

Senator Todd D. Weiler proposes the following substitute bill:

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:



26 AMENDS:

27 **26B-6-201**, as renumbered and amended by Laws of Utah 2023, Chapter 308

28 **58-9-602**, as last amended by Laws of Utah 2016, Chapter 256

29 **75-1-201**, as last amended by Laws of Utah 2013, Chapter 364

30 **75-2-205**, as last amended by Laws of Utah 2017, Chapter 204

31 **75-7-105**, as last amended by Laws of Utah 2019, Chapter 153

32 **75-7-107**, as last amended by Laws of Utah 2017, Chapter 204

33 **75-7-301**, as last amended by Laws of Utah 2017, Chapter 204

34 **75-7-501**, as last amended by Laws of Utah 2017, Chapter 204

35 **75-7-505**, as last amended by Laws of Utah 2023, Chapter 421

36 **75-7-814**, as last amended by Laws of Utah 2010, Chapter 93

37 **75-7-816**, as last amended by Laws of Utah 2017, Chapter 204

38 **76-5-111**, as last amended by Laws of Utah 2022, Chapter 181

39 **76-5-205**, as last amended by Laws of Utah 2022, Chapter 181

40 **76-6-513**, as last amended by Laws of Utah 2023, Chapter 111

41 ENACTS:

42 **75A-1-101**, Utah Code Annotated 1953

43 **75A-1-102**, Utah Code Annotated 1953

44 **75A-2-101**, Utah Code Annotated 1953

45 **75A-4-101**, Utah Code Annotated 1953

46 **75A-5-101**, Utah Code Annotated 1953

47 **75A-6-101**, Utah Code Annotated 1953

48 **75A-7-101**, Utah Code Annotated 1953

49 **75A-8-101**, Utah Code Annotated 1953

50 **75B-1-101**, Utah Code Annotated 1953

51 **75B-1-102**, Utah Code Annotated 1953

52 **75B-1-201**, Utah Code Annotated 1953

53 **75B-1-301**, Utah Code Annotated 1953

54 RENUMBERS AND AMENDS:

55 **75A-1-201**, (Renumbered from 22-1-1, Utah Code Annotated 1953)

56 **75A-1-202**, (Renumbered from 22-1-11, as last amended by Laws of Utah 2011,

- 57 Chapter 297)
- 58 [75A-1-203](#), (Renumbered from 22-1-2, Utah Code Annotated 1953)
- 59 [75A-1-204](#), (Renumbered from 22-1-4, Utah Code Annotated 1953)
- 60 [75A-1-205](#), (Renumbered from 22-1-5, Utah Code Annotated 1953)
- 61 [75A-1-206](#), (Renumbered from 22-1-6, Utah Code Annotated 1953)
- 62 [75A-1-207](#), (Renumbered from 22-1-7, Utah Code Annotated 1953)
- 63 [75A-1-208](#), (Renumbered from 22-1-8, Utah Code Annotated 1953)
- 64 [75A-1-209](#), (Renumbered from 22-1-9, Utah Code Annotated 1953)
- 65 [75A-1-210](#), (Renumbered from 22-1-10, Utah Code Annotated 1953)
- 66 [75A-2-102](#), (Renumbered from 75-9-102, as enacted by Laws of Utah 2016, Chapter
- 67 256)
- 68 [75A-2-103](#), (Renumbered from 75-9-103, as enacted by Laws of Utah 2016, Chapter
- 69 256)
- 70 [75A-2-104](#), (Renumbered from 75-9-104, as enacted by Laws of Utah 2016, Chapter
- 71 256)
- 72 [75A-2-105](#), (Renumbered from 75-9-105, as last amended by Laws of Utah 2022,
- 73 Chapter 430)
- 74 [75A-2-106](#), (Renumbered from 75-9-106, as enacted by Laws of Utah 2016, Chapter
- 75 256)
- 76 [75A-2-107](#), (Renumbered from 75-9-107, as enacted by Laws of Utah 2016, Chapter
- 77 256)
- 78 [75A-2-108](#), (Renumbered from 75-9-108, as last amended by Laws of Utah 2022,
- 79 Chapter 138)
- 80 [75A-2-109](#), (Renumbered from 75-9-109, as enacted by Laws of Utah 2016, Chapter
- 81 256)
- 82 [75A-2-110](#), (Renumbered from 75-9-110, as enacted by Laws of Utah 2016, Chapter
- 83 256)
- 84 [75A-2-111](#), (Renumbered from 75-9-111, as enacted by Laws of Utah 2016, Chapter
- 85 256)
- 86 [75A-2-112](#), (Renumbered from 75-9-112, as enacted by Laws of Utah 2016, Chapter
- 87 256)

88 **75A-2-113**, (Renumbered from 75-9-113, as enacted by Laws of Utah 2016, Chapter
89 256)
90 **75A-2-114**, (Renumbered from 75-9-114, as enacted by Laws of Utah 2016, Chapter
91 256)
92 **75A-2-115**, (Renumbered from 75-9-115, as enacted by Laws of Utah 2016, Chapter
93 256)
94 **75A-2-116**, (Renumbered from 75-9-116, as enacted by Laws of Utah 2016, Chapter
95 256)
96 **75A-2-117**, (Renumbered from 75-9-117, as enacted by Laws of Utah 2016, Chapter
97 256)
98 **75A-2-118**, (Renumbered from 75-9-118, as enacted by Laws of Utah 2016, Chapter
99 256)
100 **75A-2-119**, (Renumbered from 75-9-119, as enacted by Laws of Utah 2016, Chapter
101 256)
102 **75A-2-120**, (Renumbered from 75-9-120, as enacted by Laws of Utah 2016, Chapter
103 256)
104 **75A-2-121**, (Renumbered from 75-9-121, as enacted by Laws of Utah 2016, Chapter
105 256)
106 **75A-2-122**, (Renumbered from 75-9-122, as enacted by Laws of Utah 2016, Chapter
107 256)
108 **75A-2-123**, (Renumbered from 75-9-123, as enacted by Laws of Utah 2016, Chapter
109 256)
110 **75A-2-201**, (Renumbered from 75-9-201, as enacted by Laws of Utah 2016, Chapter
111 256)
112 **75A-2-202**, (Renumbered from 75-9-202, as enacted by Laws of Utah 2016, Chapter
113 256)
114 **75A-2-203**, (Renumbered from 75-9-203, as enacted by Laws of Utah 2016, Chapter
115 256)
116 **75A-2-204**, (Renumbered from 75-9-204, as enacted by Laws of Utah 2016, Chapter
117 256)
118 **75A-2-205**, (Renumbered from 75-9-205, as enacted by Laws of Utah 2016, Chapter

119 256)
120 [75A-2-206](#), (Renumbered from 75-9-206, as enacted by Laws of Utah 2016, Chapter
121 256)
122 [75A-2-207](#), (Renumbered from 75-9-207, as enacted by Laws of Utah 2016, Chapter
123 256)
124 [75A-2-208](#), (Renumbered from 75-9-208, as enacted by Laws of Utah 2016, Chapter
125 256)
126 [75A-2-209](#), (Renumbered from 75-9-209, as enacted by Laws of Utah 2016, Chapter
127 256)
128 [75A-2-210](#), (Renumbered from 75-9-210, as enacted by Laws of Utah 2016, Chapter
129 256)
130 [75A-2-211](#), (Renumbered from 75-9-211, as enacted by Laws of Utah 2016, Chapter
131 256)
132 [75A-2-212](#), (Renumbered from 75-9-212, as enacted by Laws of Utah 2016, Chapter
133 256)
134 [75A-2-213](#), (Renumbered from 75-9-213, as enacted by Laws of Utah 2016, Chapter
135 256)
136 [75A-2-214](#), (Renumbered from 75-9-214, as enacted by Laws of Utah 2016, Chapter
137 256)
138 [75A-2-215](#), (Renumbered from 75-9-215, as enacted by Laws of Utah 2016, Chapter
139 256)
140 [75A-2-216](#), (Renumbered from 75-9-216, as enacted by Laws of Utah 2016, Chapter
141 256)
142 [75A-2-217](#), (Renumbered from 75-9-217, as enacted by Laws of Utah 2016, Chapter
143 256)
144 [75A-2-301](#), (Renumbered from 75-9-301, as enacted by Laws of Utah 2016, Chapter
145 256)
146 [75A-2-302](#), (Renumbered from 75-9-302, as enacted by Laws of Utah 2016, Chapter
147 256)
148 [75A-2-401](#), (Renumbered from 75-9-401, as enacted by Laws of Utah 2016, Chapter
149 256)

150 **75A-2-402**, (Renumbered from 75-9-402, as enacted by Laws of Utah 2016, Chapter
151 256)
152 **75A-2-403**, (Renumbered from 75-9-403, as enacted by Laws of Utah 2016, Chapter
153 256)
154 **75A-3-101**, (Renumbered from 75-2a-103, as last amended by Laws of Utah 2023,
155 Chapters 139, 330)
156 **75A-3-102**, (Renumbered from 75-2a-102, as last amended by Laws of Utah 2008,
157 Chapter 107)
158 **75A-3-103**, (Renumbered from 75-2a-122, as last amended by Laws of Utah 2008,
159 Chapter 107)
160 **75A-3-104**, (Renumbered from 75-2a-124, as last amended by Laws of Utah 2008,
161 Chapter 107)
162 **75A-3-105**, (Renumbered from 75-2a-125, as enacted by Laws of Utah 2008, Chapter
163 107)
164 **75A-3-106**, (Renumbered from 75-2a-106, as last amended by Laws of Utah 2023,
165 Chapter 330)
166 **75A-3-107**, (Renumbered from 75-2a-120, as enacted by Laws of Utah 2007, Chapter
167 31)
168 **75A-3-201**, (Renumbered from 75-2a-104, as last amended by Laws of Utah 2009,
169 Chapter 99)
170 **75A-3-202**, (Renumbered from 75-2a-109, as last amended by Laws of Utah 2009,
171 Chapter 99)
172 **75A-3-203**, (Renumbered from 75-2a-108, as last amended by Laws of Utah 2008,
173 Chapter 107)
174 **75A-3-204**, (Renumbered from 75-2a-110, as last amended by Laws of Utah 2008,
175 Chapter 107)
176 **75A-3-205**, (Renumbered from 75-2a-112, as last amended by Laws of Utah 2008,
177 Chapter 107)
178 **75A-3-206**, (Renumbered from 75-2a-111, as last amended by Laws of Utah 2008,
179 Chapter 107)
180 **75A-3-207**, (Renumbered from 75-2a-115, as last amended by Laws of Utah 2008,

181 Chapter 107)
182 **75A-3-208**, (Renumbered from 75-2a-113, as last amended by Laws of Utah 2008,
183 Chapter 107)
184 **75A-3-301**, (Renumbered from 75-2a-107, as last amended by Laws of Utah 2008,
185 Chapter 107)
186 **75A-3-302**, (Renumbered from 75-2a-105, as last amended by Laws of Utah 2008,
187 Chapter 107)
188 **75A-3-303**, (Renumbered from 75-2a-117, as last amended by Laws of Utah 2009,
189 Chapter 99)
190 **75A-3-304**, (Renumbered from 75-2a-116, as enacted by Laws of Utah 2007, Chapter
191 31)
192 **75A-3-305**, (Renumbered from 75-2a-119, as last amended by Laws of Utah 2008,
193 Chapter 107)
194 **75A-3-306**, (Renumbered from 75-2a-123, as last amended by Laws of Utah 2008,
195 Chapter 107)
196 **75A-3-307**, (Renumbered from 75-2a-114, as last amended by Laws of Utah 2008,
197 Chapter 107)
198 **75A-3-308**, (Renumbered from 75-2a-118, as last amended by Laws of Utah 2008,
199 Chapter 107)
200 **75A-3-309**, (Renumbered from 75-2a-121, as last amended by Laws of Utah 2008,
201 Chapter 107)
202 **75A-4-102**, (Renumbered from 75-10-102, as enacted by Laws of Utah 2017, Chapter
203 125)
204 **75A-4-103**, (Renumbered from 75-10-103, as enacted by Laws of Utah 2017, Chapter
205 125)
206 **75A-4-104**, (Renumbered from 75-10-104, as enacted by Laws of Utah 2017, Chapter
207 125)
208 **75A-4-201**, (Renumbered from 75-10-201, as last amended by Laws of Utah 2018,
209 Chapter 244)
210 **75A-4-202**, (Renumbered from 75-10-202, as enacted by Laws of Utah 2017, Chapter
211 125)

212 **75A-4-203**, (Renumbered from 75-10-203, as enacted by Laws of Utah 2017, Chapter
213 125)
214 **75A-4-204**, (Renumbered from 75-10-204, as enacted by Laws of Utah 2017, Chapter
215 125)
216 **75A-4-205**, (Renumbered from 75-10-205, as enacted by Laws of Utah 2017, Chapter
217 125)
218 **75A-4-206**, (Renumbered from 75-10-206, as enacted by Laws of Utah 2017, Chapter
219 125)
220 **75A-4-301**, (Renumbered from 75-10-301, as enacted by Laws of Utah 2017, Chapter
221 125)
222 **75A-4-302**, (Renumbered from 75-10-302, as enacted by Laws of Utah 2017, Chapter
223 125)
224 **75A-4-303**, (Renumbered from 75-10-303, as enacted by Laws of Utah 2017, Chapter
225 125)
226 **75A-4-304**, (Renumbered from 75-10-304, as enacted by Laws of Utah 2017, Chapter
227 125)
228 **75A-4-305**, (Renumbered from 75-10-305, as last amended by Laws of Utah 2019,
229 Chapter 153)
230 **75A-4-306**, (Renumbered from 75-10-306, as enacted by Laws of Utah 2017, Chapter
231 125)
232 **75A-4-307**, (Renumbered from 75-10-307, as enacted by Laws of Utah 2017, Chapter
233 125)
234 **75A-4-308**, (Renumbered from 75-10-308, as enacted by Laws of Utah 2017, Chapter
235 125)
236 **75A-4-309**, (Renumbered from 75-10-309, as enacted by Laws of Utah 2017, Chapter
237 125)
238 **75A-4-310**, (Renumbered from 75-10-310, as enacted by Laws of Utah 2017, Chapter
239 125)
240 **75A-4-311**, (Renumbered from 75-10-311, as enacted by Laws of Utah 2017, Chapter
241 125)
242 **75A-4-312**, (Renumbered from 75-10-312, as enacted by Laws of Utah 2017, Chapter

243 125)
244 **75A-4-313**, (Renumbered from 75-10-313, as enacted by Laws of Utah 2017, Chapter
245 125)
246 **75A-4-314**, (Renumbered from 75-10-314, as enacted by Laws of Utah 2017, Chapter
247 125)
248 **75A-4-401**, (Renumbered from 75-10-401, as enacted by Laws of Utah 2017, Chapter
249 125)
250 **75A-4-402**, (Renumbered from 75-10-402, as enacted by Laws of Utah 2017, Chapter
251 125)
252 **75A-4-403**, (Renumbered from 75-10-403, as enacted by Laws of Utah 2017, Chapter
253 125)
254 **75A-4-404**, (Renumbered from 75-10-404, as enacted by Laws of Utah 2017, Chapter
255 125)
256 **75A-4-405**, (Renumbered from 75-10-405, as enacted by Laws of Utah 2017, Chapter
257 125)
258 **75A-4-406**, (Renumbered from 75-10-406, as enacted by Laws of Utah 2017, Chapter
259 125)
260 **75A-4-407**, (Renumbered from 75-10-407, as enacted by Laws of Utah 2017, Chapter
261 125)
262 **75A-4-501**, (Renumbered from 75-10-501, as enacted by Laws of Utah 2017, Chapter
263 125)
264 **75A-4-502**, (Renumbered from 75-10-502, as enacted by Laws of Utah 2017, Chapter
265 125)
266 **75A-4-503**, (Renumbered from 75-10-503, as enacted by Laws of Utah 2017, Chapter
267 125)
268 **75A-4-601**, (Renumbered from 75-10-601, as enacted by Laws of Utah 2017, Chapter
269 125)
270 **75A-4-602**, (Renumbered from 75-10-602, as enacted by Laws of Utah 2017, Chapter
271 125)
272 **75A-4-603**, (Renumbered from 75-10-603, as enacted by Laws of Utah 2017, Chapter
273 125)

274 **75A-5-102**, (Renumbered from 22-3-102, as last amended by Laws of Utah 2020,
275 Chapter 348)
276 **75A-5-103**, (Renumbered from 22-3-103, as repealed and reenacted by Laws of Utah
277 2019, Chapter 495)
278 **75A-5-104**, (Renumbered from 22-3-104, as last amended by Laws of Utah 2020,
279 Chapter 348)
280 **75A-5-201**, (Renumbered from 22-3-201, as last amended by Laws of Utah 2020,
281 Chapter 348)
282 **75A-5-202**, (Renumbered from 22-3-202, as last amended by Laws of Utah 2020,
283 Chapter 348)
284 **75A-5-203**, (Renumbered from 22-3-203, as last amended by Laws of Utah 2020,
285 Chapter 348)
286 **75A-5-301**, (Renumbered from 22-3-301, as last amended by Laws of Utah 2020,
287 Chapter 348)
288 **75A-5-302**, (Renumbered from 22-3-302, as last amended by Laws of Utah 2020,
289 Chapter 348)
290 **75A-5-303**, (Renumbered from 22-3-303, as last amended by Laws of Utah 2020,
291 Chapter 348)
292 **75A-5-304**, (Renumbered from 22-3-304, as last amended by Laws of Utah 2020,
293 Chapter 348)
294 **75A-5-305**, (Renumbered from 22-3-305, as last amended by Laws of Utah 2020,
295 Chapter 348)
296 **75A-5-306**, (Renumbered from 22-3-306, as enacted by Laws of Utah 2019, Chapter
297 495)
298 **75A-5-307**, (Renumbered from 22-3-307, as last amended by Laws of Utah 2020,
299 Chapter 348)
300 **75A-5-308**, (Renumbered from 22-3-308, as last amended by Laws of Utah 2020,
301 Chapter 348)
302 **75A-5-309**, (Renumbered from 22-3-309, as last amended by Laws of Utah 2020,
303 Chapter 348)
304 **75A-5-401**, (Renumbered from 22-3-401, as last amended by Laws of Utah 2020,

305 Chapter 348)
306 [75A-5-402](#), (Renumbered from 22-3-402, as last amended by Laws of Utah 2020,
307 Chapter 348)
308 [75A-5-403](#), (Renumbered from 22-3-403, as last amended by Laws of Utah 2020,
309 Chapter 348)
310 [75A-5-404](#), (Renumbered from 22-3-404, as last amended by Laws of Utah 2020,
311 Chapter 348)
312 [75A-5-405](#), (Renumbered from 22-3-405, as last amended by Laws of Utah 2020,
313 Chapter 348)
314 [75A-5-406](#), (Renumbered from 22-3-406, as repealed and reenacted by Laws of Utah
315 2019, Chapter 495)
316 [75A-5-407](#), (Renumbered from 22-3-407, as last amended by Laws of Utah 2020,
317 Chapter 348)
318 [75A-5-408](#), (Renumbered from 22-3-408, as repealed and reenacted by Laws of Utah
319 2019, Chapter 495)
320 [75A-5-409](#), (Renumbered from 22-3-409, as last amended by Laws of Utah 2020,
321 Chapter 348)
322 [75A-5-410](#), (Renumbered from 22-3-410, as repealed and reenacted by Laws of Utah
323 2019, Chapter 495)
324 [75A-5-411](#), (Renumbered from 22-3-411, as last amended by Laws of Utah 2020,
325 Chapter 348)
326 [75A-5-412](#), (Renumbered from 22-3-412, as last amended by Laws of Utah 2020,
327 Chapter 348)
328 [75A-5-413](#), (Renumbered from 22-3-413, as repealed and reenacted by Laws of Utah
329 2019, Chapter 495)
330 [75A-5-414](#), (Renumbered from 22-3-414, as last amended by Laws of Utah 2020,
331 Chapter 348)
332 [75A-5-415](#), (Renumbered from 22-3-415, as last amended by Laws of Utah 2020,
333 Chapter 348)
334 [75A-5-416](#), (Renumbered from 22-3-416, as enacted by Laws of Utah 2019, Chapter
335 495)

336 **75A-5-501**, (Renumbered from 22-3-501, as repealed and reenacted by Laws of Utah
337 2019, Chapter 495)
338 **75A-5-502**, (Renumbered from 22-3-502, as repealed and reenacted by Laws of Utah
339 2019, Chapter 495)
340 **75A-5-503**, (Renumbered from 22-3-503, as repealed and reenacted by Laws of Utah
341 2019, Chapter 495)
342 **75A-5-504**, (Renumbered from 22-3-504, as repealed and reenacted by Laws of Utah
343 2019, Chapter 495)
344 **75A-5-505**, (Renumbered from 22-3-505, as last amended by Laws of Utah 2020,
345 Chapter 348)
346 **75A-5-506**, (Renumbered from 22-3-506, as last amended by Laws of Utah 2020,
347 Chapter 348)
348 **75A-5-507**, (Renumbered from 22-3-507, as last amended by Laws of Utah 2020,
349 Chapter 348)
350 **75A-5-601**, (Renumbered from 22-3-601, as last amended by Laws of Utah 2020,
351 Chapter 348)
352 **75A-5-602**, (Renumbered from 22-3-602, as last amended by Laws of Utah 2020,
353 Chapter 348)
354 **75A-5-701**, (Renumbered from 22-3-701, as last amended by Laws of Utah 2020,
355 Chapter 348)
356 **75A-5-702**, (Renumbered from 22-3-702, as last amended by Laws of Utah 2020,
357 Chapter 348)
358 **75A-5-703**, (Renumbered from 22-3-703, as last amended by Laws of Utah 2020,
359 Chapter 348)
360 **75A-5-801**, (Renumbered from 22-3-801, as last amended by Laws of Utah 2020,
361 Chapter 348)
362 **75A-5-802**, (Renumbered from 22-3-802, as enacted by Laws of Utah 2019, Chapter
363 495)
364 **75A-5-803**, (Renumbered from 22-3-803, as last amended by Laws of Utah 2020,
365 Chapter 348)
366 **75A-5-804**, (Renumbered from 22-3-804, as last amended by Laws of Utah 2020,

