a life estate

- 4253 or other term interest described in Subsection [22-3-103(2)] 75A-5-103(2).
- 4254 (5) "Current income beneficiary" means a beneficiary to which a fiduciary may distribute
4255 net income, even if the fiduciary also may distribute principal to the beneficiary.
- 4256 (6) (a) "Distribution" means a payment or transfer by a fiduciary to a beneficiary in the
4257 beneficiary's capacity as a beneficiary, made under the terms of the trust, without
4258 consideration other than the beneficiary's right to receive the payment or transfer
4259 under the terms of the trust.
- 4260 (b) "Distribute," "distributed," and "distributee" have corresponding meanings.
- 4261 (7) (a) "Estate" means a decedent's estate.
- 4262 (b) "Estate" includes the property of the decedent as the estate is originally constituted
4263 and the property of the estate as it exists at any time during administration.
- 4264 (8) "Fiduciary" includes:
- 4265 (a) a trustee, trust director as defined in Section 75-12-102, personal representative, life
4266 tenant, holder of a term interest, and person acting under a delegation from a
4267 fiduciary;
- 4268 (b) a person that holds property for a successor beneficiary whose interest may be
4269 affected by an allocation of receipts and expenditures between income and principal;
4270 and
- 4271 (c) if there are two or more co-fiduciaries, all co-fiduciaries acting under the terms of the
4272 trust and applicable law.
- 4273 (9) (a) "Income" means money or other property a fiduciary receives as current return
4274 from principal.
- 4275 (b) "Income" includes a part of receipts from a sale, exchange, or liquidation of a
4276 principal asset to the extent provided in Part 4, Allocation of Receipts.
- 4277 (10) (a) "Income interest" means the right of a current income beneficiary to receive all
4278 or part of net income, whether the terms of the trust require the net income to be
4279 distributed or authorize the net income to be distributed in the fiduciary's discretion.
- 4280 (b) "Income interest" includes the right of a current beneficiary to use property held by a
4281 fiduciary.
- 4282 (11) "Independent person" means a person that is not:
- 4283 (a) for a trust:
- 4284 (i) a qualified beneficiary as determined under Section 75-7-103;
- 4285 (ii) a settlor of the trust; or
- 4286 (iii) an individual whose legal obligation to support a beneficiary may be satisfied by

- 4287 a distribution from the trust;
- 4288 (b) for an estate, a beneficiary;
- 4289 (c) a spouse, parent, brother, sister, or issue of an individual described in Subsection
- 4290 (11)(a) or (b);
- 4291 (d) a corporation, partnership, limited liability company, or other entity in which persons
- 4292 described in Subsections (11)(a) through (c), in the aggregate, have voting control; or
- 4293 (e) an employee of a person described in Subsection (11)(a), (b), (c), or (d).
- 4294 (12) "Mandatory income interest" means the right of a current income beneficiary to
- 4295 receive net income that the terms of the trust require the fiduciary to distribute.
- 4296 (13) (a) "Net income" means:
- 4297 (i) the total allocations during an accounting period to income under the terms of a
- 4298 trust and this chapter minus the disbursements during the accounting period, other
- 4299 than distributions, allocated to income under the terms of the trust and this
- 4300 chapter; and
- 4301 (ii) to the extent the trust is a unitrust under Part 3, Unitrust, the unitrust amount
- 4302 determined under Part 3, Unitrust.
- 4303 (b) "Net income" includes an adjustment from principal to income under Section [
- 4304 ~~22-3-203~~] 75A-5-203.
- 4305 (c) "Net income" does not include an adjustment from income to principal under Section [
- 4306 ~~22-3-203~~] 75A-5-203.
- 4307 (14) "Person" means:
- 4308 (a) an individual;
- 4309 (b) an estate;
- 4310 (c) a trust;
- 4311 (d) a business or nonprofit entity;
- 4312 (e) a public corporation, government or governmental subdivision, agency, or
- 4313 instrumentality; or
- 4314 (f) any other legal entity.
- 4315 (15) "Personal representative" means an executor, administrator, successor personal
- 4316 representative, special administrator, or person that performs substantially the same
- 4317 function with respect to an estate under the law governing the person's status.
- 4318 (16) "Principal" means property held in trust for distribution to, production of income for,
- 4319 or use by a current or successor beneficiary.
- 4320 (17) "Record" means information that is inscribed on a tangible medium or that is stored in

- 4321 an electronic or other medium and is retrievable in perceivable form.
- 4322 (18) "Settlor" means the same as that term is defined in Section 75-7-103.
- 4323 (19) "Special tax benefit" means:
- 4324 (a) exclusion of a transfer to a trust from gifts described in Section 2503(b) of the
- 4325 Internal Revenue Code because of the qualification of an income interest in the trust
- 4326 as a present interest in property;
- 4327 (b) status as a qualified subchapter S trust described in Section 1361(d)(3) of the Internal
- 4328 Revenue Code at a time the trust holds stock of an S corporation described in Section
- 4329 1361(a)(1) of the Internal Revenue Code;
- 4330 (c) an estate or gift tax marital deduction for a transfer to a trust under Section 2056 or
- 4331 2523 of the Internal Revenue Code that depends or depended in whole or in part on
- 4332 the right of the settlor's spouse to receive the net income of the trust;
- 4333 (d) exemption in whole or in part of a trust from the federal generation-skipping transfer
- 4334 tax imposed by Section 2601 of the Internal Revenue Code because the trust was
- 4335 irrevocable on September 25, 1985, if there is any possibility that:
- 4336 (i) a taxable distribution, as defined in Section 2612(b) of the Internal Revenue Code,
- 4337 could be made from the trust; or
- 4338 (ii) a taxable termination, as defined in Section 2612(a) of the Internal Revenue
- 4339 Code, could occur with respect to the trust; or
- 4340 (e) an inclusion ratio, as defined in Section 2642(a) of the Internal Revenue Code, of the
- 4341 trust which is less than one, if there is any possibility that:
- 4342 (i) a taxable distribution, as defined in Section 2612(b) of the Internal Revenue Code,
- 4343 could be made from the trust; or
- 4344 (ii) a taxable termination, as defined in Section 2612(a) of the Internal Revenue
- 4345 Code, could occur with respect to the trust.
- 4346 (20) "Successive interest" means the interest of a successor beneficiary.
- 4347 (21) "Successor beneficiary" means a person entitled to receive income or principal or to
- 4348 use property when an income interest or other current interest ends.
- 4349 (22) "Terms of a trust" means:
- 4350 (a) except as otherwise provided in Subsection (22)(b), the manifestation of the settlor's
- 4351 intent regarding a trust's provisions as:
- 4352 (i) expressed in the trust instrument; or
- 4353 (ii) established by other evidence that would be admissible in a judicial proceeding;
- 4354 (b) the trust's provisions as established, determined, or amended by:

- 4355 (i) a trustee or trust director in accordance with applicable law;
4356 (ii) a court order; or
4357 (iii) a nonjudicial settlement agreement under Section 75-7-110;
4358 (c) for an estate, a will; or
4359 (d) for a life estate or term interest, the corresponding manifestation of the rights of the
4360 beneficiaries.
- 4361 (23) (a) "Trust" includes:
4362 (i) an express trust, private or charitable, with additions to the trust, wherever and
4363 however created; and
4364 (ii) a trust created or determined by judgment or decree under which the trust is to be
4365 administered in the manner of an express trust.
- 4366 (b) "Trust" does not include:
4367 (i) a constructive trust;
4368 (ii) a resulting trust, conservatorship, guardianship, multi-party account, custodial
4369 arrangement for a minor, business trust, voting trust, security arrangement,
4370 liquidation trust, or trust for the primary purpose of paying debts, dividends,
4371 interest, salaries, wages, profits, pensions, retirement benefits, or employee
4372 benefits of any kind; or
4373 (iii) an arrangement under which a person is a nominee, escrowee, or agent for
4374 another.
- 4375 (24) (a) "Trustee" means a person, other than a personal representative, that owns or
4376 holds property for the benefit of a beneficiary.
- 4377 (b) "Trustee" includes an original, additional, or successor trustee, whether appointed or
4378 confirmed by a court.
- 4379 (25) (a) "Will" means any testamentary instrument recognized by applicable law that
4380 makes a legally effective disposition of an individual's property effective at the
4381 individual's death.
- 4382 (b) "Will" includes a codicil or other amendment to a testamentary instrument.
- 4383 Section 132. Section **75A-5-103**, which is renumbered from Section 22-3-103 is renumbered
4384 and amended to read:
- 4385 **[22-3-103] 75A-5-103. . Scope.**
- 4386 Except as otherwise provided in the terms of a trust or this chapter, this chapter
4387 applies to:
- 4388 (1) a trust or estate; and

4389 (2) a life estate or other term interest in which the interest of one or more persons will be
4390 succeeded by the interest of one or more other persons.

4391 Section 133. Section **75A-5-104**, which is renumbered from Section 22-3-104 is renumbered
4392 and amended to read:

4393 **[22-3-104] 75A-5-104. . Governing law.**

4394 (1) Except as otherwise provided in the terms of a trust or this chapter, this chapter applies
4395 when this state is:

4396 (a) the principal place of administration of a trust or estate; or

4397 (b) the situs of property that is not held in a trust or estate and is subject to a life estate or
4398 other term interest described in Subsection [22-3-103(2)] 75A-5-103(2).

4399 (2) By accepting the trusteeship of a trust having the trust's principal place of administration
4400 in this state or by moving the principal place of administration of a trust to this state, the
4401 trustee submits to the application of this chapter to any matter within the scope of this
4402 chapter involving the trust.

4403 Section 134. Section **75A-5-201**, which is renumbered from Section 22-3-201 is renumbered
4404 and amended to read:

4405 **Part 2. Fiduciary Duties and Judicial Review**

4406 **[22-3-201] 75A-5-201. . Fiduciary duties -- General principles.**

4407 (1) In making an allocation or determination or exercising discretion under this chapter, a
4408 fiduciary shall:

4409 (a) act in good faith, based on what is fair and reasonable to all beneficiaries;

4410 (b) administer a trust or estate impartially, except to the extent the terms of the trust
4411 manifest an intent that the fiduciary shall or may favor one or more beneficiaries;

4412 (c) administer the trust or estate in accordance with the terms of the trust, even if there is
4413 a different provision in this chapter; and

4414 (d) administer the trust or estate in accordance with this chapter, except to the extent the
4415 terms of the trust provide otherwise or authorize the fiduciary to determine otherwise.

4416 (2) (a) A fiduciary's allocation, determination, or exercise of discretion under this
4417 chapter is presumed to be fair and reasonable to all beneficiaries.

4418 (b) A fiduciary may exercise a discretionary power of administration given to the
4419 fiduciary by the terms of the trust, and an exercise of the power that produces a result
4420 different from a result required or permitted by this chapter does not create an
4421 inference that the fiduciary abused the fiduciary's discretion.

- 4422 (3) A fiduciary shall:
- 4423 (a) add a receipt to principal, to the extent neither the terms of the trust nor this chapter
- 4424 allocates the receipt between income and principal; and
- 4425 (b) charge a disbursement to principal, to the extent neither the terms of the trust nor this
- 4426 chapter allocates the disbursement between income and principal.
- 4427 (4) If a fiduciary determines an exercise of discretionary power will assist the fiduciary to
- 4428 administer the trust or estate impartially, the fiduciary may:
- 4429 (a) exercise the power to adjust under Section ~~[22-3-203]~~ 75A-5-203;
- 4430 (b) convert an income trust to a unitrust under Subsection ~~[22-3-303(1)(a)]~~ 75A-5-303
- 4431 (1)(a);
- 4432 (c) change the percentage or method used to calculate a unitrust amount under
- 4433 Subsection ~~[22-3-303(1)(b)]~~ 75A-5-303(1)(b); or
- 4434 (d) convert a unitrust to an income trust under Subsection ~~[22-3-303(1)(e)]~~ 75A-5-303
- 4435 (1)(c).
- 4436 (5) In making the determination under Subsection (4), the fiduciary shall consider the
- 4437 following factors:
- 4438 (a) the terms of the trust;
- 4439 (b) the nature, distribution standards, and expected duration of the trust;
- 4440 (c) the effect of the allocation rules, including specific adjustments between income and
- 4441 principal, under Part 4, Allocation of Receipts, Part 5, Allocation of Disbursements,
- 4442 Part 6, Death of Individual or Termination of Income Interest, and Part 7,
- 4443 Apportionment at Beginning and End of Income Interest;
- 4444 (d) the desirability of liquidity and regularity of income;
- 4445 (e) the desirability of the preservation and appreciation of principal;
- 4446 (f) the extent to which an asset is used or may be used by a beneficiary;
- 4447 (g) the increase or decrease in the value of principal assets, reasonably determined by the
- 4448 fiduciary;
- 4449 (h) whether and to what extent the terms of the trust:
- 4450 (i) give the fiduciary power to accumulate income or invade principal; or
- 4451 (ii) prohibit the fiduciary from accumulating income or invading principal;
- 4452 (i) the extent to which the fiduciary has accumulated income or invaded principal in
- 4453 preceding accounting periods;
- 4454 (j) the effect of current and reasonably expected economic conditions; and
- 4455 (k) the reasonably expected tax consequences of the exercise of the power.

Section 135. Section **75A-5-202**, which is renumbered from Section 22-3-202 is renumbered and amended to read:

[22-3-202] 75A-5-202. . Judicial review of exercise of discretionary power -- Request for instruction.

(1) In this section, "fiduciary decision" means:

- (a) a fiduciary's allocation between income and principal or other determination regarding income and principal required or authorized by the terms of the trust or this chapter;
 - (b) the fiduciary's exercise or nonexercise of a discretionary power regarding income and principal granted by the terms of the trust or this chapter, including the power to:
 - (i) adjust under Section [22-3-203] 75A-5-203;
 - (ii) convert an income trust to a unitrust under Subsection [22-3-303(1)(a)] 75A-5-303(1)(a);
 - (iii) change the percentage or method used to calculate a unitrust amount under Subsection [22-3-303(1)(b)] 75A-5-303(1)(b); or
 - (iv) convert a unitrust to an income trust under Subsection [22-3-303(1)(e)] 75A-5-303(1)(c); or
 - (c) the fiduciary's implementation of a decision described in Subsection (1)(a) or (b).
- (2) The court may not order a fiduciary to change a fiduciary decision, unless the court determines that the fiduciary decision was an abuse of the fiduciary's discretion.
- (3) (a) If the court determines that a fiduciary decision was an abuse of the fiduciary's discretion, the court may order a remedy authorized by law, including a remedy authorized in Section 75-7-1001.
- (b) To place the beneficiaries in the positions that the beneficiaries would have occupied if there had not been an abuse of the fiduciary's discretion, the court may order:
- (i) the fiduciary to exercise or refrain from exercising the power to adjust under Section [22-3-203] 75A-5-203;
 - (ii) the fiduciary to exercise or refrain from exercising the power to:
 - (A) convert an income trust to a unitrust under Subsection [22-3-303(1)(a)] 75A-5-303(1)(a);
 - (B) change the percentage or method used to calculate a unitrust amount under Subsection [22-3-303(1)(b)] 75A-5-303(1)(b); or
 - (C) convert a unitrust to an income trust under Subsection [22-3-303(1)(e)] 75A-5-303(1)(c);

- 4490 (iii) the fiduciary to distribute an amount to a beneficiary;
- 4491 (iv) a beneficiary to return some or all of a distribution; or
- 4492 (v) the fiduciary to withhold an amount from one or more future distributions to a
- 4493 beneficiary.

- 4494 (4) (a) On petition by a fiduciary for instruction, the court may determine whether a
- 4495 proposed fiduciary decision will result in an abuse of the fiduciary's discretion.
- 4496 (b) A beneficiary that opposes the proposed decision has the burden to establish that the
- 4497 proposed decision will result in an abuse of the fiduciary's discretion if the petition:
- 4498 (i) describes the proposed decision;
- 4499 (ii) contains sufficient information to inform the beneficiary of the reasons for
- 4500 making the proposed decision and the facts on which the fiduciary relies; and
- 4501 (iii) explains how the beneficiary will be affected by the proposed decision.

4502 Section 136. Section **75A-5-203**, which is renumbered from Section 22-3-203 is renumbered

4503 and amended to read:

4504 **[22-3-203] 75A-5-203. . Fiduciary's power to adjust.**

- 4505 (1) Except as otherwise provided in the terms of a trust or this section, a fiduciary, in a
- 4506 record, without court approval, may adjust between income and principal if the fiduciary
- 4507 determines the exercise of the power to adjust will assist the fiduciary to administer the
- 4508 trust or estate impartially.
- 4509 (2) This section does not create a duty to exercise or consider the power to adjust under
- 4510 Subsection (1) or to inform a beneficiary about the applicability of this section.
- 4511 (3) A fiduciary that in good faith exercises or fails to exercise the power to adjust under
- 4512 Subsection (1) is not liable to a person affected by the exercise or failure to exercise.
- 4513 (4) In deciding whether and to what extent to exercise the power to adjust under Subsection
- 4514 (1), a fiduciary shall consider all factors the fiduciary considers relevant, including the
- 4515 relevant factors in Subsection [22-3-201(5)] 75A-5-201(5) and the application of
- 4516 Subsection [22-3-401(9)] 75A-5-401(9), Section [22-3-408] 75A-5-408, and Section [
- 4517 22-3-413] 75A-5-413.
- 4518 (5) A fiduciary may not exercise the power to make an adjustment under Subsection (1) or
- 4519 the power to make a determination that an allocation is insubstantial under Section [
- 4520 22-3-408] 75A-5-408 if:
- 4521 (a) the adjustment or determination would reduce the amount payable to a current
- 4522 income beneficiary from a trust that qualifies for a special tax benefit, except to the
- 4523 extent the adjustment is made to provide for a reasonable apportionment of the total

- 4524 return of the trust between the current income beneficiary and successor beneficiaries;
4525 (b) the adjustment or determination would change the amount payable to a beneficiary,
4526 as a fixed annuity or a fixed fraction of the value of the trust assets, under the terms
4527 of the trust;
- 4528 (c) the adjustment or determination would reduce an amount that is permanently set
4529 aside for a charitable purpose under the terms of the trust, unless both income and
4530 principal are set aside for the charitable purpose;
- 4531 (d) possessing or exercising the power would cause a person to be treated as the owner
4532 of all or part of the trust for federal income tax purposes;
- 4533 (e) possessing or exercising the power would cause all or part of the value of the trust
4534 assets to be included in the gross estate of an individual for federal estate tax
4535 purposes;
- 4536 (f) possessing or exercising the power would cause an individual to be treated as making
4537 a gift for federal gift tax purposes;
- 4538 (g) the fiduciary is not an independent person;
- 4539 (h) the trust is irrevocable and provides for income to be paid to the settlor and
4540 possessing or exercising the power would cause the adjusted principal or income to
4541 be considered an available resource or available income under a public-benefit
4542 program; or
- 4543 (i) the trust is a unitrust under Part 3, Unitrust.
- 4544 (6) If Subsection (5)(d), (e), (f), or (g) applies to a fiduciary:
- 4545 (a) a co-fiduciary to which Subsections (5)(d) through (g) do not apply may exercise the
4546 power to adjust, unless the exercise of the power to adjust by the remaining
4547 co-fiduciary or co-fiduciaries is not permitted by the terms of the trust or law other
4548 than this chapter; or
- 4549 (b) (i) if there is no co-fiduciary to which Subsections (5)(d) through (g) do not apply:
4550 (A) except as otherwise provided in Subsection (6)(b)(ii)(A), the fiduciary may
4551 appoint a co-fiduciary to which Subsections (5)(d) through (g) do not apply;
4552 (B) except as otherwise provided in Subsection (6)(b)(ii)(B), the appointed
4553 co-fiduciary may exercise the power to adjust under Subsection (1); and
4554 (C) the appointed co-fiduciary may be a special fiduciary with limited powers.
- 4555 (ii) (A) If the appointment of a co-fiduciary is not permitted by the terms of the
4556 trust or by a provision of law outside this chapter, a fiduciary may not appoint
4557 a co-fiduciary.

- 4558 (B) If the exercise of the power to adjust by a co-fiduciary is not permitted by the
4559 terms of the trust or by a provision of law outside this chapter, the co-fiduciary
4560 may not exercise the power to adjust under Subsection (1).
- 4561 (7) A fiduciary may release or delegate to a co-fiduciary the power to adjust under
4562 Subsection (1) if the fiduciary determines that the fiduciary's possession or exercise of
4563 the power to adjust will or may:
4564 (a) cause a result described in Subsections (5)(a) through (f) or (h); or
4565 (b) deprive the trust of a tax benefit or impose a tax burden not described in Subsections
4566 (5)(a) through (f).
- 4567 (8) A fiduciary's release or delegation to a co-fiduciary under Subsection (7) of the power to
4568 adjust under Subsection (1):
4569 (a) must be in a record;
4570 (b) applies to the entire power to adjust, unless the release or delegation provides a
4571 limitation, which may be a limitation to the power to adjust:
4572 (i) from income to principal;
4573 (ii) from principal to income;
4574 (iii) for specified property; or
4575 (iv) in specified circumstances;
4576 (c) for a delegation, may be modified by a redelegation under this subsection by the
4577 co-fiduciary to which the delegation is made; and
4578 (d) subject to Subsection (8)(c), is permanent, unless the release or delegation provides a
4579 specified period, including a period measured by the life of an individual or the lives
4580 of more than one individual.
- 4581 (9) Terms of a trust that deny or limit the power to adjust between income and principal do
4582 not affect the application of this section, unless the terms of the trust expressly deny or
4583 limit the power to adjust under Subsection (1).
- 4584 (10) The exercise of the power to adjust under Subsection (1) in any accounting period may
4585 apply to the current accounting period, the immediately preceding accounting period,
4586 and one or more subsequent accounting periods.
- 4587 (11) A description of the exercise of the power to adjust under Subsection (1) shall be:
4588 (a) included in a report, if any, sent to beneficiaries under Subsection 75-7-811(3); or
4589 (b) communicated at least annually to the qualified beneficiaries determined under
4590 Subsection 75-7-103(1)(h).
- 4591 Section 137. Section **75A-5-301**, which is renumbered from Section 22-3-301 is renumbered

4592 and amended to read:

4593

Part 3. Unitrust

4594 ~~[22-3-301]~~ **75A-5-301. . Definitions for part.**

4595 ~~[In]~~ As used in this part:

4596 (1) "Applicable value" means the amount of the net fair market value of a trust taken into
4597 account under Section ~~[22-3-307]~~ 75A-5-307.

4598 (2) "Express unitrust" means a trust for which, under the terms of the trust without regard to
4599 this part, income or net income is permitted or required to be calculated as a unitrust
4600 amount.

4601 (3) "Income trust" means a trust that is not a unitrust.

4602 (4) "Net fair market value of a trust" means the fair market value of the assets of the trust
4603 minus the noncontingent liabilities of the trust.

4604 (5) (a) "Unitrust" means a trust for which net income is a unitrust amount.

4605 (b) "Unitrust" includes an express unitrust.

4606 (6) "Unitrust amount" means:

4607 (a) an amount computed by multiplying a determined value of a trust by a determined
4608 percentage; and

4609 (b) for a unitrust administered under a unitrust policy, the applicable value multiplied by
4610 the unitrust rate.

4611 (7) "Unitrust policy" means a policy described in Sections ~~[22-3-305]~~ 75A-5-305 through [
4612 ~~22-3-309]~~ 75A-5-309 and adopted under Section ~~[22-3-303]~~ 75A-5-303.