367 Chapter 348)
368 **75A-6-102**, (Renumbered from 75-11-102, as enacted by Laws of Utah 2017, Chapter
369 16)
370 **75A-6-103**, (Renumbered from 75-11-103, as enacted by Laws of Utah 2017, Chapter
371 16)
372 **75A-6-104**, (Renumbered from 75-11-104, as enacted by Laws of Utah 2017, Chapter
373 16)
374 **75A-6-105**, (Renumbered from 75-11-105, as enacted by Laws of Utah 2017, Chapter
375 16)
376 **75A-6-106**, (Renumbered from 75-11-106, as enacted by Laws of Utah 2017, Chapter
377 16)
378 **75A-6-107**, (Renumbered from 75-11-107, as enacted by Laws of Utah 2017, Chapter
379 16)
380 **75A-6-108**, (Renumbered from 75-11-108, as enacted by Laws of Utah 2017, Chapter
381 16)
382 **75A-6-109**, (Renumbered from 75-11-109, as enacted by Laws of Utah 2017, Chapter
383 16)
384 **75A-6-110**, (Renumbered from 75-11-110, as enacted by Laws of Utah 2017, Chapter
385 16)
386 **75A-6-111**, (Renumbered from 75-11-111, as enacted by Laws of Utah 2017, Chapter
387 16)
388 **75A-6-112**, (Renumbered from 75-11-112, as enacted by Laws of Utah 2017, Chapter
389 16)
390 **75A-6-113**, (Renumbered from 75-11-113, as enacted by Laws of Utah 2017, Chapter
391 16)
392 **75A-6-114**, (Renumbered from 75-11-114, as last amended by Laws of Utah 2018,
393 Chapter 27)
394 **75A-6-115**, (Renumbered from 75-11-115, as enacted by Laws of Utah 2017, Chapter
395 16)
396 **75A-6-116**, (Renumbered from 75-11-116, as enacted by Laws of Utah 2017, Chapter
397 16)

398 **75A-6-117**, (Renumbered from 75-11-117, as enacted by Laws of Utah 2017, Chapter
399 16)
400 **75A-6-118**, (Renumbered from 75-11-118, as enacted by Laws of Utah 2017, Chapter
401 16)
402 **75A-7-102**, (Renumbered from 22-5-2, as last amended by Laws of Utah 1995,
403 Chapter 20)
404 **75A-7-103**, (Renumbered from 22-5-3, as enacted by Laws of Utah 1961, Chapter 46)
405 **75A-7-104**, (Renumbered from 22-5-4, as last amended by Laws of Utah 1995,
406 Chapter 20)
407 **75A-7-105**, (Renumbered from 22-5-5, as last amended by Laws of Utah 1995,
408 Chapter 20)
409 **75A-7-106**, (Renumbered from 22-5-6, as last amended by Laws of Utah 1995,
410 Chapter 20)
411 **75A-7-107**, (Renumbered from 22-5-7, as enacted by Laws of Utah 1961, Chapter 46)
412 **75A-7-108**, (Renumbered from 22-5-8, as last amended by Laws of Utah 1995,
413 Chapter 20)
414 **75A-7-109**, (Renumbered from 22-5-9, as last amended by Laws of Utah 1995,
415 Chapter 20)
416 **75A-7-110**, (Renumbered from 22-5-10, as enacted by Laws of Utah 1961, Chapter 46)
417 **75A-7-111**, (Renumbered from 22-5-11, as enacted by Laws of Utah 1961, Chapter 46)
418 **75A-8-102**, (Renumbered from 75-5a-102, as enacted by Laws of Utah 1990, Chapter
419 272)
420 **75A-8-103**, (Renumbered from 75-5a-103, as enacted by Laws of Utah 1990, Chapter
421 272)
422 **75A-8-104**, (Renumbered from 75-5a-104, as enacted by Laws of Utah 1990, Chapter
423 272)
424 **75A-8-105**, (Renumbered from 75-5a-105, as enacted by Laws of Utah 1990, Chapter
425 272)
426 **75A-8-106**, (Renumbered from 75-5a-106, as enacted by Laws of Utah 1990, Chapter
427 272)
428 **75A-8-107**, (Renumbered from 75-5a-107, as enacted by Laws of Utah 1990, Chapter

429 272)
430 **75A-8-108**, (Renumbered from 75-5a-108, as enacted by Laws of Utah 1990, Chapter
431 272)
432 **75A-8-109**, (Renumbered from 75-5a-109, as enacted by Laws of Utah 1990, Chapter
433 272)
434 **75A-8-110**, (Renumbered from 75-5a-110, as last amended by Laws of Utah 2016,
435 Chapter 15)
436 **75A-8-111**, (Renumbered from 75-5a-111, as enacted by Laws of Utah 1990, Chapter
437 272)
438 **75A-8-112**, (Renumbered from 75-5a-112, as enacted by Laws of Utah 1990, Chapter
439 272)
440 **75A-8-113**, (Renumbered from 75-5a-113, as enacted by Laws of Utah 1990, Chapter
441 272)
442 **75A-8-114**, (Renumbered from 75-5a-114, as enacted by Laws of Utah 1990, Chapter
443 272)
444 **75A-8-115**, (Renumbered from 75-5a-115, as enacted by Laws of Utah 1990, Chapter
445 272)
446 **75A-8-116**, (Renumbered from 75-5a-116, as enacted by Laws of Utah 1990, Chapter
447 272)
448 **75A-8-117**, (Renumbered from 75-5a-117, as enacted by Laws of Utah 1990, Chapter
449 272)
450 **75A-8-118**, (Renumbered from 75-5a-118, as enacted by Laws of Utah 1990, Chapter
451 272)
452 **75A-8-119**, (Renumbered from 75-5a-119, as last amended by Laws of Utah 2005,
453 Chapter 71)
454 **75A-8-120**, (Renumbered from 75-5a-120, as enacted by Laws of Utah 1990, Chapter
455 272)
456 **75A-8-121**, (Renumbered from 75-5a-121, as enacted by Laws of Utah 1990, Chapter
457 272)
458 **75A-8-122**, (Renumbered from 75-5a-122, as enacted by Laws of Utah 1990, Chapter
459 272)

460 75A-8-123, (Renumbered from 75-5a-123, as enacted by Laws of Utah 1990, Chapter
461 272)

462 75B-1-103, (Renumbered from 22-2-1, Utah Code Annotated 1953)

463 75B-1-202, (Renumbered from 22-6-1, as enacted by Laws of Utah 1961, Chapter 174)

464 75B-1-203, (Renumbered from 22-6-2, as enacted by Laws of Utah 1961, Chapter 174)

465 75B-1-302, (Renumbered from 25-6-502, as last amended by Laws of Utah 2019,
466 Chapter 95)

467 REPEALS:

468 22-3-101, as repealed and reenacted by Laws of Utah 2019, Chapter 495

469 22-5-1, as last amended by Laws of Utah 1995, Chapter 20

470 25-6-501, as enacted by Laws of Utah 2017, Chapter 204

471 75-2a-101, as enacted by Laws of Utah 2007, Chapter 31

472 75-5a-101, as enacted by Laws of Utah 1990, Chapter 272

473 75-9-101, as enacted by Laws of Utah 2016, Chapter 256

474 75-10-101, as enacted by Laws of Utah 2017, Chapter 125

475 75-11-101, as enacted by Laws of Utah 2017, Chapter 16

476

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

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

479 **26B-6-201. Definitions.**

480 As used in this part:

481 (1) "Abandonment" means any knowing or intentional action or failure to act,
482 including desertion, by a person acting as a caretaker for a vulnerable adult that leaves the
483 vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or
484 medical or other health care.

485 (2) "Abuse" means:

486 (a) knowingly or intentionally:

487 (i) attempting to cause harm;

488 (ii) causing harm; or

489 (iii) placing another in fear of harm;

490 (b) unreasonable or inappropriate use of physical restraint, medication, or isolation that

491 causes or is likely to cause harm to a vulnerable adult;

492 (c) emotional or psychological abuse;

493 (d) a sexual offense as described in Title 76, Chapter 5, Offenses Against the
494 Individual; or

495 (e) deprivation of life sustaining treatment, or medical or mental health treatment,
496 except:

497 (i) as provided in [~~Title 75, Chapter 2a, Advance Health Care Directive Act~~] Title 75A,
498 Chapter 3, Health Care Decisions; or

499 (ii) when informed consent, as defined in Section 76-5-111, has been obtained.

500 (3) "Adult" means an individual who is 18 years old or older.

501 (4) "Adult protection case file" means a record, stored in any format, contained in a
502 case file maintained by Adult Protective Services.

503 (5) "Adult Protective Services" means the unit within the division responsible to
504 investigate abuse, neglect, and exploitation of vulnerable adults and provide appropriate
505 protective services.

506 (6) "Capacity to consent" means the ability of an individual to understand and
507 communicate regarding the nature and consequences of decisions relating to the individual, and
508 relating to the individual's property and lifestyle, including a decision to accept or refuse
509 services.

510 (7) "Caretaker" means a person or public institution that is entrusted with or assumes
511 the responsibility to provide a vulnerable adult with care, food, shelter, clothing, supervision,
512 medical or other health care, resource management, or other necessities for pecuniary gain, by
513 contract, or as a result of friendship, or who is otherwise in a position of trust and confidence
514 with a vulnerable adult, including a relative, a household member, an attorney-in-fact, a
515 neighbor, a person who is employed or who provides volunteer work, a court-appointed or
516 voluntary guardian, or a person who contracts or is under court order to provide care.

517 (8) "Counsel" means an attorney licensed to practice law in this state.

518 (9) "Database" means the statewide database maintained by the division under Section
519 26B-6-210.

520 (10) (a) "Dependent adult" means an individual 18 years old or older, who has a
521 physical or mental impairment that restricts the individual's ability to carry out normal

522 activities or to protect the individual's rights.

523 (b) "Dependent adult" includes an individual who has physical or developmental
524 disabilities or whose physical or mental capacity has substantially diminished because of age.

525 (11) "Elder abuse" means abuse, neglect, or exploitation of an elder adult.

526 (12) "Elder adult" means an individual 65 years old or older.

527 (13) "Emergency" means a circumstance in which a vulnerable adult is at an immediate
528 risk of death, serious physical injury, or serious physical, emotional, or financial harm.

529 (14) "Emergency protective services" means measures taken by Adult Protective
530 Services under time-limited, court-ordered authority for the purpose of remediating an
531 emergency.

532 (15) (a) "Emotional or psychological abuse" means knowing or intentional verbal or
533 nonverbal conduct directed at a vulnerable adult that results in the vulnerable adult suffering
534 mental anguish, emotional distress, fear, humiliation, degradation, agitation, or confusion.

535 (b) "Emotional or psychological abuse" includes intimidating, threatening, isolating,
536 coercing, or harassing.

537 (c) "Emotional or psychological abuse" does not include verbal or non-verbal conduct
538 by a vulnerable adult who lacks the capacity to intentionally or knowingly:

539 (i) engage in the conduct; or

540 (ii) cause mental anguish, emotional distress, fear, humiliation, degradation, agitation,
541 or confusion.

542 (16) "Exploitation" means an offense described in Section [76-5-111.3](#), [76-5-111.4](#), or
543 [76-5b-202](#).

544 (17) "Harm" means pain, mental anguish, emotional distress, hurt, physical or
545 psychological damage, physical injury, serious physical injury, suffering, or distress inflicted
546 knowingly or intentionally.

547 (18) "Inconclusive" means a finding by the division that there is not a reasonable basis
548 to conclude that abuse, neglect, or exploitation occurred.

549 (19) "Intimidation" means communication through verbal or nonverbal conduct which
550 threatens deprivation of money, food, clothing, medicine, shelter, social interaction,
551 supervision, health care, or companionship, or which threatens isolation or abuse.

552 (20) (a) "Isolation" means knowingly or intentionally preventing a vulnerable adult

553 from having contact with another person, unless the restriction of personal rights is authorized
554 by court order, by:

555 (i) preventing the vulnerable adult from communicating, visiting, interacting, or
556 initiating interaction with others, including receiving or inviting visitors, mail, or telephone
557 calls, contrary to the expressed wishes of the vulnerable adult, or communicating to a visitor
558 that the vulnerable adult is not present or does not want to meet with or talk to the visitor,
559 knowing that communication to be false;

560 (ii) physically restraining the vulnerable adult in order to prevent the vulnerable adult
561 from meeting with a visitor; or

562 (iii) making false or misleading statements to the vulnerable adult in order to induce
563 the vulnerable adult to refuse to receive communication from visitors or other family members.

564 (b) "Isolation" does not include an act:

565 (i) intended in good faith to protect the physical or mental welfare of the vulnerable
566 adult; or

567 (ii) performed pursuant to the treatment plan or instructions of a physician or other
568 professional advisor of the vulnerable adult.

569 (21) "Lacks capacity to consent" is as defined in Section [76-5-111.4](#).

570 (22) (a) "Neglect" means:

571 (i) (A) failure of a caretaker to provide necessary care, including nutrition, clothing,
572 shelter, supervision, personal care, or dental, medical, or other health care for a vulnerable
573 adult, unless the vulnerable adult is able to provide or obtain the necessary care without
574 assistance; or

575 (B) failure of a caretaker to provide protection from health and safety hazards or
576 maltreatment;

577 (ii) failure of a caretaker to provide care to a vulnerable adult in a timely manner and
578 with the degree of care that a reasonable person in a like position would exercise;

579 (iii) a pattern of conduct by a caretaker, without the vulnerable adult's informed
580 consent, resulting in deprivation of food, water, medication, health care, shelter, cooling,
581 heating, or other services necessary to maintain the vulnerable adult's well being;

582 (iv) knowing or intentional failure by a caretaker to carry out a prescribed treatment
583 plan that causes or is likely to cause harm to the vulnerable adult;

584 (v) self-neglect by the vulnerable adult; or

585 (vi) abandonment by a caretaker.

586 (b) "Neglect" does not include conduct, or failure to take action, that is permitted or
587 excused under [~~Title 75, Chapter 2a, Advance Health Care Directive Act~~] [Title 75A, Chapter 3,](#)
588 [Health Care Decisions.](#)

589 (23) "Physical injury" includes the damage and conditions described in Section
590 [76-5-111.](#)

591 (24) "Protected person" means a vulnerable adult for whom the court has ordered
592 protective services.

593 (25) "Protective services" means services to protect a vulnerable adult from abuse,
594 neglect, or exploitation.

595 (26) "Self-neglect" means the failure of a vulnerable adult to provide or obtain food,
596 water, medication, health care, shelter, cooling, heating, safety, or other services necessary to
597 maintain the vulnerable adult's well being when that failure is the result of the adult's mental or
598 physical impairment. Choice of lifestyle or living arrangements may not, by themselves, be
599 evidence of self-neglect.

600 (27) "Serious physical injury" is as defined in Section [76-5-111.](#)

601 (28) "Supported" means a finding by the division that there is a reasonable basis to
602 conclude that abuse, neglect, or exploitation occurred.

603 (29) "Undue influence" occurs when a person:

604 (a) uses influence to take advantage of a vulnerable adult's mental or physical
605 impairment; or

606 (b) uses the person's role, relationship, or power:

607 (i) to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or
608 fear of a vulnerable adult; or

609 (ii) to gain control deceptively over the decision making of the vulnerable adult.

610 (30) "Vulnerable adult" means an elder adult, or a dependent adult who has a mental or
611 physical impairment which substantially affects that person's ability to:

612 (a) provide personal protection;

613 (b) provide necessities such as food, shelter, clothing, or mental or other health care;

614 (c) obtain services necessary for health, safety, or welfare;

- 615 (d) carry out the activities of daily living;
- 616 (e) manage the adult's own financial resources; or
- 617 (f) comprehend the nature and consequences of remaining in a situation of abuse,
- 618 neglect, or exploitation.

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

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

621 **58-9-602. Determination of control of disposition.**

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

626 (1) the person designated:

627 (a) in a written instrument, excluding a power of attorney that terminates at death under
628 Section [~~75-9-110~~] 75A-2-110, if the written instrument is acknowledged before a Notary
629 Public or executed with the same formalities required of a will under Section 75-2-502; or

630 (b) by a service member while serving in a branch of the United States Armed Forces
631 as defined in 10 U.S.C. Sec. 1481 in a federal Record of Emergency Data, DD Form 93 or
632 subsequent form;

633 (2) the surviving, legally recognized spouse of the decedent, unless a personal
634 representative was nominated by the decedent subsequent to the marriage, in which case the
635 personal representative shall take priority over the spouse;

636 (3) the person nominated to serve as the personal representative of the decedent's estate
637 in a will executed with the formalities required in Section 75-2-502;

638 (4) (a) the sole surviving child of the decedent, or if there is more than one child of the
639 decedent, the majority of the surviving children; and

640 (b) less than one-half of the surviving children are vested with the rights of this section
641 if they have used reasonable efforts to notify all other surviving children of their instructions
642 and are not aware of any opposition to those instructions on the part of more than one-half of
643 all surviving children;

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

645 (a) if one of the surviving parents is absent, the remaining parent is vested with the

646 rights and duties of this section after reasonable efforts have been unsuccessful in locating the
647 absent surviving parent; or

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

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

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

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

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

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

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

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

669 **75-1-201. Title definitions.**

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

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

676 (2) "Application" means a written request to the registrar for an order of informal

677 probate or appointment under [~~Title 75, Chapter 3, Part 3, Informal Probate and Appointment~~
 678 ~~Proceedings~~] Chapter 3, Part 3, Informal Probate and Appointment Proceedings.

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

680 (i) a person who has any present or future interest, vested or contingent~~[, and also~~
 681 ~~includes]~~; and

682 (ii) the owner of an interest by assignment or other transfer~~];~~

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

685 (c) "Beneficiary," as it relates to a [~~"beneficiary of a beneficiary designation," refers to]~~
 686 beneficiary of a beneficiary designation, means a beneficiary of:

687 (i) an insurance or annuity policy~~[-of]~~;

688 (ii) an account with POD designation~~[-of]~~;

689 (iii) a security registered in beneficiary form (TOD)~~[-or-of]~~;

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

691 (v) other nonprobate transfer at death~~[-and]~~.

692 (d) "Beneficiary," as it relates to a [~~"~~]beneficiary designated in a governing
 693 instrument,~~["~~] includes:

694 (i) a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary
 695 designation, a donee, appointee, or taker in default of a power of appointment~~[-and]~~; and

696 (ii) a person in whose favor a power of attorney or a power held in any individual,
 697 fiduciary, or representative capacity is exercised.

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

702 (5) (a) "Child" includes any individual entitled to take as a child under this [~~code~~] title
 703 by intestate succession from the parent whose relationship is involved [~~and excludes any~~
 704 ~~person]~~.

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

707 (6) (a) "Claims," in respect to estates of decedents and protected persons, includes

708 liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise,
709 and liabilities of the estate which arise at or after the death of the decedent or after the
710 appointment of a conservator, including funeral expenses and expenses of administration.

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

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

716 [(7)] (8) "Conservator" means a person who is appointed by a court to manage the
717 estate of a protected person.

718 [(8)] (9) "Court" means any of the courts of record in this state having jurisdiction in
719 matters relating to the affairs of decedents.

720 [(9)] (10) "Descendant" [~~of an individual~~] means all of [~~his~~] an individual's
721 descendants of all generations, with the relationship of parent and child at each generation
722 being determined by the definition of child and parent contained in this title.

723 [(10)] (11) "Devise," when used as a noun, means a testamentary disposition of real or
724 personal property and, when used as a verb, means to dispose of real or personal property by
725 will.

726 [(11)] (12) "Devisee" means any person designated in a will to receive a devise. For
727 the purposes of [~~Title 75, Chapter 3, Probate of Wills and Administration~~] Chapter 3, Probate
728 of Wills and Administration, in the case of a devise to an existing trust or trustee, or to a trustee
729 in trust described by will, the trust or trustee is the devisee, and the beneficiaries are not
730 devisees.

731 [(12)] (13) "Disability" means cause for a protective order as described by Section
732 75-5-401.

733 [(13)] (14) "Distributee" means any person who has received property of a decedent
734 from his personal representative other than as a creditor or purchaser. A testamentary trustee is
735 a distributee only to the extent of distributed assets or increment thereto remaining in his hands.
736 A beneficiary of a testamentary trust to whom the trustee has distributed property received from
737 a personal representative is a distributee of the personal representative. For purposes of this
738 provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to

739 the extent of the devised assets.

740 ~~[(14)]~~ (15) "Estate" includes the property of the decedent, trust, or other person whose
741 affairs are subject to this title as originally constituted and as it exists from time to time during
742 administration.

743 ~~[(15)]~~ (16) "Exempt property" means that property of a decedent's estate which is
744 described in Section [75-2-403](#).

745 ~~[(16)]~~ (17) "Fiduciary" includes a personal representative, guardian, conservator, and
746 trustee.

747 ~~[(17)]~~ (18) "Foreign personal representative" means a personal representative of
748 another jurisdiction.

749 ~~[(18)]~~ (19) "Formal proceedings" means proceedings conducted before a judge with
750 notice to interested persons.

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

752 ~~[(19)]~~ (21) "Governing instrument" means a deed, will, trust, insurance or annuity
753 policy, account with POD designation, security registered in beneficiary form (TOD), pension,
754 profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of
755 appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of
756 any similar type.

757 ~~[(20)]~~ (22) (a) "Guardian" means a person who has qualified as a guardian of a minor
758 or incapacitated person pursuant to testamentary or court appointment, or by written instrument
759 as provided in Section [75-5-202.5](#)~~[, but excludes one]~~.

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

761 ~~[(21)]~~ (23) "Heirs," except as controlled by Section [75-2-711](#), means persons, including
762 the surviving spouse and state, who are entitled under the statutes of intestate succession to the
763 property of a decedent.

764 ~~[(22)]~~ (24) "Incapacitated" ~~[or "incapacity" is measured by functional limitations and]~~
765 means a judicial determination after proof by clear and convincing evidence that an adult's
766 ability to do the following is impaired to the extent that the individual lacks the ability, even
767 with appropriate technological assistance, to meet the essential requirements for financial
768 protection or physical health, safety, or self-care:

769 (a) receive and evaluate information;

770 (b) make and communicate decisions; or

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

772 (25) "Incapacity" means incapacitated.

773 ~~[(23)]~~ (26) "Informal proceedings" mean [those] a proceeding conducted without
774 notice to interested persons by an officer of the court acting as a registrar for probate of a will
775 or appointment of a personal representative.

776 ~~[(24)]~~ (27) (a) "Interested person" includes heirs, devisees, children, spouses, creditors,
777 beneficiaries, and any others having a property right in or claim against a trust estate or the
778 estate of a decedent, ward, or protected person. [It also] The meaning of interested person as it
779 relates to particular persons may vary from time to time and is determined according to the
780 particular purposes of, and matter involved in, any proceeding.

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

786 ~~[(25)]~~ (28) "Issue" [of a person] means a descendant [as defined in Subsection (9)] of
787 an individual.

788 ~~[(26)]~~ (29) (a) "Joint tenants with the right of survivorship" [and "community property
789 with the right of survivorship"] includes coowners of property held under circumstances that
790 entitle one or more to the whole of the property on the death of the other [or others, but
791 excludes].

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

795 ~~[(27)]~~ (30) "Lease" includes an oil, gas, or other mineral lease.

796 ~~[(28)]~~ (31) "Letters" includes letters testamentary, letters of guardianship, letters of
797 administration, and letters of conservatorship.

798 ~~[(29)]~~ (32) "Minor" means a person who is under 18 years [of age] old.

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

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

803 ~~[(30)]~~ (35) "Mortgage" means any conveyance, agreement, or arrangement in which
804 property is used as security.

805 ~~[(31)]~~ (36) "Nonresident decedent" means a decedent who was domiciled in another
806 jurisdiction at the time of ~~[his]~~ the decedent's death.

807 ~~[(32)]~~ (37) "Organization" includes a corporation, limited liability company, business
808 trust, estate, trust, partnership, joint venture, association, government or governmental
809 subdivision or agency, or any other legal or commercial entity.