4613 (8) "Unitrust rate" means the rate used to compute the unitrust amount under Subsection (6)
4614 for a unitrust administered under a unitrust policy.

4615 Section 138. Section **75A-5-302**, which is renumbered from Section 22-3-302 is renumbered
4616 and amended to read:

4617 ~~[22-3-302]~~ **75A-5-302. . Application -- Duties and remedies.**

4618 (1) Except as otherwise provided in Subsection (2), this part applies to:

4619 (a) an income trust, unless the terms of the trust expressly prohibit use of this part by:

4620 (i) a specific reference to this part; or

4621 (ii) an explicit expression of intent that net income not be calculated as a unitrust
4622 amount; and

4623 (b) an express unitrust, except to the extent the terms of the trust explicitly:

4624 (i) prohibit use of this part by a specific reference to this part;

(ii) prohibit conversion to an income trust; or

(iii) limit changes to the method of calculating the unitrust amount.

(2) This part does not apply to a trust described in Section 170(f)(2)(B), 642(c)(5), 664(d), 2702(a)(3)(A)(ii) or (iii), or 2702(b) of the Internal Revenue Code.

(3) (a) An income trust to which this part applies under Subsection (1)(a) may be converted to a unitrust under this part regardless of the terms of the trust concerning distributions.

(b) Conversion to a unitrust under this part does not affect other terms of the trust concerning distributions of income or principal.

(4) (a) This part applies to an estate only to the extent a trust is a beneficiary of the estate.

(b) To the extent of the trust's interest in the estate, and in the same manner as for a trust under this part:

(i) the estate may be administered as a unitrust;

(ii) the administration of the estate as a unitrust may be discontinued; or

(iii) the percentage or method used to calculate the unitrust amount may be changed.

(5) This part does not create a duty to take or consider action under this part or to inform a beneficiary about the applicability of this part.

(6) A fiduciary that in good faith takes or fails to take an action under this part is not liable to a person affected by the action or inaction of the fiduciary.

Section 139. Section **75A-5-303**, which is renumbered from Section 22-3-303 is renumbered and amended to read:

[22-3-303] 75A-5-303. . Authority of fiduciary.

(1) A fiduciary, without court approval, by complying with Subsections (2) and (6), may:

(a) convert an income trust to a unitrust if the fiduciary adopts, in a record, a unitrust policy for the trust providing:

(i) that, in administering the trust, the net income of the trust will be a unitrust amount rather than net income determined without regard to this part; and

(ii) the percentage and method used to calculate the unitrust amount;

(b) change the percentage or method used to calculate a unitrust amount for a unitrust if the fiduciary adopts in a record a unitrust policy or an amendment or replacement of a unitrust policy providing changes in the percentage or method used to calculate the unitrust amount; or

(c) convert a unitrust to an income trust if the fiduciary adopts, in a record, a determination that, in administering the trust, the net income of the trust will be net

- 4659 income determined without regard to this part rather than a unitrust amount.
- 4660 (2) A fiduciary may take an action under Subsection (1) if:
- 4661 (a) the fiduciary determines that the action will assist the fiduciary to administer a trust
- 4662 impartially;
- 4663 (b) the fiduciary sends a notice in a record, in the manner required by Section [22-3-304]
- 4664 75A-5-304, describing and proposing to take the action;
- 4665 (c) the fiduciary sends a copy of the notice under Subsection (2)(b) to each settlor of the
- 4666 trust which is:
- 4667 (i) if an individual, living; or
- 4668 (ii) if not an individual, in existence;
- 4669 (d) at least one member of each class of the qualified beneficiaries determined under
- 4670 Subsection 75-7-103(1)(h) receiving the notice under Subsection (2)(b) is:
- 4671 (i) if an individual, legally competent;
- 4672 (ii) if not an individual, in existence; or
- 4673 (iii) represented in the manner provided in Subsection [22-3-304(2)] 75A-5-304(2);
- 4674 and
- 4675 (e) the fiduciary does not receive, by the date specified in the notice under Subsection [
- 4676 22-3-304(4)(e)] 75A-5-304(4)(e), an objection in a record to the action proposed
- 4677 under Subsection (2)(b) from a person to which the notice under Subsection (2)(b) is
- 4678 sent.
- 4679 (3) (a) If a fiduciary receives, not later than the date stated in the notice under Subsection [
- 4680 22-3-304(4)(e)] 75A-5-304(4)(e), an objection in a record described in Subsection [
- 4681 22-3-304(4)(d)] 75A-5-304(4)(d) to a proposed action, the fiduciary or a beneficiary
- 4682 may request that the court:
- 4683 (i) require the fiduciary to take the proposed action;
- 4684 (ii) require the fiduciary to take the proposed action with modifications; or
- 4685 (iii) prevent the proposed action.
- 4686 (b) A person described in Subsection [22-3-304(1)] 75A-5-304(1) may oppose the
- 4687 proposed action in the proceeding under Subsection (3)(a), regardless of whether the
- 4688 person:
- 4689 (i) consented under Subsection [22-3-304(3)] 75A-5-304(3); or
- 4690 (ii) objected under Subsection [22-3-304(4)(d)] 75A-5-304(4)(d).
- 4691 (4) If, after sending a notice under Subsection (2)(b), a fiduciary decides not to take the
- 4692 action proposed in the notice, the fiduciary shall notify each person described in

4693 Subsection [22-3-304(1)] 75A-5-304(1) in a record of the decision not to take the action
4694 and the reasons for the decision.

4695 (5) If a beneficiary requests in a record that a fiduciary take an action described in
4696 Subsection (1) and the fiduciary declines to act or does not act within 90 days after
4697 receiving the request, the beneficiary may request the court to direct the fiduciary to take
4698 the action requested.

4699 (6) In deciding whether and how to take an action authorized by Subsection (1), or whether
4700 and how to respond to a request by a beneficiary under Subsection (5), a fiduciary shall
4701 consider all factors relevant to the trust and the beneficiaries, including the relevant
4702 factors in Subsection [22-3-201(5)] 75A-5-201(5).

4703 (7) For a reason described in Subsection [22-3-203(7)] 75A-5-203(7), and in the manner
4704 described in Subsection [22-3-203(8)] 75A-5-203(8), a fiduciary may:

4705 (a) release or delegate the power to convert an income trust to a unitrust under
4706 Subsection (1)(a);

4707 (b) change the percentage or method used to calculate a unitrust amount under
4708 Subsection (1)(b); or

4709 (c) convert a unitrust to an income trust under Subsection (1)(c).

4710 Section 140. Section **75A-5-304**, which is renumbered from Section 22-3-304 is renumbered
4711 and amended to read:

4712 **[22-3-304] 75A-5-304. . Notice.**

4713 (1) A fiduciary shall send a notice required by Subsection [22-3-303(2)(b)] 75A-5-303(2)(b)
4714 in a manner authorized under Section 75-7-109 to:

4715 (a) the qualified beneficiaries determined under Subsection 75-7-103(1)(h);

4716 (b) each person acting, in accordance with Title 75, Chapter 12, Uniform Directed Trust
4717 Act, as trust director of the trust; and

4718 (c) each person that is granted a power by the terms of the trust to appoint or remove a
4719 trustee or person described in Subsection (1)(b), to the extent the power is exercisable
4720 when the person that exercises the power is not then serving as trustee or is a person
4721 described in Subsection (1)(b).

4722 (2) The representation provisions of Sections 75-7-301 through 75-7-305 apply to notice
4723 under this section.

4724 (3) (a) A person may consent in a record at any time to action proposed under
4725 Subsection [22-3-303(2)(b)] 75A-5-303(2)(b).

4726 (b) If a person required to receive a notice under Subsection (1) consents under

4727 Subsection (3)(a) to not receive the notice, the fiduciary is not required to send the
4728 person the notice.

4729 (4) A notice required by Subsection [~~22-3-303(2)(b)~~] 75A-5-303(2)(b) shall include:

- 4730 (a) the action proposed under Subsection [~~22-3-303(2)(b)~~] 75A-5-303(2)(b);
- 4731 (b) for a conversion of an income trust to a unitrust, a copy of the unitrust policy adopted
4732 under Subsection [~~22-3-303(1)(a)~~] 75A-5-303(1)(a);
- 4733 (c) for a change in the percentage or method used to calculate the unitrust amount, a
4734 copy of the unitrust policy or amendment or replacement of the unitrust policy
4735 adopted under Subsection [~~22-3-303(1)(b)~~] 75A-5-303(1)(b);
- 4736 (d) a statement that the person to which the notice is sent may object to the proposed
4737 action by stating in a record the basis for the objection and sending or delivering the
4738 record to the fiduciary;
- 4739 (e) the date by which the fiduciary shall receive an objection under Subsection (4)(d),
4740 which shall be at least 30 days after the date the notice is sent;
- 4741 (f) the date on which the action is proposed to be taken and the date on which the action
4742 is proposed to take effect;
- 4743 (g) the name and contact information of the fiduciary; and
- 4744 (h) the name and contact information of a person that may be contacted for additional
4745 information.

4746 Section 141. Section **75A-5-305**, which is renumbered from Section 22-3-305 is renumbered
4747 and amended to read:

4748 **[~~22-3-305~~] 75A-5-305. . Unitrust policy.**

4749 (1) In administering a unitrust under this part, a fiduciary shall follow a unitrust policy:

- 4750 (a) adopted under Subsection [~~22-3-303(1)(a)~~] 75A-5-303(1)(a) or (b); or
- 4751 (b) amended or replaced under Subsection [~~22-3-303(1)(b)~~] 75A-5-303(1)(b).

4752 (2) A unitrust policy shall provide:

- 4753 (a) the unitrust rate or the method for determining the unitrust rate under Section [~~22-3-306~~]
4754 75A-5-306;
- 4755 (b) the method for determining the applicable value under Section [~~22-3-307~~] 75A-5-307;
4756 and
- 4757 (c) the rules described in Sections [~~22-3-306~~] 75A-5-306 through [~~22-3-309~~] 75A-5-309
4758 that apply in the administration of the unitrust, regardless of whether the rules are:
4759 (i) mandatory, as provided in Subsections [~~22-3-307(1)~~] 75A-5-307(1) and [~~22-3-308~~
4760 (1)] 75A-5-308(1); or

- (ii) optional, as provided in Section ~~[22-3-306]~~ 75A-5-306 and Subsections ~~[22-3-307(2), 22-3-308(2), and 22-3-309(1)]~~ 75A-5-307(2), 75A-5-308(2), and 75A-5-309(1), to the extent the fiduciary elects to adopt those rules.

Section 142. Section **75A-5-306**, which is renumbered from Section 22-3-306 is renumbered and amended to read:

~~[22-3-306]~~ 75A-5-306. . Unitrust rate.

- (1) Except as otherwise provided in Subsection ~~[22-3-309(2)(a)]~~ 75A-5-309(2)(a), a unitrust rate may be:
- (a) a fixed unitrust rate; or
 - (b) a unitrust rate that is determined for each period using:
 - (i) a market index or other published data; or
 - (ii) a mathematical blend of market indices or other published data over a stated number of preceding periods.
- (2) Except as otherwise provided in Subsection ~~[22-3-309(2)(a)]~~ 75A-5-309(2)(a), a unitrust policy may provide:
- (a) a limit on how high the unitrust rate determined under Subsection (1)(b) may rise;
 - (b) a limit on how low the unitrust rate determined under Subsection (1)(b) may fall;
 - (c) a limit on how much the unitrust rate determined under Subsection (1)(b) may increase over the unitrust rate for the preceding period or a mathematical blend of unitrust rates over a stated number of preceding periods;
 - (d) a limit on how much the unitrust rate determined under Subsection (1)(b) may decrease below the unitrust rate for the preceding period or a mathematical blend of unitrust rates over a stated number of preceding periods; or
 - (e) a mathematical blend of any of the unitrust rates determined under Subsection (1)(b) and Subsections (2)(a) through (d).

Section 143. Section **75A-5-307**, which is renumbered from Section 22-3-307 is renumbered and amended to read:

~~[22-3-307]~~ 75A-5-307. . Applicable value.

- (1) A unitrust policy shall provide the method for determining the fair market value of an asset for the purpose of determining the unitrust amount, including:
- (a) the frequency of valuing the asset, which need not require a valuation in every period; and
 - (b) the date for valuing the asset in each period that the asset is valued.
- (2) Except as otherwise provided in Subsection ~~[22-3-309(2)(b)]~~ 75A-5-309(2)(b), a unitrust

- 4795 policy may provide methods for determining the amount of the net fair market value of
4796 the trust to take into account in determining the applicable value, including:
- 4797 (a) obtaining an appraisal of an asset for which fair market value is not readily available;
 - 4798 (b) exclusion of specific assets or groups or types of assets;
 - 4799 (c) other exceptions or modifications of the treatment of specific assets or groups or
4800 types of assets;
 - 4801 (d) identification and treatment of cash or property held for distribution;
 - 4802 (e) use of:
 - 4803 (i) an average of fair market values over a stated number of preceding periods; or
 - 4804 (ii) another mathematical blend of fair market values over a stated number of
4805 preceding periods;
 - 4806 (f) a limit on how much the applicable value of all assets, groups of assets, or individual
4807 assets may increase over:
 - 4808 (i) the corresponding applicable value for the preceding period; or
 - 4809 (ii) a mathematical blend of applicable values over a stated number of preceding time
4810 periods;
 - 4811 (g) a limit on how much the applicable value of all assets, groups of assets, or individual
4812 assets may decrease below:
 - 4813 (i) the corresponding applicable value for the preceding period; or
 - 4814 (ii) a mathematical blend of applicable values over a stated number of preceding
4815 periods;
 - 4816 (h) the treatment of accrued income and other features of an asset that affect value; and
 - 4817 (i) determining the liabilities of the trust, including treatment of liabilities to conform
4818 with the treatment of assets under Subsections (2)(a) through (h).

4819 Section 144. Section **75A-5-308**, which is renumbered from Section 22-3-308 is renumbered
4820 and amended to read:

4821 **[22-3-308] 75A-5-308. . Period.**

- 4822 (1) (a) A unitrust policy shall provide the period used under Sections [22-3-306 and
4823 22-3-307] 75A-5-306 and 75A-5-307.
- 4824 (b) Except as otherwise provided in Subsection 22-3-309(2)(c), the period may be:
- 4825 (i) a calendar year;
 - 4826 (ii) a 12-month period other than a calendar year;
 - 4827 (iii) a calendar quarter;
 - 4828 (iv) a three-month period other than a calendar quarter; or

4829 (v) another period.

4830 (2) Except as otherwise provided in Subsection [22-3-309(2)] 75A-5-309(2), a unitrust
4831 policy may provide standards for:

4832 (a) using fewer preceding periods under Subsection [22-3-306(1)(b)(ii)]

4833 75A-5-306(1)(b)(ii), (2)(c), or (2)(d) if:

4834 (i) the trust was not in existence in a preceding period; or

4835 (ii) market indices or other published data are not available for a preceding period;

4836 (b) using fewer preceding periods under Subsection [22-3-307(2)(e)(i) or (ii)]

4837 75A-5-307(2)(e)(i), (e)(ii), (f)(ii), or (g)(ii) if:

4838 (i) the trust was not in existence in a preceding period; or

4839 (ii) fair market values are not available for a preceding period; and

4840 (c) prorating the unitrust amount on a daily basis for a part of a period in which the trust
4841 or the administration of the trust as a unitrust or the interest of any beneficiary
4842 commences or terminates.

4843 Section 145. Section **75A-5-309**, which is renumbered from Section 22-3-309 is renumbered
4844 and amended to read:

4845 **[22-3-309] 75A-5-309. . Special tax benefits -- Other rules.**

4846 (1) A unitrust policy may:

4847 (a) provide methods and standards for:

4848 (i) determining the timing of distributions;

4849 (ii) making distributions in cash or in kind or partly in cash and partly in kind; or

4850 (iii) correcting an underpayment or overpayment to a beneficiary based on the
4851 unitrust amount if there is an error in calculating the unitrust amount;

4852 (b) specify sources and the order of sources, including categories of income for federal
4853 income tax purposes, from which distributions of a unitrust amount are paid; or

4854 (c) provide other standards and rules the fiduciary determines serve the interests of the
4855 beneficiaries.

4856 (2) If a trust qualifies for a special tax benefit or a fiduciary is not an independent person:

4857 (a) the unitrust rate established under Section [22-3-306] 75A-5-306 may not be less than
4858 3% or more than 5%;

4859 (b) the only provisions of Section [22-3-307] 75A-5-307 that apply are Subsections [
4860 22-3-307(1)] 75A-5-307(1) and (2)(a), (d), (e)(i), and (i);

4861 (c) the only period that may be used under Section [22-3-308] 75A-5-308 is a calendar
4862 year under Subsection [22-3-308(1)] 75A-5-308(1); and

4863 (d) the only other provisions of Section [22-3-308] 75A-5-308 that apply are [Subsection
4864 22-3-308(2)(b)(i)] Subsections 75A-5-308(2)(b)(i) and (c).

4865 Section 146. Section **75A-5-401**, which is renumbered from Section 22-3-401 is renumbered
4866 and amended to read:

4867

Part 4. Allocation of Receipts

4868 **[~~22-3-401~~] 75A-5-401. . Receipts from entity -- Character of receipts from entity.**

4869 (1) [In] As used in this section:

4870 (a) "Capital distribution" means an entity distribution of money that is a:

4871 (i) return of capital; or

4872 (ii) distribution in total or partial liquidation of the entity.

4873 (b) (i) "Entity" means a corporation, partnership, limited liability company, regulated
4874 investment company, real estate investment trust, common trust fund, or any other
4875 organization or arrangement in which a fiduciary owns or holds an interest,
4876 regardless of whether the entity is a taxpayer for federal income tax purposes.

4877 (ii) "Entity" does not include:

4878 (A) a trust or estate to which Section [22-3-402] 75A-5-402 applies;

4879 (B) a business or other activity to which Section [22-3-403] 75A-5-403 applies that
4880 is not conducted by an entity described in Subsection (1)(b)(i);

4881 (C) an asset-backed security; or

4882 (D) an instrument or arrangement to which Section [22-3-416] 75A-5-416 applies.

4883 (c) "Entity distribution" means a payment or transfer by an entity made to a person in the
4884 person's capacity as an owner or holder of an interest in the entity.

4885 (2) In this section, an attribute or action of an entity includes an attribute or action of any
4886 other entity in which the entity owns or holds an interest, including an interest owned or
4887 held indirectly through another entity.

4888 (3) Except as otherwise provided in Subsections (4)(b) through (d), a fiduciary shall
4889 allocate to income:

4890 (a) money received in an entity distribution; and

4891 (b) tangible personal property of nominal value received from the entity.

4892 (4) A fiduciary shall allocate to principal:

4893 (a) property received in an entity distribution that is not:

4894 (i) money; or

4895 (ii) tangible personal property of nominal value;

- (b) money received in an entity distribution in an exchange for part or all of the fiduciary's interest in the entity, to the extent the entity distribution reduces the fiduciary's interest in the entity relative to the interests of other persons that own or hold interests in the entity;
- (c) money received in an entity distribution that the fiduciary determines or estimates is a capital distribution; and
- (d) money received in an entity distribution from an entity that is:
- (i) a regulated investment company or real estate investment trust if the money received is a capital gain dividend for federal income tax purposes; or
 - (ii) treated for federal income tax purposes in a comparable manner to the treatment described in Subsection (4)(d)(i).
- (5) A fiduciary may determine or estimate that money received in an entity distribution is a capital distribution:
- (a) by relying without inquiry or investigation on a characterization of the entity distribution provided by or on behalf of the entity, unless the fiduciary:
 - (i) determines, on the basis of information known to the fiduciary, that the characterization is or may be incorrect; or
 - (ii) owns or holds more than 50% of the voting interest in the entity;
 - (b) by determining or estimating, on the basis of information known to the fiduciary or provided to the fiduciary by or on behalf of the entity, that the total amount of money and property received by the fiduciary in the entity distribution or a series of related entity distributions is or will be greater than 20% of the fair market value of the fiduciary's interest in the entity; or
 - (c) if neither Subsection (5)(a) nor (b) applies, by considering the factors in Subsection (6) and the information known to the fiduciary or provided to the fiduciary by or on behalf of the entity.
- (6) In making a determination or estimate under Subsection (5)(c), a fiduciary may consider:
- (a) a characterization of an entity distribution provided by or on behalf of the entity;
 - (b) the amount of money or property received in:
 - (i) the entity distribution; or
 - (ii) what the fiduciary determines is or will be a series of related entity distributions;
 - (c) the amount described in Subsection (6)(b) compared to the amount that the fiduciary determines or estimates is, during the current or preceding accounting periods:
 - (i) the entity's operating income;

- 4930 (ii) the proceeds of the entity's sale or other disposition of:
- 4931 (A) all or part of the business or other activity conducted by the entity;
- 4932 (B) one or more business assets that are not sold to customers in the ordinary
- 4933 course of the business or other activity conducted by the entity; or
- 4934 (C) one or more assets other than business assets, unless the entity's primary
- 4935 activity is to invest in assets to realize gain on the disposition of all or some of
- 4936 the assets;
- 4937 (iii) if the entity's primary activity is to invest in assets to realize gain on the
- 4938 disposition of all or some of the assets, the gain realized on the disposition;
- 4939 (iv) the entity's regular, periodic entity distributions;
- 4940 (v) the amount of money that the entity has accumulated;
- 4941 (vi) the amount of money that the entity has borrowed;
- 4942 (vii) the amount of money that the entity has received from the sources described in
- 4943 Sections ~~[22-3-407, 22-3-410, 22-3-411, and 22-3-412]~~ 75A-5-407, 75A-5-410,
- 4944 75A-5-411, and 75A-5-412; and
- 4945 (viii) the amount of money that the entity has received from a source not otherwise
- 4946 described in this subsection; and
- 4947 (d) any other factor the fiduciary determines is relevant.
- 4948 (7) If, after applying Subsections (3) through (6), a fiduciary determines that a part of an
- 4949 entity distribution is a capital distribution but the fiduciary is in doubt about the amount
- 4950 of the entity distribution that is a capital distribution, the fiduciary shall allocate to
- 4951 principal the amount of the entity distribution that is in doubt.
- 4952 (8) If a fiduciary receives additional information about the application of this section to an
- 4953 entity distribution before the fiduciary has paid part of the entity distribution to a
- 4954 beneficiary, the fiduciary may consider the additional information before making the
- 4955 payment to the beneficiary and may change a decision to make the payment to the
- 4956 beneficiary.
- 4957 (9) If a fiduciary receives additional information about the application of this section to an
- 4958 entity distribution after the fiduciary has paid part of the entity distribution to a
- 4959 beneficiary, the fiduciary is not required to change or recover the payment to the
- 4960 beneficiary but may consider that information in determining whether to exercise the
- 4961 power to adjust under Section ~~[22-3-203]~~ 75A-5-203.
- 4962 Section 147. Section **75A-5-402**, which is renumbered from Section 22-3-402 is renumbered
- 4963 and amended to read:

~~[22-3-402]~~ 75A-5-402. . Receipts from entity -- Distribution from trust or estate.

(1) A fiduciary shall allocate:

(a) to income an amount received as a distribution of income, including a unitrust distribution under Part 3, Unitrust, from a trust or estate in which the fiduciary has an interest, other than an interest the fiduciary purchased in a trust that is an investment entity; and

(b) to principal an amount received as a distribution of principal from the trust or estate.