810 ~~[(33)]~~ (38) (a) "Parent" includes any person entitled to take, or who would be entitled
811 to take if the child died without a will, as a parent under this ~~[code]~~ title by intestate succession
812 from the child whose relationship is in question ~~[and excludes]~~.

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

815 ~~[(34)]~~ (39) "Payor" means a trustee, insurer, business entity, employer, government,
816 governmental agency or subdivision, or any other person authorized or obligated by law or a
817 governing instrument to make payments.

818 ~~[(35)]~~ (40) "Person" means an individual or an organization.

819 ~~[(36)]~~ (41) ~~[(a)]~~ "Personal representative" includes executor, administrator, successor
820 personal representative, special administrator, and persons who perform substantially the same
821 function under the law governing their status.

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

823 ~~[(37)]~~ (42) "Petition" means a written request to the court for an order after notice.

824 ~~[(38)]~~ (43) "Proceeding" includes action at law and suit in equity.

825 ~~[(39)]~~ (44) "Property" includes both real and personal property or any interest therein
826 and means anything that may be the subject of ownership.

827 ~~[(40)]~~ (45) "Protected person" means a person for whom a conservator has been
828 appointed. ~~[A "minor protected person" means a minor for whom a conservator has been~~
829 ~~appointed because of minority].~~

830 ~~[(41)]~~ (46) "Protective proceeding" means a proceeding described in Section [75-5-401](#).

831 ~~[(42)]~~ (47) "Record" means information that is inscribed on a tangible medium or that

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

833 ~~[(43)]~~ (48) "Registrar" ~~[refers to]~~ means the official of the court designated to perform
834 the functions of registrar as provided in Section 75-1-307.

835 ~~[(44)]~~ (49) "Security" includes any note, stock, treasury stock, bond, debenture,
836 evidence of indebtedness, certificate of interest, or participation in an oil, gas, or mining title or
837 lease or in payments out of production under such a title or lease, collateral trust certificate,
838 transferable share, voting trust certificate, and, in general, any interest or instrument commonly
839 known as a security, or any certificate of interest or participation, any temporary or interim
840 certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or
841 purchase, any of the foregoing.

842 ~~[(45)]~~ (50) "Settlement," in reference to a decedent's estate, includes the full process of
843 administration, distribution, and closing.

844 ~~[(46)]~~ (51) "Sign" means, with present intent to authenticate or adopt a record other
845 than a will:

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

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

849 ~~[(47)]~~ (52) "Special administrator" means a personal representative as described in
850 Sections 75-3-614 through 75-3-618.

851 ~~[(48)]~~ (53) "State" means a state of the United States, the District of Columbia, the
852 Commonwealth of Puerto Rico, any territory or insular possession subject to the jurisdiction of
853 the United States, or a Native American tribe or band recognized by federal law or formally
854 acknowledged by a state.

855 ~~[(49)]~~ (54) "Successor personal representative" means a personal representative, other
856 than a special administrator, who is appointed to succeed a previously appointed personal
857 representative.

858 ~~[(50)]~~ (55) "Successors" means persons, other than creditors, who are entitled to
859 property of a decedent under the decedent's will or this title.

860 ~~[(51)]~~ (56) "Supervised administration" ~~[refers to]~~ means the proceedings described in
861 ~~[Title 75, Chapter 3, Part 5, Supervised Administration]~~ Chapter 3, Part 5, Supervised
862 Administration.

863 ~~[(52)] (57) (a) ["Survive," except for purposes of Part 3 of Article VI, Uniform TOD~~
 864 ~~Security Registration Act, means]~~ "Survive" means, except for Chapter 6, Part 3, Uniform
 865 ~~Transfer on Death Security Registration Act,~~ that an individual has neither predeceased an
 866 event, including the death of another individual, nor is considered to have predeceased an event
 867 under Section ~~75-2-104~~ or ~~75-2-702~~. ~~[The term]~~

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

870 ~~[(53)] (58)~~ "Testacy proceeding" means a proceeding to establish a will or determine
 871 intestacy.

872 ~~[(54)] (59)~~ "Testator" includes an individual of either sex.

873 ~~[(55)] (60) (a)~~ "Trust" includes:

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

876 (ii) an express trust, private or charitable, with additions thereto, wherever and
 877 however created[; ~~The term also includes]; or~~

878 (iii) a trust created or determined by judgment or decree under which the trust is to be
 879 administered in the manner of an express trust. [~~The term excludes other constructive trusts,~~
 880 and it excludes resulting trusts, conservatorships, personal representatives, trust accounts]

881 (b) "Trust" does not include:

882 (i) a constructive trust;

883 (ii) a resulting trust;

884 (iii) a conservatorship;

885 (iv) a personal representative;

886 (v) a trust account as defined in [~~Title 75, Chapter 6, Nonprobate Transfers, custodial~~
 887 arrangements pursuant to any] Chapter 6, Nonprobate Transfers;

888 (vi) a custodial arrangement under Title 75A, Chapter 8, Uniform Transfers To Minors
 889 Act[; ~~business trusts];~~

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

891 (viii) a common trust [~~funds;] fund;~~

892 (ix) a voting [~~trusts;] trust;~~

893 (x) a preneed funeral [~~plans] plan~~ under Title 58, Chapter 9, Funeral Services

894 Licensing Act~~[, security arrangements, liquidation trusts, and trusts]~~;

895 (xi) a security arrangement;

896 (xii) a liquidation trust;

897 (xiii) a trust for the primary purpose of paying debts, dividends, interest, salaries,

898 wages, profits, pensions, or employee benefits of any kind~~[, and]~~; or

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

900 ~~[(56)]~~ (61) "Trustee" includes an original, additional, and successor trustee, and

901 cotrustee, whether or not appointed or confirmed by the court.

902 ~~[(57)]~~ (62) "Ward" means a person for whom a guardian has been appointed. [~~A~~

903 ~~"minor ward" is a minor for whom a guardian has been appointed solely because of minority.]~~

904 ~~[(58)]~~ (63) "Will" includes codicil and any testamentary instrument which merely

905 appoints an executor, revokes or revises another will, nominates a guardian, or expressly

906 excludes or limits the right of an individual or class to succeed to property of the decedent

907 passing by intestate succession.

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

909 **75-2-205. Decedent's nonprobate transfers to others.**

910 Unless excluded under Section **75-2-208**, the value of the augmented estate includes the

911 value of the decedent's nonprobate transfers to others, not included under Section **75-2-204**, of

912 any of the types described in this section, in the amount provided respectively for each type of

913 transfer:

914 (1) Property owned or owned in substance by the decedent immediately before death

915 that passed outside probate at the decedent's death. Property included under this category

916 consists of the property described in this Subsection (1).

917 (a) (i) Property over which the decedent alone, immediately before death, held a

918 presently exercisable general power of appointment.

919 (ii) The amount included is the value of the property subject to the power, to the extent

920 the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise,

921 to or for the benefit of any person other than the decedent's estate or surviving spouse.

922 (b) (i) The decedent's fractional interest in property held by the decedent in joint

923 tenancy with the right of survivorship.

924 (ii) The amount included is the value of the decedent's fractional interest, to the extent

925 the fractional interest passed by right of survivorship at the decedent's death to a surviving joint
926 tenant other than the decedent's surviving spouse.

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

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

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

936 (ii) The amount included:

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

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

942 (2) Property transferred in any of the forms described in this Subsection (2) by the
943 decedent during marriage:

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

947 (ii) An irrevocable transfer in trust which includes a restriction on transfer of the
948 decedent's interest as settlor and beneficiary as described in Section ~~[25-6-502]~~ [75B-1-302](#).

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

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

956 (ii) The amount included with respect to a power over property is the value of the
957 property subject to the power, and the amount included with respect to a power over income is
958 the value of the property that produces or produced the income, to the extent the power in
959 either case was exercisable at the decedent's death to or for the benefit of any person other than
960 the decedent's surviving spouse or to the extent the property passed at the decedent's death, by
961 exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than
962 the decedent's estate or surviving spouse.

963 (iii) If the power is a power over both income and property and Subsection (2)(b)(ii)
964 produces different amounts, the amount included is the greater amount.

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

968 (a) (i) Any property that passed as a result of the termination of a right or interest in, or
969 power over, property that would have been included in the augmented estate under Subsection
970 (1)(a), (b), or (c), or under Subsection (2), if the right, interest, or power had not terminated
971 until the decedent's death.

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

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

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

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

987 (ii) The amount included:

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

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

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

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

998 Section 5. Section **75-7-105** is amended to read:

999 **75-7-105. Default and mandatory rules.**

1000 (1) Except as otherwise provided in the terms of the trust, this chapter governs the
1001 duties and powers of a trustee, relations among trustees, and the rights and interests of a
1002 beneficiary.

1003 (2) Except as specifically provided in this chapter, the terms of a trust prevail over any
1004 provision of this chapter except:

1005 (a) the requirements for creating a trust;

1006 (b) subject to Sections [75-12-109](#), [75-12-111](#), and [75-12-112](#), the duty of a trustee to
1007 act in good faith and in accordance with the purposes of the trust;

1008 (c) the requirement that a trust and the terms of the trust be for the benefit of the trust's
1009 beneficiaries;

1010 (d) the power of the court to modify or terminate a trust under Sections [75-7-410](#)
1011 through [75-7-416](#);

1012 (e) the effect of a spendthrift provision, Section [~~25-6-502~~] [75B-1-302](#), and the rights
1013 of certain creditors and assignees to reach a trust as provided in Part 5, Creditor's Claims -
1014 Spendthrift and Discretionary Trusts;

1015 (f) the power of the court under Section [75-7-702](#) to require, dispense with, or modify
1016 or terminate a bond;

1017 (g) the effect of an exculpatory term under Section [75-7-1008](#);

1018 (h) the rights under Sections [75-7-1010](#) through [75-7-1013](#) of a person other than a
1019 trustee or beneficiary;

1020 (i) periods of limitation for commencing a judicial proceeding; and

1021 (j) the subject-matter jurisdiction of the court and venue for commencing a proceeding
1022 as provided in Sections [75-7-203](#) and [75-7-205](#).

1023 Section 6. Section **75-7-107** is amended to read:

1024 **75-7-107. Governing law.**

1025 (1) [~~For purposes of~~] As used in this section:

1026 (a) "Foreign trust" means a trust that is created in another state or country and valid in
1027 the state or country in which the trust is created.

1028 (b) "State law provision" means a provision that the laws of a named state govern the
1029 validity, construction, and administration of a trust.

1030 (2) If a trust has a state law provision specifying this state, the validity, construction,
1031 and administration of the trust are to be governed by the laws of this state if any administration
1032 of the trust is done in this state.

1033 (3) For all trusts created on or after December 31, 2003, if a trust does not have a state
1034 law provision, the validity, construction, and administration of the trust are to be governed by
1035 the laws of this state if the trust is administered in this state.

1036 (4) A trust shall be considered to be administered in this state if:

1037 (a) the trust states that this state is the place of administration, and any administration
1038 of the trust is done in this state; or

1039 (b) the place of business where the fiduciary transacts a major portion of its
1040 administration of the trust is in this state.

1041 (5) If a foreign trust is administered in this state as provided in this section, the
1042 following provisions are effective and enforceable under the laws of this state:

1043 (a) a provision in the trust that restricts the transfer of trust assets in a manner similar
1044 to Section [~~25-6-502~~] [75B-1-302](#);

1045 (b) a provision that allows the trust to be perpetual; or

1046 (c) a provision that is not expressly prohibited by the law of this state.

1047 (6) A foreign trust that moves its administration to this state is valid whether or not the
1048 trust complied with the laws of this state at the time of the trust's creation or after the trust's

1049 creation.

1050 (7) Unless otherwise designated in the trust instrument, a trust is administered in this
1051 state if it meets the requirements of Subsection (4).

1052 Section 7. Section **75-7-301** is amended to read:

1053 **75-7-301. Basic effect.**

1054 (1) Notice to a person who may represent and bind another person under this part has
1055 the same effect as if notice were given directly to the other person.

1056 (2) The consent of a person who may represent and bind another person under this part
1057 is binding on the person represented unless the person represented objects to the representation
1058 before the consent would otherwise have become effective.

1059 (3) Except as otherwise provided in Sections [75-7-411](#) and [\[25-6-502\] 75B-1-302](#), a
1060 person who under this part may represent a settlor who lacks capacity may receive notice and
1061 give a binding consent on the settlor's behalf.

1062 Section 8. Section **75-7-501** is amended to read:

1063 **75-7-501. Rights of beneficiary's creditor or assignee.**

1064 To the extent a beneficiary's interest is not protected by a spendthrift provision or
1065 Section [\[25-6-502\] 75B-1-302](#), the court may authorize a creditor or assignee of the beneficiary
1066 to reach the beneficiary's interest by attachment of present or future distributions to or for the
1067 benefit of the beneficiary or other means. The court may limit the award to relief as is
1068 appropriate under the circumstances.

1069 Section 9. Section **75-7-505** is amended to read:

1070 **75-7-505. Creditor's claim against settlor.**

1071 Regardless of whether the terms of a trust contain a spendthrift provision, the following
1072 rules apply:

1073 (1) During the lifetime of the settlor, the property of a revocable trust is subject to the
1074 claims of the settlor's creditors. If a revocable trust has more than one settlor, the amount the
1075 creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the
1076 portion of the trust attributable to that settlor's contribution.

1077 (2) (a) With respect to an irrevocable trust other than an irrevocable trust that meets the
1078 requirements of Section [\[25-6-502\] 75B-1-302](#), a creditor or assignee of the settlor may reach
1079 the maximum amount that can be distributed to or for the settlor's benefit.

1080 (b) With respect to an irrevocable trust that has more than one settlor, other than an
1081 irrevocable trust that meets the requirements of Section ~~[25-6-502]~~ 75B-1-302, the amount a
1082 creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the
1083 portion of the trust attributable to that settlor's contribution.

1084 (c) Notwithstanding Subsections (2)(a) and (b), a creditor of a settlor may not satisfy
1085 the creditor's claim from an irrevocable trust solely because the trustee may make a
1086 discretionary distribution reimbursing the settlor for income tax liability of the settlor
1087 attributable to the income of the irrevocable trust, when the distribution is:

- 1088 (i) subject to the discretion of a trustee who is not the settlor;
- 1089 (ii) subject to the consent of an advisor who is not the settlor; or
- 1090 (iii) at the direction of an advisor who is not the settlor.

1091 (3) After the death of a settlor, and subject to the settlor's right to direct the source from
1092 which liabilities will be paid, the property of a trust that was revocable at the settlor's death, but
1093 not property received by the trust as a result of the death of the settlor which is otherwise
1094 exempt from the claims of the settlor's creditors, is subject to claims of the settlor's creditors,
1095 costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal
1096 of remains, and statutory allowances to a surviving spouse and children to the extent the
1097 settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

1098 Section 10. Section **75-7-814** is amended to read:

1099 **75-7-814. Specific powers of trustee.**

1100 (1) Without limiting the authority conferred by Section 75-7-813, a trustee may:

1101 (a) collect trust property and accept or reject additions to the trust property from a
1102 settlor or any other person;

1103 (b) acquire or sell property, for cash or on credit, at public or private sale;

1104 (c) exchange, partition, or otherwise change the character of trust property;

1105 (d) deposit trust money in an account in a regulated financial service institution;

1106 (e) borrow money, with or without security from any financial institution, including a
1107 financial institution that is serving as a trustee or one of its affiliates, and mortgage or pledge
1108 trust property for a period within or extending beyond the duration of the trust;

1109 (f) with respect to an interest in a proprietorship, partnership, limited liability company,
1110 business trust, corporation, or other form of business or enterprise, continue the business or

1111 other enterprise and take any action that may be taken by shareholders, members, or property
1112 owners, including merging, dissolving, or otherwise changing the form of business
1113 organization or contributing additional capital;

1114 (g) with respect to stocks or other securities, exercise the rights of an absolute owner,
1115 including the right to:

1116 (i) vote, or give proxies to vote, with or without power of substitution, or enter into or
1117 continue a voting trust agreement;

1118 (ii) hold a security in the name of a nominee or in other form without disclosure of the
1119 trust so that title may pass by delivery;

1120 (iii) pay calls, assessments, and other sums chargeable or accruing against the
1121 securities, and sell or exercise stock subscription or conversion rights; and

1122 (iv) deposit the securities with a depository or other regulated financial service
1123 institution;

1124 (h) with respect to an interest in real property, construct, or make ordinary or
1125 extraordinary repairs to, alterations to, or improvements in, buildings or other structures,
1126 demolish improvements, raze existing or erect new party walls or buildings, subdivide or
1127 develop land, dedicate land to public use or grant public or private easements, and make or
1128 vacate plats and adjust boundaries;

1129 (i) enter into a lease for any purpose as lessor or lessee, including a lease or other
1130 arrangement for exploration and removal of natural resources, with or without the option to
1131 purchase or renew, for a period within or extending beyond the duration of the trust;

1132 (j) grant an option involving a sale, lease, or other disposition of trust property or
1133 acquire an option for the acquisition of property, including an option exercisable beyond the
1134 duration of the trust, and exercise an option so acquired;

1135 (k) insure the property of the trust against damage or loss and insure the trustee, the
1136 trustee's agents, and beneficiaries against liability arising from the administration of the trust;

1137 (l) abandon or decline to administer property of no value or of insufficient value to
1138 justify its collection or continued administration;

1139 (m) with respect to possible liability for violation of environmental law:

1140 (i) inspect or investigate property the trustee holds or has been asked to hold, or
1141 property owned or operated by an organization in which the trustee holds or has been asked to

1142 hold an interest, for the purpose of determining the application of environmental law with
1143 respect to the property;

1144 (ii) take action to prevent, abate, or otherwise remedy any actual or potential violation
1145 of any environmental law affecting property held directly or indirectly by the trustee, whether
1146 taken before or after the assertion of a claim or the initiation of governmental enforcement;

1147 (iii) decline to accept property into trust or disclaim any power with respect to property
1148 that is or may be burdened with liability for violation of environmental law;

1149 (iv) compromise claims against the trust which may be asserted for an alleged violation
1150 of environmental law; and

1151 (v) pay the expense of any inspection, review, abatement, or remedial action to comply
1152 with environmental law;

1153 (n) pay or contest any claim, settle a claim by or against the trust, and release, in whole
1154 or in part, a claim belonging to the trust;

1155 (o) pay taxes, assessments, compensation of the trustee and of employees and agents of
1156 the trust, and other expenses incurred in the administration of the trust;

1157 (p) exercise elections with respect to federal, state, and local taxes;

1158 (q) select a mode of payment under any employee benefit or retirement plan, annuity,
1159 or life insurance payable to the trustee, exercise rights thereunder, including exercise of the
1160 right to indemnification for expenses and against liabilities, and take appropriate action to
1161 collect the proceeds;

1162 (r) make loans out of trust property, including loans to a beneficiary on terms and
1163 conditions the trustee considers to be fair and reasonable under the circumstances, and the
1164 trustee has a lien on future distributions for repayment of those loans;

1165 (s) pledge trust property to guarantee loans made by others to the beneficiary;

1166 (t) appoint a trustee to act in another jurisdiction with respect to trust property located
1167 in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the
1168 appointing trustee, require that the appointed trustee furnish security, and remove any trustee so
1169 appointed;

1170 (u) pay an amount distributable to a beneficiary who is under a legal disability or who
1171 the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or
1172 applying it for the beneficiary's benefit, or by:

- 1173 (i) paying it to the beneficiary's conservator or, if the beneficiary does not have a
1174 conservator, the beneficiary's guardian;
- 1175 (ii) paying it to the beneficiary's custodian under [~~Title 75, Chapter 5a, Uniform~~
1176 ~~Transfers to Minors Act~~] Title 75A, Chapter 8, Uniform Transfers to Minors Act;
- 1177 (iii) if the trustee does not know of a conservator, guardian, custodian, or custodial
1178 trustee, paying it to an adult relative or other person having legal or physical care or custody of
1179 the beneficiary, to be expended on the beneficiary's behalf; or
- 1180 (iv) managing it as a separate fund on the beneficiary's behalf, subject to the
1181 beneficiary's continuing right to withdraw the distribution;
- 1182 (v) on distribution of trust property or the division or termination of a trust, make
1183 distributions in divided or undivided interests, allocate particular assets in proportionate or
1184 disproportionate shares, value the trust property for those purposes, and adjust for resulting
1185 differences in valuation;
- 1186 (w) resolve a dispute concerning the interpretation of the trust or its administration by
1187 mediation, arbitration, or other procedure for alternative dispute resolution;
- 1188 (x) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to
1189 protect trust property and the trustee in the performance of the trustee's duties;
- 1190 (y) sign and deliver contracts and other instruments that are useful to achieve or
1191 facilitate the exercise of the trustee's powers; and
- 1192 (z) on termination of the trust, exercise the powers appropriate to finalize the
1193 administration of the trust and distribute the trust property to the persons entitled to it.
- 1194 (2) A trustee may delegate investment and management functions that a prudent trustee
1195 of comparable skills could properly delegate under the circumstances.
- 1196 (a) The trustee shall exercise reasonable care, skill, and caution in:
- 1197 (i) selecting the agent;
- 1198 (ii) establishing the scope and terms of the delegation consistent with the purposes of
1199 the trust; and
- 1200 (iii) periodically reviewing the agent's actions to monitor the agent's performance and
1201 compliance with the terms of the delegation.
- 1202 (b) In performing a delegated function, an agent has a duty to the trust to exercise
1203 reasonable care to comply with the terms of the delegation.

1204 (c) A trustee who complies with the requirements of this Subsection (2) is not liable to
1205 the beneficiaries or to the trust for the decisions or actions of the agent to whom the function
1206 was delegated.

1207 (3) The trustee may exercise the powers set forth in this section and in the trust either
1208 in the name of the trust or in the name of the trustee as trustee, specifically including the right
1209 to take title, to encumber or convey assets, including real property, in the name of the trust.
1210 This Subsection (3) applies to a trustee's exercise of trust powers. After May 11, 2010, for
1211 recording purposes, the name of the trustee, the address of the trustee, and the name and date of
1212 the trust, shall be included on all recorded documents affecting real property to which the trust
1213 is a party in interest.

1214 Section 11. Section **75-7-816** is amended to read:

1215 **75-7-816. Recitals when title to real property is in trust -- Failure.**

1216 (1) When title to real property is granted to a person as trustee, the terms of the trust
1217 may be given either:

1218 (a) in the deed of transfer; or

1219 (b) in an instrument signed by the grantor and recorded in the same office as the grant
1220 to the trustee.

1221 (2) If the terms of the trust are not made public as required in Subsection (1), a
1222 conveyance from the trustee is absolute in favor of purchasers for value who take the property
1223 without notice of the terms of the trust.

1224 (3) The terms of the trust recited in the deed of transfer or the instrument recorded
1225 under Subsection (1)(b) shall include:

1226 (a) the name of the trustee;

1227 (b) the address of the trustee; and

1228 (c) the name and date of the trust.

1229 (4) Any real property titled in a trust which has a restriction on transfer described in
1230 Section [~~25-6-502~~] [75B-1-302](#) shall include in the title the words "asset protection trust."