(2) If a fiduciary purchases, or receives from a settlor, an interest in a trust that is an investment entity, Section ~~[22-3-401, 22-3-415, or 22-3-416]~~ 75A-5-401, 75A-5-415, or 75A-5-416 applies to a receipt from the trust.

Section 148. Section **75A-5-403**, which is renumbered from Section 22-3-403 is renumbered and amended to read:

~~[22-3-403]~~ 75A-5-403. . Receipts from entity -- Business or other activity conducted by fiduciary.

(1) This section applies to a business or other activity conducted by a fiduciary if the fiduciary determines that it is in the interests of the beneficiaries to account separately for the business or other activity instead of:

(a) accounting for the business or other activity as part of the fiduciary's general accounting records; or

(b) conducting the business or other activity through an entity described in Subsection [~~22-3-401(1)(b)(i)~~] 75A-5-401(1)(b)(i).

(2) A fiduciary may account separately under this section for the transactions of a business or other activity, whether or not assets of the business or other activity are segregated from other assets held by the fiduciary.

(3) A fiduciary that accounts separately under this section for a business or other activity:

(a) may determine:

(i) the extent to which the net cash receipts of the business or other activity shall be retained for:

(A) working capital;

(B) the acquisition or replacement of fixed assets; and

(C) other reasonably foreseeable needs of the business or other activity; and

(ii) the extent that the remaining net cash receipts are accounted for as principal or income in the fiduciary's general accounting records for the trust;

(b) may make a determination under Subsection (3)(a) separately and differently from

4998 the fiduciary's decisions concerning distributions of income or principal; and
4999 (c) shall account for the net amount received from the sale of an asset of the business or
5000 other activity, other than a sale in the ordinary course of the business or other
5001 activity, as principal in the fiduciary's general accounting records for the trust, to the
5002 extent the fiduciary determines that the net amount received is no longer required in
5003 the conduct of the business or other activity.

5004 (4) A fiduciary may account separately under this section for activities that include:
5005 (a) retail, manufacturing, service, and other traditional business activities;
5006 (b) farming;
5007 (c) raising and selling livestock and other animals;
5008 (d) managing rental properties;
5009 (e) extracting minerals, water, and other natural resources;
5010 (f) growing and cutting timber;
5011 (g) an activity to which [~~Section 22-3-414, 22-3-415, or 22-3-416~~] Section 75A-5-414,
5012 75A-5-415, or 75A-5-416 applies; and
5013 (h) any other business conducted by the fiduciary.

5014 Section 149. Section **75A-5-404**, which is renumbered from Section 22-3-404 is renumbered
5015 and amended to read:

5016 **[22-3-404] 75A-5-404. . Receipts not normally apportioned -- Principal receipts.**

5017 A fiduciary shall allocate to principal:

5018 (1) to the extent not allocated to income under this chapter, an asset received from:
5019 (a) an individual during the individual's lifetime;
5020 (b) an estate;
5021 (c) a trust on termination of an income interest; or
5022 (d) a payor under a contract naming the fiduciary as beneficiary;
5023 (2) except as otherwise provided in this part, money or other property received from the
5024 sale, exchange, liquidation, or change in form of a principal asset;
5025 (3) an amount recovered from a third party to reimburse the fiduciary because of a
5026 disbursement described in Subsection [~~22-3-502(1)~~] 75A-5-502(1) or for another reason
5027 to the extent not based on loss of income;
5028 (4) proceeds of property taken by eminent domain, except that proceeds awarded for loss of
5029 income in an accounting period are income if a current income beneficiary had a
5030 mandatory income interest during the accounting period;
5031 (5) net income received in an accounting period during which there is no beneficiary to

which a fiduciary is permitted or required to distribute income; and

(6) other receipts as provided in Part 3, Unitrust.

Section 150. Section **75A-5-405**, which is renumbered from Section 22-3-405 is renumbered and amended to read:

[22-3-405] 75A-5-405. . Receipts not normally apportioned -- Rental property.

(1) To the extent a fiduciary does not account for the management of rental property as a business under Section [22-3-403] 75A-5-403, the fiduciary shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease.

(2) An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods:

(a) shall be added to principal and held subject to the terms of the lease, except as otherwise provided by law other than this chapter; and

(b) is not allocated to income or available for distribution to a beneficiary until the fiduciary's contractual obligations have been satisfied with respect to that amount.

Section 151. Section **75A-5-406**, which is renumbered from Section 22-3-406 is renumbered and amended to read:

[22-3-406] 75A-5-406. . Receipts not normally apportioned -- Receipt on obligation to be paid in money.

(1) This section does not apply to an obligation to which Section [22-3-409, 22-3-410, 22-3-411, 22-3-412, 22-3-414, 22-3-415, or 22-3-416] 75A-5-409, 75A-5-410, 75A-5-411, 75A-5-412, 75A-5-414, 75A-5-415, or 75A-5-416 applies.

(2) A fiduciary shall allocate to income, without provision for amortization of premium, an amount received as interest on an obligation to pay money to the fiduciary, including an amount received as consideration for prepaying principal.

(3) (a) A fiduciary shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the fiduciary.

(b) A fiduciary shall allocate to income the increment in value of a bond or other obligation for the payment of money bearing no stated interest but payable or redeemable, at maturity or another future time, in an amount that exceeds the amount in consideration of which it was issued.

Section 152. Section **75A-5-407**, which is renumbered from Section 22-3-407 is renumbered and amended to read:

[22-3-407] 75A-5-407. . Receipts not normally apportioned -- Insurance policy or

5066 **contract.**

5067 (1) This section does not apply to a contract to which Section [22-3-409] 75A-5-409 applies.

5068 (2) (a) Except as otherwise provided in Subsection (3), a fiduciary shall allocate to
5069 principal the proceeds of a life insurance policy or other contract received by the
5070 fiduciary as beneficiary, including a contract that insures against damage to,
5071 destruction of, or loss of title to an asset.

5072 (b) The fiduciary shall allocate dividends on an insurance policy:

5073 (i) to income, to the extent premiums on the policy are paid from income; and

5074 (ii) to principal, to the extent premiums on the policy are paid from principal.

5075 (3) A fiduciary shall allocate to income proceeds of a contract that insures the fiduciary
5076 against loss of:

5077 (a) occupancy or other use by a current income beneficiary;

5078 (b) income; or

5079 (c) subject to Section [22-3-403] 75A-5-403, profits from a business.

5080 Section 153. Section **75A-5-408**, which is renumbered from Section 22-3-408 is renumbered
5081 and amended to read:

5082 **[22-3-408] 75A-5-408. . Receipts normally apportioned -- Insubstantial allocation**
5083 **not required.**

5084 (1) If a fiduciary determines that an allocation between income and principal required by
5085 Section [22-3-409, 22-3-410, 22-3-411, 22-3-412, or 22-3-415] 75A-5-409, 75A-5-410,
5086 75A-5-411, 75A-5-412, or 75A-5-415 is insubstantial, the fiduciary may allocate the
5087 entire amount to principal, unless Subsection [22-3-203(5)] 75A-5-203(5) applies to the
5088 allocation.

5089 (2) A fiduciary may presume an allocation is insubstantial under Subsection (1) if:

5090 (a) the amount of the allocation would increase or decrease net income in an accounting
5091 period, as determined before the allocation, by less than 10%; and

5092 (b) the asset producing the receipt to be allocated has a fair market value less than 10%
5093 of the total fair market value of the assets owned or held by the fiduciary at the
5094 beginning of the accounting period.

5095 (3) The power to make a determination under Subsection (1) may be:

5096 (a) exercised by a co-fiduciary in the manner described in Subsection [22-3-203(6)]
5097 75A-5-203(6); or

5098 (b) released or delegated for a reason described in Subsection [22-3-203(7)] 75A-5-203
5099 (7) and in the manner described in Subsection [22-3-203(8)] 75A-5-203(8).

5100 Section 154. Section **75A-5-409**, which is renumbered from Section 22-3-409 is renumbered
5101 and amended to read:

5102 **~~[22-3-409]~~ 75A-5-409. . Receipts normally apportioned -- Deferred compensation,**
5103 **annuity, or similar payment.**

5104 (1) ~~[In]~~ As used in this section:

5105 (a) "Internal income of a separate fund" means the amount determined under Subsection
5106 (2).

5107 (b) "Marital trust" means a trust:

5108 (i) of which the settlor's surviving spouse is the only current income beneficiary and
5109 is entitled to a distribution of all the current net income of the trust; and

5110 (ii) that qualifies for a marital deduction with respect to the settlor's estate under
5111 Section 2056 of the Internal Revenue Code because:

5112 (A) an election to qualify for a marital deduction under Section 2056(b)(7) of the
5113 Internal Revenue Code has been made; or

5114 (B) the trust qualifies for a marital deduction under Section 2056(b)(5) of the
5115 Internal Revenue Code.

5116 (c) (i) "Payment" means an amount a fiduciary may receive over a fixed number of
5117 years or during the life of one or more individuals because of services rendered or
5118 property transferred to the payor in exchange for future amounts the fiduciary may
5119 receive.

5120 (ii) "Payment" includes an amount received in money or property from the payor's
5121 general assets or from a separate fund created by the payor.

5122 (d) "Separate fund" includes a private or commercial annuity, an individual retirement
5123 account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

5124 (2) For each accounting period, and for each separate fund:

5125 (a) the fiduciary shall determine the internal income of the separate fund as if the
5126 separate fund were a trust subject to this chapter;

5127 (b) if the fiduciary cannot determine the internal income of the separate fund under
5128 Subsection (2)(a), the internal income of the separate fund is deemed to equal 3% of
5129 the value of the separate fund, according to the most recent statement of value
5130 preceding the beginning of the accounting period; and

5131 (c) if the fiduciary cannot determine the value of the separate fund under Subsection
5132 (2)(b), the value of the separate fund is deemed to equal the present value of the
5133 expected future payments, as determined under Section 7520 of the Internal Revenue

5134 Code, for the month preceding the beginning of the accounting period for which the
5135 computation is made.

5136 (3) A fiduciary shall allocate a payment received from a separate fund during an accounting
5137 period to income, to the extent of the internal income of the separate fund during the
5138 accounting period, and the balance to principal.

5139 (4) The fiduciary of a marital trust shall:

5140 (a) withdraw from a separate fund the amount the current income beneficiary of the trust
5141 requests the fiduciary to withdraw, not greater than the amount by which the internal
5142 income of the separate fund during the accounting period exceeds the amount the
5143 fiduciary otherwise receives from the separate fund during the accounting period;

5144 (b) transfer from principal to income the amount the current income beneficiary requests
5145 the fiduciary to transfer, not greater than the amount by which the internal income of
5146 the separate fund during the accounting period exceeds the amount the fiduciary
5147 receives from the separate fund during the accounting period after the application of
5148 Subsection (4)(a); and

5149 (c) distribute to the current income beneficiary as income:

5150 (i) the amount of the internal income of the separate fund received or withdrawn
5151 during the accounting period; and

5152 (ii) the amount transferred from principal to income under Subsection (4)(b).

5153 (5) For a trust, other than a marital trust, of which one or more current income beneficiaries
5154 are entitled to a distribution of all the current net income, the fiduciary shall transfer
5155 from principal to income the amount by which the internal income of a separate fund
5156 during the accounting period exceeds the amount the fiduciary receives from the
5157 separate fund during the accounting period.

5158 Section 155. Section **75A-5-410**, which is renumbered from Section 22-3-410 is renumbered
5159 and amended to read:

5160 **~~[22-3-410]~~ 75A-5-410. . Receipts normally apportioned -- Liquidating asset.**

5161 (1) ~~[In]~~ As used in this section:

5162 (a) "Liquidating asset" means an asset whose value will diminish or terminate because
5163 the asset is expected to produce receipts for a limited time.

5164 (b) "Liquidating asset" includes a leasehold, patent, copyright, royalty right, and right to
5165 receive payments during a period of more than one year under an arrangement that
5166 does not provide for the payment of interest on the unpaid balance.

5167 (2) This section does not apply to a receipt subject to Section ~~[22-3-401, 22-3-409, 22-3-411,~~

5168 ~~22-3-412, 22-3-414, 22-3-415, 22-3-416, or 22-3-503]~~ 75A-5-401, 75A-5-409,
 5169 75A-5-411, 75A-5-412, 75A-5-414, 75A-5-415, 75A-5-416, or 75A-5-503.

5170 (3) A fiduciary shall allocate:

5171 (a) to income:

5172 (i) a receipt produced by a liquidating asset, to the extent the receipt does not exceed
 5173 3% of the value of the asset; or

5174 (ii) if the fiduciary cannot determine the value of the asset, 10% of the receipt; and

5175 (b) to principal, the balance of the receipt.

5176 Section 156. Section **75A-5-411**, which is renumbered from Section 22-3-411 is renumbered
 5177 and amended to read:

5178 ~~[22-3-411]~~ **75A-5-411. . Receipts normally apportioned -- Minerals, water, and**
 5179 **other natural resources.**

5180 (1) To the extent that a fiduciary does not account for a receipt from an interest in minerals,
 5181 water, or other natural resources as a business under Section ~~[22-3-403]~~ 75A-5-403, the
 5182 fiduciary shall allocate the receipt:

5183 (a) to income, to the extent received:

5184 (i) as delay rental or annual rent on a lease;

5185 (ii) as a factor for interest or the equivalent of interest under an agreement creating a
 5186 production payment; or

5187 (iii) on account of an interest in renewable water;

5188 (b) to principal, if received from a production payment, to the extent that Subsection
 5189 (1)(a)(ii) does not apply; or

5190 (c) between income and principal equitably, to the extent received:

5191 (i) on account of an interest in nonrenewable water;

5192 (ii) as a royalty, shut-in-well payment, take-or-pay payment, or bonus; or

5193 (iii) from a working interest or any other interest not provided for in Subsection
 5194 (1)(a) or (b) or Subsection (1)(c)(i) or (ii).

5195 (2) This section applies to an interest owned or held by a fiduciary regardless of whether a
 5196 settlor was extracting minerals, water, or other natural resources before the fiduciary
 5197 owned or held the interest.

5198 (3) An allocation of a receipt under Subsection (1)(c) is presumed to be equitable if the
 5199 amount allocated to principal is equal to the amount allowed by the Internal Revenue
 5200 Code as a deduction for depletion of the interest.

5201 (4) (a) If a fiduciary owns or holds an interest in minerals, water, or other natural

resources before July 1, 2020, the fiduciary may allocate receipts from the interest as provided in this section or in the manner used by the fiduciary before July 1, 2020.

(b) If the fiduciary acquires an interest in minerals, water, or other natural resources on or after July 1, 2020, the fiduciary shall allocate receipts from the interest as provided in this section.

Section 157. Section **75A-5-412**, which is renumbered from Section 22-3-412 is renumbered and amended to read:

[22-3-412] 75A-5-412. . Receipts normally apportioned -- Timber.

(1) To the extent that a fiduciary does not account for receipts from the sale of timber and related products as a business under Section ~~[22-3-403]~~ 75A-5-403, the fiduciary shall allocate the net receipts:

(a) to income, to the extent that the amount of timber cut from the land does not exceed the rate of growth of the timber;

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

(c) between income and principal if the net receipts are from the lease of land used for growing and cutting timber or from a contract to cut timber from land, by determining the amount of timber cut from the land under the lease or contract and applying the rules in Subsections (1)(a) and (b); or

(d) to principal, to the extent that advance payments, bonuses, and other payments are not allocated under Subsection (1)(a), (b), or (c).

(2) In determining net receipts to be allocated under Subsection (1), a fiduciary shall deduct and transfer to principal a reasonable amount for depletion.

(3) This section applies to land owned or held by a fiduciary regardless of whether a settlor was cutting timber from the land before the fiduciary owned or held the property.

(4) (a) If a fiduciary owns or holds an interest in land used for growing and cutting timber before July 1, 2020, the fiduciary may allocate net receipts from the sale of timber and related products as provided in this section or in the manner used by the fiduciary before July 1, 2020.

(b) If the fiduciary acquires an interest in land used for growing and cutting timber on or after July 1, 2020, the fiduciary shall allocate net receipts from the sale of timber and related products as provided in this section.

Section 158. Section **75A-5-413**, which is renumbered from Section 22-3-413 is renumbered and amended to read:

~~[22-3-413]~~ 75A-5-413. . Receipts normally apportioned -- Marital deduction property not productive of income.

(1) If a trust received property for which a gift or estate tax marital deduction was allowed and the settlor's spouse holds a mandatory income interest in the trust, the spouse may require the trustee, to the extent the trust assets otherwise do not provide the spouse with sufficient income from or use of the trust assets to qualify for the deduction, to:

- (a) make property productive of income;
- (b) convert property to property productive of income within a reasonable time; or
- (c) exercise the power to adjust under Section ~~[22-3-203]~~ 75A-5-203.

(2) The trustee may decide which action or combination of actions in Subsection (1) to take.

Section 159. Section **75A-5-414**, which is renumbered from Section 22-3-414 is renumbered and amended to read:

~~[22-3-414]~~ 75A-5-414. . Receipts normally apportioned -- Derivative or option.

(1) ~~[In]~~ As used in this section:

- (a) "Derivative" means a contract, instrument, other arrangement, or combination of contracts, instruments, or other arrangements, for which the value, rights, and obligations are, in whole or in part, dependent on or derived from an underlying tangible or intangible asset, group of tangible or intangible assets, index, or occurrence of an event.
- (b) "Derivative" includes stocks, fixed income securities, and financial instruments and arrangements based on indices, commodities, interest rates, weather-related events, and credit-default events.

(2) To the extent that a fiduciary does not account for a transaction in derivatives as a business under Section ~~[22-3-403]~~ 75A-5-403, the fiduciary shall allocate:

- (a) 10% of receipts from the transaction and 10% of disbursements made in connection with the transaction to income; and
- (b) the balance to principal.

(3) Subsection (4) applies if:

- (a) a fiduciary:
 - (i) grants an option to buy property from a trust, regardless of whether the trust owns the property when the option is granted;
 - (ii) grants an option that permits another person to sell property to the trust; or
 - (iii) acquires an option to buy property for the trust or an option to sell an asset owned by the trust; and

5270 (b) the fiduciary or other owner of the asset is required to deliver the asset if the option
5271 is exercised.

5272 (4) If this subsection applies, the fiduciary shall allocate 10% to income and the balance to
5273 principal of the following amounts:

5274 (a) an amount received for granting the option;

5275 (b) an amount paid to acquire the option; and

5276 (c) gain or loss realized on the exercise, exchange, settlement, offset, closing, or
5277 expiration of the option.

5278 Section 160. Section **75A-5-415**, which is renumbered from Section 22-3-415 is renumbered
5279 and amended to read:

5280 **~~[22-3-415]~~ 75A-5-415. . Receipts normally apportioned -- Asset-backed security.**

5281 (1) Except as otherwise provided in Subsection (2), a fiduciary shall allocate:

5282 (a) to income, a receipt from or related to an asset-backed security, to the extent that the
5283 payor identifies the payment as being from interest or other current return; and

5284 (b) to principal, the balance of the receipt.

5285 (2) If a fiduciary receives one or more payments in exchange for part or all of the
5286 fiduciary's interest in an asset-backed security, including a liquidation or redemption of
5287 the fiduciary's interest in the security, the fiduciary shall allocate:

5288 (a) to income, 10% of receipts from the transaction and 10% of disbursements made in
5289 connection with the transaction; and

5290 (b) to principal, the balance of the receipts and disbursements.

5291 Section 161. Section **75A-5-416**, which is renumbered from Section 22-3-416 is renumbered
5292 and amended to read:

5293 **~~[22-3-416]~~ 75A-5-416. . Receipts normally apportioned -- Other financial**
5294 **instrument or arrangement.**

5295 (1) A fiduciary shall allocate receipts from or related to a financial instrument or
5296 arrangement not otherwise addressed by this chapter.

5297 (2) The allocation must be consistent with Sections ~~[22-3-414 and 22-3-415]~~ 75A-5-414 and
5298 75A-5-415.

5299 Section 162. Section **75A-5-501**, which is renumbered from Section 22-3-501 is renumbered
5300 and amended to read:

5301 **Part 5. Allocation of Disbursements**

5302 **~~[22-3-501]~~ 75A-5-501. . Disbursement from income.**

5303 Subject to Section [22-3-504] 75A-5-504, and except as otherwise provided in
 5304 Subsection [22-3-601(3)(b)] 75A-5-601(3)(b) or (c), a fiduciary shall disburse from
 5305 income:
 5306 (1) one-half of:
 5307 (a) the regular compensation of the fiduciary and any person providing investment
 5308 advisory, custodial, or other services to the fiduciary, to the extent income is
 5309 sufficient; and
 5310 (b) an expense for an accounting, judicial or nonjudicial proceeding, or other matter that
 5311 involves both income and successive interests, to the extent income is sufficient;
 5312 (2) the balance of the disbursements described in Subsection (1), to the extent a fiduciary
 5313 that is an independent person determines that making those disbursements from income
 5314 would be in the interests of the beneficiaries;
 5315 (3) another ordinary expense incurred in connection with administration, management, or
 5316 preservation of property and distribution of income, including interest, an ordinary
 5317 repair, regularly recurring tax assessed against principal, and an expense of an
 5318 accounting, judicial or nonjudicial proceeding, or other matter that involves primarily an
 5319 income interest, to the extent income is sufficient; and
 5320 (4) a premium on insurance covering loss of a principal asset or income from or use of the
 5321 asset.

5322 Section 163. Section **75A-5-502**, which is renumbered from Section 22-3-502 is renumbered
 5323 and amended to read:

5324 **[22-3-502] 75A-5-502. . Disbursement from principal.**

5325 (1) Subject to Section [22-3-505] 75A-5-505, and except as otherwise provided in
 5326 Subsection [22-3-601(3)(b)] 75A-5-601(3)(b) or (c), a fiduciary shall disburse from
 5327 principal:
 5328 (a) the balance of the disbursements described in Subsections [22-3-501(1)] 75A-5-501(1)
 5329 and (3), after application of Subsection [22-3-501(2)] 75A-5-501(2);
 5330 (b) the fiduciary's compensation calculated on principal as a fee for acceptance,
 5331 distribution, or termination;
 5332 (c) a payment of an expense to prepare for or execute a sale or other disposition of
 5333 property;
 5334 (d) a payment on the principal of a trust debt;
 5335 (e) a payment of an expense of an accounting, judicial or nonjudicial proceeding, or
 5336 other matter that involves primarily principal, including a proceeding to construe the

- 5337 terms of the trust or protect property;
- 5338 (f) a payment of a premium for insurance, including title insurance, not described in
- 5339 Subsection ~~[22-3-501(4)]~~ 75A-5-501(4), of which the fiduciary is the owner and
- 5340 beneficiary;
- 5341 (g) a payment of an estate or inheritance tax or other tax imposed because of the death of
- 5342 a decedent, including penalties, apportioned to the trust; and
- 5343 (h) a payment:
- 5344 (i) related to environmental matters, including:
- 5345 (A) reclamation;
- 5346 (B) assessing environmental conditions;
- 5347 (C) remedying and removing environmental contamination;
- 5348 (D) monitoring remedial activities and the release of substances;
- 5349 (E) preventing future releases of substances;
- 5350 (F) collecting amounts from persons liable or potentially liable for the costs of
- 5351 activities described in Subsections (1)(h)(i)(A) through (E);
- 5352 (G) penalties imposed under environmental laws or regulations;
- 5353 (H) other actions to comply with environmental laws or regulations;
- 5354 (I) statutory or common law claims by third parties; and
- 5355 (J) defending claims based on environmental matters; and
- 5356 (ii) for a premium for insurance for matters described in Subsection (1)(h)(i).
- 5357 (2) If a principal asset is encumbered with an obligation that requires income from the asset
- 5358 to be paid directly to a creditor, the fiduciary shall transfer from principal to income an
- 5359 amount equal to the income paid to the creditor in reduction of the principal balance of
- 5360 the obligation.
- 5361 Section 164. Section **75A-5-503**, which is renumbered from Section 22-3-503 is renumbered
- 5362 and amended to read:
- 5363 **~~[22-3-503]~~ 75A-5-503. . Transfer from income to principal for depreciation.**
- 5364 (1) ~~[H]~~ As used in this section, "depreciation" means a reduction in value due to wear, tear,
- 5365 decay, corrosion, or gradual obsolescence of a tangible asset having a useful life of more
- 5366 than one year.
- 5367 (2) A fiduciary may transfer to principal a reasonable amount of the net cash receipts from a
- 5368 principal asset that is subject to depreciation, but may not transfer any amount for
- 5369 depreciation:
- 5370 (a) of the part of real property used or available for use by a beneficiary as a residence;

(b) of tangible personal property held or made available for the personal use or enjoyment of a beneficiary; or

(c) under this section, to the extent the fiduciary accounts:

(i) under Section [22-3-410] 75A-5-410 for the asset; or

(ii) under Section [22-3-403] 75A-5-403 for the business or other activity in which the asset is used.

(3) An amount transferred to principal under this section need not be separately held.

Section 165. Section **75A-5-504**, which is renumbered from Section 22-3-504 is renumbered and amended to read:

[22-3-504] 75A-5-504. . Reimbursement of income from principal.

(1) If a fiduciary makes or expects to make an income disbursement described in Subsection (2), the fiduciary may transfer an appropriate amount from principal to income in one or more accounting periods to reimburse income.

(2) To the extent the fiduciary has not been and does not expect to be reimbursed by a third party, income disbursements to which Subsection (1) applies include:

(a) an amount chargeable to principal but paid from income because principal is illiquid;

(b) a disbursement made to prepare property for sale, including improvements and commissions; and

(c) a disbursement described in Subsection [22-3-502(1)] 75A-5-502(1).

(3) If an asset whose ownership gives rise to an income disbursement becomes subject to a successive interest after an income interest ends, the fiduciary may continue to make transfers under Subsection (1).

Section 166. Section **75A-5-505**, which is renumbered from Section 22-3-505 is renumbered and amended to read:

[22-3-505] 75A-5-505. . Reimbursement of principal from income.

(1) If a fiduciary makes or expects to make a principal disbursement described in Subsection (2), the fiduciary may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or provide a reserve for future principal disbursements.

(2) To the extent that a fiduciary has not been and does not expect to be reimbursed by a third party, principal disbursements to which Subsection (1) applies include:

(a) an amount chargeable to income but paid from principal because income is not sufficient;

(b) the cost of an improvement to principal, regardless of whether the improvement is a

- 5405 change to an existing asset or the construction of a new asset, including a special
5406 assessment;
- 5407 (c) a disbursement made to prepare property for rental, including tenant allowances,
5408 leasehold improvements, and commissions;
- 5409 (d) a periodic payment on an obligation secured by a principal asset, to the extent that
5410 the amount transferred from income to principal for depreciation is less than the
5411 periodic payment; and
- 5412 (e) a disbursement described in Subsection [~~22-3-502(1)~~] 75A-5-502(1).
- 5413 (3) If an asset whose ownership gives rise to a principal disbursement becomes subject to a
5414 successive interest after an income interest ends, the fiduciary may continue to make
5415 transfers under Subsection (1).

5416 Section 167. Section **75A-5-506**, which is renumbered from Section 22-3-506 is renumbered
5417 and amended to read:

5418 **[~~22-3-506~~] 75A-5-506. . Income taxes.**

- 5419 (1) A tax required to be paid by a fiduciary that is based on receipts allocated to income
5420 shall be paid from income.
- 5421 (2) A tax required to be paid by a fiduciary that is based on receipts allocated to principal
5422 shall be paid from principal, even if the tax is called an income tax by the taxing
5423 authority.
- 5424 (3) Subject to Subsection (4) and Sections [~~22-3-504, 22-3-505, and 22-3-507~~] 75A-5-504,
5425 75A-5-505, and 75A-5-507, a tax required to be paid by a fiduciary on a share of an
5426 entity's taxable income in an accounting period shall be paid from:
- 5427 (a) income and principal proportionately to the allocation between income and principal
5428 of receipts from the entity in the period; and
- 5429 (b) principal, to the extent that the tax exceeds the receipts from the entity in the
5430 accounting period.
- 5431 (4) After applying Subsections (1) through (3), a fiduciary shall adjust income or principal
5432 receipts, to the extent that the taxes the fiduciary pays are reduced because of a
5433 deduction for a payment made to a beneficiary.

5434 Section 168. Section **75A-5-507**, which is renumbered from Section 22-3-507 is renumbered
5435 and amended to read:

5436 **[~~22-3-507~~] 75A-5-507. . Adjustment between income and principal because of**
5437 **taxes.**

- 5438 (1) A fiduciary may make an adjustment between income and principal to offset the shifting

of economic interests or tax benefits between current income beneficiaries and successor beneficiaries that arises from:

- (a) an election or decision the fiduciary makes regarding a tax matter, other than a decision to claim an income tax deduction to which Subsection (2) applies;
- (b) an income tax or other tax imposed on the fiduciary or a beneficiary as a result of a transaction involving the fiduciary or a distribution by the fiduciary; or
- (c) ownership by the fiduciary of an interest in an entity, a part of whose taxable income, regardless of whether the taxable income is distributed, is includable in the taxable income of the fiduciary or a beneficiary.

- (2) (a) If the amount of an estate tax marital or charitable deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting the amount for estate tax purposes and, as a result, estate taxes paid from principal are increased and income taxes paid by the fiduciary or a beneficiary are decreased, the fiduciary shall charge each beneficiary that benefits from the decrease in income tax to reimburse the principal from which the increase in estate tax is paid.
- (b) The total reimbursement must equal the increase in the estate tax, to the extent that the principal used to pay the increase would have qualified for a marital or charitable deduction but for the payment.
- (c) The share of the reimbursement for each fiduciary or beneficiary whose income taxes are reduced shall be the same as the fiduciary's or beneficiary's share of the total decrease in income tax.
- (3) A fiduciary that charges a beneficiary under Subsection (2) may offset the charge by obtaining payment from the beneficiary, withholding an amount from future distributions to the beneficiary, or adopting another method or combination of methods.

Section 169. Section **75A-5-601**, which is renumbered from Section 22-3-601 is renumbered and amended to read:

Part 6. Death of Individual or Termination of Income Interest

~~[22-3-601]~~ 75A-5-601. . Determination and distribution of net income.

- (1) This section applies when:
- (a) the death of an individual results in the creation of an estate or trust; or
 - (b) an income interest in a trust terminates, regardless of whether the trust continues or is distributed.
- (2) A fiduciary of an estate or trust with an income interest that terminates shall:

- (a) determine, in accordance with Subsection (8) and Part 4, Allocation of Receipts, Part 5, Allocation of Disbursements, and Part 7, Apportionment at Beginning and End of Income Interest, the amount of net income and net principal receipts received from property specifically given to a beneficiary; and
- (b) distribute the net income and net principal receipts to the beneficiary that is to receive the specific property.
- (3) Subject to Subsection (4), a fiduciary shall determine the income and net income of an estate or income interest in a trust that terminates, other than the amount of net income determined in accordance with Subsection (2), and in accordance with Part 4, Allocation of Receipts, Part 5, Allocation of Disbursements, and Part 7, Apportionment at Beginning and End of Income Interest, and by:
- (a) including in net income all income from property used or sold to discharge liabilities;
- (b) paying from income or principal, in the fiduciary's discretion:
- (i) fees of attorneys, accountants, and fiduciaries;
- (ii) court costs and other expenses of administration;
- (iii) interest on estate taxes, inheritance taxes, and other taxes imposed because of the decedent's death; and
- (c) paying from principal other disbursements made or incurred in connection with the settlement of the estate or the winding up of an income interest that terminates, including:
- (i) to the extent authorized by the decedent's will, the terms of the trust, or applicable law, debts, funeral expenses, disposition of remains, family allowances, estate and inheritance taxes, and other taxes imposed because of the decedent's death; and
- (ii) related penalties that are apportioned, by the decedent's will, the terms of the trust, or applicable law, to the estate or income interest that terminates.
- (4) A fiduciary may pay the expenses from income of property passing to a trust for which the fiduciary claims a federal estate tax marital or charitable deduction only to the extent:
- (a) the payment of the expenses from income will not cause the reduction or loss of the deduction; or
- (b) the fiduciary makes an adjustment under Subsection ~~[22-3-507(2)]~~ 75A-5-507(2).
- (5) If a decedent's will, the terms of a trust, or applicable law provides for the payment of interest or the equivalent of interest to a beneficiary that receives a pecuniary amount outright, the fiduciary shall make the payment from net income determined under Subsection (3) or from principal to the extent that net income is insufficient.

(6) If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends because of an income beneficiary's death, and no payment of interest or the equivalent of interest is provided for by the terms of the trust or applicable law, the fiduciary shall pay the interest or the equivalent of interest to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

(7) A fiduciary shall distribute net income remaining after payments required by Subsections (5) and (6) in the manner described in Section ~~[22-3-602]~~ 75A-5-602 to all other beneficiaries, including a beneficiary that receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(8) (a) A fiduciary may not reduce principal or income receipts from property described in Subsection (2) because of a payment described in Section ~~[22-3-501 or 22-3-502]~~ 75A-5-501 or 75A-5-502, to the extent the decedent's will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent the fiduciary recovers or expects to recover the payment from a third party.

(b) The net income and principal receipts from the property shall be determined by including the amount the fiduciary receives or pays regarding the property, whether the amount accrued or became due before, on, or after the date of the decedent's death or an income interest's terminating event, and making a reasonable provision for an amount the estate or income interest may become obligated to pay after the property is distributed.

Section 170. Section **75A-5-602**, which is renumbered from Section 22-3-602 is renumbered and amended to read:

~~[22-3-602]~~ **75A-5-602. . Distribution to successor beneficiary.**

(1) (a) Except to the extent Part 3, Unitrust, applies for a beneficiary that is a trust, each beneficiary described in Subsection ~~[22-3-601(6)]~~ 75A-5-601(6) is entitled to receive a share of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values of the undistributed principal assets as of the distribution date.

(b) If a fiduciary makes more than one distribution of assets to beneficiaries to which this section applies, each beneficiary, including a beneficiary that does not receive part of the distribution, is entitled, as of each distribution date, to a share of the net

- 5540 income the fiduciary received after the decedent's death, an income interest's other
5541 terminating event, or the preceding distribution by the fiduciary.
- 5542 (2) In determining a beneficiary's share of net income under Subsection (1):
- 5543 (a) the beneficiary is entitled to receive a share of the net income equal to the
5544 beneficiary's fractional interest in the undistributed principal assets immediately
5545 before the distribution date;
- 5546 (b) the beneficiary's fractional interest under Subsection (2)(a) shall be calculated:
- 5547 (i) on the aggregate value of the assets as of the distribution date without reducing the
5548 value by any unpaid principal obligation; and
- 5549 (ii) without regard to:
- 5550 (A) property specifically given to a beneficiary under the decedent's will or the
5551 terms of the trust; and
- 5552 (B) property required to pay pecuniary amounts not in trust; and
- 5553 (c) the distribution date under Subsection (2)(a) may be the date on which the fiduciary
5554 calculates the value of the assets if that date is reasonably near the date on which the
5555 assets are distributed.
- 5556 (3) To the extent that a fiduciary does not distribute under this section all the collected but
5557 undistributed net income to each beneficiary on or before a distribution date, the
5558 fiduciary shall maintain records showing the interest of each beneficiary in the net
5559 income.
- 5560 (4) If this section applies to income from an asset, a fiduciary may apply Subsection (2) to
5561 net gain or loss realized from the disposition of the asset after the decedent's death, an
5562 income interest's terminating event, or the preceding distribution by the fiduciary.

5563 Section 171. Section **75A-5-701**, which is renumbered from Section 22-3-701 is renumbered
5564 and amended to read:

5565 **Part 7. Apportionment at Beginning and End of Income Interest**

5566 **~~[22-3-701]~~ 75A-5-701. . When right to income begins and ends.**

- 5567 (1) (a) An income beneficiary is entitled to net income in accordance with the terms of
5568 the trust from the date on which an income interest begins.
- 5569 (b) The income interest begins on the date that is specified in the terms of the trust or, if
5570 no date is specified, on the date an asset becomes subject to:
- 5571 (i) the trust for the current income beneficiary; or
- 5572 (ii) a successive interest for a successor beneficiary.

- 5573 (2) An asset becomes subject to a trust under Subsection (1)(b)(i):
 5574 (a) for an asset that is transferred to the trust during the settlor's life, on the date the asset
 5575 is transferred;
 5576 (b) for an asset that becomes subject to the trust because of a decedent's death, on the
 5577 date of the decedent's death, even if there is an intervening period of administration
 5578 of the decedent's estate; or
 5579 (c) for an asset that is transferred to a fiduciary by a third party because of a decedent's
 5580 death, on the date of the decedent's death.

- 5581 (3) An asset becomes subject to a successive interest under Subsection (1)(b)(ii) on the day
 5582 after the preceding income interest ends, as determined under Subsection (4), even if
 5583 there is an intervening period of administration to wind up the preceding income interest.

- 5584 (4) An income interest ends on the day before an income beneficiary dies or another
 5585 terminating event occurs or on the last day of a period during which there is no
 5586 beneficiary to which a fiduciary is permitted or required to distribute income.

5587 Section 172. Section **75A-5-702**, which is renumbered from Section 22-3-702 is renumbered
 5588 and amended to read:

5589 **[22-3-702] 75A-5-702. . Apportionment of receipts and disbursements when**
 5590 **decedent dies or income interest begins.**

- 5591 (1) A fiduciary shall allocate an income receipt or disbursement, other than a receipt to
 5592 which Subsection [22-3-601(2)] 75A-5-601(2) applies, to principal if the due date of the
 5593 income receipt or disbursement occurs before the date on which:

- 5594 (a) for an estate, the decedent died; or
 5595 (b) for a trust or successive interest, an income interest begins.

- 5596 (2) If the due date of a periodic income receipt or disbursement occurs on or after the date
 5597 on which a decedent died or an income interest begins, a fiduciary shall allocate the
 5598 receipt or disbursement to income.

- 5599 (3) If an income receipt or disbursement is not periodic or has no due date, a fiduciary shall:

- 5600 (a) treat the receipt or disbursement under this section as accruing from day to day; and
 5601 (b) allocate:
 5602 (i) to principal, the portion of the receipt or disbursement accruing before the date on
 5603 which a decedent died or an income interest begins; and
 5604 (ii) to income, the balance.

- 5605 (4) A receipt or disbursement is periodic under Subsections (2) and (3) if:

- 5606 (a) the receipt or disbursement shall be paid at regular intervals under an obligation to

5607 make payments; or

5608 (b) the payor customarily makes payments at regular intervals.

5609 (5) (a) An item of income or obligation is due under this section on the date on which
5610 the payor is required to make a payment.

5611 (b) If a payment date is not stated, there is no due date.

5612 (6) Distributions to shareholders or other owners from an entity to which Section [22-3-401]
5613 75A-5-401 applies are due:

5614 (a) on the date fixed by or on behalf of the entity for determining the persons entitled to
5615 receive the distribution;

5616 (b) if no date is fixed, on the date of the decision by or on behalf of the entity to make
5617 the distribution; or

5618 (c) if no date is fixed and the fiduciary does not know the date of the decision by or on
5619 behalf of the entity to make the distribution, on the date the fiduciary learns of the
5620 decision.

5621 Section 173. Section **75A-5-703**, which is renumbered from Section 22-3-703 is renumbered
5622 and amended to read:

5623 **[22-3-703] 75A-5-703. . Apportionment when income interest ends.**

5624 (1) [In] As used in this section:

5625 (a) "Undistributed income" means net income received on or before the date on which
5626 an income interest ends.

5627 (b) "Undistributed income" does not include an item of income or expense that is due or
5628 accrued or net income that has been added or is required to be added, to principal
5629 under the terms of the trust.

5630 (2) Except as otherwise provided in Subsection (3), when a mandatory income interest of a
5631 beneficiary ends, the fiduciary shall pay the beneficiary's share of the undistributed
5632 income that is not disposed of under the terms of the trust to the beneficiary or, if the
5633 beneficiary does not survive the date that the interest ends, to the beneficiary's estate.

5634 (3) If a beneficiary has an unqualified power to withdraw more than 5% of the value of a
5635 trust immediately before an income interest ends:

5636 (a) the fiduciary shall allocate to principal the undistributed income from the portion of
5637 the trust that may be withdrawn; and

5638 (b) Subsection (2) applies only to the balance of the undistributed income.

5639 (4) When a fiduciary's obligation to pay a fixed annuity or a fixed fraction of the value of
5640 assets ends, the fiduciary shall prorate the final payment as required to preserve an

5641 income tax, gift tax, estate tax, or other tax benefit.

5642 Section 174. Section **75A-5-801**, which is renumbered from Section 22-3-801 is renumbered
5643 and amended to read:

5644 **Part 8. Applicability Provisions**

5645 **[22-3-801] 75A-5-801. . Uniformity of application and construction.**

5646 In applying and construing this uniform act, consideration must be given to the
5647 need to promote uniformity of the law with respect to the uniform act's subject matter
5648 among states that enact [it-] this uniform law.

5649 Section 175. Section **75A-5-802**, which is renumbered from Section 22-3-802 is renumbered
5650 and amended to read:

5651 **[22-3-802] 75A-5-802. . Relation to Electronic Signatures in Global and National**
5652 **Commerce Act.**

5653 This chapter modifies, limits, or supersedes the Electronic Signatures in Global and
5654 National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or
5655 supersede Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic
5656 delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Sec.
5657 7003(b).

5658 Section 176. Section **75A-5-803**, which is renumbered from Section 22-3-803 is renumbered
5659 and amended to read:

5660 **[22-3-803] 75A-5-803. . Application to trust or estate.**

5661 This chapter applies to a trust or estate existing or created on or after July 1, 2020,
5662 except as otherwise expressly provided in the terms of the trust or this chapter.

5663 Section 177. Section **75A-5-804**, which is renumbered from Section 22-3-804 is renumbered
5664 and amended to read:

5665 **[22-3-804] 75A-5-804. . Severability.**

5666 If any provision of this chapter or the application of this chapter to any person or
5667 circumstance is held invalid, the invalidity does not affect other provisions or
5668 applications of this chapter that can be given effect without the invalid provision or
5669 application, and to this end the provisions of this chapter are severable.

5670 Section 178. Section **75A-6-101** is enacted to read:

5671 **CHAPTER 6. UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT**

5672 **75A-6-101 . Reserved.**

5673 Reserved.

5674 Section 179. Section **75A-6-102**, which is renumbered from Section 75-11-102 is renumbered
5675 and amended to read:

5676 **[75-11-102] 75A-6-102. . Definitions for chapter.**

5677 As used in this chapter:

- 5678 (1) "Account" means an arrangement under a terms of service agreement in which a
5679 custodian carries, maintains, processes, receives, or stores a digital asset of the user or
5680 provides goods or services to the user.
- 5681 (2) "Agent" means an attorney in fact granted authority under a durable or nondurable
5682 power of attorney.
- 5683 (3) "Carries" means engages in the transmission of an electronic communication.
- 5684 (4) "Catalogue of electronic communications" means information that identifies each
5685 person with which a user has had an electronic communication, the time and date of the
5686 communication, and the electronic address of the person.
- 5687 (5) (a) "Conservator" means a person appointed by a court to manage the estate of a
5688 living individual.
- 5689 (b) "Conservator" includes a limited conservator.
- 5690 (6) "Content of an electronic communication" means information concerning the substance
5691 or meaning of the communication that:
- 5692 (a) has been sent or received by a user;
- 5693 (b) is in electronic storage by a custodian providing an electronic communication service
5694 to the public or is carried or maintained by a custodian providing a remote computing
5695 service to the public; and
- 5696 (c) is not readily accessible to the public.
- 5697 (7) "Court" means the district court.
- 5698 (8) "Custodian" means a person that carries, maintains, processes, receives, or stores a
5699 digital asset of a user.
- 5700 (9) "Designated recipient" means a person chosen by a user using an online tool to
5701 administer digital assets of the user.
- 5702 (10) (a) "Digital asset" means an electronic record in which an individual has a right or
5703 interest.
- 5704 (b) "Digital asset" does not include an underlying asset or liability unless the asset or
5705 liability is itself an electronic record.
- 5706 (11) "Electronic" means relating to technology having electrical, digital, magnetic, wireless,
5707 optical, electromagnetic, or similar capabilities.

5708 (12) "Electronic communication" has the same meaning as the definition in 18 U.S.C. Sec.
5709 2510(12).

5710 (13) "Electronic communication service" means a custodian that provides to a user the
5711 ability to send or receive an electronic communication.

5712 (14) "Estate" means the same as that term is defined in Section 75-1-201.

5713 ~~[(14)]~~ (15) "Fiduciary" means an original, additional, or successor personal representative,
5714 conservator, guardian, agent, or trustee.

5715 ~~[(15)]~~ (16) (a) "Guardian" means a person appointed by a court to manage the affairs of a
5716 living individual.

5717 (b) "Guardian" includes a limited guardian.

5718 ~~[(16)]~~ (17) "Information" means data, text, images, videos, sounds, codes, computer
5719 programs, software, databases, or the like.

5720 ~~[(17)]~~ (18) "Online tool" means an electronic service provided by a custodian that allows the
5721 user, in an agreement distinct from the terms of service agreement between the custodian
5722 and user, to provide directions for disclosure or nondisclosure of digital assets to a third
5723 person.

5724 ~~[(18)]~~ (19) "Person" means an individual, estate, business or nonprofit entity, public
5725 corporation, government or governmental subdivision, agency, instrumentality, or other
5726 legal entity.

5727 ~~[(19)]~~ (20) "Personal representative" means an executor, administrator, special administrator
5728 as defined in Section 75-1-201, or person that performs substantially the same function
5729 under the law of this state other than this chapter.

5730 ~~[(20)]~~ (21) "Power of attorney" means a record that grants an agent authority to act in the
5731 place of a principal.

5732 ~~[(21)]~~ (22) "Principal" means an individual who grants authority to an agent in a power of
5733 attorney.

5734 ~~[(22)]~~ (23) (a) "Protected person" means an individual for whom a conservator or
5735 guardian has been appointed.

5736 (b) "Protected person" includes an individual for whom an application for the
5737 appointment of a conservator or guardian is pending.

5738 ~~[(23)]~~ (24) "Record" means information that is inscribed on a tangible medium or that is
5739 stored in an electronic or other medium and is retrievable in perceivable form.

5740 ~~[(24)]~~ (25) "Remote computing service" means a custodian that provides to a user computer
5741 processing services or the storage of digital assets by means of an electronic

5742 communications system, as defined in 18 U.S.C. Sec. 2510(14).