1231 Section 12. Section **75A-1-101** is enacted to read:

1232 **TITLE 75A. FIDUCIARIES**

1233 **CHAPTER 1. FIDUCIARIES**

1234 **Part 1. General Provisions**

1235 75A-1-101. **Reserved for title definitions.**

1236 Reserved.

1237 Section 13. Section **75A-1-102** is enacted to read:

1238 75A-1-102. **Transition clause.**

1239 If, at the time a power of attorney, a power of appointment, an advanced health care
1240 directive, or another legal document was executed, the document contained a correct citation to
1241 a provision in Title 22, Fiduciaries and Trusts, and Title 75, Utah Uniform Probate Code, that,
1242 after the execution of the document, was renumbered and amended for inclusion in this title,
1243 that citation is a valid citation to the same provision in this title.

1244 Section 14. Section **75A-1-201**, which is renumbered from Section 22-1-1 is
1245 renumbered and amended to read:

1246 **Part 2. Payments and Deposits by Fiduciaries**

1247 ~~[22-1-1].~~ 75A-1-201. **Definitions for part.**

1248 ~~[In this chapter unless the context or subject matter otherwise requires:]~~ As used in this
1249 part:

1250 (1) "Fiduciary" ~~[includes]~~ means:

1251 (a) a trustee under any trust, expressed, implied, resulting or constructive;

1252 (b) an executor;

1253 (c) an administrator;

1254 (d) a guardian;

1255 (e) a conservator;

1256 (f) a curator;

1257 (g) a receiver;

1258 (h) a trustee in bankruptcy;

1259 (i) an assignee for the benefit of creditors;

1260 (j) a partner;

1261 (k) an agent;

1262 (l) an officer of a corporation, public or private;

1263 (m) a public officer; ~~and~~; or

1264 (n) any other person acting in a fiduciary capacity for any person, trust, or estate.

1265 ~~["Principal" includes any person to whom a fiduciary as such owes an obligation.]~~

1266 [A thing is done "in good faith" when it is in fact done honestly, whether it is done
1267 negligently or not.]

1268 (2) "Good faith" means something is in fact done honestly regardless of whether it is
1269 done negligently or not.

1270 (3) "Principal" means a person to whom a fiduciary owes an obligation.

1271 Section 15. Section **75A-1-202**, which is renumbered from Section 22-1-11 is
1272 renumbered and amended to read:

1273 ~~[22-1-11].~~ **75A-1-202. Transactions prior to May 12, 1925.**

1274 The provisions of this ~~[chapter]~~ part do not apply to transactions taking place prior to
1275 May 12, 1925.

1276 Section 16. Section **75A-1-203**, which is renumbered from Section 22-1-2 is
1277 renumbered and amended to read:

1278 ~~[22-1-2].~~ **75A-1-203. Payments or transfers made to a fiduciary.**

1279 (1) A person who in good faith pays or transfers to a fiduciary any money or other
1280 property ~~[which]~~ that the fiduciary ~~[as such]~~ is authorized to receive is not responsible for the
1281 proper application ~~[thereof]~~ of the money or property by the fiduciary~~[-and no].~~

1282 (2) A right or title acquired from the fiduciary in consideration of ~~[such]~~ a payment or
1283 transfer described in Subsection (1) is not invalid ~~[in]~~ as a consequence of a misapplication by
1284 the fiduciary.

1285 Section 17. Section **75A-1-204**, which is renumbered from Section 22-1-4 is
1286 renumbered and amended to read:

1287 ~~[22-1-4].~~ **75A-1-204. Transfer of negotiable instruments by a fiduciary.**

1288 ~~[If any negotiable instrument payable or indorsed to a fiduciary as such is endorsed by~~
1289 ~~the fiduciary, or if any negotiable instrument payable or endorsed to his principal is endorsed~~
1290 ~~by a fiduciary empowered to endorse such instrument on behalf of his principal, the indorsee is~~
1291 ~~not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary~~
1292 ~~in endorsing or delivering the instrument, and is not chargeable with notice that the fiduciary is~~
1293 ~~committing a breach of his obligation as fiduciary, unless he takes the instrument with actual~~
1294 ~~knowledge of such breach or with knowledge of such facts that his action in taking the~~
1295 ~~instrument amounts to bad faith. If, however, such instrument is transferred by the fiduciary in~~
1296 ~~payment of, or as security for, a personal debt of the fiduciary to the actual knowledge of the~~

1297 creditor, or is transferred in any transaction known by the transferee to be for the personal
 1298 benefit of the fiduciary, the creditor or other transferee is liable to the principal, if the fiduciary
 1299 in fact commits a breach of his obligation as fiduciary in transferring the instrument].

1300 (1) If a fiduciary endorses a negotiable instrument that is payable or endorsed to the
 1301 fiduciary or the fiduciary's principal, and the fiduciary has authority to endorse the negotiable
 1302 instrument on behalf of the principal, the person that receives the negotiable instrument
 1303 through the endorsement:

1304 (a) is not bound to inquire as to whether the fiduciary is committing a breach of the
 1305 fiduciary's obligation in endorsing or delivering the negotiable instrument; and

1306 (b) is not required to provide notice that the fiduciary is committing a breach of the
 1307 fiduciary's obligation, unless the person:

1308 (i) takes the negotiable instrument with actual knowledge that the fiduciary is
 1309 committing a breach of the fiduciary's obligation; or

1310 (ii) knows that taking the negotiable instrument amounts to bad faith.

1311 (2) Notwithstanding Subsection (1), a person is liable to a principal if:

1312 (a) the fiduciary transfers a negotiable instrument to the person and the person knows
 1313 that the fiduciary is transferring the negotiable instrument:

1314 (i) as payment of, or as a security for, a personal debt of the fiduciary; or

1315 (ii) for the personal benefit of the fiduciary; and

1316 (b) the fiduciary commits a breach of the fiduciary's obligation in transferring the
 1317 negotiable instrument to the person.

1318 Section 18. Section **75A-1-205**, which is renumbered from Section 22-1-5 is
 1319 renumbered and amended to read:

1320 **[22-1-5]. 75A-1-205. Checks -- Drawn by a fiduciary and payable to a third**
 1321 **person.**

1322 ~~[If a check or other bill of exchange is drawn by a fiduciary as such, or in the name of~~
 1323 ~~his principal by a fiduciary empowered to draw such instrument in the name of his principal,~~
 1324 ~~the payee is not bound to inquire whether the fiduciary is committing a breach of his obligation~~
 1325 ~~as fiduciary in drawing or delivering the instrument, and is not chargeable with notice that the~~
 1326 ~~fiduciary is committing a breach of his obligation as fiduciary, unless he takes the instrument~~
 1327 ~~with actual knowledge of such breach or with knowledge of such facts that his action in taking~~

1328 ~~the instrument amounts to bad faith. If, however, such instrument is payable to a personal~~
1329 ~~creditor of the fiduciary and delivered to the creditor in payment of, or as security for, a~~
1330 ~~personal debt of the fiduciary to the actual knowledge of the creditor, or is drawn and delivered~~
1331 ~~in any transaction known by the payee to be for the personal benefit of the fiduciary, the~~
1332 ~~creditor or other payee is liable to the principal, if the fiduciary in fact commits a breach of his~~
1333 ~~obligation as fiduciary in drawing or delivering the instrument.]~~

1334 (1) If a fiduciary draws a check or other bill of exchange in the name of the fiduciary's
1335 principal and the fiduciary has authority to draw the check or other bill of exchange in the name
1336 of the principal, the person to which the check or other bill of exchange is paid:

1337 (a) is not bound to inquire as to whether the fiduciary is committing a breach of the
1338 fiduciary's obligation in drawing the check or other bill of exchange; and

1339 (b) is not required to provide notice that the fiduciary is committing a breach of the
1340 fiduciary's obligation, unless the person:

1341 (i) takes the check or other bill of exchange with actual knowledge that the fiduciary is
1342 committing a breach of the fiduciary's obligation; or

1343 (ii) knows that taking the check or other bill of exchange amounts to bad faith.

1344 (2) Notwithstanding Subsection (1), a person is liable to a principal if:

1345 (a) the fiduciary writes and delivers the check or other bill of exchange to the person;

1346 (b) the person knows that the fiduciary is drawing and delivering the check or other bill
1347 of exchange for:

1348 (i) payment of, or as a security for, a personal debt of the fiduciary; or

1349 (ii) the personal benefit of the fiduciary; and

1350 (c) the fiduciary commits a breach of the fiduciary's obligation in drawing or delivering
1351 the check or other bill of exchange to the person.

1352 Section 19. Section **75A-1-206**, which is renumbered from Section 22-1-6 is
1353 renumbered and amended to read:

1354 **[22-1-6]. 75A-1-206. Checks drawn by or payable to a fiduciary.**

1355 ~~[If a check or other bill of exchange is drawn by a fiduciary as such, or in the name of~~
1356 ~~his principal by a fiduciary empowered to draw such instrument in the name of his principal,~~
1357 ~~payable to the fiduciary personally, or payable to a third person and by him transferred to the~~
1358 ~~fiduciary, and is thereafter transferred by the fiduciary, whether in payment of a personal debt~~

1359 of the fiduciary or otherwise, the transferee is not bound to inquire whether the fiduciary is
 1360 committing a breach of his obligation as fiduciary in transferring the instrument, and is not
 1361 chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary,
 1362 unless he takes the instrument with actual knowledge of such breach or with knowledge of such
 1363 facts that his action in taking the instrument amounts to bad faith.] If a fiduciary draws a check
 1364 or other bill of exchange in the name of the fiduciary's principal and the fiduciary has authority
 1365 to draw the check or other bill of exchange that is payable to the fiduciary or a person that
 1366 transfers the payment to the fiduciary, the person to which the check or other bill of exchange
 1367 is paid:

1368 (1) is not bound to inquire as to whether the fiduciary is committing a breach of the
 1369 fiduciary's obligation in transferring the check or other bill of exchange to the fiduciary; and

1370 (2) is not required to provide notice that the fiduciary is committing a breach of the
 1371 fiduciary's obligation, unless the person:

1372 (a) takes the check or other bill of exchange with actual knowledge that the fiduciary is
 1373 committing a breach of the fiduciary's obligation; or

1374 (b) knows that taking the check or other bill of exchange amounts to bad faith.

1375 Section 20. Section **75A-1-207**, which is renumbered from Section 22-1-7 is
 1376 renumbered and amended to read:

1377 ~~[22-1-7].~~ **75A-1-207. Bank deposits in the name of a fiduciary.**

1378 ~~[If a deposit is made in a bank to the credit of a fiduciary as such, the bank is authorized~~
 1379 ~~to pay the amount of the deposit or any part thereof upon the check of the fiduciary, signed~~
 1380 ~~with the name in which such deposit is entered, without being liable to the principal, unless the~~
 1381 ~~bank pays the check with actual knowledge that the fiduciary is committing a breach of his~~
 1382 ~~obligation as fiduciary in drawing the check, or with knowledge of such facts that its action in~~
 1383 ~~paying the check amounts to bad faith. If, however, such a check is payable to the drawee bank~~
 1384 ~~and is delivered to it in payment of, or as security for, a personal debt of the fiduciary to it, the~~
 1385 ~~bank is liable to the principal, if the fiduciary in fact commits a breach of his obligation as~~
 1386 ~~fiduciary in drawing or delivering the check.]~~

1387 (1) If a fiduciary deposits a check in a bank in the name of the fiduciary's principal and
 1388 to the credit of the fiduciary and the bank is authorized to pay the amount of the deposit or any
 1389 part of the deposit, the bank is not liable to the principal unless:

1390 (a) the bank pays the check with actual knowledge that the fiduciary is committing a
1391 breach of the fiduciary's obligation in drawing the check; or

1392 (b) the bank knows that paying the check amounts to bad faith.

1393 (2) Notwithstanding Subsection (1), a bank is liable to a principal if:

1394 (a) the fiduciary deposits a check in the name of the principal as payment to the bank
1395 for payment of, or as security for, a personal debt of the fiduciary; and

1396 (b) the fiduciary commits a breach of the fiduciary's obligation in drawing or delivering
1397 the check to the bank.

1398 Section 21. Section **75A-1-208**, which is renumbered from Section 22-1-8 is
1399 renumbered and amended to read:

1400 ~~[22-1-8].~~ **75A-1-208. Checks drawn in name of a principal.**

1401 ~~[If a check is drawn upon the account of his principal in a bank by a fiduciary who is~~
1402 ~~empowered to draw checks upon his principal's account, the bank is authorized to pay such~~
1403 ~~check without being liable to the principal, unless the bank pays the check with actual~~
1404 ~~knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing~~
1405 ~~such check, or with knowledge of such facts that its action in paying the check amounts to bad~~
1406 ~~faith. If, however, such a check is payable to the drawee bank and is delivered to it in payment~~
1407 ~~of, or as security for, a personal debt of the fiduciary to it, the bank is liable to the principal, if~~
1408 ~~the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the~~
1409 ~~check.]~~

1410 (1) If a fiduciary draws a check upon the account of the fiduciary's principal in a bank
1411 that is authorized to draw checks upon the principal's account and the bank is authorized to pay
1412 the check, the bank is not liable to the principal unless:

1413 (a) the bank pays the check with actual knowledge that the fiduciary is committing a
1414 breach of the fiduciary's obligation in drawing the check; or

1415 (b) the bank knows that paying the check amounts to bad faith.

1416 (2) Notwithstanding Subsection (1), the bank is liable to a principal if:

1417 (a) the principal's fiduciary deposits a check in the name of the principal as payment to
1418 the bank for payment of, or as security for, a personal debt of the fiduciary; and

1419 (b) the fiduciary commits a breach of the fiduciary's obligation in drawing or delivering
1420 the check to the bank.

1421 Section 22. Section **75A-1-209**, which is renumbered from Section 22-1-9 is
1422 renumbered and amended to read:

1423 **[22-1-9]. 75A-1-209. Deposits in a fiduciary's personal account.**

1424 ~~[If a fiduciary makes a deposit in a bank to his personal credit of checks drawn by him~~
1425 ~~upon an account in his own name as fiduciary, or of checks payable to him as fiduciary, or of~~
1426 ~~checks drawn by him upon an account in the name of his principal, if he is empowered to draw~~
1427 ~~checks thereon, or of checks payable to his principal and indorsed by him, if he is empowered~~
1428 ~~to indorse such checks, or if he otherwise makes a deposit of funds held by him as fiduciary,~~
1429 ~~the bank receiving such deposit is not bound to inquire whether the fiduciary is committing~~
1430 ~~thereby a breach of his obligation as fiduciary; and the bank is authorized to pay the amount of~~
1431 ~~the deposit or any part thereof upon the personal check of the fiduciary without being liable to~~
1432 ~~the principal, unless the bank receives the deposit or pays the check with actual knowledge that~~
1433 ~~the fiduciary is committing a breach of his obligation as fiduciary in making such deposit or in~~
1434 ~~drawing such check, or with knowledge of such facts that its action in receiving the deposit or~~
1435 ~~paying the check amounts to bad faith.] If a principal authorizes a fiduciary to write or endorse
1436 a check for the principal, and the fiduciary writes a check payable to the fiduciary and deposits
1437 the check in a bank into the fiduciary's personal account:~~

1438 (1) the bank is not bound to inquire whether a fiduciary is committing a breach of the
1439 fiduciary's obligation to a principal; and

1440 (2) the bank is authorized to pay the amount of the deposit or any part of a personal
1441 check of the fiduciary without being liable to the principal unless:

1442 (a) the bank deposits the check for a fiduciary with actual knowledge that the fiduciary
1443 is committing a breach of the fiduciary's obligation in depositing the check; or

1444 (b) the bank knows that depositing the check for the fiduciary amounts to bad faith.

1445 Section 23. Section **75A-1-210**, which is renumbered from Section 22-1-10 is
1446 renumbered and amended to read:

1447 **[22-1-10]. 75A-1-210. Deposits in name of several trustees.**

1448 When a deposit is made in a bank in the name of two or more persons as trustees and a
1449 check is drawn upon the trust account by ~~[any trustee or trustees]~~ a trustee authorized by ~~[the~~
1450 ~~other trustee or trustees]~~ another trustee to draw checks upon the trust account~~[, neither the~~
1451 ~~payee nor other holder nor the bank is];~~

1452 (1) the payee or bank is not bound to inquire whether [it] the deposit is a breach of trust
1453 to authorize [such trustee or trustees] a trustee to draw checks upon the trust account[~~;~~and];
1454 and

1455 (2) the payee or bank is not liable[;] unless the circumstances are such that the action of
1456 the [payee or other holder or the bank] payee or bank amounts to bad faith.

1457 Section 24. Section **75A-2-101** is enacted to read:

1458 **CHAPTER 2. UNIFORM POWER OF ATTORNEY ACT**

1459 **Part 1. General Provisions**

1460 **75A-2-101. Reserved.**

1461 Reserved.

1462 Section 25. Section **75A-2-102**, which is renumbered from Section 75-9-102 is
1463 renumbered and amended to read:

1464 ~~[75-9-102].~~ **75A-2-102. Definitions for chapter.**

1465 ~~[It]~~ As used in this chapter:

1466 (1) (a) "Agent" means a person granted authority to act for a principal under a power of
1467 attorney, whether denominated an agent, attorney-in-fact, or otherwise. [The term]

1468 (b) "Agent" includes an original agent, coagent, successor agent, and person to which
1469 an agent's authority is delegated.

1470 (2) "Beneficiary" means the same as that term is defined in Section [75-1-201](#).

1471 (3) "Beneficiary designation" means the same as that term is defined in Section
1472 [75-1-201](#).

1473 (4) "Child" means the same as that term is defined in Section [75-1-201](#).

1474 (5) "Claims" means the same as that term is defined in Section [75-1-201](#).

1475 (6) "Conservator" means the same as that term is defined in Section [75-1-201](#).

1476 (7) "Descendant" means the same as that term is defined in Section [75-1-201](#).

1477 ~~[(2)]~~ (8) "Durable," with respect to a power of attorney, means not terminated by the
1478 principal's incapacity.

1479 ~~[(3)]~~ (9) "Electronic" means relating to technology having electrical, digital, magnetic,
1480 wireless, optical, electromagnetic, or similar capabilities.

1481 (10) "Estate" means the same as that term is defined in Section [75-1-201](#).

1482 (11) "Fiduciary" means the same as that term is defined in Section [75-1-201](#).

- 1483 ~~[(4)]~~ (12) "Good faith" means honesty in fact.
- 1484 (13) "Guardian" means the same as that term is defined in Section [75-1-201](#).
- 1485 ~~[(5)]~~ (14) "Incapacity" means the inability of an individual to manage property or
- 1486 business affairs because the individual:
- 1487 (a) has an impairment in the ability to receive and evaluate information or make or
- 1488 communicate decisions even with the use of technological assistance; or
- 1489 (b) is:
- 1490 (i) missing;
- 1491 (ii) detained, including incarcerated in a penal system; or
- 1492 (iii) outside the United States and unable to return.
- 1493 (15) "Lease" means the same as that term is defined in Section [75-1-201](#).
- 1494 (16) "Mortgage" means the same as that term is defined in Section [75-1-201](#).
- 1495 (17) "Organization" means the same as that term is defined in Section [75-1-201](#).
- 1496 ~~[(6)]~~ (18) "Person" means an individual, corporation, business trust, estate, trust,
- 1497 partnership, limited liability company, association, joint venture, public corporation,
- 1498 government or governmental subdivision, agency, or instrumentality, or any other legal or
- 1499 commercial entity.
- 1500 (19) "Personal representative" means the same as that term is defined in Section
- 1501 [75-1-201](#).
- 1502 ~~[(7)]~~ (20) "Power of attorney" means a writing or other record that grants authority to
- 1503 an agent to act in the place of the principal, whether or not the term power of attorney is used.
- 1504 ~~[(8)]~~ (21) (a) "Presently exercisable general power of appointment," with respect to
- 1505 property or a property interest subject to a power of appointment, means power exercisable at
- 1506 the time in question to vest absolute ownership in the principal individually, the principal's
- 1507 estate, the principal's creditors, or the creditors of the principal's estate. [~~The term~~]
- 1508 (b) "Presently exercisable general power of appointment" includes a power of
- 1509 appointment not exercisable until the occurrence of a specified event, the satisfaction of an
- 1510 ascertainable standard, or the passage of a specified period only after the occurrence of the
- 1511 specified event, the satisfaction of the ascertainable standard, or the passage of the specified
- 1512 period. [~~The term~~]
- 1513 (c) "Presently exercisable general power of appointment" does not include a power

1514 exercisable in a fiduciary capacity or only by will.

1515 ~~[(9)]~~ (22) "Principal" means an individual who grants authority to an agent in a power
1516 of attorney.

1517 ~~[(10)]~~ (23) "Property" means anything that may be the subject of ownership, whether
1518 real or personal, or legal or equitable, or any interest or right therein.

1519 ~~[(11)]~~ (24) "Record" means information that is inscribed on a tangible medium or that
1520 is stored in an electronic or other medium and is retrievable in perceivable form.

1521 (25) "Security" means the same as that term is defined in Section [75-1-201](#).

1522 ~~[(12)]~~ (26) "Sign" means, with present intent to authenticate or adopt a record:

1523 (a) to execute or adopt a tangible symbol; or

1524 (b) to attach to or logically associate with the record an electronic sound, symbol, or
1525 process.

1526 ~~[(13)]~~ (27) "State" means a state of the United States, the District of Columbia, Puerto
1527 Rico, the United States Virgin Islands, or any territory or insular possession subject to the
1528 jurisdiction of the United States.

1529 ~~[(14)]~~ (28) (a) "Stocks and bonds" means stocks, bonds, mutual funds, and all other
1530 types of securities and financial instruments, whether held directly, indirectly, or in any other
1531 manner. ~~[The term]~~

1532 (b) "Stocks and bonds" does not include commodity futures contracts and call or put
1533 options on stocks or stock indexes.

1534 (29) "Trust" means the same as that term is defined in Section [75-1-201](#).

1535 (30) "Trustee" means the same as that term is defined in Section [75-1-201](#).

1536 (31) "Will" means the same as that term is defined in Section [75-1-201](#).

1537 Section 26. Section **75A-2-103**, which is renumbered from Section 75-9-103 is
1538 renumbered and amended to read:

1539 ~~[75-9-103]~~. **75A-2-103. Applicability.**

1540 This chapter applies to all powers of attorney except:

1541 (1) a power to the extent it is coupled with an interest in the subject of the power,
1542 including a power given to or for the benefit of a creditor in connection with a credit
1543 transaction;

1544 (2) a power to make health care decisions;

1545 (3) a proxy or other delegation to exercise voting rights or management rights with
1546 respect to an entity; and

1547 (4) a power created on a form prescribed by a government or governmental
1548 subdivision, agency, or instrumentality for a governmental purpose.

1549 Section 27. Section **75A-2-104**, which is renumbered from Section 75-9-104 is
1550 renumbered and amended to read:

1551 ~~[75-9-104].~~ **75A-2-104. Power of attorney is durable.**

1552 A power of attorney created under this chapter is durable unless it expressly provides
1553 that it is terminated by the incapacity of the principal.

1554 Section 28. Section **75A-2-105**, which is renumbered from Section 75-9-105 is
1555 renumbered and amended to read:

1556 ~~[75-9-105].~~ **75A-2-105. Execution of power of attorney.**

1557 (1) (a) A power of attorney shall be signed by the principal or in the principal's
1558 conscious presence by another individual directed by the principal to sign the principal's name
1559 on the power of attorney before a notary public or other individual authorized by the law to
1560 take acknowledgments.

1561 (b) A signature on a power of attorney is presumed to be genuine if the principal
1562 acknowledges the signature before a notary public or other individual authorized by law to take
1563 acknowledgments.

1564 (2) If the principal resides or is about to reside in a hospital, assisted living, skilled
1565 nursing, or similar facility, at the time of execution of the power of attorney, the principal may
1566 not name any agent that is the owner, operator, health care provider, or employee of the
1567 hospital, assisted living facility, skilled nursing, or similar residential care facility unless:

1568 (a) the agent is the spouse, legal guardian, or next of kin of the principal~~[-or unless];~~ or

1569 (b) the agent's authority is strictly limited to the purpose of assisting the principal to
1570 establish eligibility for Medicaid.

1571 (3) A violation of Subsection (2) is a violation of Section [76-5-111.4](#).

1572 Section 29. Section **75A-2-106**, which is renumbered from Section 75-9-106 is
1573 renumbered and amended to read:

1574 ~~[75-9-106].~~ **75A-2-106. Validity of power of attorney.**

1575 (1) A power of attorney executed in this state on or after May 10, 2016, is valid if its

1576 execution complies with Section [~~75-9-105~~] 75A-2-105.

1577 (2) A power of attorney executed in this state before May 10, 2016, is valid if its
1578 execution complied with the law of this state as it existed at the time of execution.

1579 (3) A power of attorney executed other than in this state is valid in this state if, when
1580 the power of attorney was executed, the execution complied with:

1581 (a) the law of the jurisdiction that determines the meaning and effect of the power of
1582 attorney pursuant to Section [~~75-9-107~~] 75A-2-107; or

1583 (b) the requirements for a military power of attorney pursuant to 10 U.S.C. Sec. 1044b.

1584 (4) Except as otherwise provided by statute other than this chapter, a photocopy or
1585 electronically transmitted copy of an original power of attorney has the same effect as the
1586 original. For transactions involving real property, the copy of the power of attorney may be
1587 recorded in the county where the transaction lies when attached to an affidavit of the person
1588 accepting the power of attorney.

1589 Section 30. Section **75A-2-107**, which is renumbered from Section 75-9-107 is
1590 renumbered and amended to read:

1591 [~~75-9-107~~]. **75A-2-107. Meaning and effect of power of attorney.**

1592 The meaning and effect of a power of attorney is determined by the law of the
1593 jurisdiction indicated in the power of attorney and, in the absence of an indication of
1594 jurisdiction, by the law of the jurisdiction in which the power of attorney was executed.

1595 Section 31. Section **75A-2-108**, which is renumbered from Section 75-9-108 is
1596 renumbered and amended to read:

1597 [~~75-9-108~~]. **75A-2-108. Nomination of conservator or guardian -- Adequacy of**
1598 **power of attorney -- Relation of agent to conservator or other fiduciary.**

1599 (1) In a power of attorney, a principal may nominate a conservator of the principal's
1600 estate or a guardian of the principal's person for consideration by the court if protective
1601 proceedings, as defined in Section 75-1-201, for the principal's estate or person are begun after
1602 the principal executes the power of attorney.

1603 (2) If a principal executes a power of attorney and a petition is filed to appoint a
1604 conservator of the principal's estate, the court shall consider whether:

1605 (a) the provisions in the power of attorney are adequate to manage and protect the
1606 principal's estate without appointing a conservator; or

1607 (b) the appointment of a conservator is necessary to manage and protect the principal's
1608 estate.

1609 (3) If the court appoints a conservator of the principal's estate or a guardian of the
1610 principal's person, the court shall appoint a conservator or a guardian in accordance with the
1611 principal's most recent nomination unless there is good cause shown or disqualification.

1612 (4) If, after a principal executes a power of attorney, the court determines that an
1613 appointment of a conservator or other fiduciary is necessary to manage and protect some or all
1614 of the principal's estate:

1615 (a) the agent named in the principal's power of attorney is accountable to the
1616 conservator or other fiduciary as well as the principal; and

1617 (b) the power of attorney is not terminated and the agent's authority continues unless
1618 limited, suspended, or terminated by the court.

1619 Section 32. Section **75A-2-109**, which is renumbered from Section 75-9-109 is
1620 renumbered and amended to read:

1621 ~~[75-9-109]~~. **75A-2-109**. **When power of attorney is effective.**

1622 (1) A power of attorney is effective when executed unless the principal provides in the
1623 power of attorney that it becomes effective at a future date or upon the occurrence of a future
1624 event or contingency.

1625 (2) If a power of attorney becomes effective upon the occurrence of a future event or
1626 contingency, the principal, in the power of attorney, may authorize one or more persons to
1627 determine in a writing or other record that the event or contingency has occurred.

1628 (3) If a power of attorney becomes effective upon the principal's incapacity and the
1629 principal has not authorized a person to determine whether the principal is incapacitated, or the
1630 person authorized is unable or unwilling to make the determination, the power of attorney
1631 becomes effective upon a determination in a writing or other record by:

1632 (a) a physician that the principal is incapacitated within the meaning of Subsection
1633 ~~[75-9-102(5)(a)]~~ 75A-2-102(14)(a); or

1634 (b) an attorney at law, a judge, or an appropriate governmental official that the
1635 principal is incapacitated within the meaning of Subsection ~~[75-9-102(5)(b)]~~
1636 75A-2-102(14)(b).

1637 (4) A person authorized by the principal in the power of attorney to determine that the

1638 principal is incapacitated may act as the principal's personal representative pursuant to the
1639 Health Insurance Portability and Accountability Act, Sections 1171 through 1179 of the Social
1640 Security Act, 42 U.S.C. Sec. 1320d, and applicable regulations, to obtain access to the
1641 principal's health care information and communicate with the principal's health care provider.

1642 Section 33. Section **75A-2-110**, which is renumbered from Section 75-9-110 is
1643 renumbered and amended to read:

1644 ~~[75-9-110]~~. **75A-2-110**. **Termination of power of attorney or agent's authority.**

1645 (1) A power of attorney terminates when:

1646 (a) the principal dies;

1647 (b) the principal becomes incapacitated, if the power of attorney is not durable;

1648 (c) the principal revokes the power of attorney;

1649 (d) the power of attorney provides that it terminates;

1650 (e) the purpose of the power of attorney is accomplished; or

1651 (f) the principal revokes the agent's authority or the agent dies, becomes incapacitated,
1652 or resigns, and the power of attorney does not provide for another agent to act under the power
1653 of attorney.

1654 (2) An agent's authority terminates when:

1655 (a) the principal revokes the authority;

1656 (b) the agent dies, becomes incapacitated, or resigns;

1657 (c) an action is filed for the dissolution or annulment of the agent's marriage to the
1658 principal or their legal separation, unless the power of attorney otherwise provides; or

1659 (d) the power of attorney terminates.

1660 (3) Unless the power of attorney otherwise provides, an agent's authority is exercisable
1661 until the authority terminates under Subsection (2), notwithstanding a lapse of time since the
1662 execution of the power of attorney.

1663 (4) (a) Termination of an agent's authority or of a power of attorney is not effective as
1664 to the agent or another person that, without actual knowledge of the termination, acts in good
1665 faith under the power of attorney.

1666 (b) An act so performed, unless otherwise invalid or unenforceable, binds the principal
1667 and the principal's successors in interest.

1668 (5) (a) Incapacity of the principal of a power of attorney that is not durable does not

1669 revoke or terminate the power of attorney as to an agent or other person that, without actual
1670 knowledge of the incapacity, acts in good faith under the power of attorney.

1671 (b) An act so performed, unless otherwise invalid or unenforceable, binds the principal
1672 and the principal's successors in interest.

1673 (6) The execution of a power of attorney does not revoke a power of attorney
1674 previously executed by the principal unless the subsequent power of attorney provides that the
1675 previous power of attorney is revoked or that all other powers of attorney are revoked.

1676 (7) The principal may revoke or amend a power of attorney:

1677 (a) by substantial compliance with a method provided in the terms of the power of
1678 attorney that expressly excludes all other methods for amending or revoking the power of
1679 attorney; or

1680 (b) if the terms of the power of attorney do not provide a method or the method
1681 provided in the terms is not expressly made exclusive, by any other method manifesting clear
1682 and convincing evidence of the principal's intent.

1683 Section 34. Section **75A-2-111**, which is renumbered from Section 75-9-111 is
1684 renumbered and amended to read:

1685 ~~[75-9-111]~~. **75A-2-111. Coagents and successor agents.**

1686 (1) (a) A principal may designate two or more persons to act as coagents.

1687 (b) Unless the power of attorney otherwise provides, each coagent may exercise its
1688 authority independently.

1689 (2) (a) A principal may designate one or more successor agents to act if an agent
1690 resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve.

1691 (b) A principal may grant authority to designate one or more successor agents to an
1692 agent or other person designated by name, office, or function.

1693 (c) Unless the power of attorney otherwise provides, a successor agent:

1694 ~~[(a)]~~ (i) has the same authority as that granted to the original agent; and

1695 ~~[(b)]~~ (ii) may not act until all predecessor agents have resigned, died, become
1696 incapacitated, are no longer qualified to serve, or have declined to serve.

1697 (3) Except as otherwise provided in the power of attorney and Subsection (4), an agent
1698 that does not participate in or conceal a breach of fiduciary duty committed by another agent,
1699 including a predecessor agent, is not liable for the actions of the other agent.

1700 (4) (a) An agent that has accepted appointment and that has actual knowledge of a
1701 breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if
1702 the principal is incapacitated, take any action reasonably appropriate in the circumstances to
1703 safeguard the principal's best interest.

1704 (b) An agent that fails to notify the principal or take action as required by this
1705 subsection is liable for the reasonably foreseeable damages that could have been avoided if the
1706 agent had notified the principal or taken action.

1707 Section 35. Section **75A-2-112**, which is renumbered from Section 75-9-112 is
1708 renumbered and amended to read:

1709 ~~[75-9-112]~~. **75A-2-112**. **Reimbursement and compensation of agent.**

1710 Unless the power of attorney otherwise provides, an agent is entitled to reimbursement
1711 of expenses reasonably incurred on behalf of the principal and to compensation that is
1712 reasonable under the circumstances.

1713 Section 36. Section **75A-2-113**, which is renumbered from Section 75-9-113 is
1714 renumbered and amended to read:

1715 ~~[75-9-113]~~. **75A-2-113**. **Agent's acceptance.**

1716 Except as otherwise provided in the power of attorney, a person accepts appointment as
1717 an agent under a power of attorney by exercising authority or performing duties as an agent or
1718 by any other assertion or conduct indicating acceptance.

1719 Section 37. Section **75A-2-114**, which is renumbered from Section 75-9-114 is
1720 renumbered and amended to read:

1721 ~~[75-9-114]~~. **75A-2-114**. **Agent's duties.**

1722 (1) Notwithstanding provisions in the power of attorney, an agent that has accepted
1723 appointment shall:

1724 (a) act in accordance with the principal's reasonable expectations to the extent actually
1725 known by the agent and, otherwise, in the principal's best interest;

1726 (b) act in good faith;

1727 (c) act only within the scope of authority granted in the power of attorney; and

1728 (d) comply with the terms of the power of attorney.

1729 (2) (a) Except as otherwise provided in the power of attorney or other provision of this
1730 chapter, an agent that has accepted appointment shall have no further obligation to act under

1731 the power of attorney.

1732 (b) However, with respect to any action taken by the agent under the power of attorney,
1733 the agent shall:

1734 ~~(a)~~ (i) act loyally for the principal's benefit;

1735 ~~(b)~~ (ii) act so as not to create a conflict of interest that impairs the agent's ability to
1736 act impartially in the principal's best interest;

1737 ~~(c)~~ (iii) act with the care, competence, and diligence ordinarily exercised by agents in
1738 similar circumstances;

1739 ~~(d)~~ (iv) keep a record of all receipts, disbursements, and transactions made on behalf
1740 of the principal;

1741 ~~(e)~~ (v) cooperate with a person that has authority to make health care decisions for
1742 the principal to carry out the principal's reasonable expectations to the extent actually known by
1743 the agent and, otherwise, act in the principal's best interest; and

1744 ~~(f)~~ (vi) attempt to preserve the principal's estate plan, to the extent actually known by
1745 the agent, if preserving the plan is consistent with the principal's best interest based on all
1746 relevant factors, including:

1747 ~~(i)~~ (A) the value and nature of the principal's property;

1748 ~~(ii)~~ (B) the principal's foreseeable obligations and need for maintenance;

1749 ~~(iii)~~ (C) minimization of taxes, including income, estate, inheritance,
1750 generation-skipping transfer, and gift taxes; and

1751 ~~(iv)~~ (D) eligibility for a benefit, a program, or assistance under a statute, rule, or
1752 regulation.

1753 (3) An agent that acts in good faith is not liable to any beneficiary of the principal's
1754 estate plan for failure to preserve the plan.

1755 (4) An agent that acts with care, competence, and diligence for the best interest of the
1756 principal is not liable solely because the agent also benefits from the act or has an individual or
1757 conflicting interest in relation to the property or affairs of the principal.

1758 (5) If an agent is selected by the principal because of special skills or expertise
1759 possessed by the agent or in reliance on the agent's representation that the agent has special
1760 skills or expertise, the special skills or expertise shall be considered in determining whether the
1761 agent has acted with care, competence, and diligence under the circumstances.

1762 (6) Absent a breach of duty to the principal, an agent is not liable if the value of the
1763 principal's property declines.

1764 (7) An agent that exercises authority to delegate to another person the authority granted
1765 by the principal or that engages another person on behalf of the principal is not liable for an act,
1766 error of judgment, or default of that person if the agent exercises care, competence, and
1767 diligence in selecting and monitoring the person.

1768 (8) (a) Except as otherwise provided in the power of attorney, an agent is not required
1769 to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless
1770 ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary
1771 acting for the principal, a governmental agency having authority to protect the welfare of the
1772 principal, an interested person, as defined in ~~[Subsection 75-1-201(24)]~~ Section 75-1-201, after
1773 the principal's incapacity, or upon the death of the principal, by the personal representative or
1774 successor in interest of the principal's estate.

1775 (b) If so requested, within 30 days the agent shall comply with the request or provide a
1776 writing or other record substantiating why additional time is needed and shall comply with the
1777 request within an additional 30 days.

1778 Section 38. Section **75A-2-115**, which is renumbered from Section 75-9-115 is
1779 renumbered and amended to read:

1780 ~~[75-9-115].~~ **75A-2-115. Exoneration of agent.**

1781 A provision in a power of attorney relieving an agent of liability for breach of duty is
1782 binding on the principal and the principal's successors in interest except to the extent the
1783 provision:

1784 (1) relieves the agent of liability for breach of duty committed dishonestly, with an
1785 improper motive, or with reckless indifference to the purposes of the power of attorney or the
1786 best interest of the principal; or

1787 (2) was inserted as a result of an abuse of a confidential or fiduciary relationship with
1788 the principal.

1789 Section 39. Section **75A-2-116**, which is renumbered from Section 75-9-116 is
1790 renumbered and amended to read:

1791 ~~[75-9-116].~~ **75A-2-116. Judicial relief.**

1792 (1) The following persons may petition a court to construe a power of attorney or

1793 review the agent's conduct and grant appropriate relief:

1794 (a) the principal or the agent;

1795 (b) a guardian, conservator, or other fiduciary acting for the principal;

1796 (c) a person authorized to make health care decisions for the principal;

1797 (d) the principal's spouse, parent as defined in Section 75-1-201, or descendant;

1798 (e) an individual who would qualify as a presumptive heir of the principal;

1799 (f) a person named as a beneficiary to receive any property, benefit, or contractual right

1800 on the principal's death or as a beneficiary of a trust created by or for the principal that has a

1801 financial interest in the principal's estate;

1802 (g) a governmental agency having regulatory authority to protect the welfare of the

1803 principal;

1804 (h) the principal's caregiver or another person that demonstrates sufficient interest in

1805 the principal's welfare; and

1806 (i) a person asked to accept the power of attorney.

1807 (2) Upon motion by the principal, the court shall dismiss a petition filed under this

1808 section, unless the court finds that the principal lacks capacity to revoke the agent's authority or

1809 the power of attorney.

1810 Section 40. Section **75A-2-117**, which is renumbered from Section 75-9-117 is

1811 renumbered and amended to read:

1812 ~~[75-9-117]~~. **75A-2-117. Agent's liability.**

1813 An agent that violates this chapter is liable to the principal or the principal's successors

1814 in interest for the amount required to:

1815 (1) restore the value of the principal's property to what it would have been had the

1816 violation not occurred; and

1817 (2) reimburse the principal or the principal's successors in interest for the attorney fees

1818 and costs paid on the agent's behalf.

1819 Section 41. Section **75A-2-118**, which is renumbered from Section 75-9-118 is

1820 renumbered and amended to read:

1821 ~~[75-9-118]~~. **75A-2-118. Agent's resignation -- Notice.**

1822 Unless the power of attorney provides a different method for an agent's resignation, an

1823 agent may resign by giving notice to the principal and, if the principal is incapacitated:

1824 (1) to the guardian, if one has been appointed for the principal, and a coagent or
1825 successor agent; or

1826 (2) if there is no person described in Subsection (1), to:

1827 (a) the principal's caregiver;

1828 (b) another person reasonably believed by the agent to have sufficient interest in the
1829 principal's welfare; or

1830 (c) a governmental agency having authority to protect the welfare of the principal.

1831 Section 42. Section ~~75A-2-119~~, which is renumbered from Section 75-9-119 is
1832 renumbered and amended to read:

1833 ~~[75-9-119]~~. 75A-2-119. **Acceptance of and reliance upon acknowledged power**
1834 **of attorney.**

1835 (1) [~~For purposes of this section and Section 75-9-120~~] As used in this section,
1836 "acknowledged" means purportedly verified before a notary public or other individual
1837 authorized to take acknowledgements.

1838 (2) A person that in good faith accepts an acknowledged power of attorney without
1839 actual knowledge that the signature is not genuine may rely upon the presumption under
1840 Section [~~75-9-105~~] 75A-2-105 that the signature is genuine.

1841 (3) A person that in good faith accepts an acknowledged power of attorney without
1842 actual knowledge that the power of attorney is void, invalid, or terminated, that the purported
1843 agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly
1844 exercising the agent's authority may rely upon the power of attorney as if the power of attorney
1845 were genuine, valid, and still in effect, the agent's authority were genuine, valid, and still in
1846 effect, and the agent had not exceeded and had properly exercised the authority.

1847 (4) A person that is asked to accept an acknowledged power of attorney may request,
1848 and rely upon, without further investigation:

1849 (a) an agent's certification under penalty of perjury of any factual matter concerning the
1850 principal, agent, or power of attorney;

1851 (b) an English translation of the power of attorney if the power of attorney contains, in
1852 whole or in part, language other than English; and

1853 (c) an opinion of counsel as to any matter of law concerning the power of attorney if
1854 the person making the request provides in a writing or other record the reason for the request.

1855 (5) An English translation or an opinion of counsel requested under this section shall
1856 be provided at the principal's expense unless the request is made more than seven business days
1857 after the power of attorney is presented for acceptance.

1858 (6) For purposes of this section and Section [~~75-9-120~~] 75A-2-120, a person that
1859 conducts activities through employees is without actual knowledge of a fact relating to a power
1860 of attorney, a principal, or an agent if the employee conducting the transaction involving the
1861 power of attorney is without actual knowledge of the fact.

1862 Section 43. Section **75A-2-120**, which is renumbered from Section 75-9-120 is
1863 renumbered and amended to read:

1864 [~~75-9-120~~]. **75A-2-120. Liability for refusal to accept acknowledged power of**
1865 **attorney.**

1866 (1) As used in this section, "acknowledged" means the same as that term is defined in
1867 Section 75A-2-119.

1868 (2) Except as otherwise provided in Subsection [~~(2)~~] (3):

1869 (a) a person shall either accept an acknowledged power of attorney or request a
1870 certification, a translation, or an opinion of counsel under Subsection [~~75-9-119(4)~~]
1871 75A-2-119(4) no later than seven business days after presentation of the power of attorney for
1872 acceptance;

1873 (b) if a person requests a certification, a translation, or an opinion of counsel under
1874 Subsection [~~75-9-119(4)~~] 75A-2-119(4), the person shall accept the power of attorney no later
1875 than five business days after receipt of the certification, translation, or opinion of counsel; and

1876 (c) a person may not require an additional or different form of power of attorney for
1877 authority granted in the power of attorney presented.

1878 [~~(2)~~] (3) A person is not required to accept an acknowledged power of attorney if:

1879 (a) the person is not otherwise required to engage in a transaction with the principal in
1880 the same circumstances;

1881 (b) engaging in a transaction with the agent or the principal in the same circumstances
1882 would be inconsistent with federal law;

1883 (c) the person has actual knowledge of the termination of the agent's authority or of the
1884 power of attorney before exercise of the power;

1885 (d) a request for a certification, a translation, or an opinion of counsel under Subsection

1886 [~~75-9-119(4)~~] 75A-2-119(4) is refused;

1887 (e) the person in good faith believes that the power is not valid or that the agent does
1888 not have the authority to perform the act requested, whether or not a certification, a translation,
1889 or an opinion of counsel under Subsection [~~75-9-119(4)~~] 75A-2-119(4) has been requested or
1890 provided; or

1891 (f) the person makes, or has actual knowledge that another person has made, a report to
1892 the Division of Aging and Adult Services stating a good faith belief that the principal may be
1893 subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a
1894 person acting for or with the agent.

1895 [~~(3)~~] (4) A person that refuses in violation of this section to accept an acknowledged
1896 power of attorney is subject to:

1897 (a) a court order mandating acceptance of the power of attorney; and

1898 (b) liability for reasonable [~~attorney's~~] attorney fees and costs incurred in any action or
1899 proceeding that confirms the validity of the power of attorney or mandates acceptance of the
1900 power of attorney.

1901 [~~(4)~~] (5) Court proceedings under this section shall be conducted pursuant to the terms
1902 in the Uniform Probate Code governing venue and procedures.

1903 Section 44. Section **75A-2-121**, which is renumbered from Section 75-9-121 is
1904 renumbered and amended to read:

1905 [~~75-9-121~~]. **75A-2-121. Principles of law and equity.**

1906 Unless displaced by a provision of this chapter, the principles of law and equity
1907 supplement this act.

1908 Section 45. Section **75A-2-122**, which is renumbered from Section 75-9-122 is
1909 renumbered and amended to read:

1910 [~~75-9-122~~]. **75A-2-122. Laws applicable to financial institutions and entities.**

1911 This chapter does not supersede any other law applicable to financial institutions or
1912 other entities, and the other law controls if inconsistent with this chapter.