5743 (26) "Successor personal representative" means the same as that term is defined in Section
5744 75-1-201.

5745 [(25)] (27) "Terms of service agreement" means an agreement that controls the relationship
5746 between a user and a custodian.

5747 (28) "Trust" means the same as that term is defined in Section 75-1-201.

5748 [(26)] (29) (a) "Trustee" means a fiduciary with legal title to property pursuant to an
5749 agreement or declaration that creates a beneficial interest in another.

5750 (b) "Trustee" includes a successor trustee.

5751 [(27)] (30) "User" means a person that has an account with a custodian.

5752 [(28)] (31) "Will" includes a codicil, a testamentary instrument that only appoints an
5753 executor, and an instrument that revokes or revises a testamentary instrument.

5754 Section 180. Section **75A-6-103**, which is renumbered from Section 75-11-103 is renumbered
5755 and amended to read:

5756 **[75-11-103] 75A-6-103. . Applicability.**

5757 (1) This chapter applies to:

5758 (a) a fiduciary or agent acting under a will or power of attorney executed before, on, or
5759 after May 9, 2017;

5760 (b) a personal representative acting for a decedent who died before, on, or after May 9,
5761 2017;

5762 (c) a conservatorship or guardianship proceeding commenced before, on, or after May 9,
5763 2017; and

5764 (d) a trustee acting under a trust created before, on, or after May 9, 2017.

5765 (2) This chapter applies to a custodian if the user resides in this state or resided in this state
5766 at the time of the user's death.

5767 (3) This chapter does not apply to a digital asset of an employer used by an employee in the
5768 ordinary course of the employer's business.

5769 Section 181. Section **75A-6-104**, which is renumbered from Section 75-11-104 is renumbered
5770 and amended to read:

5771 **[75-11-104] 75A-6-104. . User direction for disclosure of digital assets.**

5772 (1) A user may use an online tool to direct the custodian to disclose or not to disclose to a
5773 designated recipient some or all of the user's digital assets, including the content of
5774 electronic communications. If the online tool allows the user to modify or delete a
5775 direction at all times, a direction regarding disclosure using an online tool overrides a

contrary direction by the user in a will, trust, power of attorney, or other record.

(2) If a user has not used an online tool to give direction under Subsection (1) or if the custodian has not provided an online tool, the user may allow or prohibit in a will, trust, power of attorney, or other record disclosure to a fiduciary of some or all of the user's digital assets, including the content of electronic communications sent or received by the user.

(3) A user's direction under Subsection (1) or (2) overrides a contrary provision in a terms of service agreement that does not require the user to act affirmatively and distinctly from the user's assent to the terms of service.

Section 182. Section **75A-6-105**, which is renumbered from Section 75-11-105 is renumbered and amended to read:

~~[75-11-105]~~ 75A-6-105. . Terms of service agreement.

(1) This chapter does not change or impair a right of a custodian or a user under a terms of service agreement to access and use digital assets of the user.

(2) This chapter does not give a fiduciary or designated recipient any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary or designated recipient acts or represents.

(3) A fiduciary's or designated recipient's access to digital assets may be modified or eliminated by a user, by federal law, or by a terms of service agreement if the user has not provided direction under Section ~~[75-11-104]~~ 75A-6-104.

Section 183. Section **75A-6-106**, which is renumbered from Section 75-11-106 is renumbered and amended to read:

~~[75-11-106]~~ 75A-6-106. . Procedure for disclosing digital assets.

(1) When disclosing digital assets of a user under this chapter, the custodian may at the custodian's sole discretion:

- (a) grant a fiduciary or designated recipient full access to the user's account;
- (b) grant a fiduciary or designated recipient partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or
- (c) provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

(2) A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under this chapter.

(3) A custodian need not disclose under this chapter a digital asset deleted by a user.

(4) If a user directs or a fiduciary requests a custodian to disclose under this chapter some, but not all, of the user's digital assets, the custodian need not disclose the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the court to disclose:

- (a) a subset limited by date of the user's digital assets;
- (b) all of the user's digital assets to the fiduciary or designated recipient;
- (c) none of the user's digital assets; or
- (d) all of the user's digital assets to the court for review in camera.

Section 184. Section **75A-6-107**, which is renumbered from Section 75-11-107 is renumbered and amended to read:

~~[75-11-107]~~ 75A-6-107. . Disclosure of content of electronic communications of deceased user.

If a deceased user consented to or a court directs disclosure of the contents of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the representative gives the custodian:

- (1) a written request for disclosure in physical or electronic form;
- (2) a certified copy of the death certificate of the user;
- (3) a certified copy of the letter of appointment of the representative or a small estate affidavit or court order;
- (4) unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney, or other record evidencing the user's consent to disclosure of the content of electronic communications; and
- (5) if requested by the custodian:
 - (a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;
 - (b) evidence linking the account to the user; or
 - (c) a finding by the court that:
 - (i) the user had a specific account with the custodian, identifiable by the information specified in Subsection (5)(a);
 - (ii) disclosure of the content of electronic communications of the user would not violate 18 U.S.C. Sec. 2701 et seq., 47 U.S.C. Sec. 222, or other applicable law;
 - (iii) unless the user provided direction using an online tool, the user consented to

5844 disclosure of the content of electronic communications; or
5845 (iv) disclosure of the content of electronic communications of the user is reasonably
5846 necessary for administration of the estate.

5847 Section 185. Section **75A-6-108**, which is renumbered from Section 75-11-108 is renumbered
5848 and amended to read:

5849 **[75-11-108] 75A-6-108. . Disclosure of other digital assets of deceased user.**

5850 Unless the user prohibited disclosure of digital assets or the court directs
5851 otherwise, a custodian shall disclose to the personal representative of the estate of
5852 a deceased user a catalogue of electronic communications sent or received by the
5853 user and digital assets, other than the content of electronic communications, of the
5854 user, if the representative gives the custodian:

- 5855 (1) a written request for disclosure in physical or electronic form;
5856 (2) a certified copy of the death certificate of the user;
5857 (3) a certified copy of the letter of appointment of the representative, a small estate
5858 affidavit, or court order; and
5859 (4) if requested by the custodian:
5860 (a) a number, username, address, or other unique subscriber or account identifier
5861 assigned by the custodian to identify the user's account;
5862 (b) evidence linking the account to the user;
5863 (c) an affidavit stating that disclosure of the user's digital assets is reasonably necessary
5864 for administration of the estate; or
5865 (d) a finding by the court that:
5866 (i) the user had a specific account with the custodian, identifiable by the information
5867 specified in Subsection (4)(a); or
5868 (ii) disclosure of the user's digital assets is reasonably necessary for administration of
5869 the estate.

5870 Section 186. Section **75A-6-109**, which is renumbered from Section 75-11-109 is renumbered
5871 and amended to read:

5872 **[75-11-109] 75A-6-109. . Disclosure of content of electronic communications of**
5873 **principal.**

5874 To the extent a power of attorney expressly grants an agent authority over the
5875 content of electronic communications sent or received by the principal and unless
5876 directed otherwise by the principal or the court, a custodian shall disclose to the
5877 agent the content if the agent gives the custodian:

- 5878 (1) a written request for disclosure in physical or electronic form;
5879 (2) an original or copy of the power of attorney expressly granting the agent authority over
5880 the content of electronic communications of the principal;
5881 (3) a certification by the agent, under penalty of perjury, that the power of attorney is in
5882 effect; and
5883 (4) if requested by the custodian:
5884 (a) a number, username, address, or other unique subscriber or account identifier
5885 assigned by the custodian to identify the principal's account; or
5886 (b) evidence linking the account to the principal.

5887 Section 187. Section **75A-6-110**, which is renumbered from Section 75-11-110 is renumbered
5888 and amended to read:

5889 **~~[75-11-110]~~ 75A-6-110. . Disclosure of other digital assets of principal.**

5890 Unless otherwise ordered by the court, directed by the principal, or provided by a
5891 power of attorney, a custodian shall disclose to an agent with specific authority over
5892 digital assets, or general authority to act on behalf of a principal, a catalogue of
5893 electronic communications sent or received by the principal and digital assets, other
5894 than the content of electronic communications, of the principal if the agent gives the
5895 custodian:

- 5896 (1) a written request for disclosure in physical or electronic form;
5897 (2) an original or a copy of the power of attorney that gives the agent specific authority over
5898 digital assets or general authority to act on behalf of the principal;
5899 (3) a certification by the agent, under penalty of perjury, that the power of attorney is in
5900 effect; and
5901 (4) if requested by the custodian:
5902 (a) a number, username, address, or other unique subscriber or account identifier
5903 assigned by the custodian to identify the principal's account; or
5904 (b) evidence linking the account to the principal.

5905 Section 188. Section **75A-6-111**, which is renumbered from Section 75-11-111 is renumbered
5906 and amended to read:

5907 **~~[75-11-111]~~ 75A-6-111. . Disclosure of digital assets held in trust when trustee is**
5908 **original user.**

5909 Unless otherwise ordered by the court or provided in a trust, a custodian shall
5910 disclose to a trustee that is an original user of an account any digital asset of the
5911 account held in trust, including a catalogue of electronic communications of the

5912 trustee and the content of electronic communications.

5913 Section 189. Section **75A-6-112**, which is renumbered from Section 75-11-112 is renumbered
5914 and amended to read:

5915 **~~[75-11-112]~~ 75A-6-112. . Disclosure of contents of electronic communications held**
5916 **in trust when trustee not original user.**

5917 Unless otherwise ordered by the court, directed by the user, or provided in a trust,
5918 a custodian shall disclose to a trustee that is not an original user of an account the
5919 content of an electronic communication sent or received by an original or successor
5920 user and carried, maintained, processed, received, or stored by the custodian in the
5921 account of the trust if the trustee gives the custodian:

- 5922 (1) a written request for disclosure in physical or electronic form;
5923 (2) a certified copy of the trust instrument or a certification of the trust under Section
5924 75-7-1013 that includes consent to disclosure of the content of electronic
5925 communications to the trustee;
5926 (3) a certification by the trustee, under penalty of perjury, that the trust exists and the
5927 trustee is a currently acting trustee of the trust; and
5928 (4) if requested by the custodian:
5929 (a) a number, username, address, or other unique subscriber or account identifier
5930 assigned by the custodian to identify the trust's account; or
5931 (b) evidence linking the account to the trust.

5932 Section 190. Section **75A-6-113**, which is renumbered from Section 75-11-113 is renumbered
5933 and amended to read:

5934 **~~[75-11-113]~~ 75A-6-113. . Disclosure of other digital assets held in trust when**
5935 **trustee not original user.**

5936 Unless otherwise ordered by the court, directed by the user, or provided in a trust,
5937 a custodian shall disclose, to a trustee that is not an original user of an account, a
5938 catalogue of electronic communications sent or received by an original or successor
5939 user and stored, carried, or maintained by the custodian in an account of the trust and
5940 any digital assets, other than the content of electronic communications, in which the
5941 trust has a right or interest if the trustee gives the custodian:

- 5942 (1) a written request for disclosure in physical or electronic form;
5943 (2) a certified copy of the trust instrument or a certification of the trust under Section
5944 75-7-1013;
5945 (3) a certification by the trustee, under penalty of perjury, that the trust exists and the

trustee is a currently acting trustee of the trust; and

(4) if requested by the custodian:

(a) a number, username, address, or other unique subscriber or account identifier

assigned by the custodian to identify the trust's account; or

(b) evidence linking the account to the trust.

Section 191. Section **75A-6-114**, which is renumbered from Section 75-11-114 is renumbered and amended to read:

~~[75-11-114]~~ 75A-6-114. . Disclosure of digital assets to conservator or guardian of protected person.

(1) After an opportunity for a hearing under Chapter 5, Protection of Persons Under Disability and Their Property, the court may grant a conservator or guardian access to the digital assets of a protected person.

(2) Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a conservator or guardian the catalogue of electronic communications sent or received by a protected person and any digital assets, other than the content of electronic communications, in which the protected person has a right or interest if the conservator or guardian gives the custodian:

(a) a written request for disclosure in physical or electronic form;

(b) a certified copy of the court order that gives the conservator or guardian authority over the digital assets of the protected person; and

(c) if requested by the custodian:

(i) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the account of the protected person; or

(ii) evidence linking the account to the protected person.

(3) A conservator or guardian with general authority to manage the assets of a protected person may request a custodian of the digital assets of the protected person to suspend or terminate an account of the protected person for good cause. A request made under this section must be accompanied by a certified copy of the court order giving the conservator or guardian authority over the protected person's property.

Section 192. Section **75A-6-115**, which is renumbered from Section 75-11-115 is renumbered and amended to read:

~~[75-11-115]~~ 75A-6-115. . Fiduciary duty and authority.

(1) The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including:

- 5980 (a) the duty of care;
5981 (b) the duty of loyalty; and
5982 (c) the duty of confidentiality.
- 5983 (2) A fiduciary's or designated recipient's authority with respect to a digital asset of a user:
5984 (a) except as otherwise provided in Section [75-11-104] 75A-6-104, is subject to the
5985 applicable terms of service;
5986 (b) is subject to other applicable law, including copyright law;
5987 (c) in the case of a fiduciary, is limited by the scope of the fiduciary's duties; and
5988 (d) may not be used to impersonate the user.
- 5989 (3) A fiduciary with authority over the property of a decedent, protected person, principal,
5990 or settlor has the right to access any digital asset in which the decedent, protected
5991 person, principal, or settlor had a right or interest and that is not held by a custodian or
5992 subject to a terms of service agreement.
- 5993 (4) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the
5994 property of the decedent, protected person, principal, or settlor for the purpose of
5995 applicable computer fraud and unauthorized computer access laws.
- 5996 (5) A fiduciary with authority over the tangible, personal property of a decedent, protected
5997 person, principal, or settlor:
5998 (a) has the right to access the property and any digital asset stored in it; and
5999 (b) is an authorized user for the purpose of computer fraud and unauthorized computer
6000 access laws.
- 6001 (6) A custodian may disclose information in an account to a fiduciary of the user when the
6002 information is required to terminate an account used to access digital assets licensed to
6003 the user.
- 6004 (7) A fiduciary of a user may request a custodian to terminate the user's account. A request
6005 for termination shall be in writing, in either physical or electronic form, and
6006 accompanied by:
6007 (a) if the user is deceased, a certified copy of the death certificate of the user;
6008 (b) a certified copy of the letter of appointment of the representative, a small estate
6009 affidavit, or court order, power of attorney, or trust giving the fiduciary authority
6010 over the account; and
6011 (c) if requested by the custodian:
6012 (i) a number, username, address, or other unique subscriber or account identifier
6013 assigned by the custodian to identify the user's account;

- (ii) evidence linking the account to the user; or
- (iii) a finding by the court that the user had a specific account with the custodian, identifiable by the information specified in Subsection (7)(c)(i).

Section 193. Section **75A-6-116**, which is renumbered from Section 75-11-116 is renumbered and amended to read:

~~[75-11-116]~~ 75A-6-116. . Custodian compliance and immunity.

- (1) Not later than 60 days after receipt of the information required under Sections [~~75-11-107 through 75-11-115~~] 75A-6-107 through 75A-6-115, a custodian shall comply with a request under this chapter from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance.
- (2) An order under Subsection (1) directing compliance shall contain a finding that compliance is not in violation of 18 U.S.C. Sec. 2702.
- (3) A custodian may notify the user that a request for disclosure or to terminate an account was made under this chapter.
- (4) A custodian may deny a request under this chapter from a fiduciary or designated recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the receipt of the fiduciary's request.
- (5) This chapter does not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under this chapter to obtain a court order that:
- (a) specifies that an account belongs to the protected person or principal;
- (b) specifies that there is sufficient consent from the protected person or principal to support the requested disclosure; and
- (c) contains a finding required by law other than this chapter.
- (6) A custodian and its officers, employees, and agents are immune from liability for an act or omission done in good faith in compliance with this chapter.

Section 194. Section **75A-6-117**, which is renumbered from Section 75-11-117 is renumbered and amended to read:

~~[75-11-117]~~ 75A-6-117. . Uniformity of application and construction.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact [it] this uniform law.

Section 195. Section **75A-6-118**, which is renumbered from Section 75-11-118 is renumbered

6048 and amended to read:

6049 **[75-11-118] 75A-6-118. . Relation to Electronic Signatures in Global and National**
6050 **Commerce Act.**

6051 This chapter modifies, limits, or supersedes the Electronic Signatures in Global and
6052 National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or
6053 supersede Section 101(c) of that act or 15 U.S.C. Sec. 7001(c), or authorize electronic
6054 delivery of any of the notices described in Section 103(b) of that act or 15 U.S.C. Sec.
6055 7003(b).

6056 Section 196. Section **75A-7-101** is enacted to read:

6057 **CHAPTER 7. UNIFORM ACT FOR SIMPLIFICATION**
OF FIDUCIARY SECURITY TRANSFERS

6059 **75A-7-101 . Reserved.**

6060 Reserved.

6061 Section 197. Section **75A-7-102**, which is renumbered from Section 22-5-2 is renumbered
6062 and amended to read:

6063 **[22-5-2] 75A-7-102. . Definitions for chapter.**

6064 [In] As used in this chapter~~[, unless the context otherwise requires]:~~

6065 (1) "Assignment" includes any written stock power, bond power, bill of sale, deed,
6066 declaration of trust or other instrument of transfer.

6067 (2) "Claim of beneficial interest" includes:

6068 (a) a claim of any interest by a decedent's legatee, distributee, heir or creditor, a
6069 beneficiary under a trust, a ward, a beneficial owner of a security registered in the
6070 name of a nominee, or a minor owner of a security registered in the name of a
6071 custodian, or a claim of any similar interest, whether the claim is asserted by the
6072 claimant or by a fiduciary or by any other authorized person in his behalf~~], and~~
6073 ~~includes] ; and~~

6074 (b) a claim that the transfer would be in breach of fiduciary duties.

6075 (3) "Corporation" means a private or public corporation, association or trust issuing a
6076 security.

6077 (4) "Fiduciary" means an executor, administrator, trustee, guardian, committee,
6078 conservator, curator, tutor, custodian or nominee.

6079 (5) "Person" includes an individual, a corporation, government or governmental subdivision
6080 or agency, business trust, estate, trust, partnership or association, two or more persons

- 6081 having a joint or common interest, or any other legal or commercial entity.
- 6082 (6) "Security" includes any share of stock, bond, debenture, note or other security issued by
- 6083 a corporation which is registered as to ownership on the books of the corporation.
- 6084 (7) "Transfer" means a change on the books of a corporation in the registered ownership of
- 6085 a security.
- 6086 (8) "Transfer agent" means a person employed or authorized by a corporation to transfer
- 6087 securities issued by the corporation.

6088 Section 198. Section **75A-7-103**, which is renumbered from Section 22-5-3 is renumbered

6089 and amended to read:

6090 **~~[22-5-3]~~ 75A-7-103. . Registration of security in the name of a fiduciary.**

6091 A corporation or transfer agent registering a security in the name of a person who

6092 is a fiduciary or who is described as a fiduciary is not bound to inquire into the

6093 existence, extent, or correct description of the fiduciary relationship, and thereafter the

6094 corporation and its transfer agent may assume without inquiry that the newly registered

6095 owner continues to be the fiduciary until the corporation or transfer agent receives

6096 written notice that the fiduciary is no longer acting as such with respect to the particular

6097 security.

6098 Section 199. Section **75A-7-104**, which is renumbered from Section 22-5-4 is renumbered

6099 and amended to read:

6100 **~~[22-5-4]~~ 75A-7-104. . Assignment of security by a fiduciary.**

6101 Except as otherwise provided in this chapter, a corporation or transfer agent

6102 making a transfer of a security pursuant to an assignment by a fiduciary:

- 6103 (1) may assume without inquiry that the assignment, even though to the fiduciary himself or
- 6104 to his nominee, is within his authority and capacity and is not in breach of his fiduciary
- 6105 duties;
- 6106 (2) may assume without inquiry that the fiduciary has complied with any controlling
- 6107 instrument and with the law of the jurisdiction governing the fiduciary relationship,
- 6108 including any law requiring the fiduciary to obtain court approval of the transfer; and
- 6109 (3) is not charged with notice of and is not bound to obtain or examine any court record or
- 6110 any recorded or unrecorded document relating to the fiduciary relationship or the
- 6111 assignment, even though the record or document is in its possession.

6112 Section 200. Section **75A-7-105**, which is renumbered from Section 22-5-5 is renumbered

6113 and amended to read:

6114 **~~[22-5-5]~~ 75A-7-105. . Assignment of security by a fiduciary -- Evidence of**

6115 **appointment or incumbency.**

6116 (1) A corporation or transfer agent making a transfer pursuant to an assignment by a
6117 fiduciary who is not the registered owner shall obtain the following evidence of
6118 appointment or incumbency:

6119 [(1)] (a) in the case of a fiduciary appointed or qualified by a court, a certificate issued by
6120 or under the direction or supervision of that court or an officer thereof and dated
6121 within 60 days before the transfer; or

6122 [(2)] (b) in any other case, a copy of a document showing the appointment or a certificate
6123 issued by or on behalf of a person reasonably believed by the corporation or transfer
6124 agent to be responsible or, in the absence of such a document or certificate, other
6125 evidence reasonably deemed by the corporation or transfer agent to be appropriate.

6126 (2) Corporations and transfer agents may adopt standards with respect to evidence of
6127 appointment or incumbency under this subsection provided such standards are not
6128 manifestly unreasonable.

6129 (3) Neither the corporation nor transfer agent is charged with notice of the contents of any
6130 document obtained pursuant to this subsection except to the extent that the contents
6131 relate directly to the appointment or incumbency.

6132 Section 201. Section **75A-7-106**, which is renumbered from Section 22-5-6 is renumbered
6133 and amended to read:

6134 ~~[22-5-6]~~ **75A-7-106. . Adverse claims to transfer of security by a fiduciary --**
6135 **Notice.**

6136 (1) (a) A person asserting a claim of beneficial interest adverse to the transfer of a
6137 security pursuant to an assignment by a fiduciary may give the corporation or transfer
6138 agent written notice of the claim.

6139 (b) The corporation or transfer agent is not put on notice unless the written notice
6140 identifies the claimant, the registered owner and the issue of which the security is a
6141 part, provides an address for communications directed to the claimant and is received
6142 before the transfer.

6143 (c) Nothing in this ~~[act-]~~ chapter relieves the corporation or transfer agent of any liability
6144 for making or refusing to make the transfer after it is so put on notice, unless it
6145 proceeds in the manner authorized in Subsection (2).

6146 (2) (a) As soon as practicable after the presentation of a security for transfer pursuant to
6147 an assignment by a fiduciary, a corporation or transfer agent which has received
6148 notice of a claim of beneficial interest adverse to the transfer may send notice of the

6149 presentation by registered or certified mail to the claimant at the address given by
6150 him.

6151 (b) If the corporation or transfer agent so mails such a notice it shall withhold the
6152 transfer for 30 days after the mailing and shall then make the transfer unless
6153 restrained by a court order.

6154 Section 202. Section **75A-7-107**, which is renumbered from Section 22-5-7 is renumbered
6155 and amended to read:

6156 **[22-5-7] 75A-7-107. . Nonliability of corporation or transfer agent.**

6157 A corporation or transfer agent incurs no liability to any person by making a
6158 transfer or otherwise acting in a manner authorized by this [aet] chapter.

6159 Section 203. Section **75A-7-108**, which is renumbered from Section 22-5-8 is renumbered
6160 and amended to read:

6161 **[22-5-8] 75A-7-108. . Nonliability of third persons.**

6162 (1) [Nø] A person who participates in the acquisition, disposition, assignment or transfer of
6163 a security by or to a fiduciary, including a person who guarantees the signature of the
6164 fiduciary, is not liable for participation in any breach of fiduciary duty by reason of
6165 failure to inquire whether the transaction involves such a breach unless it is shown that [
6166 he] the person acted with actual knowledge that the proceeds of the transaction were
6167 being or were to be used wrongfully for the individual benefit of the fiduciary or that the
6168 transaction was otherwise in breach of duty.

6169 (2) If a corporation or transfer agent makes a transfer pursuant to an assignment by a
6170 fiduciary, a person who guaranteed the signature of the fiduciary is not liable on the
6171 guarantee to any person to whom the corporation or transfer agent by reason of this [aet]
6172 chapter incurs no liability.

6173 (3) This section does not impose any liability upon the corporation or [its] the corporation's
6174 transfer agent.

6175 Section 204. Section **75A-7-109**, which is renumbered from Section 22-5-9 is renumbered
6176 and amended to read:

6177 **[22-5-9] 75A-7-109. . Territorial application of law to rights and duties of**
6178 **corporation or third persons.**

6179 (1) The rights and duties of a corporation and [its] the corporation's transfer agents in
6180 registering a security in the name of a fiduciary or in making a transfer of a security
6181 pursuant to an assignment by a fiduciary are governed by the law of the jurisdiction
6182 under whose laws the corporation is organized.

6183 (2) This chapter applies to the rights and duties of a person other than the corporation and
 6184 its transfer agents with regard to acts and omissions in this state in connection with the
 6185 acquisition, disposition, assignment, or transfer of a security by or to a fiduciary and of a
 6186 person who guarantees in this state the signature of a fiduciary in connection with such a
 6187 transaction.

6188 Section 205. Section **75A-7-110**, which is renumbered from Section 22-5-10 is renumbered
 6189 and amended to read:

6190 **~~[22-5-10]~~ 75A-7-110. . Tax obligations not affected .**

6191 This [act] chapter does not affect any obligation of a corporation or transfer agent
 6192 with respect to estate, inheritance, succession or other taxes imposed by the laws of this
 6193 state.

6194 Section 206. Section **75A-7-111**, which is renumbered from Section 22-5-11 is renumbered
 6195 and amended to read:

6196 **~~[22-5-11]~~ 75A-7-111. . Construction.**

6197 This [act] uniform act shall be so construed as to effectuate [its] the act's general
 6198 purpose to make uniform the law of those states which enact [it] this uniform act.

6199 Section 207. Section **75A-8-101** is enacted to read:

6200 **CHAPTER 8. UNIFORM TRANSFERS TO MINORS ACT**

6201 **75A-8-101 . Reserved.**

6202 Reserved.

6203 Section 208. Section **75A-8-102**, which is renumbered from Section 75-5a-102 is renumbered
 6204 and amended to read:

6205 **~~[75-5a-102]~~ 75A-8-102. . Definitions for chapter.**

6206 As used in this [part] chapter:

6207 (1) "Adult" means an individual who is 21 years [~~of age~~] old or older.

6208 (2) "Beneficiary" means the same as that term is defined in Section 75-1-201.

6209 [~~(2)~~] (3) "Benefit plan" means an employer's plan for the benefit of an employee or partner.

6210 [~~(3)~~] (4) "Broker" means a person lawfully engaged in the business of effecting transactions
 6211 in securities or commodities for the person's own account or for the accounts of others.

6212 [~~(4)~~] (5) "Conservator" means a person appointed or qualified by a court to act as general,
 6213 limited, or temporary guardian of a minor's property or a person legally authorized to
 6214 perform substantially the same functions.

6215 [~~(5)~~] (6) "Court" means the [~~probate division of the district court for the~~] court in the county

6216 in which the custodian resides.

6217 [(6)] (7) "Custodial property" means:

6218 (a) any interest in property transferred to a custodian under this ~~[part]~~ chapter; and

6219 (b) the income from and proceeds of that interest in property.

6220 [(7)] (8) "Custodian" means a person so designated under Section ~~[75-5a-110]~~ 75A-8-110 or

6221 a successor or substitute custodian designated under Section ~~[75-5a-119]~~ 75A-8-119.

6222 (9) "Estate" means the same as that term is defined in Section 75-1-201.

6223 (10) "Fiduciary" means the same as that term is defined in Section 75-1-201.

6224 [(8)] (11) "Financial institution" means a bank, trust company, savings institution, or credit

6225 union, chartered and supervised under state or federal law.

6226 (12) "Guardian" means the same as that term is defined in Section 75-1-201.

6227 (13) "Incapacitated" means the same as that term is defined in Section 75-1-201.

6228 (14) "Incapacity" means the same as that term is defined in Section 75-1-201.

6229 (15) "Interested person" means the same as that term is defined in Section 75-1-201.

6230 [(9)] (16) "Legal representative" means an individual's personal representative or

6231 conservator.

6232 [(10)] (17) "Member of the minor's family" means the minor's parent, stepparent, spouse,

6233 grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by

6234 adoption.

6235 [(11)] (18) "Minor" means an individual who is ~~[not yet 21 years of age]~~ under 21 years old.

6236 (19) "Parent" means the same as that term is defined in Section 75-1-201.

6237 (20) "Payor" means the same as that term is defined in Section 75-1-201.

6238 [(12)] (21) "Person" means an individual, corporation, organization as defined in Section

6239 75-1-201, or other legal entity.

6240 [(13)] (22) "Personal representative" means an executor, administrator, successor personal

6241 representative as defined in Section 75-1-201, or special administrator as defined in

6242 Section 75-1-201, of a decedent's estate or a person legally authorized to perform

6243 substantially the same functions.

6244 (23) "Petition" means the same as that term is defined in Section 75-1-201.

6245 (24) "Property" means the same as that term is defined in Section 75-1-201.

6246 (25) "Record" means the same as that term is defined in Section 75-1-201.

6247 (26) "Security" means the same as that term is defined in Section 75-1-201.

6248 [(14)] (27) "State" includes any state of the United States, the district of Columbia, the

6249 Commonwealth of Puerto Rico, and any territory or possession subject to the legislative

6250 authority of the United States.

6251 (28) "Testator" means the same as that term is defined in Section 75-1-201.

6252 [(15)] (29) "Transfer" means a transaction that creates custodial property under Section [
6253 75-5a-110] 75A-8-109.

6254 [(16)] (30) "Transferor" means a person who makes a transfer under this [part] chapter.

6255 (31) "Trust" means the same as that term is defined in Section 75-1-201.

6256 [(17)] (32) "Trust company" means a financial institution, corporation, or other legal entity,
6257 authorized to exercise general trust powers.

6258 (33) "Trustee" means the same as that term is defined in Section 75-1-201.

6259 (34) "Will" means the same as that term is defined in Section 75-1-201.

6260 Section 209. Section **75A-8-103**, which is renumbered from Section 75-5a-103 is renumbered
6261 and amended to read:

6262 **[75-5a-103] 75A-8-103. . Scope and jurisdiction.**

6263 (1) (a) This [part] chapter applies to a transfer that refers to this [part] chapter in the
6264 designation under Subsection [75-5a-110(1)] 75A-8-110(1) by which the transfer is
6265 made if at the time of the transfer, the transferor, the minor, or the custodian is a
6266 resident of this state, or the custodial property is located in this state.

6267 (b) The custodianship created remains subject to this [part] chapter despite a subsequent
6268 change in residence of a transferor, the minor, or the custodian, or the removal of
6269 custodial property from this state.

6270 (2) A person designated as custodian under this [part] chapter is subject to personal
6271 jurisdiction in this state regarding any matter relating to the custodianship.

6272 (3) A transfer that purports to be made and is valid under the Uniform Transfers to Minors
6273 Act, the Uniform Gifts to Minors Act, or a substantially similar act of another state is
6274 governed by the laws of the designated state and may be executed and is enforceable in
6275 this state if at the time of the transfer, the transferor, the minor, or the custodian is a
6276 resident of the designated state, or the custodial property is located in the designated
6277 state.

6278 Section 210. Section **75A-8-104**, which is renumbered from Section 75-5a-104 is renumbered
6279 and amended to read:

6280 **[75-5a-104] 75A-8-104. . Nomination of custodian.**

6281 (1) (a) A person having the right to designate the recipient of property transferable upon
6282 the occurrence of a future event may revocably nominate a custodian to receive the
6283 property for a minor beneficiary upon the occurrence of the event by naming the

custodian followed in substance by the words: "as custodian for (name of minor) under the Uniform Transfers to Minors Act."

(b) The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve.

(c) The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

(2) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under Subsection ~~[75-5a-110(1)]~~ 75A-8-110(1).

(3) (a) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under Section ~~[75-5a-110]~~ 75A-8-110.

(b) Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property under Section ~~[75-5a-110]~~ 75A-8-110.

Section 211. Section **75A-8-105**, which is renumbered from Section 75-5a-105 is renumbered and amended to read:

~~[75-5a-105]~~ **75A-8-105. . Transfer by gift or exercise of power of appointment.**

A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor under Section ~~[75-5a-110]~~ 75A-8-110.

Section 212. Section **75A-8-106**, which is renumbered from Section 75-5a-106 is renumbered and amended to read:

~~[75-5a-106]~~ **75A-8-106. . Transfer authorized by will or trust.**

(1) A personal representative or trustee may make an irrevocable transfer under Section ~~[75-5a-110]~~ 75A-8-110 to a custodian for the benefit of a minor as authorized in the governing will or trust.

(2) If the testator or settlor has nominated a custodian under Section ~~[75-5a-104]~~ 75A-8-104 to receive the custodial property, the transfer must be made to that person.

(3) If the testator or settlor has not nominated a custodian under Section ~~[75-5a-104]~~ 75A-8-104, or all persons nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, the personal representative or the trustee, as the case

6318 may be, shall designate the custodian from among those eligible to serve as custodian
6319 for property of that kind under Subsection [~~75-5a-110(1)~~] 75A-8-110(1).

6320 Section 213. Section **75A-8-107**, which is renumbered from Section 75-5a-107 is renumbered
6321 and amended to read:

6322 **[~~75-5a-107~~] 75A-8-107. . Other transfer by fiduciary.**

6323 (1) Subject to Subsection (3), a personal representative or trustee may make an irrevocable
6324 transfer to another adult or trust company as custodian for the benefit of a minor under
6325 Section [~~75-5a-110~~] 75A-8-110, in the absence of a will or under a will or trust that does
6326 not contain an authorization to do so.

6327 (2) Subject to Subsection (3), a conservator may make an irrevocable transfer to another
6328 adult or trust company as custodian for the benefit of the minor pursuant to Section [~~75-5a-110~~]
6329 75A-8-110.

6330 (3) A transfer under Subsection [~~75-5a-110(1)~~] 75A-8-110(1) or (2) may be made only if:

6331 (a) the personal representative, trustee, or conservator considers the transfer to be in the
6332 best interest of the minor;

6333 (b) the transfer is not prohibited by or inconsistent with provisions of the applicable will,
6334 trust agreement, or other governing instrument, as defined in Section 75-1-201; and

6335 (c) the transfer is authorized by the court, if it exceeds \$10,000 in value.

6336 Section 214. Section **75A-8-108**, which is renumbered from Section 75-5a-108 is renumbered
6337 and amended to read:

6338 **[~~75-5a-108~~] 75A-8-108. . Transfer by obligor.**

6339 (1) Subject to Subsections (2) and (3), a person not subject to Section [~~75-5a-106 or~~
6340 ~~75-5a-107~~] 75A-8-106 or 75A-8-107 who holds property of or owes a liquidated debt to
6341 a minor not having a conservator, may make an irrevocable transfer to a custodian for
6342 the benefit of the minor under Section [~~75-5a-110~~] 75A-8-110.

6343 (2) If a person having the right under Section [~~75-5a-104~~] 75A-8-104 has nominated a
6344 custodian under that section to receive the custodial property, the transfer must be made
6345 to that person.

6346 (3) If no custodian has been nominated under Section [~~75-5a-104~~] 75A-8-104, or all persons
6347 nominated as custodian die before the transfer or are unable, decline, or are ineligible to
6348 serve, a transfer under this section may be made to an adult member of the minor's
6349 family or to a trust company unless the property exceeds \$10,000 in value.

6350 Section 215. Section **75A-8-109**, which is renumbered from Section 75-5a-109 is renumbered
6351 and amended to read:

~~[75-5a-109]~~ 75A-8-109. . Receipt for custodial property.

A written acknowledgment of delivery by a custodian is sufficient receipt and discharge for custodial property transferred to the custodian under this ~~[part]~~ chapter.

Section 216. Section **75A-8-110**, which is renumbered from Section 75-5a-110 is renumbered and amended to read:

~~[75-5a-110]~~ 75A-8-110. . Manner of creating custodial property and effecting transfer -- Designation of initial custodian -- Control.

(1) Custodial property is created and a transfer is made when:

(a) an uncertificated security or a certificated security in registered form is either:

(i) registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for (name of minor) under the Uniform Transfers to Minors Act"; or

(ii) delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement, to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form in Subsection (2);

(b) money is paid or delivered, or a security held in the name of a broker, financial institution, or its nominee is transferred to a broker, or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for (name of minor) under the Uniform Transfers to Minors Act";

(c) the ownership of a life or endowment insurance policy or annuity contract is either:

(i) registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for (name of minor) under the Uniform Transfers to Minors Act"; or

(ii) assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: "as custodian for (name of minor) under the Uniform Transfers to Minors Act";

(d) an irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words: "as custodian for (name of minor)

- 6386 under the Uniform Transfers to Minors Act";
- 6387 (e) an interest in real property is recorded in the name of the transferor, an adult other
- 6388 than the transferor, or a trust company, followed in substance by the words: "as
- 6389 custodian for (name of minor) under the Uniform Transfers to Minors Act";
- 6390 (f) a certificate of title issued by a department or agency of a state or of the United States
- 6391 which evidences title to tangible personal property is either:
- 6392 (i) issued in the name of the transferor, an adult other than the transferor, or a trust
- 6393 company, followed in substance by the words: "as custodian for (name
- 6394 of minor) under the Uniform Transfers to Minors Act"; or
- 6395 (ii) delivered to an adult other than the transferor or to a trust company, endorsed to
- 6396 that person followed in substance by the words: "as custodian for (name
- 6397 of minor) under the Uniform Transfers to Minors Act";
- 6398 (g) an interest in any property not described in Subsections (1)(a) through (f) is
- 6399 transferred to an adult other than the transferor or to a trust company by a written
- 6400 instrument in substantially the form set forth in Subsection (2); or
- 6401 (h) contributions are made into a custodial account at the Utah Educational Savings Plan
- 6402 in accordance with Title 53B, Chapter 8a, Utah Educational Savings Plan.
- 6403 (2) An instrument in the following form satisfies the requirements of Subsections (1)(a)(ii) and
- 6404 (1)(g): "Transfer Under the Uniform Transfers to Minors Act
- 6405 I, (name of transferor or name and representative capacity if a fiduciary) hereby
- 6406 transfer to (name of custodian), as custodian for (name of minor) under the
- 6407 Uniform Transfers to Minors Act, the following: (insert a description of the custodial property
- 6408 sufficient to identify it).
- 6409 Dated:
- 6410
- 6411 (Signature)
- 6412 (name of custodian) acknowledges receipt of the property described above as
- 6413 custodian for the minor named above under the Uniform Transfers to Minors Act.
- 6414 Dated:
- 6415
- 6416 (Signature of Custodian)"
- 6417 (3) A transferor shall place the custodian in control of the custodial property as soon as
- 6418 practicable.

6419 Section 217. Section **75A-8-111**, which is renumbered from Section 75-5a-111 is renumbered
6420 and amended to read:

6421 **~~[75-5a-111]~~ 75A-8-111. . Single custodianship.**

6422 (1) A transfer may be made only for one minor, and only one person may be the custodian.

6423 (2) All custodial property held under this ~~[part]~~ chapter by the same custodian for the
6424 benefit of the same minor constitutes a single custodianship.

6425 Section 218. Section **75A-8-112**, which is renumbered from Section 75-5a-112 is renumbered
6426 and amended to read:

6427 **~~[75-5a-112]~~ 75A-8-112. . Validity and effect of transfer.**

6428 (1) The validity of a transfer made in a manner prescribed in this ~~[part]~~ chapter is not
6429 affected by:

6430 (a) failure of the transferor to comply with Subsection ~~[75-5a-110(3)]~~ 75A-8-110(3)
6431 concerning possession and control;

6432 (b) designation of an ineligible custodian, except designation of the transferor in the case
6433 of property for which the transferor is ineligible to serve as custodian under
6434 Subsection ~~[75-5a-110(1)]~~ 75A-8-110(1); or

6435 (c) death or incapacity of a person nominated under Section ~~[75-5a-104]~~ 75A-8-104 or
6436 designated under Section ~~[75-5a-110]~~ 75A-8-110 as custodian or the disclaimer of the
6437 office by that person.

6438 (2) (a) A transfer made under Section ~~[75-5a-110]~~ 75A-8-110 is irrevocable, and the
6439 custodial property is indefeasibly vested in the minor, but the custodian has all the
6440 rights, powers, duties, and authority provided in this ~~[part]~~ chapter.

6441 (b) ~~[Neither the minor nor the minor's legal representative has]~~ A minor, or a minor's
6442 representative, does not have any right, power, duty, or authority regarding the
6443 custodial property except as provided in this ~~[part]~~ chapter.

6444 (3) By making a transfer, the transferor incorporates in the disposition all the provisions of
6445 this ~~[part]~~ chapter and grants to the custodian, and to any third person dealing with a
6446 person designated as custodian, the respective powers, rights, and immunities provided
6447 in this ~~[part]~~ chapter.

6448 Section 219. Section **75A-8-113**, which is renumbered from Section 75-5a-113 is renumbered
6449 and amended to read:

6450 **~~[75-5a-113]~~ 75A-8-113. . Care of custodial property.**

6451 (1) A custodian shall:

6452 (a) take control of custodial property;

- 6453 (b) register or record title to custodial property if appropriate; and
6454 (c) collect, hold, manage, invest, and reinvest custodial property.
- 6455 (2) (a) In dealing with custodial property, a custodian shall observe the standard of care
6456 that would be observed by a prudent person dealing with property of another and is
6457 not limited by any other statute restricting investments by fiduciaries.
- 6458 (b) If a custodian has a special skill or expertise or is named custodian on the basis of
6459 representations of a special skill or expertise, the custodian shall use the skill or
6460 expertise.
- 6461 (c) However, a custodian may, in [his-] the custodian's discretion and without liability to
6462 the minor or the minor's estate, retain any custodial property received from a
6463 transferor.
- 6464 (3) A custodian may invest in or pay premiums on life insurance or endowment policies on:
6465 (a) the life of the minor only if the minor or the minor's estate is the sole beneficiary; or
6466 (b) the life of another person in whom the minor has an insurable interest only to the
6467 extent the minor, the minor's estate, or the custodian in the capacity of custodian, is
6468 the irrevocable beneficiary.
- 6469 (4) (a) A custodian shall at all times keep custodial property separate and distinct from
6470 all other property in a manner sufficient to identify it clearly as custodial property of
6471 the minor.
- 6472 (b) (i) Custodial property consisting of an undivided interest is so identified if the
6473 minor's interest is held as a tenant in common and is fixed.
- 6474 (ii) Custodial property subject to recordation is so identified if it is recorded, and
6475 custodial property subject to registration is so identified if it is either registered, or
6476 held in an account designated, in the name of the custodian, followed in substance
6477 by the words: "as a custodian for (name of minor) under the Uniform
6478 Transfers to Minors Act."
- 6479 (5) A custodian shall keep records of all transactions with respect to custodial property,
6480 including information necessary for the preparation of the minor's tax returns, and shall
6481 make them available for inspection at reasonable intervals by a parent or legal
6482 representative of the minor or by the minor if the minor is 14 years [of age-] old or older.
- 6483 Section 220. Section **75A-8-114**, which is renumbered from Section 75-5a-114 is renumbered
6484 and amended to read:
- 6485 **[75-5a-114] 75A-8-114. . Powers of custodian.**
- 6486 (1) A custodian, acting in a custodial capacity, has all the rights, powers, and authority over

6487 custodial property that unmarried adult owners have over their own property, but a
6488 custodian may exercise those rights, powers, and authority in that capacity only.

6489 (2) This section does not relieve a custodian from liability for breach of Section ~~[75-5a-113]~~
6490 75A-8-113.

6491 Section 221. Section **75A-8-115**, which is renumbered from Section 75-5a-115 is renumbered
6492 and amended to read:

6493 ~~[75-5a-115]~~ **75A-8-115. . Use of custodial property.**

6494 (1) A custodian may deliver or pay to the minor or expend for the minor's benefit so much
6495 of the custodial property as the custodian considers advisable for the use and benefit of
6496 the minor, without court order and without regard to:

6497 (a) the duty or ability of the custodian personally or of any other person to support the
6498 minor; or

6499 (b) any other income or property of the minor which may be applicable or available for
6500 that purpose.

6501 (2) On petition of an interested person, or the minor if the minor is 14 years ~~[of age]~~ old or
6502 older, the court may order the custodian to deliver or pay to the minor or expend for the
6503 minor's benefit so much of the custodial property as the court considers advisable for the
6504 use and benefit of the minor.

6505 (3) A delivery, payment, or expenditure under this section is in addition to, not in
6506 substitution for, and does not affect any obligation of a person to support the minor.

6507 Section 222. Section **75A-8-116**, which is renumbered from Section 75-5a-116 is renumbered
6508 and amended to read:

6509 ~~[75-5a-116]~~ **75A-8-116. . Custodian's expenses, compensation, and bond.**

6510 (1) A custodian is entitled to reimbursement from custodial property for reasonable
6511 expenses incurred in the performance of the custodian's duties.

6512 (2) Except for one who is a transferor under Section ~~[75-5a-105]~~ 75A-8-105, a custodian has
6513 a noncumulative election during each calendar year to charge reasonable compensation
6514 for services performed during that year.

6515 (3) Except as provided in Subsection ~~[75-5a-119(6)]~~ 75A-8-119(6), a custodian need not
6516 give a bond.

6517 Section 223. Section **75A-8-117**, which is renumbered from Section 75-5a-117 is renumbered
6518 and amended to read:

6519 ~~[75-5a-117]~~ **75A-8-117. . Exemption of third person from liability.**

6520 A third person in good faith and without court order may act on the instructions of

6521 or otherwise deal with any person purporting to make a transfer or purporting to act in
6522 the capacity of a custodian and, in the absence of knowledge, is not responsible for
6523 determining:
6524 (1) the validity of the purported custodian's designation;
6525 (2) the propriety of, or the authority under this [part] chapter for, any act of the purported
6526 custodian;
6527 (3) the validity or propriety under this [part] chapter of any instrument or instructions
6528 executed or given either by the person purporting to make transfer or by the purported
6529 custodian; or
6530 (4) the propriety of the application of any property of the minor delivered to the purported
6531 custodian.