1913 Section 46. Section **75A-2-123**, which is renumbered from Section 75-9-123 is
1914 renumbered and amended to read:

1915 [~~75-9-123~~]. **75A-2-123. Remedies under other law.**

1916 The remedies under this chapter are not exclusive and do not abrogate any right or

1917 remedy under the law of this state other than this chapter.

1918 Section 47. Section **75A-2-201**, which is renumbered from Section 75-9-201 is
1919 renumbered and amended to read:

1920 **Part 2. Authority**

1921 ~~[75-9-201]~~. **75A-2-201. Authority that requires specific grant -- Grant of**
1922 **general authority.**

1923 (1) An agent under a power of attorney may do the following on behalf of the principal
1924 or with the principal's property only if the power of attorney expressly grants the agent the
1925 authority, and exercise of the authority is not otherwise prohibited by another agreement or
1926 instrument to which the authority or property is subject:

- 1927 (a) create, amend, revoke, or terminate an inter vivos trust;
- 1928 (b) make a gift;
- 1929 (c) create or change rights of survivorship;
- 1930 (d) create or change a beneficiary designation;
- 1931 (e) delegate authority granted under the power of attorney;
- 1932 (f) waive the principal's right to be a beneficiary of a joint and survivor annuity,
1933 including a survivor benefit under a retirement plan;
- 1934 (g) exercise fiduciary powers that the principal has authority to delegate; or
- 1935 (h) disclaim property or otherwise exercise a power of appointment.

1936 (2) Notwithstanding a grant of authority to do an act described in Subsection (1),
1937 unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, or
1938 descendant of the principal may not exercise authority under a power of attorney to create in
1939 the agent, or in an individual to whom the agent owes a legal obligation of support, an interest
1940 in the principal's property, whether by gift, right of survivorship, beneficiary designation,
1941 disclaimer, or otherwise.

1942 (3) Subject to Subsections (1), (2), (4), and (5), if a power of attorney grants to an agent
1943 authority to do all acts that a principal could do, the agent has the general authority described in
1944 Sections ~~[75-9-204 through 75-9-216]~~ 75A-2-204 through 75A-2-216.

1945 (4) Unless the power of attorney otherwise provides, a grant of authority to make a gift
1946 is subject to Section ~~[75-9-217]~~ 75A-2-217.

1947 (5) Subject to Subsections (1), (2), and (4), if the subjects over which authority is

1948 granted in a power of attorney are similar or overlap, the broadest authority controls.

1949 (6) Authority granted in a power of attorney is exercisable with respect to property that
1950 the principal has when the power of attorney is executed or acquires later, whether or not the
1951 property is located in this state and whether or not the authority is exercised or the power of
1952 attorney is executed in this state.

1953 (7) An act performed by an agent pursuant to a power of attorney has the same effect,
1954 inures to the benefit of, and binds the principal and the principal's successors in interest as if
1955 the principal had performed the act.

1956 Section 48. Section **75A-2-202**, which is renumbered from Section 75-9-202 is
1957 renumbered and amended to read:

1958 ~~[75-9-202]~~. **75A-2-202. Incorporation of authority.**

1959 (1) An agent has authority described in this part if the power of attorney refers to
1960 general authority with respect to the descriptive term for the subjects stated in Sections
1961 ~~[75-9-204 through 75-9-217]~~ 75A-2-204 through 75A-2-217 or cites the section in which the
1962 authority is described.

1963 (2) A reference in a power of attorney to general authority with respect to the
1964 descriptive term for a subject in Sections ~~[75-9-204 through 75-9-217]~~ 75A-2-204 through
1965 75A-2-217 or a citation to a section of Sections ~~[75-9-204 through 75-9-217]~~ 75A-2-204
1966 through 75A-2-217 incorporates the entire section as if it were set out in full in the power of
1967 attorney.

1968 (3) A principal may modify authority incorporated by reference.

1969 Section 49. Section **75A-2-203**, which is renumbered from Section 75-9-203 is
1970 renumbered and amended to read:

1971 ~~[75-9-203]~~. **75A-2-203. Construction of authority generally.**

1972 Except as otherwise provided in the power of attorney, by executing a power of attorney
1973 that incorporates by reference a subject described in Sections ~~[75-9-204 through 75-9-217]~~
1974 75A-2-204 through 75A-2-217 or that grants to an agent authority to do all acts that a principal
1975 could do pursuant to Subsection ~~[75-9-201(3)]~~ 75A-2-201(3), a principal authorizes the agent,
1976 with respect to that subject, to:

1977 (1) demand, receive, and obtain, by litigation or otherwise, money or another thing of
1978 value to which the principal is, may become, or claims to be entitled, and conserve, invest,

1979 disburse, or use anything so received or obtained for the purposes intended;

1980 (2) contract in any manner with any person, on terms agreeable to the agent, to

1981 accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate,

1982 release, or modify the contract or another contract made by or on behalf of the principal;

1983 (3) execute, acknowledge, seal, deliver, file, or record any instrument or

1984 communication the agent considers desirable to accomplish a purpose of a transaction,

1985 including creating at any time a schedule listing some or all of the principal's property and

1986 attaching it to the power of attorney;

1987 (4) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or

1988 propose or accept a compromise with respect to a claim existing in favor of or against the

1989 principal or intervene in litigation relating to the claim;

1990 (5) seek on the principal's behalf the assistance of a court or other governmental agency

1991 to carry out an act authorized in the power of attorney;

1992 (6) engage, compensate, and discharge an attorney, accountant, discretionary

1993 investment manager, expert witness, or other advisor;

1994 (7) prepare, execute, and file a record, report, or other document to safeguard or

1995 promote the principal's interest under a statute or regulation;

1996 (8) communicate with any representative or employee of a government or

1997 governmental subdivision, agency, or instrumentality on behalf of the principal;

1998 (9) access communications intended for, and communicate on behalf of the principal,

1999 whether by mail, electronic transmission, telephone, or other means; and

2000 (10) do any lawful act with respect to the subject and all property related to the subject.

2001 Section 50. Section **75A-2-204**, which is renumbered from Section 75-9-204 is

2002 renumbered and amended to read:

2003 ~~[75-9-204]~~. **75A-2-204. Real property.**

2004 Unless the power of attorney otherwise provides, language in a power of attorney

2005 granting general authority with respect to real property authorizes the agent to:

2006 (1) demand, buy, lease, receive, accept as a gift or as security for an extension of credit,

2007 or otherwise acquire or reject an interest in real property or a right incident to real property;

2008 (2) (a) sell;

2009 (b) exchange;

- 2010 (c) convey with or without covenants, representations, or warranties;
- 2011 (d) quitclaim;
- 2012 (e) release;
- 2013 (f) surrender;
- 2014 (g) retain title for security;
- 2015 (h) encumber;
- 2016 (i) partition;
- 2017 (j) consent to partitioning;
- 2018 (k) subject to an easement or covenant;
- 2019 (l) subdivide;
- 2020 (m) apply for zoning or other governmental permits;
- 2021 (n) plat or consent to platting;
- 2022 (o) develop;
- 2023 (p) grant an option concerning;
- 2024 (q) lease;
- 2025 (r) sublease;
- 2026 (s) contribute to an entity in exchange for an interest in that entity; or
- 2027 (t) otherwise grant or dispose of an interest in real property or a right incident to real
- 2028 property;
- 2029 (3) pledge or mortgage an interest in real property or right incident to real property as
- 2030 security to borrow money or pay, renew, or extend the time of payment of a debt of the
- 2031 principal or a debt guaranteed by the principal;
- 2032 (4) release, assign, satisfy, or enforce by litigation or otherwise a mortgage, deed of
- 2033 trust, conditional sale contract, encumbrance, lien, or other claim to real property that exists or
- 2034 is asserted;
- 2035 (5) manage or conserve an interest in real property or a right incident to real property
- 2036 owned or claimed to be owned by the principal, including:
- 2037 (a) insuring against liability or casualty or other loss;
- 2038 (b) obtaining or regaining possession of or protecting the interest or right by litigation
- 2039 or otherwise;
- 2040 (c) paying, assessing, compromising, or contesting taxes or assessments or applying for

2041 and receiving refunds in connection with taxes or assessments; and

2042 (d) purchasing supplies, hiring assistance or labor, and making repairs or alterations to
2043 the real property;

2044 (6) use, develop, alter, replace, remove, erect, or install structures or other
2045 improvements upon real property in or incident to which the principal has, or claims to have,
2046 an interest or right;

2047 (7) participate in a reorganization with respect to real property or an entity that owns an
2048 interest in or right incident to real property and receive, hold, and act with respect to stocks and
2049 bonds or other property received in a plan of reorganization, including:

2050 (a) selling or otherwise disposing of stocks and bonds;

2051 (b) exercising or selling an option, right of conversion, or similar right with respect to
2052 stocks and bonds; and

2053 (c) exercising any voting rights in person or by proxy;

2054 (8) change the form of title of an interest in or right incident to real property; and

2055 (9) dedicate to public use, with or without consideration, easements or other real
2056 property in which the principal has, or claims to have, an interest.

2057 Section 51. Section **75A-2-205**, which is renumbered from Section 75-9-205 is
2058 renumbered and amended to read:

2059 ~~[75-9-205]~~. **75A-2-205. Tangible personal property.**

2060 Unless the power of attorney otherwise provides, language in a power of attorney
2061 granting general authority with respect to tangible personal property authorizes the agent to:

2062 (1) demand, buy, receive, accept as a gift or as security for an extension of credit, or
2063 otherwise acquire or reject ownership or possession of tangible personal property or an interest
2064 in tangible personal property;

2065 (2) sell; exchange; convey with or without covenants, representations, or warranties;
2066 quitclaim; release; surrender; create a security interest in; grant options concerning; lease;
2067 sublease; or otherwise dispose of tangible personal property or an interest in tangible personal
2068 property;

2069 (3) grant a security interest in tangible personal property or an interest in tangible
2070 personal property as security to borrow money or pay, renew, or extend the time of payment of
2071 a debt of the principal or a debt guaranteed by the principal;

2072 (4) release, assign, satisfy, or enforce by litigation or otherwise, a security interest, lien,
2073 or other claim on behalf of the principal, with respect to tangible personal property or an
2074 interest in tangible personal property;

2075 (5) manage or conserve tangible personal property or an interest in tangible personal
2076 property on behalf of the principal, including:

2077 (a) insuring against liability, casualty, or other loss;

2078 (b) obtaining or regaining possession of or protecting the property or interest, by
2079 litigation or otherwise;

2080 (c) paying, assessing, compromising, or contesting taxes or assessments or applying for
2081 and receiving refunds in connection with taxes or assessments;

2082 (d) moving the property from place to place;

2083 (e) storing the property for hire or on a gratuitous bailment; and

2084 (f) using and making repairs, alterations, or improvements to the property; and

2085 (6) change the form of title of an interest in tangible personal property.

2086 Section 52. Section **75A-2-206**, which is renumbered from Section 75-9-206 is
2087 renumbered and amended to read:

2088 ~~[75-9-206]~~. **75A-2-206. Stocks and bonds.**

2089 Unless the power of attorney otherwise provides, language in a power of attorney
2090 granting general authority with respect to stocks and bonds authorizes the agent to:

2091 (1) buy, sell, and exchange stocks and bonds;

2092 (2) establish, continue, modify, or terminate an account with respect to stocks and
2093 bonds;

2094 (3) pledge stocks and bonds as security to borrow, pay, renew, or extend the time of
2095 payment of a debt of the principal;

2096 (4) receive certificates and other evidences of ownership with respect to stocks and
2097 bonds; and

2098 (5) exercise voting rights with respect to stocks and bonds in person or by proxy, enter
2099 into voting trusts, and consent to limitations on the right to vote.

2100 Section 53. Section **75A-2-207**, which is renumbered from Section 75-9-207 is
2101 renumbered and amended to read:

2102 ~~[75-9-207]~~. **75A-2-207. Commodities and options.**

2103 Unless the power of attorney otherwise provides, language in a power of attorney
2104 granting general authority with respect to commodities and options authorizes the agent to:

2105 (1) buy, sell, exchange, assign, settle, and exercise commodity futures contracts and
2106 call or put options on stocks or stock indexes traded on a regulated option exchange; and

2107 (2) establish, continue, modify, and terminate option accounts.

2108 Section 54. Section **75A-2-208**, which is renumbered from Section 75-9-208 is
2109 renumbered and amended to read:

2110 ~~[75-9-208]~~. **75A-2-208. Banks and other financial institutions.**

2111 Unless the power of attorney otherwise provides, language in a power of attorney
2112 granting general authority with respect to banks and other financial institutions authorizes the
2113 agent to:

2114 (1) continue, modify, and terminate an account or other banking arrangement made by
2115 or on behalf of the principal;

2116 (2) establish, modify, and terminate an account or other banking arrangement with a
2117 bank, trust company, savings and loan association, credit union, thrift company, brokerage
2118 firm, or other financial institution selected by the agent;

2119 (3) contract for services available from a financial institution, including renting or
2120 closing a safe deposit box or space in a vault;

2121 (4) withdraw, by check, order, electronic funds transfer, or otherwise, money or
2122 property of the principal deposited with or left in the custody of a financial institution;

2123 (5) receive statements of account, vouchers, notices, and similar documents from a
2124 financial institution and act with respect to them;

2125 (6) enter a safe deposit box or vault and withdraw or add to the contents;

2126 (7) borrow money and pledge as security personal property of the principal necessary
2127 to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a
2128 debt guaranteed by the principal;

2129 (8) make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes,
2130 checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to the
2131 principal or the principal's order, transfer money, receive the cash or other proceeds of those
2132 transactions, and accept a draft drawn by a person upon the principal and pay it when due;

2133 (9) receive for the principal and act upon a sight draft, warehouse receipt, or other

2134 document of title whether tangible or electronic, or other negotiable or nonnegotiable
2135 instrument;

2136 (10) apply for, receive, and use letters of credit, credit and debit cards, electronic
2137 transaction authorizations, and traveler's checks from a financial institution and give an
2138 indemnity or other agreement in connection with letters of credit; and

2139 (11) consent to an extension of the time of payment with respect to commercial paper
2140 or a financial transaction with a financial institution.

2141 Section 55. Section **75A-2-209**, which is renumbered from Section 75-9-209 is
2142 renumbered and amended to read:

2143 ~~[75-9-209]~~. **75A-2-209. Operation of entity or business.**

2144 Subject to the terms of a document or an agreement governing an entity or an entity
2145 ownership interest, and unless the power of attorney otherwise provides, language in a power
2146 of attorney granting general authority with respect to operation of an entity or business
2147 authorizes the agent to:

2148 (1) operate, buy, sell, enlarge, reduce, or terminate an ownership interest;

2149 (2) perform a duty or discharge a liability and exercise in person or by proxy a right,
2150 power, privilege, or option that the principal has, may have, or claims to have;

2151 (3) enforce the terms of an ownership agreement;

2152 (4) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or
2153 propose or accept a compromise with respect to litigation to which the principal is a party
2154 because of an ownership interest;

2155 (5) exercise in person or by proxy, or enforce by litigation or otherwise, a right, power,
2156 privilege, or option the principal has or claims to have as the holder of stocks and bonds;

2157 (6) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or
2158 propose or accept a compromise with respect to litigation to which the principal is a party
2159 concerning stocks and bonds;

2160 (7) with respect to an entity or business owned solely by the principal:

2161 (a) continue, modify, renegotiate, extend, and terminate a contract made by or on
2162 behalf of the principal with respect to the entity or business before execution of the power of
2163 attorney;

2164 (b) determine:

- 2165 (i) the location of its operation;
- 2166 (ii) the nature and extent of its business;
- 2167 (iii) the methods of manufacturing, selling, merchandising, financing, accounting, and
- 2168 advertising employed in its operation;
- 2169 (iv) the amount and types of insurance carried; and
- 2170 (v) the mode of engaging, compensating, and dealing with its employees and
- 2171 accountants, attorneys, or other advisors;
- 2172 (c) change the name or form of organization under which the entity or business is
- 2173 operated and enter into an ownership agreement with other persons to take over all or part of
- 2174 the operation of the entity or business; and
- 2175 (d) demand and receive money due or claimed by the principal or on the principal's
- 2176 behalf in the operation of the entity or business and control and disburse the money in the
- 2177 operation of the entity or business;
- 2178 (8) put additional capital into an entity or business in which the principal has an
- 2179 interest;
- 2180 (9) join in a plan of reorganization, consolidation, conversion, domestication, or
- 2181 merger of the entity or business;
- 2182 (10) sell or liquidate all or part of an entity or business;
- 2183 (11) establish the value of an entity or business under a buy-out agreement to which the
- 2184 principal is a party;
- 2185 (12) prepare, sign, file, and deliver reports, compilations of information, returns, or
- 2186 other papers with respect to an entity or business and make related payments; and
- 2187 (13) pay, compromise, or contest taxes, assessments, fines, or penalties and perform
- 2188 any other act to protect the principal from illegal or unnecessary taxation, assessments, fines, or
- 2189 penalties, with respect to an entity or business, including attempts to recover, in any manner
- 2190 permitted by law, money paid before or after the execution of the power of attorney.

2191 Section 56. Section **75A-2-210**, which is renumbered from Section 75-9-210 is
2192 renumbered and amended to read:

2193 ~~[75-9-210]~~. **75A-2-210. Insurance and annuities.**

2194 Unless the power of attorney otherwise provides, language in a power of attorney
2195 granting general authority with respect to insurance and annuities authorizes the agent to:

2196 (1) continue, pay the premium or make a contribution on, modify, exchange, rescind,
2197 release, or terminate a contract procured by or on behalf of the principal that insures or
2198 provides an annuity to either the principal or another person, whether or not the principal is a
2199 beneficiary under the contract;

2200 (2) procure new, different, and additional contracts of insurance and annuities for the
2201 principal and the principal's spouse, [~~children~~] child, and other dependents, and select the
2202 amount, type of insurance or annuity, and mode of payment;

2203 (3) pay the premium or make a contribution on, modify, exchange, rescind, release, or
2204 terminate a contract of insurance or annuity procured by the agent;

2205 (4) apply for and receive a loan secured by a contract of insurance or annuity;

2206 (5) surrender and receive the cash surrender value on a contract of insurance or
2207 annuity;

2208 (6) exercise an election;

2209 (7) exercise investment powers available under a contract of insurance or annuity;

2210 (8) change the manner of paying premiums on a contract of insurance or annuity;

2211 (9) change or convert the type of insurance or annuity with respect to which the
2212 principal has or claims to have authority described in this section;

2213 (10) apply for and procure a benefit or assistance under a statute or regulation to
2214 guarantee or pay premiums of a contract of insurance on the life of the principal;

2215 (11) collect, sell, assign, hypothecate, borrow against, or pledge the interest of the
2216 principal in a contract of insurance or annuity;

2217 (12) select the form and timing of the payment of proceeds from a contract of insurance
2218 or annuity; and

2219 (13) pay, from proceeds or otherwise, compromise or contest, and apply for refunds in
2220 connection with a tax or assessment levied by a taxing authority with respect to a contract of
2221 insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

2222 Section 57. Section **75A-2-211**, which is renumbered from Section 75-9-211 is
2223 renumbered and amended to read:

2224 ~~[75-9-211]~~. **75A-2-211. Estates, trusts, and other beneficial interests.**

2225 (1) ~~[In this section]~~ As used in this section, "estate, trust, or other beneficial interest"
2226 means a trust, probate estate, guardianship, conservatorship, escrow, custodianship, or fund

2227 from which the principal is, may become, or claims to be entitled to a share or payment.

2228 (2) Unless the power of attorney otherwise provides, language in a power of attorney
2229 granting general authority with respect to estates, trusts, and other beneficial interests
2230 authorizes the agent to:

2231 (a) accept, receive, receipt for, sell, assign, pledge, or exchange a share in or payment
2232 from an estate, trust, or other beneficial interest;

2233 (b) demand or obtain money or another thing of value to which the principal is, may
2234 become, or claims to be entitled by reason of an estate, trust, or other beneficial interest, by
2235 litigation or otherwise;

2236 (c) exercise for the benefit of the principal a presently exercisable general power of
2237 appointment held by the principal;

2238 (d) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or
2239 propose or accept a compromise with respect to litigation to ascertain the meaning, validity, or
2240 effect of a deed, will, declaration of trust, or other instrument or transaction affecting the
2241 interest of the principal;

2242 (e) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or
2243 propose or accept a compromise with respect to litigation to remove, substitute, or surcharge a
2244 fiduciary;

2245 (f) conserve, invest, disburse, or use anything received for an authorized purpose;

2246 (g) transfer an interest of the principal in real property, stocks and bonds, accounts with
2247 financial institutions or securities intermediaries, insurance, annuities, and other property to the
2248 trustee of a revocable trust created by the principal as settlor; and

2249 (h) reject, renounce, disclaim, release, or consent to a reduction in or modification of a
2250 share in or payment from an estate, trust, or other beneficial interest.

2251 Section 58. Section **75A-2-212**, which is renumbered from Section 75-9-212 is
2252 renumbered and amended to read:

2253 ~~[75-9-212]~~. **75A-2-212. Claims and litigation.**

2254 Unless the power of attorney otherwise provides, language in a power of attorney
2255 granting general authority with respect to claims and litigation authorizes the agent to:

2256 (1) assert and maintain before a court or administrative agency a claim, claim for relief,
2257 cause of action, counterclaim, offset, recoupment, or defense, including an action to recover

2258 property or other thing of value, recover damages sustained by the principal, eliminate or
2259 modify tax liability, or seek an injunction, specific performance, or other relief;

2260 (2) bring an action to determine adverse claims or intervene or otherwise participate in
2261 litigation;

2262 (3) seek an attachment, garnishment, order of arrest, or other preliminary, provisional,
2263 or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or
2264 decree;

2265 (4) make or accept a tender, offer of judgment, or admission of facts, submit a
2266 controversy on an agreed statement of facts, consent to examination, and bind the principal in
2267 litigation;

2268 (5) submit to alternative dispute resolution, settle, and propose or accept a
2269 compromise;

2270 (6) waive the issuance and service of process upon the principal, accept service of
2271 process, appear for the principal, designate persons upon which process directed to the
2272 principal may be served, execute and file or deliver stipulations on the principal's behalf, verify
2273 pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and
2274 pay for the preparation and printing of records and briefs, receive, execute, and file or deliver a
2275 consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement,
2276 or other instrument in connection with the prosecution, settlement, or defense of a claim or
2277 litigation;

2278 (7) act for the principal with respect to bankruptcy or insolvency, whether voluntary or
2279 involuntary, concerning the principal or some other person, or with respect to a reorganization,
2280 receivership, or application for the appointment of a receiver or trustee that affects an interest
2281 of the principal in property or other thing of value;

2282 (8) pay a judgment, award, or order against the principal or a settlement made in
2283 connection with a claim or litigation; and

2284 (9) receive money or other thing of value paid in settlement of or as proceeds of a
2285 claim or litigation.

2286 Section 59. Section **75A-2-213**, which is renumbered from Section 75-9-213 is
2287 renumbered and amended to read:

2288 **[75-9-213]. 75A-2-213. Personal and family maintenance.**

2289 (1) Unless the power of attorney otherwise provides, language in a power of attorney
2290 granting general authority with respect to personal and family maintenance authorizes the agent
2291 to:

2292 (a) perform the acts necessary to maintain the customary standard of living of the
2293 principal, the principal's spouse, and the following individuals, whether living when the power
2294 of attorney is executed or later born:

2295 (i) ~~[the principal's children]~~ a child of the principal;

2296 (ii) other individuals legally entitled to be supported by the principal; and

2297 (iii) the individuals whom the principal has customarily supported or indicated the
2298 intent to support;

2299 (b) make periodic payments of child support and other family maintenance required by
2300 a court or governmental agency or an agreement to which the principal is a party;

2301 (c) provide living quarters for the individuals described in Subsection (1)(a) by:

2302 (i) purchase, lease, or other contract; or

2303 (ii) paying the operating costs, including interest, amortization payments, repairs,
2304 improvements, and taxes, for premises owned by the principal or occupied by those
2305 individuals;

2306 (d) provide normal domestic help, usual vacations and travel expenses, and funds for
2307 shelter, clothing, food, appropriate education, including postsecondary and vocational
2308 education, and other current living costs for the individuals described in Subsection (1)(a);

2309 (e) pay expenses for necessary health care and custodial care on behalf of the
2310 individuals described in Subsection (1)(a);

2311 (f) act as the principal's personal representative pursuant to the Health Insurance
2312 Portability and Accountability Act, Sections 1171 through 1179 of the Social Security Act, 42
2313 U.S.C. Sec. 1320d, and applicable regulations, in making decisions related to the past, present,
2314 or future payment for the provision of health care consented to by the principal or anyone
2315 authorized under the law of this state to consent to health care on behalf of the principal;

2316 (g) continue any provision made by the principal for automobiles or other means of
2317 transportation, including registering, licensing, insuring, and replacing them, for the individuals
2318 described in Subsection (1)(a);

2319 (h) maintain credit and debit accounts and open new accounts for the convenience of

2320 the individuals described in Subsection (1)(a); and

2321 (i) continue payments incidental to the membership or affiliation of the principal in a
2322 religious institution, club, society, order, or other organization or to continue contributions to
2323 those organizations.

2324 (2) Authority with respect to personal and family maintenance is neither dependent
2325 upon, nor limited by, authority that an agent may or may not have with respect to gifts under
2326 this chapter.

2327 Section 60. Section **75A-2-214**, which is renumbered from Section 75-9-214 is
2328 renumbered and amended to read:

2329 ~~[75-9-214]~~. **75A-2-214**. **Benefits from governmental programs or civil or**
2330 **military service.**

2331 (1) ~~[In this section]~~ As used in this section, "benefits from governmental programs or
2332 civil or military service" means any benefit, program, or assistance provided under a statute or
2333 regulation, including social security, Medicare, and Medicaid.

2334 (2) Unless the power of attorney otherwise provides, language in a power of attorney
2335 granting general authority with respect to benefits from governmental programs or civil or
2336 military service authorizes the agent to:

2337 (a) execute vouchers in the name of the principal for allowances and reimbursements
2338 payable by the United States or a foreign government or by a state or subdivision of a state to
2339 the principal, including allowances and reimbursements for transportation of the individuals
2340 described in Subsection ~~[75-9-213(1)(a)]~~ 75A-2-213(1)(a), and for shipment of their household
2341 effects;

2342 (b) take possession and order the removal and shipment of property of the principal
2343 from a post, warehouse, depot, dock, or other place of storage or safekeeping, either
2344 governmental or private, and execute and deliver a release, voucher, receipt, bill of lading,
2345 shipping ticket, certificate, or other instrument for that purpose;

2346 (c) enroll in, apply for, select, reject, change, amend, or discontinue, on the principal's
2347 behalf, a benefit or program;

2348 (d) prepare, file, and maintain a claim of the principal for a benefit or assistance,
2349 financial or otherwise, to which the principal may be entitled under a statute or regulation;

2350 (e) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or

2351 propose or accept a compromise with respect to litigation concerning any benefit or assistance
2352 the principal may be entitled to receive under a statute or regulation; and

2353 (f) receive the financial proceeds of a claim described in Subsection (2)(d) and
2354 conserve, invest, disburse, or use for a lawful purpose anything received.

2355 Section 61. Section **75A-2-215**, which is renumbered from Section 75-9-215 is
2356 renumbered and amended to read:

2357 ~~[75-9-215]~~. **75A-2-215. Retirement plans.**

2358 (1) ~~[In this section]~~ As used in this section, "retirement plan" means a plan or account
2359 created by an employer, the principal, or another individual to provide retirement benefits or
2360 deferred compensation of which the principal is a participant, beneficiary, or owner, including
2361 a plan or account under the following sections of the Internal Revenue Code:

2362 (a) an individual retirement account under Section 408, Internal Revenue Code;

2363 (b) a Roth individual retirement account under Section 408A, Internal Revenue Code;

2364 (c) a deemed individual retirement account under Section 408(q), Internal Revenue
2365 Code;

2366 (d) an annuity or mutual fund custodial account under Section 403(b), Internal Revenue
2367 Code;

2368 (e) a pension, profit-sharing, stock bonus, or other retirement plan qualified under
2369 Section 401(a), Internal Revenue Code;

2370 (f) a plan under Section 457(b), Internal Revenue Code; and

2371 (g) a nonqualified deferred compensation plan under Section 409A, Internal Revenue
2372 Code.

2373 (2) Unless the power of attorney otherwise provides, language in a power of attorney
2374 granting general authority with respect to retirement plans authorizes the agent to:

2375 (a) select the form and timing of payments under a retirement plan and withdraw
2376 benefits from a plan;

2377 (b) make a rollover, including a direct trustee-to-trustee rollover, of benefits from one
2378 retirement plan to another;

2379 (c) establish a retirement plan in the principal's name;

2380 (d) make contributions to a retirement plan;

2381 (e) exercise investment powers available under a retirement plan; and

2382 (f) borrow from, sell assets to, or purchase assets from a retirement plan.

2383 Section 62. Section **75A-2-216**, which is renumbered from Section 75-9-216 is
2384 renumbered and amended to read:

2385 ~~[75-9-216]~~. **75A-2-216. Taxes.**

2386 Unless the power of attorney otherwise provides, language in a power of attorney
2387 granting general authority with respect to taxes authorizes the agent to:

2388 (1) prepare, sign, and file federal, state, local, and foreign income, gift, payroll,
2389 property, Federal Insurance Contributions Act, and other tax returns, claims for refunds,
2390 requests for extension of time, petitions regarding tax matters, and any other tax-related
2391 documents, including receipts, offers, waivers, consents, including consents and agreements
2392 under Section 2032A, Internal Revenue Code, closing agreements, and any power of attorney
2393 required by the Internal Revenue Service or other taxing authority with respect to a tax year
2394 upon which the statute of limitations has not run and the following 25 tax years;

2395 (2) pay taxes due, collect refunds, post bonds, receive confidential information, and
2396 contest deficiencies determined by the Internal Revenue Service or other taxing authority;

2397 (3) exercise any election available to the principal under federal, state, local, or foreign
2398 tax law; and

2399 (4) act for the principal in all tax matters for all periods before the Internal Revenue
2400 Service or other taxing authority.

2401 Section 63. Section **75A-2-217**, which is renumbered from Section 75-9-217 is
2402 renumbered and amended to read:

2403 ~~[75-9-217]~~. **75A-2-217. Gifts.**

2404 (1) ~~[In this section, a gift "for the benefit of" a person]~~ As used in this section, "for the
2405 benefit of" includes a gift to a trust, an account under ~~[the Uniform Transfers to Minors Act~~
2406 ~~(1983/1986)]~~ Chapter 8, Uniform Transfers to Minors Act, and a tuition savings account or
2407 prepaid tuition plan as defined under Section 529, Internal Revenue Code.

2408 (2) Unless the power of attorney otherwise provides, language in a power of attorney
2409 granting general authority with respect to gifts authorizes the agent only to:

2410 (a) make outright to, or for the benefit of, a person a gift of any of the principal's
2411 property, including by the exercise of a presently exercisable general power of appointment
2412 held by the principal, in an amount per donee not to exceed the annual dollar limits of the

2413 federal gift tax exclusion under Section 2503(b), Internal Revenue Code, without regard to
 2414 whether the federal gift tax exclusion applies to the gift, or if the principal's spouse agrees to
 2415 consent to a split gift pursuant to Section 2513, Internal Revenue Code, in an amount per donee
 2416 not to exceed twice the annual federal gift tax exclusion limit; and

2417 (b) consent, pursuant to Section 2513, Internal Revenue Code, to the splitting of a gift
 2418 made by the principal's spouse in an amount per donee not to exceed the aggregate annual gift
 2419 tax exclusions for both spouses.

2420 (3) An agent may make a gift of the principal's property only as the agent determines is
 2421 consistent with the principal's objectives if actually known by the agent and, if unknown, as the
 2422 agent determines is consistent with the principal's best interest based on all relevant factors,
 2423 including:

2424 (a) the value and nature of the principal's property;

2425 (b) the principal's foreseeable obligations and need for maintenance;

2426 (c) minimization of taxes, including income, estate, inheritance, generation-skipping
 2427 transfer, and gift taxes;

2428 (d) eligibility for a benefit, program, or assistance under a statute or regulation; and

2429 (e) the principal's personal history of making or joining in making gifts.

2430 Section 64. Section **75A-2-301**, which is renumbered from Section 75-9-301 is
 2431 renumbered and amended to read:

2432 **Part 3. Statutory Forms**

2433 ~~[75-9-301].~~ **75A-2-301. Statutory form power of attorney.**

2434 A document substantially in the following form may be used to create a statutory form
 2435 power of attorney that has the meaning and effect prescribed by this chapter.

2436 STATUTORY FORM POWER OF ATTORNEY

2437 IMPORTANT INFORMATION

2438 This power of attorney authorizes another person (your agent) to make decisions
 2439 concerning your property for you (the principal). Your agent will be able to make decisions
 2440 and act with respect to your property (including your money) whether or not you are able to act
 2441 for yourself. The meaning of authority over subjects listed on this form is explained in [~~Title~~
 2442 ~~75, Chapter 9, Uniform Power of Attorney Act]~~ Title 75A, Chapter 2, Uniform Power of
 2443 Attorney Act.

2444 This power of attorney does not authorize the agent to make health care decisions for
2445 you.

2446 You should select someone you trust to serve as your agent. Unless you specify
2447 otherwise, generally the agent's authority will continue until you die or revoke the power of
2448 attorney, or the agent resigns or is unable to act for you.

2449 Your agent is entitled to reasonable compensation unless you state otherwise in the
2450 Special Instructions.

2451 This form provides for designation of one agent. If you wish to name more than one
2452 agent you may name a coagent in the Special Instructions. Coagents are not required to act
2453 together unless you include that requirement in the Special Instructions.

2454 If your agent is unable or unwilling to act for you, your power of attorney will end
2455 unless you have named a successor agent. You may also name a second successor agent.

2456 This power of attorney becomes effective immediately unless you state otherwise in the
2457 Special Instructions.

2458 If you have questions about the power of attorney or the authority you are granting to
2459 your agent, you should seek legal advice before signing this form.

2460 DESIGNATION OF AGENT

2461 I _____ name the following

2462 (Name of Principal)

2463 person as my agent:

2464 Name of Agent: _____

2465 Agent's Address: _____

2466 Agent's Telephone Number: _____

2467 DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

2468 If my agent is unable or unwilling to act for me, I name as my successor agent:

2469 Name of Successor Agent: _____

2470 Successor Agent's Address: _____

2471 Successor Agent's Telephone Number: _____

2472 If my successor agent is unable or unwilling to act for me, I name as my second successor
2473 agent:

2474 Name of Second Successor Agent: _____

2475 Second Successor Agent's Address: _____

2476 Second Successor Agent's Telephone Number: _____

2477 GRANT OF GENERAL AUTHORITY

2478 I grant my agent and any successor agent general authority to act for me with respect to the
2479 following subjects as defined in [~~Title 75, Chapter 9, Uniform Power of Attorney Act~~] Title
2480 75A, Chapter 2, Uniform Power of Attorney Act:

2481 (INITIAL each subject you want to include in the agent's general authority. If you wish to grant
2482 general authority over all of the subjects you may initial "All Preceding Subjects" instead of
2483 initialing each subject.)

2484 Real Property

2485 Tangible Personal Property

2486 Stocks and Bonds

2487 Commodities and Options

2488 Banks and Other Financial Institutions

2489 Operation of Entity or Business

2490 Insurance and Annuities

2491 Estates, Trusts, and Other Beneficial Interests

2492 Claims and Litigation

2493 Personal and Family Maintenance

2494 Benefits from Governmental Programs or Civil or Military Service

2495 Retirement Plans

2496 Taxes

2497 All Preceding Subjects

2498 GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

2499 My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED
2500 the specific authority listed below:

2501 (CAUTION: Granting any of the following will give your agent the authority to take actions
2502 that could significantly reduce your property or change how your property is distributed at your
2503 death. INITIAL ONLY the specific authority you WANT to give your agent.)

2504 Create, amend, revoke, or terminate an inter vivos trust

2505 Make a gift, subject to the limitations of Section [~~75-9-217~~][75A-2-217](#), and any special

- 2506 instructions in this power of attorney
- 2507 () Create or change rights of survivorship
- 2508 () Create or change a beneficiary designation
- 2509 () Authorize another person to exercise the authority granted under this power of attorney
- 2510 () Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a
- 2511 survivor benefit under a retirement plan
- 2512 () Exercise fiduciary powers that the principal has authority to delegate
- 2513 () Disclaim or refuse an interest in property, including a power of appointment

LIMITATION ON AGENT'S AUTHORITY

2515 An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to benefit
2516 the agent or a person to whom the agent owes an obligation of support unless I have included
2517 that authority in the Special Instructions.

SPECIAL INSTRUCTIONS (OPTIONAL)

2519 You may give special instructions on the following lines:

2520 _____

2521 _____

2522 _____

2523 _____

2524 _____

2525 _____

2526 _____

EFFECTIVE DATE

2528 This power of attorney is effective immediately unless I have stated otherwise in the Special
2529 Instructions.

NOMINATION OF CONSERVATOR OR GUARDIAN (OPTIONAL)

2531 If it becomes necessary for a court to appoint a conservator of my estate or guardian of my
2532 person, I nominate the following person(s) for appointment:

2533 Name of Nominee for conservator of my estate: _____

2534 Nominee's Address: _____

2535 Nominee's Telephone Number: _____

2536 Name of Nominee for guardian of my person: _____

2537 Nominee's Address: _____

2538 Nominee's Telephone Number: _____

2539 RELIANCE ON THIS POWER OF ATTORNEY

2540 Any person, including my agent, may rely upon the validity of this power of attorney or a copy
2541 of it unless that person knows it has terminated or is invalid.

2542 SIGNATURE AND ACKNOWLEDGMENT

2543 _____

2544 Your Signature Date

2545 _____

2546 Your Name Printed

2547 _____

2548 _____

2549 Your Address

2550 _____

2551 Your Telephone Number

2552 State of _____

2553 County of _____

2554 This document was acknowledged before me on _____,

(Date)

2556 by _____.

2557 (Name of Principal)

2558 _____ (Seal, if any)

2559 Signature of Notary

2560 My commission expires: _____

2561 [This document prepared by:

2562 _____

2563 _____]

2564 IMPORTANT INFORMATION FOR AGENT

2565 Agent's Duties

2566 When you accept the authority granted under this power of attorney, a special legal relationship
2567 is created between you and the principal. This relationship imposes upon you legal duties that

2568 continue until you resign or the power of attorney is terminated or revoked. You shall:

2569 (1) do what you know the principal reasonably expects you to do with the principal's
2570 property or, if you do not know the principal's expectations, act in the principal's best interest;

2571 (2) act in good faith;

2572 (3) do nothing beyond the authority granted in this power of attorney; and

2573 (4) disclose your identity as an agent whenever you act for the principal by writing or
2574 printing the name of the principal and signing your own name as "agent" in the following
2575 manner:

2576 (Principal's Name) by (Your Signature) as Agent

2577 Unless the Special Instructions in this power of attorney state otherwise, you must also:

2578 (1) act loyally for the principal's benefit;

2579 (2) avoid conflicts that would impair your ability to act in the principal's best interest;

2580 (3) act with care, competence, and diligence;

2581 (4) keep a record of all receipts, disbursements, and transactions made on behalf of the
2582 principal;

2583 (5) cooperate with any person that has authority to make health care decisions for the
2584 principal to do what you know the principal reasonably expects or, if you do not know the
2585 principal's expectations, to act in the principal's best interest; and

2586 (6) attempt to preserve the principal's estate plan if you know the plan and preserving
2587 the plan is consistent with the principal's best interest.

2588 Termination of Agent's Authority

2589 You must stop acting on behalf of the principal if you learn of any event that terminates this
2590 power of attorney or your authority under this power of attorney. Events that terminate a power
2591 of attorney or your authority to act under a power of attorney include:

2592 (1) death of the principal;

2593 (2) the principal's revocation of the power of attorney or your authority;

2594 (3) the occurrence of a termination event stated in the power of attorney;

2595 (4) the purpose of the power of attorney is fully accomplished; or

2596 (5) if you are married to the principal, a legal action is filed with a court to end your
2597 marriage, or for your legal separation, unless the Special Instructions in this power of attorney
2598 state that such an action will not terminate your authority.

2599 Liability of Agent
 2600 The meaning of the authority granted to you is defined in [~~Title 75, Chapter 9, Uniform Power~~
 2601 ~~of Attorney Act~~] Title 75A, Chapter 2, Uniform Power of Attorney Act. If you violate [~~Title~~
 2602 ~~75, Chapter 9, Uniform Power of Attorney Act~~] Title 75A, Chapter 2, Uniform Power of
 2603 Attorney Act, or act outside the authority granted, you may be liable for any damages caused by
 2604 your violation.

2605 If there is anything about this document or your duties that you do not understand, you
 2606 should seek legal advice.

2607 Section 65. Section **75A-2-302**, which is renumbered from Section 75-9-302 is
 2608 renumbered and amended to read:

2609 ~~[75-9-302]~~. **75A-2-302. Agent's certification.**

2610 The following optional form may be used by an agent to certify facts concerning a
 2611 power of attorney.

2612 AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER
 2613 OF ATTORNEY AND AGENT'S AUTHORITY

2614 State of _____

2615 [County] of _____

2616 I, _____ (Name of Agent), certify under
 2617 penalty of perjury that _____ (Name of Principal)
 2618 granted me authority as an agent or successor agent in a power of attorney dated
 2619 _____.

2620 I further certify that to my knowledge:

2621 (1) the principal is alive and has not revoked the power of attorney or my authority to
 2622 act under the power of attorney and the power of attorney and my authority to act under the
 2623 power of attorney have not terminated;

2624 (2) if the power of attorney was drafted to become effective upon the happening of an
 2625 event or contingency, the event or contingency has occurred;

2626 (3) if I was named as a successor agent, the prior agent is no longer able or willing to
 2627 serve; and

2628 (4) _____

2629 _____

2630 _____

2631 _____

2632 (Insert other relevant statements)

2633 SIGNATURE AND ACKNOWLEDGMENT

2634 _____

2635 Agent's Signature Date

2636 _____

2637 Agent's Name Printed

2638 _____

2639 _____

2640 Agent's Address

2641 _____

2642 Agent's Telephone Number

2643 This document was acknowledged before me on _____,

2644 (Date)

2645 by _____.

2646 (Name of Agent)

2647 _____ (Seal, if any)

2648 Signature of Notary

2649 My commission expires: _____

2650 This document prepared by:

2651 _____

2652 Section 66. Section **75A-2-401**, which is renumbered from Section 75-9-401 is

2653 renumbered and amended to read:

2654 **Part 4. Applicability Provisions**

2655 ~~[75-9-401]~~. **75A-2-401**. **Uniformity of application and construction.**

2656 In applying and construing this uniform act, consideration shall be given to the need to
2657 promote uniformity of the law with respect to its subject matter among the states that enact [it]
2658 this uniform act.

2659 Section 67. Section **75A-2-402**, which is renumbered from Section 75-9-402 is

2660 renumbered and amended to read:

2661 ~~[75-9-402]~~. 75A-2-402. **Relation to Electronic Signatures in Global and**
2662 **National Commerce Act.**

2663 This chapter modifies, limits, and supersedes the federal Electronic Signatures in
2664 Global and National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or
2665 supersede Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of
2666 any of the notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

2667 Section 68. Section **75A-2-403**, which is renumbered from Section 75-9-403 is
2668 renumbered and amended to read:

2669 ~~[75-9-403]~~. 75A-2-403. **Effect on existing powers of attorney.**

2670 Except as otherwise provided:

2671 (1) this chapter applies to a power of attorney created before, on, or after May 10,
2672 2016;

2673 (2) this chapter applies to a judicial proceeding concerning a power of attorney
2674 commenced on or after May 10, 2016;

2675 (3) this chapter applies to a judicial proceeding concerning a power of attorney
2676 commenced before May 10, 2016, unless the court finds that application of a provision of this
2677 chapter would substantially interfere with the effective conduct of the judicial proceeding or
2678 prejudice the rights of a party, in which case that provision does not apply and the superseded
2679 law applies; and

2680 (4) an act done before May 10, 2016, is not affected by this chapter.

2681 Section 69. Section **75A-3-101**, which is renumbered from Section 75-2a-103 is
2682 renumbered and amended to read:

2683 **CHAPTER 3. HEALTH CARE DECISIONS**

2684 **Part 1. General Provisions**

2685 ~~[75-2a-103]~~. 75A-3-101. **Definitions for chapter.**

2686 As used in this chapter:

2687 (1) "Adult" means an individual who is:

2688 (a) at least 18 years old; or

2689 (b) an emancipated minor.

2690 (2) "Advance health care directive":

- 2691 (a) includes:
- 2692 (i) a designation of an agent to make health care decisions for an adult when the adult
- 2693 cannot make or communicate health care decisions; or
- 2694 (ii) an expression of preferences about health care decisions;
- 2695 (b) may take one of the following forms:
- 2696 (i) a written document, voluntarily executed by an adult in accordance with the
- 2697 requirements of this chapter; or
- 2698 (ii) a witnessed oral statement, made in accordance with the requirements of this
- 2699 chapter; and
- 2700 (c) does not include a POLST order.
- 2701 (3) "Agent" means an adult designated in an advance health care directive to make
- 2702 health care decisions for the declarant.
- 2703 (4) "APRN" means an individual who is:
- 2704 (a) certified or licensed as an advance practice registered nurse under Subsection
- 2705 [58-31b-301\(2\)\(e\)](#);
- 2706 (b) an independent practitioner;
- 2707 (c) acting under a consultation and referral plan with a physician; and
- 2708 (d) acting within the scope of practice for that individual, as provided by law, rule, and
- 2709 specialized certification and training in that individual's area of practice.
- 2710 (5) "Best interest" means that the benefits to the person resulting from a treatment
- 2711 outweigh the burdens to the person resulting from the treatment, taking into account:
- 2712 (a) the effect of the treatment on the physical, emotional, and cognitive functions of the
- 2713 person;
- 2714 (b) the degree of physical pain or discomfort caused to the person by the treatment or
- 2715 the withholding or withdrawal of treatment;
- 2716 (c) the degree to which the person's medical condition, the treatment, or the
- 2717 withholding or withdrawal of treatment, result in a severe and continuing impairment of the
- 2718 dignity of the person by subjecting the person to humiliation and dependency;
- 2719 (d) the effect of the treatment on the life expectancy of the person;
- 2720 (e) the prognosis of the person for recovery with and without the treatment;
- 2721 (f) the risks, side effects, and benefits of the treatment, or the withholding or

2722 withdrawal of treatment; and

2723 (g) the religious beliefs and basic values of the person receiving treatment, to the extent
2724 these may assist the decision maker in determining the best interest.