6532 Section 224. Section **75A-8-118**, which is renumbered from Section 75-5a-118 is renumbered
6533 and amended to read:

6534 **[75-5a-118] 75A-8-118. . Liability to third persons.**

6535 (1) A claim may be asserted against the custodial property by proceeding against the
6536 custodian in the custodial capacity, whether or not the custodian or the minor is
6537 personally liable, if the claim is based on:
6538 (a) a contract entered into by a custodian acting in a custodial capacity;
6539 (b) an obligation arising from the ownership or control of custodial property; or
6540 (c) a tort committed during the custodianship.
6541 (2) A custodian is not personally liable:
6542 (a) on a contract properly entered into in the custodial capacity unless the custodian fails
6543 to reveal that capacity and to identify the custodianship in the contract; or
6544 (b) for an obligation arising from control of custodial property or for a tort committed
6545 during the custodianship unless the custodian is personally at fault.
6546 (3) A minor is not personally liable for an obligation arising from ownership of custodial
6547 property or for a tort committed during the custodianship unless the minor is personally
6548 at fault.

6549 Section 225. Section **75A-8-119**, which is renumbered from Section 75-5a-119 is renumbered
6550 and amended to read:

6551 **[75-5a-119] 75A-8-119. . Renunciation, resignation, death, or removal of**
6552 **custodian -- Designation of successor custodian.**

6553 (1) (a) A person nominated under Section ~~[75-5a-104]~~ 75A-8-104 or designated under
6554 Section ~~[75-5a-110]~~ 75A-8-110 as custodian may decline to serve by delivering a

valid disclaimer to the person who made the nomination or to the transferor or the transferor's legal representative.

(b) If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under Section [75-5a-104] 75A-8-104, the person who made the nomination may nominate a substitute custodian under Section [75-5a-104] 75A-8-104; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under Subsection [75-5a-110(1)] 75A-8-110(1).

(c) The custodian designated has the rights of a successor custodian.

(2) (a) A custodian at any time may designate a trust company or an adult other than a transferor under Section [75-5a-105] 75A-8-105 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor.

(b) If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.

(3) A custodian may resign at any time by delivering written notice to the minor if the minor is 14 years [~~of age~~] old or older and to the successor custodian and by delivering the custodial property to the successor custodian.

(4) (a) (i) If a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor is 14 years [~~of age~~] old or older, the minor may designate as successor custodian, in the manner prescribed in Subsection (2), an adult member of the minor's family, a conservator of the minor, or a trust company.

(ii) If the minor is not yet 14 years [~~of age~~] old or fails to act within 60 days after the ineligibility, death, or incapacity, the conservator of the minor becomes successor custodian.

(b) If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(5) (a) A custodian who declines to serve under Subsection (1) or resigns under Subsection (3), or the legal representative of a deceased or incapacitated custodian

6589 shall as soon as practicable place the custodial property and records in the possession
6590 and control of the successor custodian.

6591 (b) The successor custodian by action may enforce the obligation to deliver custodial
6592 property and records and becomes responsible for each item as received.

6593 (6) A transferor, the legal representative of a transferor, an adult member of the minor's
6594 family, a guardian of the person of the minor, the conservator of the minor, or the minor
6595 if ~~[he is 14 years of age]~~ the minor is 14 years old or older, may petition the court to
6596 remove the custodian for cause and to designate a successor custodian other than a
6597 transferor under Section ~~[75-5a-105]~~ 75A-8-105 or to require the custodian to give
6598 appropriate bond.

6599 Section 226. Section **75A-8-120**, which is renumbered from Section 75-5a-120 is renumbered
6600 and amended to read:

6601 ~~[75-5a-120]~~ **75A-8-120. . Accounting by and determination of liability of**
6602 **custodian.**

6603 (1) A minor who is 14 years ~~[of age]~~ old or older, the minor's guardian of the person or legal
6604 representative, an adult member of the minor's family, a transferor, or a transferor's legal
6605 representative may petition the court:

6606 (a) for an accounting by the custodian or the custodian's legal representative; or
6607 (b) for a determination of responsibility, as between the custodial property and the
6608 custodian personally, for claims against the custodial property unless the
6609 responsibility has been adjudicated in an action under Section ~~[75-5a-118]~~ 75A-8-118
6610 to which the minor or the minor's legal representative was a party.

6611 (2) A successor custodian may petition the court for an accounting by the predecessor
6612 custodian.

6613 (3) The court, in a proceeding under this ~~[part]~~ chapter or in any other proceeding, may
6614 require or permit the custodian or the custodian's legal representative to account.

6615 (4) If a custodian is removed under Subsection ~~[75-5a-119(6)]~~ 75A-8-119(6), the court shall
6616 require an accounting and order delivery of the custodial property and records to the
6617 successor custodian and the execution of all instruments required for transfer of the
6618 custodial property.

6619 Section 227. Section **75A-8-121**, which is renumbered from Section 75-5a-121 is renumbered
6620 and amended to read:

6621 ~~[75-5a-121]~~ **75A-8-121. . Termination of custodianship.**

6622 The custodian shall transfer in an appropriate manner the custodial property to the

6623 minor or to the minor's estate upon the earlier of:

6624 (1) the minor's becoming 21 years [~~of age~~] old with respect to custodial property transferred
6625 under Section [~~75-5a-105 or 75-5a-106~~] 75A-8-105 or 75A-8-106;

6626 (2) the minor's attainment of majority under the laws of this state with respect to the
6627 custodial property transferred under Section [~~75-5a-107 or 75-5a-108~~] 75A-8-107 or
6628 75A-8-108; or

6629 (3) the minor's death.

6630 Section 228. Section **75A-8-122**, which is renumbered from Section 75-5a-122 is renumbered
6631 and amended to read:

6632 ~~[75-5a-122]~~ **75A-8-122. . Applicability.**

6633 This [~~part~~] chapter applies to a transfer within the scope of Section [~~75-5a-103~~]
6634 75A-8-103 made after its effective date if:

- 6635 (1) the transfer purports to have been made under the Uniform Gifts to Minors Act; or
6636 (2) the instrument by which the transfer purports to have been made uses in substance the
6637 designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under
6638 the Uniform Transfers to Minors Act" of any other state, and the application of this part
6639 is necessary to validate the transfer.

6640 Section 229. Section **75A-8-123**, which is renumbered from Section 75-5a-123 is renumbered
6641 and amended to read:

6642 ~~[75-5a-123]~~ **75A-8-123. . Effect on existing custodianships.**

6643 (1) Any transfer of custodial property as now defined in this [~~part~~] chapter made before July
6644 1, 1990, is validated notwithstanding that there was no specific authority in the Uniform
6645 Gifts to Minors Act for the coverage of custodial property of that kind or for a transfer
6646 from that source at the time the transfer was made.

6647 (2) This [~~part~~] chapter applies to all transfers made before July 1, 1990, in a manner and
6648 form prescribed in the Uniform Gifts to Minors Act, except as the application impairs
6649 constitutionally vested rights or extends the duration of custodianships in existence on
6650 July 1, 1990.

6651 (3) Sections [~~75-5a-102 and 75-5a-121~~] 75A-8-102 and 75A-8-121 regarding the age of a
6652 minor for whom custodial property is held under this [~~part~~] chapter do not apply to
6653 custodial property held in a custodianship that terminated because of the minor's
6654 attainment of the age of majority and before July 1, 1990.

6655 Section 230. Section **75B-1-101** is enacted to read:

6656

TITLE 75B. TRUSTS

CHAPTER 1. GENERAL PROVISIONS

Part 1. General Provisions

75B-1-101 . Reserved for title definitions.

Reserved.

Section 231. Section **75B-1-102** is enacted to read:

75B-1-102 . Transition clause.

If, at the time a trust or another legal document was executed, the document contained a correct citation to a provision in Title 22, Fiduciaries and Trusts, and Title 75, Utah Uniform Probate Code, that, after the execution of the document, was renumbered and amended for inclusion in this title, that citation is a valid citation to the same provision in this title.

Section 232. Section **75B-1-103**, which is renumbered from Section 22-2-1 is renumbered and amended to read:

[22-2-1] 75B-1-103. . Death of trustee -- Trust estate vests in successor.

Upon the death of a sole or surviving trustee of an express trust:

- (1) the trust estate does not descend to [his] the trustee's heirs or pass to [his] the trustee's personal representatives[, but shall by virtue hereof, upon the appointment and qualification of a successor to such trustee, become immediately vested in such successor in trust.] ; and
- (2) the trust estate immediately vests in the successor trustee upon the appointment and qualification of a successor trustee.

Section 233. Section **75B-1-201** is enacted to read:

Part 2. Retirement Trust**75B-1-201 . Definitions for part.**

As used in this part:

- (1) "Income" means the same as that term is defined in Section 75A-5-101.
- (2) "Principal" means the same as that term is defined in Section 75A-5-101.
- (3) "Retirement trust" means a trust:
 - (a) created by an employer as part of a pension, stock bonus, disability, death benefit, profit sharing, retirement, or similar plan primarily for the benefit of an employee or

- the employee's family, appointee, or beneficiary;
- (b) to which contributions are made by the employer or employee; and
- (c) that is created for the purpose of distributing principal or income to the employee or the employee's family, appointee, or beneficiary.

Section 234. Section **75B-1-202**, which is renumbered from Section 22-6-1 is renumbered and amended to read:

[22-6-1] 75B-1-202. . Retirement trusts exempted from rules against perpetuities, accumulations, or suspension of power of alienation.

~~[No trust heretofore or hereafter created by an employer as part of a pension, stock bonus, disability, death benefit, profit sharing, retirement or similar plan, primarily for the benefit of some or all of such employers' employees, their families, appointees or beneficiaries, to which contributions are made by such employer or employees, or by both employer and employees, which trust is for the purpose of distributing to such employees or their families, beneficiaries, or appointees, the earnings or principal, or both, shall be deemed to be invalid by reason of any rule against perpetuities, or against accumulations, or concerning the suspension of the power of alienation of title to property, or any other law restricting or limiting the duration of trusts; and such a trust may continue in perpetuity or for such time as may be necessary to accomplish the purposes for which it was created.]~~

- (1) A retirement trust is not invalid as violating a rule against perpetuities, a rule against accumulations, a rule concerning the suspension of the power of alienation of title to property, or any other law restricting or limiting the duration of trusts.
- (2) A retirement trust may continue in perpetuity or for the time that is necessary to accomplish the purposes for which the retirement trust was created.

Section 235. Section **75B-1-203**, which is renumbered from Section 22-6-2 is renumbered and amended to read:

[22-6-2] 75B-1-203. . Income permitted to accumulate.

~~The income arising from or earned by the property held in [such trust within the classifications mentioned, may be] a retirement trust is permitted to accumulate, in accordance with the terms of [such trust, for so long a time as may be] the trust:~~

- (1) for the time period permitted by the instrument creating the trust~~[, or if no time is so specified, for such time as the trustee or trustees may deem necessary] ; or~~
- (2) if the instrument creating the trust does not specify a time period, for the time period that is necessary for a trustee of the trust to accomplish the purposes for which the trust

6721 was created.

6722 Section 236. Section **75B-1-301** is enacted to read:

6723 **Part 3. Asset Protection Trust**

6724 **75B-1-301 . Definitions for part.**

6725 As used in this part:

6726 (1) "Creditor" means:

6727 (a) a creditor or other claimant of the settlor existing when the trust is created; or

6728 (b) a person who subsequently becomes a creditor, including whether or not reduced to
6729 judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed,
6730 undisputed, legal, equitable, secured, or unsecured;

6731 (i) holding or seeking to enforce a judgment entered by a court or other body having
6732 adjudicative authority; or

6733 (ii) with a right to payment.

6734 (2) "Domestic support obligation" means:

6735 (a) a child support judgment or order;

6736 (b) a spousal support judgment or order; or

6737 (c) an unsatisfied claim arising from a property division in a divorce proceeding.

6738 (3) "Insolvent" means:

6739 (a) having generally ceased to pay debts in the ordinary course of business other than as
6740 a result of a bona fide dispute;

6741 (b) being unable to pay debts as they become due; or

6742 (c) being insolvent within the meaning of federal bankruptcy law.

6743 (4) "Paid and delivered" does not include the settlor's use or occupancy of real property or
6744 personal property owned by the trust if the use or occupancy is in accordance with the
6745 trustee's discretionary authority under the trust instrument.

6746 (5) "Personal property" includes intangible and tangible personal property.

6747 (6) "Property" means real property, personal property, and interests in real or personal
6748 property.

6749 (7) "Settlor" means a person who transfers property in trust.

6750 (8) "Transfer" means any form of transfer of property, including gratuitous transfers,
6751 whether by deed, conveyance, or assignment.

6752 (9) "Trust" means the same as that term is defined in Section 75-1-201.

6753 Section 237. Section **75B-1-302**, which is renumbered from Section 25-6-502 is renumbered

6754 and amended to read:

6755 **[25-6-502] 75B-1-302. . Asset protection trust.**

6756 [(1) ~~As used in this section:~~]

6757 [(a) ~~"Creditor" means:~~]

6758 [(i) ~~a creditor or other claimant of the settlor existing when the trust is created; or]~~

6759 [(ii) ~~a person who subsequently becomes a creditor, including, whether or not reduced to~~
6760 ~~judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed,~~
6761 ~~undisputed, legal, equitable, secured, or unsecured;~~]

6762 [(A) ~~one holding or seeking to enforce a judgment entered by a court or other body having~~
6763 ~~adjudicative authority; or]~~

6764 [(B) ~~one with a right to payment.~~]

6765 [(b) ~~"Domestic support obligation" means:~~]

6766 [(i) ~~a child support judgment or order;~~]

6767 [(ii) ~~a spousal support judgment or order; or]~~

6768 [(iii) ~~an unsatisfied claim arising from a property division in a divorce proceeding.~~]

6769 [(c) ~~"Insolvent" means:~~]

6770 [(i) ~~having generally ceased to pay debts in the ordinary course of business other than as a~~
6771 ~~result of a bona fide dispute;~~]

6772 [(ii) ~~being unable to pay debts as they become due; or]~~

6773 [(iii) ~~being insolvent within the meaning of federal bankruptcy law.~~]

6774 [(d) (i) ~~"Property" means real property, personal property, and interests in real or personal~~
6775 ~~property.~~]

6776 [(ii) ~~"Personal property" includes intangible and tangible personal property.~~]

6777 [(e) ~~"Settlor" means a person who transfers property in trust.~~]

6778 [(f) ~~"Transfer" means any form of transfer of property, including gratuitous transfers,~~
6779 ~~whether by deed, conveyance, or assignment.~~]

6780 [(g) ~~"Trust" has the same meaning as in Section 75-1-201.~~]

6781 [(2) ~~"Paid and delivered" to the settlor, as beneficiary, does not include the settlor's use or~~
6782 ~~occupancy of real property or personal property owned by the trust if the use or~~
6783 ~~occupancy is in accordance with the trustee's discretionary authority under the trust~~
6784 ~~instrument.~~]

6785 [(3)] (1) If the settlor of an irrevocable trust is also a beneficiary of the trust, and if the
6786 requirements of Subsection [(5)] (3) are satisfied, a creditor of the settlor may not:

6787 (a) satisfy a claim or liability of the settlor in either law or equity out of the settlor's

6788 transfer to the trust or the settlor's beneficial interest in the trust;

6789 (b) force or require the trustee to make a distribution to the settlor, as beneficiary; or

6790 (c) require the trustee to pay any distribution directly to the creditor, or otherwise attach

6791 the distribution before it has been paid or delivered by the trustee to the settlor, as

6792 beneficiary.

6793 ~~[(4)]~~ (2) Notwithstanding Subsection ~~[(3)]~~ (1), nothing in this section:

6794 (a) prohibits a creditor from satisfying a claim or liability from the distribution once it

6795 has been paid or delivered by the trustee to the settlor, as beneficiary; or

6796 (b) nullifies or impairs a security interest that was granted by a settlor or a trustee with

6797 respect to property that is transferred to the trust.

6798 ~~[(5)]~~ (3) (a) In order for Subsection ~~[(3)]~~ (1) to apply, the conditions in this Subsection ~~[(5)]~~

6799 (3) shall be satisfied.

6800 (b) Where this Subsection ~~[(5)]~~ (3) requires that a provision be included in the trust

6801 instrument, no particular language need be used in the trust instrument if the meaning

6802 of the trust provision otherwise complies with this Subsection ~~[(5)]~~ (3).

6803 ~~[(a)]~~ (c) An agreement or understanding, express or implied, between the settlor and the

6804 trustee that attempts to grant or permit the retention by the settlor of greater rights or

6805 authority than is stated in the trust instrument is void.

6806 ~~[(b)]~~ (d) The trust instrument shall provide that the trust is governed by Utah law and is

6807 established pursuant to this section.

6808 ~~[(e)]~~ (e) The trust instrument shall require that at all times at least one trustee shall be a

6809 Utah resident or Utah trust company, as the term "trust company" is defined in

6810 Section 7-5-1.

6811 ~~[(d)]~~ (f) (i) The trust instrument shall provide that neither the interest of the settlor, as

6812 beneficiary, nor the income or principal of the trust may be voluntarily or

6813 involuntarily transferred by the settlor, as beneficiary.

6814 (ii) The provision shall be considered to be a restriction on the transfer of the settlor's

6815 beneficial interest in the trust that is enforceable under applicable nonbankruptcy

6816 law within the meaning of 11 U.S.C. Sec. 541(c)(2).

6817 ~~[(e)]~~ (g) The settlor may not have the ability under the trust instrument, without the

6818 consent of a person who has a substantial beneficial interest in the trust, which

6819 interest would be adversely affected by the exercise of the power held by the settlor:

6820 (i) to revoke, amend, or terminate all or any part of the trust; or

6821 (ii) to withdraw any property from the trust, except that the settlor, without the

6822 approval or consent of any person, may be given the power, under the trust
6823 agreement, to substitute assets of substantially equivalent value.

6824 ~~[(f)]~~ (h) The trust instrument may not provide for any mandatory distributions of either
6825 income or principal to the settlor, as beneficiary, except as provided in Subsection [
6826 ~~(7)(g)~~] (5)(g).

6827 ~~[(g)]~~ (i) (i) The trust instrument shall require that, at least 30 days before paying and
6828 delivering any distribution to the settlor, as beneficiary, the trustee notify in
6829 writing every person who has a domestic support obligation against the settlor.

6830 (ii) The trust instrument shall require that the notice state the date the distribution will
6831 be paid and delivered and the amount of the distribution.

6832 ~~[(h)]~~ (j) At the time that the settlor transfers any assets to the trust, the settlor may not be
6833 in default of making a payment due under a domestic support obligation.

6834 ~~[(i)]~~ (k) A transfer of assets to the trust may not render the settlor insolvent.

6835 ~~[(j)]~~ (l) At the time the settlor transfers any assets to the trust, the settlor may not intend
6836 to hinder, delay, or defraud a known creditor by transferring the assets to the trust. A
6837 settlor's expressed intention to protect trust assets from the settlor's potential future
6838 creditors is not evidence of an intent to hinder, delay, or defraud a known creditor.

6839 ~~[(k)]~~ (m) Assets transferred to the trust may not be derived from unlawful activities.

6840 ~~[(l)]~~ (n) With respect to each transfer of assets to the trust, the settlor shall sign a sworn
6841 affidavit stating that at the time of the transfer of the assets to the trust:

6842 (i) the settlor has full right, title, and authority to transfer the assets to the trust;
6843 (ii) the transfer of the assets to the trust will not render the settlor insolvent;
6844 (iii) the settlor does not intend to hinder, delay, or defraud a known creditor by
6845 transferring the assets to the trust;

6846 (iv) there is no pending or threatened court action against the settlor, except for a
6847 court action identified by the settlor on an attachment to the affidavit;

6848 (v) the settlor is not involved in an administrative proceeding that is reasonably
6849 expected to have a material adverse effect on the financial condition of the settlor,
6850 except an administrative proceeding identified on an attachment to the affidavit;

6851 (vi) at the time of the transfer of the assets to the trust, the settlor is not in default of a
6852 domestic support obligation;

6853 (vii) the settlor does not contemplate filing for relief under the provisions of United
6854 States Code, Title 11, Bankruptcy; and

6855 (viii) the assets being transferred to the trust were not derived from unlawful

6856 activities.

6857 [(6)] (4) Failure to satisfy the requirements of Subsection [(5)] (3) shall result in the
6858 consequences described in this Subsection [(6)] (4).

6859 (a) If any requirement of Subsections [(5)(b)] (3)(b) through (g) is not satisfied, none of
6860 the property held in the trust will at any time have the benefit of the protections
6861 described in Subsection [(3)] (1).

6862 (b) If the trustee does not send the notice required under Subsection [(5)(g)] (3)(g), the
6863 court may authorize any person with a domestic support obligation against the settlor
6864 to whom notice was not sent to attach the distribution or future distributions, but the
6865 person may not:

6866 (i) satisfy a claim or liability in either law or equity out of the settlor's transfer to the
6867 trust or the settlor's beneficial interest in the trust; or

6868 (ii) force or require the trustee to make a distribution to the settlor, as beneficiary.

6869 (c) If any requirement described in Subsections [(5)(i)] (3)(i) through (l) is not satisfied,
6870 the property transferred to the trust that does not satisfy the requirement may not
6871 have the benefit of the protections described in Subsection [(3)] (1).

6872 (d) If the requirement described in Subsection [(5)(h)] (3)(h) is not satisfied, the property
6873 transferred to the trust that does not satisfy the requirement does not have the benefit
6874 of the protections described in Subsection [(3)] (1) with respect to any person with a
6875 domestic support obligation.

6876 (e) A creditor of the settlor has the burden of proving that the requirement in Subsection [
6877 (5)(i)] (3)(i) or (j) is not satisfied by clear and convincing evidence.

6878 [(7)] (5) The provisions of Subsection [(3)] (1) may apply to a trust even if:

6879 (a) the settlor serves as a cotrustee or as an advisor to the trustee, except that the settlor
6880 may not determine whether a discretionary distribution will be made;

6881 (b) the settlor participates in a determination regarding whether a discretionary
6882 distribution is made to the settlor by:

6883 (i) requesting a distribution from the trust;

6884 (ii) consulting with the trustees regarding whether a discretionary distribution will be
6885 made;

6886 (iii) exercising a right to consent to or veto the distribution under a power described
6887 in Subsection [(7)(e)] (5)(e);

6888 (iv) signing documentation in the settlor's capacity as a cotrustee that implements a
6889 distribution when the other trustees use discretionary power to independently

- 6890 authorize a distribution; or
- 6891 (v) participating in an action authorizing a distribution if the other trustees can
- 6892 authorize the distribution without the settlor's participation.
- 6893 (c) the settlor has the authority under the terms of the trust instrument to appoint a
- 6894 nonsubordinate advisor or a trust protector who can remove and appoint trustees and
- 6895 who can direct, consent to, or disapprove distributions;
- 6896 (d) the settlor has the power under the terms of the trust instrument to serve as an
- 6897 investment director or to appoint an investment director under Section 75-7-906;
- 6898 (e) the trust instrument gives the settlor the power to consent to or veto a distribution
- 6899 from the trust;
- 6900 (f) the trust instrument gives the settlor an inter vivos or a testamentary nongeneral
- 6901 power of appointment or similar power;
- 6902 (g) the trust instrument gives the settlor the right to receive the following types of
- 6903 distributions:
- 6904 (i) income, principal, or both in the discretion of a person, including a trustee, other
- 6905 than the settlor;
- 6906 (ii) principal, subject to an ascertainable standard set forth in the trust;
- 6907 (iii) income or principal from a charitable remainder annuity trust or charitable
- 6908 remainder unitrust, as defined in 26 U.S.C. Sec. 664;
- 6909 (iv) a percentage of the value of the trust each year as determined under the trust
- 6910 instrument, but not exceeding the amount that may be defined as income under 26
- 6911 U.S.C. Sec. 643(b);
- 6912 (v) the transferor's potential or actual use of real property held under a qualified
- 6913 personal residence trust, or potential or actual possession of a qualified annuity
- 6914 interest, within the meaning of 26 U.S.C. Sec. 2702 and the accompanying
- 6915 regulations;
- 6916 (vi) income or principal from a grantor retained annuity trust or grantor retained
- 6917 unitrust that is allowed under 26 U.S.C. Sec. 2702; and
- 6918 (vii) income from a trust intended to qualify for the federal estate tax or gift tax
- 6919 marital deduction under 26 U.S.C. Sec. 2056(b)(7) or 2523(f);
- 6920 (h) the trust instrument authorizes the settlor to use real or personal property owned by
- 6921 the trust; or
- 6922 (i) with respect to the property held in the trust, the settlor may:
- 6923 (i) give a personal guarantee on a debt or obligation secured by the property;

- 6924 (ii) make payments, directly or indirectly, on a debt or obligation secured by the
 6925 property;
- 6926 (iii) pay property taxes, casualty and liability insurance premiums, homeowner
 6927 association dues, maintenance expenses, or other similar expenses on the property;
 6928 or
- 6929 (iv) pay income tax on income attributable to the portion of property held in the trust,
 6930 of which the settlor is considered to be the owner under 26 U.S.C. Secs. 671
 6931 through 678, which payments will not be considered additional transfers to the
 6932 trust for purposes of this section.
- 6933 ~~[(8)]~~ (6) (a) If a trust instrument contains the provisions described in Subsections ~~[(5)(b)]~~
 6934 ~~(3)(b)~~ through (g), the transfer restrictions prevent a creditor or other person from
 6935 asserting any cause of action or claim for relief against a trustee of the trust or against
 6936 others involved in the counseling, drafting, preparation, execution, or funding of the
 6937 trust for conspiracy to commit fraudulent conveyance or another voidable transfer,
 6938 aiding and abetting a fraudulent conveyance or another voidable transfer,
 6939 participation in the trust transaction, or similar cause of action or claim for relief.
- 6940 (b) For purposes of this ~~[subsection]~~ Subsection (6), counseling, drafting, preparation,
 6941 execution, or funding of the trust includes the preparation and funding of a limited
 6942 partnership, a limited liability company, or other entity if interests in the entity are
 6943 subsequently transferred to the trust.
- 6944 (c) The creditor and other person prevented from asserting a cause of action or claim for
 6945 relief may assert a cause of action against, and are limited to recourse against, only:
 6946 ~~[(a)]~~ (i) the trust and the trust assets; and
 6947 ~~[(b)]~~ (ii) the settlor, to the extent otherwise allowed in this section.
- 6948 ~~[(9)]~~ (7) (a) A cause of action or claim for relief under Subsection ~~[(5)(i)]~~ (3)(i) or (j) is a
 6949 cause of action or claim for relief under Section 25-6-202 or 25-6-203.
- 6950 (b) Except as provided in Subsection ~~[(9)(a)]~~ (7)(a), a cause of action or claim for relief
 6951 under this section is not a cause of action or claim for relief under Sections 25-6-101
 6952 through 25-6-407.
- 6953 (c) Notwithstanding Section 25-6-305, a cause of action or claim for relief regarding a
 6954 fraudulent conveyance or other voidable transfer of a settlor's assets under this
 6955 section is extinguished unless the action is brought by a creditor of the settlor who
 6956 was a creditor of the settlor before the assets in question were transferred to the trust
 6957 and the action is brought within the earlier of:

- 6958 (i) the later of two years after the transfer is made, or one year after the transfer is or
6959 reasonably could have been discovered by the creditor if the creditor:
6960 (A) can demonstrate, by clear and convincing evidence, that the creditor asserted a
6961 specific claim against the settlor before the transfer; or
6962 (B) files another action, other than an action alleging a fraudulent conveyance or
6963 other voidable transfer against the settlor that asserts a claim based on an act or
6964 omission of the settlor that occurred before the transfer, and the action
6965 described in Subsection ~~[(9)(e)]~~ (7)(c) is filed within two years after the
6966 transfer; or
- 6967 (ii) (A) with respect to a creditor known to the settlor, 120 days after the date on
6968 which notice of the transfer is mailed to the creditor, which notice shall state
6969 the name and address of the settlor or the settlor's representative, the name and
6970 address of the trustee or the trustee's representative, and also describe the assets
6971 that were transferred, but does not need to state the value of those assets if the
6972 assets are other than cash, and which shall inform the creditor that the creditor
6973 is required to bring the creditor's cause of action or claim for relief against the
6974 settlor and the trustee within 120 days from the mailing of the notice or be
6975 forever barred; or
- 6976 (B) with respect to a creditor not known to the settlor, 120 days after the date on
6977 which notice of the transfer is first published in a newspaper of general
6978 circulation in the county in which the settlor then resides, or is published on a
6979 public legal notice website as defined in Section 45-1-101, which notice shall
6980 state the name of the settlor or the settlor's representative, the address of the
6981 settlor or the settlor's representative, the name of the trustee or the trustee's
6982 representative, the address of the trustee or the trustee's representative, and also
6983 describe the assets that were transferred, but does not need to state the value of
6984 those assets.

6985 ~~[(10)]~~ (8) (a) The notice required in Subsection ~~[(9)(e)(ii)(B)]~~ (7)(c)(ii)(B) shall be
6986 published in accordance with the provisions of Section 45-1-101 for three
6987 consecutive weeks and inform creditors that they are required to bring a cause of
6988 action or claim for relief within 120 days from the first publication of the notice or be
6989 forever barred.

6990 (b) Failure to give the notice required in Subsection ~~[(9)(e)(ii)]~~ (7)(c)(ii) to a creditor
6991 does not prevent the shortening of the limitations period under Subsection ~~[(9)(e)(ii)]~~

6992 (7)(c)(ii) with respect to another creditor who properly received notice by mail or
6993 publication.

6994 ~~[(11)]~~ (9) (a) A trust is subject to this section if it is governed by Utah law, as provided in
6995 Section 75-7-107, and if it otherwise meets the requirements of this section.

6996 (b) A court of this state has exclusive jurisdiction over an action or claim for relief that
6997 is based on a transfer of property to a trust that is the subject of this section.

6998 ~~[(12)]~~ (10) (a) With respect to a trust that is subject to this section, a claim brought by a
6999 creditor of a beneficiary who is not the settlor is subject to Section 75-7-501 et. seq.

7000 (b) With respect to an irrevocable trust that is not subject to this section, a claim brought
7001 by a creditor of a beneficiary who is the settlor is subject to the provisions of
7002 Subsection 75-7-505(2).

7003 ~~[(13)]~~ (11) If a provision in this section conflicts with a provision in Sections 25-6-101
7004 through 25-6-407, the provision of this section shall supersede the conflicting provision
7005 in Sections 25-6-101 through 25-6-407.

7006 ~~[(14)]~~ (12) Nothing in this section alters rights vested or created under this section before
7007 May 14, 2019.

7008 Section 238. Section **76-5-111** is amended to read:

7009 **76-5-111 . Abuse of a vulnerable adult -- Penalties.**

7010 (1) (a) As used in this section:

7011 (i) "Abandonment" means a knowing or intentional action or inaction, including
7012 desertion, by a person acting as a caretaker for a vulnerable adult that leaves the
7013 vulnerable adult without the means or ability to obtain necessary food, clothing,
7014 shelter, or medical or other health care.

7015 (ii) "Abuse" means:

7016 (A) attempting to cause harm, intentionally or knowingly causing harm, or
7017 intentionally or knowingly placing another in fear of imminent harm;

7018 (B) causing physical injury by knowing or intentional acts or omissions;

7019 (C) unreasonable or inappropriate use of physical restraint, medication, or
7020 isolation that causes or is likely to cause harm to a vulnerable adult that is in
7021 conflict with a physician's orders or used as an unauthorized substitute for
7022 treatment, unless that conduct furthers the health and safety of the vulnerable
7023 adult; or

7024 (D) deprivation of life-sustaining treatment, except:

7025 (I) as provided in ~~[Title 75, Chapter 2a, Advance Health Care Directive Act]~~

- 7026 Title 75A, Chapter 3, Health Care Decisions; or
- 7027 (II) when informed consent, as defined in this section, has been obtained.
- 7028 (iii) "Caretaker" means a person or public institution that is entrusted with or assumes
- 7029 the responsibility to provide a vulnerable adult with care, food, shelter, clothing,
- 7030 supervision, medical or other health care, or other necessities for pecuniary gain,
- 7031 by contract, or as a result of friendship, or in a position of trust and confidence
- 7032 with a vulnerable adult, including a relative, a household member, an
- 7033 attorney-in-fact, a neighbor, a person who is employed or who provides volunteer
- 7034 work, a court-appointed or voluntary guardian, or a person who contracts or is
- 7035 under court order to provide care.
- 7036 (iv) (A) "Dependent adult" means an individual 18 years old or older, who has a
- 7037 physical or mental impairment that restricts the individual's ability to carry out
- 7038 normal activities or to protect the individual's rights.
- 7039 (B) "Dependent adult" includes an individual who has physical or developmental
- 7040 disabilities or whose physical or mental capacity has substantially diminished
- 7041 because of age.
- 7042 (v) "Elder adult" means an individual 65 years old or older.
- 7043 (vi) "Exploitation" means an offense described in Section 76-5-111.3, 76-5-111.4, or
- 7044 76-5b-202.
- 7045 (vii) "Harm" means pain, mental anguish, emotional distress, hurt, physical or
- 7046 psychological damage, physical injury, suffering, or distress inflicted knowingly
- 7047 or intentionally.
- 7048 (viii) "Informed consent" means:
- 7049 (A) a written expression by the individual or authorized by the individual, stating
- 7050 that the individual fully understands the potential risks and benefits of the
- 7051 withdrawal of food, water, medication, medical services, shelter, cooling,
- 7052 heating, or other services necessary to maintain minimum physical or mental
- 7053 health, and that the individual desires that the services be withdrawn, except
- 7054 that a written expression is valid only if the individual is of sound mind when
- 7055 the consent is given, and the consent is witnessed by at least two individuals
- 7056 who do not benefit from the withdrawal of services; or
- 7057 (B) consent to withdraw food, water, medication, medical services, shelter,
- 7058 cooling, heating, or other services necessary to maintain minimum physical or
- 7059 mental health, as permitted by court order.

- 7060 (ix) (A) "Isolation" means knowingly or intentionally preventing a vulnerable
7061 adult from having contact with another person, unless the restriction of
7062 personal rights is authorized by court order, by:
- 7063 (I) preventing the vulnerable adult from communicating, visiting, interacting,
7064 or initiating interaction with others, including receiving or inviting visitors,
7065 mail, or telephone calls, contrary to the express wishes of the vulnerable
7066 adult, or communicating to a visitor that the vulnerable adult is not present
7067 or does not want to meet with or talk to the visitor, knowing that
7068 communication to be false;
 - 7069 (II) physically restraining the vulnerable adult in order to prevent the
7070 vulnerable adult from meeting with a visitor; or
 - 7071 (III) making false or misleading statements to the vulnerable adult in order to
7072 induce the vulnerable adult to refuse to receive communication from visitors
7073 or other family members.
- 7074 (B) "Isolation" does not include an act:
- 7075 (I) intended in good faith to protect the physical or mental welfare of the
7076 vulnerable adult; or
 - 7077 (II) performed pursuant to the treatment plan or instructions of a physician or
7078 other professional advisor of the vulnerable adult.
- 7079 (x) "Neglect" means:
- 7080 (A) failure of a caretaker to provide nutrition, clothing, shelter, supervision,
7081 personal care, or dental or other health care, or failure to provide protection
7082 from health and safety hazards or maltreatment;
 - 7083 (B) failure of a caretaker to provide care to a vulnerable adult in a timely manner
7084 and with the degree of care that a reasonable person in a like position would
7085 exercise;
 - 7086 (C) a pattern of conduct by a caretaker, without the vulnerable adult's informed
7087 consent, resulting in deprivation of food, water, medication, health care,
7088 shelter, cooling, heating, or other services necessary to maintain the vulnerable
7089 adult's well being;
 - 7090 (D) intentional failure by a caretaker to carry out a prescribed treatment plan that
7091 results or could result in physical injury or physical harm; or
 - 7092 (E) abandonment by a caretaker.
- 7093 (xi) (A) "Physical injury" includes damage to any bodily tissue caused by

- 7094 nontherapeutic conduct, to the extent that the tissue must undergo a healing
7095 process in order to be restored to a sound and healthy condition, or damage to
7096 any bodily tissue to the extent that the tissue cannot be restored to a sound and
7097 healthy condition.
- 7098 (B) "Physical injury" includes skin bruising, a dislocation, physical pain, illness,
7099 impairment of physical function, a pressure sore, bleeding, malnutrition,
7100 dehydration, a burn, a bone fracture, a subdural hematoma, soft tissue swelling,
7101 injury to any internal organ, or any other physical condition that imperils the
7102 health or welfare of the vulnerable adult and is not a serious physical injury as
7103 defined in this section.
- 7104 (xii) "Position of trust and confidence" means the position of a person who:
7105 (A) is a parent, spouse, adult child, or other relative of a vulnerable adult;
7106 (B) is a joint tenant or tenant in common with a vulnerable adult;
7107 (C) has a legal or fiduciary relationship with a vulnerable adult, including a
7108 court-appointed or voluntary guardian, trustee, attorney, attorney-in-fact, or
7109 conservator; or
7110 (D) is a caretaker of a vulnerable adult.
- 7111 (xiii) "Serious physical injury" means any physical injury or set of physical injuries
7112 that:
7113 (A) seriously impairs a vulnerable adult's health;
7114 (B) was caused by use of a dangerous weapon;
7115 (C) involves physical torture or causes serious emotional harm to a vulnerable
7116 adult; or
7117 (D) creates a reasonable risk of death.
- 7118 (xiv) "Vulnerable adult" means an elder adult, or a dependent adult who has a mental
7119 or physical impairment which substantially affects that individual's ability to:
7120 (A) provide personal protection;
7121 (B) provide necessities such as food, shelter, clothing, or medical or other health
7122 care;
7123 (C) obtain services necessary for health, safety, or welfare;
7124 (D) carry out the activities of daily living;
7125 (E) manage the adult's own resources; or
7126 (F) comprehend the nature and consequences of remaining in a situation of abuse,
7127 neglect, or exploitation.

- 7128 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 7129 (2) An actor, including a caretaker, commits abuse of a vulnerable adult if the actor, under
7130 circumstances other than those likely to produce death or serious physical injury:
- 7131 (a) causes a vulnerable adult to suffer harm, abuse, or neglect;
- 7132 (b) having the care or custody of a vulnerable adult, causes or permits that vulnerable
7133 adult's person or health to be injured, abused, or neglected; or
- 7134 (c) causes or permits a vulnerable adult to be placed in a situation in which the
7135 vulnerable adult's person or health is endangered.
- 7136 (3) (a) A violation of Subsection (2):
- 7137 (i) is a class A misdemeanor if done intentionally or knowingly;
- 7138 (ii) is a class B misdemeanor if done recklessly; or
- 7139 (iii) is a class C misdemeanor if done with criminal negligence.
- 7140 (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) that is based on
7141 isolation of a vulnerable adult is a third degree felony.
- 7142 (4) (a) It does not constitute a defense to a prosecution for a violation of this section that
7143 the actor did not know the age of the vulnerable adult.
- 7144 (b) An adult is not considered abused, neglected, or a vulnerable adult for the reason that
7145 the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu
7146 of medical care.
- 7147 (5) If an actor, including a caretaker, violates this section by willfully isolating a vulnerable
7148 adult, in addition to the penalties under Subsection (3), the court may require that the
7149 actor:
- 7150 (a) undergo appropriate counseling as a condition of the sentence; and
- 7151 (b) pay for the costs of the ordered counseling.
- 7152 Section 239. Section **76-5-205** is amended to read:
- 7153 **76-5-205 . Manslaughter -- Penalties.**
- 7154 (1) (a) As used in this section:
- 7155 (i) (A) "Aid" means the act of providing the physical means.
- 7156 (B) "Aid" does not include the withholding or withdrawal of life sustaining
7157 treatment procedures to the extent allowed under [~~Title 75, Chapter 2a,~~
7158 ~~Advance Health Care Directive Act~~] Title 75A, Chapter 3, Health Care
7159 Decisions, or any other laws of this state.
- 7160 (ii) "Practitioner" means an individual currently licensed, registered, or otherwise
7161 authorized by law to administer, dispense, distribute, or prescribe medications or

- 7162 procedures in the course of professional practice.
- 7163 (iii) "Provides" means to administer, prescribe, distribute, or dispense.
- 7164 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 7165 (2) Except as provided in Subsection (5), an actor commits manslaughter if the actor:
- 7166 (a) recklessly causes the death of another individual;
- 7167 (b) intentionally, and with knowledge that another individual intends to commit suicide
- 7168 or attempt to commit suicide, aids the individual to commit suicide; or
- 7169 (c) commits a homicide which would be murder, but the offense is reduced in
- 7170 accordance with Subsection 76-5-203(4).
- 7171 (3) A violation of Subsection (2) is a felony of the second degree.
- 7172 (4) (a) In addition to the penalty described under this section or any other section, a
- 7173 defendant who is convicted of violating this section shall have the defendant's driver
- 7174 license revoked under Section 53-3-220 if the death of another individual results
- 7175 from driving a motor vehicle.
- 7176 (b) The court shall forward the report of the conviction resulting from driving a motor
- 7177 vehicle to the Driver License Division in accordance with Section 53-3-218.
- 7178 (5) (a) A practitioner does not violate Subsection (2)(b) if the practitioner provides
- 7179 medication or a procedure to treat an individual's illness or relieve an individual's
- 7180 pain or discomfort, regardless of whether the medication or procedure may hasten or
- 7181 increase the risk of death to the individual to whom the practitioner provides the
- 7182 medication or procedure.
- 7183 (b) Notwithstanding Subsection (5)(a), a practitioner violates Subsection (2)(b) if the
- 7184 practitioner intentionally and knowingly provides the medication or procedure to aid
- 7185 the individual to commit suicide or attempt to commit suicide.
- 7186 Section 240. Section **76-6-513** is amended to read:
- 7187 **76-6-513 . Unlawful dealing of property by a fiduciary.**
- 7188 (1) (a) As used in this section:
- 7189 (i) "Fiduciary" means the same as that term is defined in Section ~~[22-1-1]~~ 75A-1-201.
- 7190 (ii) "Financial institution" means "depository institution" and "trust company" as
- 7191 defined in Section 7-1-103.
- 7192 (iii) "Governmental entity" is as defined in Section 63G-7-102.
- 7193 (iv) "Person" does not include a financial institution whose fiduciary functions are
- 7194 supervised by the Department of Financial Institutions or a federal regulatory
- 7195 agency.

- 7196 (v) "Property" means the same as that term is defined in Section 76-6-401.
- 7197 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 7198 (2) An actor commits unlawfully dealing with property by a fiduciary if the actor:
- 7199 (a) deals with property:
- 7200 (i) that has been entrusted to the actor as a fiduciary, or property of a governmental
- 7201 entity, public money, or of a financial institution; and
- 7202 (ii) in a manner which:
- 7203 (A) the actor knows is a violation of the actor's duty; and
- 7204 (B) involves substantial risk of loss or detriment to the property owner or to a
- 7205 person for whose benefit the property was entrusted; or
- 7206 (b) acting as a fiduciary pledges:
- 7207 (i) as collateral for a personal loan, or as collateral for the benefit of some party, other
- 7208 than the owner or the person for whose benefit the property was entrusted, the
- 7209 property that has been entrusted to the fiduciary; and
- 7210 (ii) without permission of the owner of the property or some other authorized person.
- 7211 (3) (a) A violation of Subsection (2)(a) is:
- 7212 (i) a second degree felony if the:
- 7213 (A) value of the property is or exceeds \$5,000; or
- 7214 (B) property is stolen from the person of another;
- 7215 (ii) a third degree felony if:
- 7216 (A) the value of the property is or exceeds \$1,500 but is less than \$5,000;
- 7217 (B) the value of the property is or exceeds \$500 and the actor has been twice
- 7218 before convicted of any of the following offenses, if each prior offense was
- 7219 committed within 10 years before the date of the current conviction or the date
- 7220 of the offense upon which the current conviction is based and at least one of
- 7221 those convictions is for a class A misdemeanor:
- 7222 (I) any theft, any robbery, or any burglary with intent to commit theft;
- 7223 (II) any offense under Part 5, Fraud; or
- 7224 (III) any attempt to commit any offense under Subsection (3)(a)(ii)(B)(I) or (II);
- 7225 (C) the value of property is or exceeds \$500 but is less than \$1,500; or
- 7226 (D) the actor has been previously convicted of a felony violation of any of the
- 7227 offenses listed in Subsections (3)(a)(ii)(B)(I) through (3)(a)(ii)(B)(III), if the
- 7228 prior offense was committed within 10 years before the date of the current
- 7229 conviction or the date of the offense upon which the current conviction is

7230 based;

7231 (iii) a class A misdemeanor if:

7232 (A) the value of the property stolen is or exceeds \$500 but is less than \$1,500; or

7233 (B) the actor has been twice before convicted of any of the offenses listed in

7234 Subsections (3)(a)(ii)(B)(I) through (3)(a)(ii)(B)(III), if each prior offense was

7235 committed within 10 years before the date of the current conviction or the date

7236 of the offense upon which the current conviction is based; or

7237 (iv) a class B misdemeanor if the value of the property stolen is less than \$500 and

7238 the theft is not an offense under Subsection (3)(a)(iii)(B).

7239 (b) A violation of Subsection (2)(b) is:

7240 (i) a second degree felony if the value of the property wrongfully pledged is or

7241 exceeds \$5,000;

7242 (ii) a third degree felony if the value of the property wrongfully pledged is or exceeds

7243 \$1,500 but is less than \$5,000;

7244 (iii) a class A misdemeanor if the value of the property is or exceeds \$500, but is less

7245 than \$1,500 or the actor has been twice before convicted of theft, robbery,

7246 burglary with intent to commit theft, or unlawful dealing with property by a

7247 fiduciary; or

7248 (iv) a class B misdemeanor if the value of the property is less than \$500.

7249 (4) This section may not be construed to impose criminal or civil liability on any law

7250 enforcement officer acting within the scope of a criminal investigation.

7251 (5) The forfeiture of property under this section, including any seizure and disposition of

7252 the property and any related judicial or administrative proceeding, shall be conducted in

7253 accordance with Title 77, Chapter 11a, Seizure of Property and Contraband, through

7254 Chapter 11c, Retention of Evidence.

7255 Section 241. **Repealer.**

7256 This bill repeals:

7257 Section **22-3-101, Title.**

7258 Section **22-5-1, Title.**

7259 Section **25-6-501, Title.**

7260 Section **75-2a-101, Title.**

7261 Section **75-5a-101, Short title.**

7262 Section **75-9-101, Title.**

7263 Section **75-10-101, Title.**

- 7264 Section **75-11-101, Title.**
- 7265 Section 242. **Effective date.**
- 7266 This bill takes effect on September 1, 2024.