2725 (6) "Capacity to appoint an agent" means that the adult understands the consequences
2726 of appointing a particular person as agent.

2727 (7) "Child" means the same as that term is defined in Section 75-1-201.

2728 [~~(7)~~] (8) "Declarant" means an adult who has completed and signed or directed the
2729 signing of an advance health care directive.

2730 [~~(8)~~] (9) "Default surrogate" means the adult who may make decisions for an individual
2731 when either:

2732 (a) an agent or guardian has not been appointed; or

2733 (b) an agent is not able, available, or willing to make decisions for an adult.

2734 [~~(9)~~] (10) "Emergency medical services provider" means a person that is licensed,
2735 designated, or certified under Title 26B, Chapter 4, Part 1, Utah Emergency Medical Services
2736 System.

2737 (11) "Estate" means the same as that term is defined in Section 75-1-201.

2738 [~~(10)~~] (12) "Generally accepted health care standards":

2739 (a) is defined only for the purpose of:

2740 (i) this chapter and does not define the standard of care for any other purpose under
2741 Utah law; and

2742 (ii) enabling health care providers to interpret the statutory form set forth in Section
2743 [~~75-2a-117~~] 75A-3-303; and

2744 (b) means the standard of care that justifies a provider in declining to provide life
2745 sustaining care because the proposed life sustaining care:

2746 (i) will not prevent or reduce the deterioration in the health or functional status of an
2747 individual;

2748 (ii) will not prevent the impending death of an individual; or

2749 (iii) will impose more burden on the individual than any expected benefit to the
2750 individual.

2751 (13) "Guardian" means the same as that term is defined in Section 75-1-201.

2752 [~~(11)~~] (14) "Health care" means any care, treatment, service, or procedure to improve,

2753 maintain, diagnose, or otherwise affect an individual's physical or mental condition.

2754 [~~(12)~~] (15) "Health care decision":

2755 (a) means a decision about an adult's health care made by, or on behalf of, an adult, that
2756 is communicated to a health care provider;

2757 (b) includes:

2758 (i) selection and discharge of a health care provider and a health care facility;

2759 (ii) approval or disapproval of diagnostic tests, procedures, programs of medication,
2760 and orders not to resuscitate; and

2761 (iii) directions to provide, withhold, or withdraw artificial nutrition and hydration and
2762 all other forms of health care; and

2763 (c) does not include decisions about an adult's financial affairs or social interactions
2764 other than as indirectly affected by the health care decision.

2765 [~~(13)~~] (16) "Health care decision making capacity" means an adult's ability to make an
2766 informed decision about receiving or refusing health care, including:

2767 (a) the ability to understand the nature, extent, or probable consequences of health
2768 status and health care alternatives;

2769 (b) the ability to make a rational evaluation of the burdens, risks, benefits, and
2770 alternatives of accepting or rejecting health care; and

2771 (c) the ability to communicate a decision.

2772 [~~(14)~~] (17) "Health care facility" means:

2773 (a) a health care facility as defined in Title 26B, Chapter 2, Part 2, Health Care Facility
2774 Licensing and Inspection; and

2775 (b) private offices of physicians, dentists, and other health care providers licensed to
2776 provide health care under Title 58, Occupations and Professions.

2777 [~~(15)~~] (18) "Health care provider" means the same as that term is defined in Section
2778 [78B-3-403](#), except that "health care provider" does not include an emergency medical services
2779 provider.

2780 [~~(16)~~] (19) (a) "Life sustaining care" means any medical intervention, including
2781 procedures, administration of medication, or use of a medical device, that maintains life by
2782 sustaining, restoring, or supplanting a vital function.

2783 (b) "Life sustaining care" does not include care provided for the purpose of keeping an

2784 individual comfortable.

2785 (20) "Incapacitated" means the same as that term is defined in Section 75-1-201.

2786 (21) "Incapacity" means the same as that term is defined in Section 75-1-201.

2787 [~~17~~] (22) "Minor" means an individual who:

2788 (a) is under 18 years old; and

2789 (b) is not an emancipated minor.

2790 (23) "Parent" means the same as that term is defined in Section 75-1-201.

2791 (24) "Personal representative" means the same as that term is defined in Section

2792 75-1-201.

2793 [~~18~~] (25) "Physician" means a physician and surgeon or osteopathic surgeon licensed

2794 under Title 58, Chapter 67, Utah Medical Practice Act or Chapter 68, Utah Osteopathic

2795 Medical Practice Act.

2796 [~~19~~] (26) "Physician assistant" means an individual licensed as a physician assistant

2797 under Title 58, Chapter 70a, Utah Physician Assistant Act.

2798 [~~20~~] (27) "POLST order" means an order, on a form designated by the Department of

2799 Health and Human Services under Section [~~75-2a-106~~] 75A-3-106, that gives direction to

2800 health care providers, health care facilities, and emergency medical services providers

2801 regarding the specific health care decisions of the individual to whom the order relates.

2802 [~~21~~] (28) "Reasonably available" means:

2803 (a) readily able to be contacted without undue effort; and

2804 (b) willing and able to act in a timely manner considering the urgency of the

2805 circumstances.

2806 (29) "State" means the same as that term is defined in Section 75-1-201.

2807 [~~22~~] (30) "Substituted judgment" means the standard to be applied by a surrogate

2808 when making a health care decision for an adult who previously had the capacity to make

2809 health care decisions, which requires the surrogate to consider:

2810 (a) specific preferences expressed by the adult:

2811 (i) when the adult had the capacity to make health care decisions; and

2812 (ii) at the time the decision is being made;

2813 (b) the surrogate's understanding of the adult's health care preferences;

2814 (c) the surrogate's understanding of what the adult would have wanted under the

2815 circumstances; and

2816 (d) to the extent that the preferences described in [~~Subsections (22)(a) through (c)~~]

2817 Subsections (30)(a) through (c) are unknown, the best interest of the adult.

2818 [~~(23)~~] (31) "Surrogate" means a health care decision maker who is:

2819 (a) an appointed agent;

2820 (b) a default surrogate under the provisions of Section [~~75-2a-108~~] 75A-3-203; or

2821 (c) a guardian.

2822 (32) "Trust" means the same as that term is defined in Section 75-1-201.

2823 (33) "Will" means the same as that term is defined in Section 75-1-201.

2824 Section 70. Section **75A-3-102**, which is renumbered from Section 75-2a-102 is

2825 renumbered and amended to read:

2826 [~~75-2a-102~~]. **75A-3-102. Intent statement.**

2827 (1) The Legislature finds:

2828 (a) developments in health care technology make possible many alternatives for

2829 treating medical conditions and make possible the unnatural prolongation of life;

2830 (b) an adult should have the clear legal choice to:

2831 (i) accept or reject health care, even if rejecting health care will result in death sooner
2832 than death would be expected to occur if rejected health care were started or continued;

2833 (ii) be spared unwanted procedures; and

2834 (iii) be permitted to die with a maximum of dignity and function and a minimum of

2835 pain;

2836 (c) Utah law should:

2837 (i) provide an adult with a legal tool to designate a health care agent and express
2838 preferences about health care options to go into effect only after the adult loses the ability to

2839 make or communicate health care decisions, including decisions about end-of-life care; and

2840 (ii) promote an advance health care directive system that can be administered

2841 effectively within the health care system;

2842 (d) surrogate decisions made on behalf of an adult who previously had capacity to
2843 make health care decisions, but who has lost health care decision making capacity should be

2844 based on:

2845 (i) input from the incapacitated adult, to the extent possible under the circumstances;

2846 (ii) specific preferences expressed by the adult prior to the loss of health care decision
2847 making capacity;

2848 (iii) the surrogate's understanding of the adult's health care preferences; and

2849 (iv) the surrogate's understanding of what the adult would have wanted under the
2850 circumstances; and

2851 (e) surrogate decisions made on behalf of an adult who has never had health care
2852 decision making capacity should be made on the basis of the adult's best interest.

2853 (2) In recognition of the dignity and privacy that each adult is entitled to expect, and to
2854 protect the right of an adult to refuse to be treated without the adult's consent, the Legislature
2855 declares that this state recognizes the right to make binding advance health care directives
2856 directing health care providers to:

2857 (a) provide life sustaining medically indicated health care;

2858 (b) withhold or withdraw health care; or

2859 (c) provide health care only to the extent set forth in an advance health care directive.

2860 Section 71. Section **75A-3-103**, which is renumbered from Section 75-2a-122 is
2861 renumbered and amended to read:

2862 ~~[75-2a-122].~~ **75A-3-103. Effect of chapter.**

2863 ~~[The Advance Health Care Directive Act created in this]~~ This chapter does not:

2864 (1) create a presumption concerning the intention of an adult who has not made or who
2865 has revoked an advance health care directive;

2866 (2) authorize mercy killing, assisted suicide, or euthanasia; or

2867 (3) authorize the provision, withholding, or withdrawal of health care, to the extent
2868 prohibited by the laws of this state.

2869 Section 72. Section **75A-3-104**, which is renumbered from Section 75-2a-124 is
2870 renumbered and amended to read:

2871 ~~[75-2a-124].~~ **75A-3-104. Provisions cumulative with existing law.**

2872 The provisions of this chapter are cumulative with existing law regarding a person's
2873 right to consent or refuse to consent to medical treatment and do not impair any existing rights
2874 or responsibilities that a health care provider, a person, including a minor or incapacitated
2875 person, or a person's family or surrogate may have in regard to the provision, withholding or
2876 withdrawal of life sustaining procedures under the common law or statutes of the state.

2877 Section 73. Section **75A-3-105**, which is renumbered from Section 75-2a-125 is
2878 renumbered and amended to read:

2879 ~~[75-2a-125]~~. **75A-3-105. Severability.**

2880 (1) If any one or more provision, section, subsection, sentence, clause, phrase, or word
2881 of this chapter, or the application of this chapter to any person or circumstance, is found to be
2882 unconstitutional, the same is hereby declared to be severable and the balance of this chapter
2883 shall remain effective notwithstanding such unconstitutionality.

2884 (2) The Legislature hereby declares that it would have passed this chapter, and each
2885 provision, section, subsection, sentence, clause, phrase, or word of this chapter, irrespective of
2886 the fact that any one or more provision, section, subsection, sentence, clause, phrase, or word
2887 be declared unconstitutional.

2888 Section 74. Section **75A-3-106**, which is renumbered from Section 75-2a-106 is
2889 renumbered and amended to read:

2890 ~~[75-2a-106]~~. **75A-3-106. Emergency medical services -- POLST order.**

2891 (1) A POLST order may be created by or on behalf of a person as described in this
2892 section.

2893 (2) A POLST order shall, in consultation with the person authorized to consent to the
2894 order pursuant to this section, be prepared by:

2895 (a) the physician, APRN, or, subject to Subsection (11), physician assistant of the
2896 person to whom the POLST order relates; or

2897 (b) a health care provider who:

2898 (i) is acting under the supervision of a person described in Subsection (2)(a); and

2899 (ii) is:

2900 (A) a nurse, licensed under Title 58, Chapter 31b, Nurse Practice Act;

2901 (B) a physician assistant, licensed under Title 58, Chapter 70a, Utah Physician
2902 Assistant Act;

2903 (C) a mental health professional, licensed under Title 58, Chapter 60, Mental Health
2904 Professional Practice Act; or

2905 (D) another health care provider, designated by rule as described in Subsection (10).

2906 (3) A POLST order shall be signed:

2907 (a) personally, by the physician, APRN, or, subject to Subsection (11), physician

2908 assistant of the person to whom the POLST order relates; and
2909 (b) (i) if the person to whom the POLST order relates is an adult with health care
2910 decision making capacity, by:
2911 (A) the person; or
2912 (B) an adult who is directed by the person to sign the POLST order on behalf of the
2913 person;
2914 (ii) if the person to whom the POLST order relates is an adult who lacks health care
2915 decision making capacity, by:
2916 (A) the surrogate with the highest priority under Section [~~75-2a-111~~] [75A-3-206](#);
2917 (B) the majority of the class of surrogates with the highest priority under Section
2918 [~~75-2a-111~~] [75A-3-206](#); or
2919 (C) a person directed to sign the POLST order by, and on behalf of, the persons
2920 described in Subsection (3)(b)(ii)(A) or (B); or
2921 (iii) if the person to whom the POLST order relates is a minor, by a parent or guardian
2922 of the minor.
2923 (4) If a POLST order relates to a minor and directs that life sustaining treatment be
2924 withheld or withdrawn from the minor, the order shall include a certification by two physicians
2925 that, in their clinical judgment, an order to withhold or withdraw life sustaining treatment is in
2926 the best interest of the minor.
2927 (5) A POLST order:
2928 (a) shall be in writing, on a form designated by the Department of Health and Human
2929 Services;
2930 (b) shall state the date on which the POLST order was made;
2931 (c) may specify the level of life sustaining care to be provided to the person to whom
2932 the order relates; and
2933 (d) may direct that life sustaining care be withheld or withdrawn from the person to
2934 whom the order relates.
2935 (6) A health care provider or emergency medical service provider, licensed or certified
2936 under Title 26B, Chapter 4, Part 1, Utah Emergency Medical Services System, is immune from
2937 civil or criminal liability, and is not subject to discipline for unprofessional conduct, for:
2938 (a) complying with a POLST order in good faith; or

2939 (b) providing life sustaining treatment to a person when a POLST order directs that the
2940 life sustaining treatment be withheld or withdrawn.

2941 (7) To the extent that the provisions of a POLST order described in this section conflict
2942 with the provisions of an advance health care directive made under Section [\[75-2a-107\]](#)
2943 [75A-3-301](#), the provisions of the POLST order take precedence.

2944 (8) An adult, or a parent or guardian of a minor, may revoke a POLST order by:

2945 (a) orally informing emergency service personnel;

2946 (b) writing "void" across the POLST order form;

2947 (c) burning, tearing, or otherwise destroying or defacing:

2948 (i) the POLST order form; or

2949 (ii) a bracelet or other evidence of the POLST order;

2950 (d) asking another adult to take the action described in this Subsection (8) on the
2951 person's behalf;

2952 (e) signing or directing another adult to sign a written revocation on the person's
2953 behalf;

2954 (f) stating, in the presence of an adult witness, that the person wishes to revoke the
2955 order; or

2956 (g) completing a new POLST order.

2957 (9) (a) Except as provided in Subsection (9)(c), a surrogate for an adult who lacks
2958 health care decision making capacity may only revoke a POLST order if the revocation is
2959 consistent with the substituted judgment standard.

2960 (b) Except as provided in Subsection (9)(c), a surrogate who has authority under this
2961 section to sign a POLST order may revoke a POLST order, in accordance with Subsection
2962 (9)(a), by:

2963 (i) signing a written revocation of the POLST order; or

2964 (ii) completing and signing a new POLST order.

2965 (c) A surrogate may not revoke a POLST order during the period of time beginning
2966 when an emergency service provider is contacted for assistance, and ending when the
2967 emergency ends.

2968 (10) (a) The Department of Health and Human Services shall make rules, in
2969 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

2970 (i) create the forms and systems described in this section; and
 2971 (ii) develop uniform instructions for the form established in Section ~~[75-2a-117]~~
 2972 75A-3-303.

2973 (b) The Department of Health and Human Services may make rules, in accordance
 2974 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to designate health care
 2975 professionals, in addition to those described in Subsection (2)(b)(ii), who may prepare a
 2976 POLST order.

2977 (c) The Department of Health and Human Services may assist others with training of
 2978 health care professionals regarding this chapter.

2979 (11) A physician assistant may not prepare or sign a POLST order, unless the physician
 2980 assistant is permitted to prepare or sign the POLST order under the physician assistant's
 2981 delegation of services agreement~~[, as defined in Section 58-70a-102]~~.

2982 (12) (a) Notwithstanding any other provision of this section:

2983 (i) the provisions of Title 46, Chapter 4, Uniform Electronic Transactions Act, apply to
 2984 any signature required on the POLST order; and

2985 (ii) a verbal confirmation satisfies the requirement for a signature from an individual
 2986 under Subsection (3)(b)(ii) or (iii), if:

2987 (A) requiring the individual described in Subsection (3)(b)(i)(B), (ii), or (iii) to sign the
 2988 POLST order in person or electronically would require significant difficulty or expense; and

2989 (B) a licensed health care provider witnesses the verbal confirmation and signs the
 2990 POLST order attesting that the health care provider witnessed the verbal confirmation.

2991 (b) The health care provider described in Subsection (12)(a)(ii)(B):

2992 (i) may not be the same individual who signs the POLST order under Subsection
 2993 (3)(a); and

2994 (ii) shall verify, in accordance with HIPAA as defined in Section 26B-3-126, the
 2995 identity of the individual who is providing the verbal confirmation.

2996 Section 75. Section 75A-3-107, which is renumbered from Section 75-2a-120 is
 2997 renumbered and amended to read:

2998 ~~[75-2a-120]~~. 75A-3-107. Judicial relief.

2999 A district court may enjoin or direct a health care decision, or order other equitable
 3000 relief based on a petition filed by:

- 3001 (1) a patient;
- 3002 (2) an agent of a patient;
- 3003 (3) a guardian of a patient;
- 3004 (4) a default surrogate of a patient;
- 3005 (5) a health care provider of a patient;
- 3006 (6) a health care facility providing care for a patient; or
- 3007 (7) an individual who meets the requirements of Section ~~[75-2a-108]~~ [75A-3-203](#).
- 3008 Section 76. Section **75A-3-201**, which is renumbered from Section 75-2a-104 is
- 3009 renumbered and amended to read:

Part 2. Health Care Decisions for Adult

3010 ~~[75-2a-104]~~. **75A-3-201. Capacity to make health care decisions --**
3012 **Presumption -- Overcoming presumption.**

- 3013 (1) An adult is presumed to have:
 - 3014 (a) health care decision making capacity; and
 - 3015 (b) capacity to make or revoke an advance health care directive.
- 3016 (2) To overcome the presumption of capacity described in Subsection (1)(a), a
3017 physician, an APRN, or, subject to Subsection (6), a physician assistant who has personally
3018 examined the adult and assessed the adult's health care decision making capacity must:
 - 3019 (a) find that the adult lacks health care decision making capacity;
 - 3020 (b) record the finding in the adult's medical chart including an indication of whether
3021 the adult is likely to regain health care decision making capacity; and
 - 3022 (c) make a reasonable effort to communicate the determination to:
 - 3023 (i) the adult;
 - 3024 (ii) other health care providers or health care facilities that the person who makes the
3025 finding would routinely inform of such a finding; and
 - 3026 (iii) if the adult has a surrogate, any known surrogate.
- 3027 (3) (a) An adult who is found to lack health care decision making capacity in
3028 accordance with Subsection (2) may, at any time, challenge the finding by:
 - 3029 (i) submitting to a health care provider a written notice stating that the adult disagrees
3030 with the physician's finding; or
 - 3031 (ii) orally informing the health care provider that the adult disagrees with the finding.

3032 (b) A health care provider who is informed of a challenge under Subsection (3)(a),
3033 shall, if the adult has a surrogate, promptly inform the surrogate of the adult's challenge.

3034 (c) A surrogate informed of a challenge to a finding under this section, or the adult if
3035 no surrogate is acting on the adult's behalf, shall inform the following of the adult's challenge:

3036 (i) any other health care providers involved in the adult's care; and

3037 (ii) the health care facility, if any, in which the adult is receiving care.

3038 (d) Unless otherwise ordered by a court, a finding, under Subsection (2), that the adult
3039 lacks health care decision making capacity, is not in effect if the adult challenges the finding
3040 under Subsection (3)(a).

3041 (e) If an adult does not challenge the finding described in Subsection (2), the health
3042 care provider and health care facility may rely on a surrogate, pursuant to the provisions of this
3043 chapter, to make health care decisions for the adult.

3044 (4) A health care provider or health care facility that relies on a surrogate to make
3045 decisions on behalf of an adult has an ongoing obligation to consider whether the adult
3046 continues to lack health care decision making capacity.

3047 (5) If at any time a health care provider finds, based on an examination and assessment,
3048 that the adult has regained health care decision making capacity, the health care provider shall
3049 record the results of the assessment in the adult's medical record, and the adult can direct the
3050 adult's own health care.

3051 (6) A physician assistant may not make a finding described in Subsection (2), unless
3052 the physician assistant is permitted to make the finding under the physician assistant's
3053 delegation of services agreement~~[as defined in Section 58-70a-102]~~.

3054 Section 77. Section **75A-3-202**, which is renumbered from Section 75-2a-109 is
3055 renumbered and amended to read:

3056 ~~[75-2a-109]~~. **75A-3-202. Effect of current health care preferences --**
3057 **Health care decision making.**

3058 (1) (a) An adult with health care decision making capacity retains the right to make
3059 health care decisions as long as the adult has health care decision making capacity ~~[as defined~~
3060 ~~in Section 75-2a-103]~~.

3061 (b) For purposes of this chapter, the inability to communicate through speech does not
3062 mean that the adult lacks health care decision making capacity.

3063 (2) An adult's current health care decisions, however expressed or indicated, always
3064 supersede an adult's prior decisions or health care directives.

3065 (3) Unless otherwise directed in an advance health care directive, an advance health
3066 care directive or the authority of a surrogate to make health care decisions on behalf of an
3067 adult:

3068 (a) is effective only after a physician, physician assistant, or APRN makes a
3069 determination of incapacity as provided in Section [~~75-2a-104~~] 75A-3-201;

3070 (b) remains in effect during any period of time in which the declarant lacks capacity to
3071 make health care decisions; and

3072 (c) ceases to be effective when:

3073 (i) a declarant disqualifies a surrogate or revokes the advance health care directive;

3074 (ii) a health care provider finds that the declarant has health care decision making
3075 capacity;

3076 (iii) a court issues an order invalidating a health care directive; or

3077 (iv) the declarant has challenged the finding of incapacity under the provisions of
3078 Subsection [~~75-2a-104(3)~~] 75A-3-201(3).

3079 Section 78. Section **75A-3-203**, which is renumbered from Section 75-2a-108 is
3080 renumbered and amended to read:

3081 [~~75-2a-108~~]. **75A-3-203. Default surrogates.**

3082 (1) (a) Any member of the class described in Subsection (1)(b) may act as an adult's
3083 surrogate if:

3084 (i) (A) the adult has not appointed an agent;

3085 (B) an appointed agent is not reasonably available; or

3086 (C) a guardian has not been appointed; and

3087 (ii) the member of the class described in Subsection (1)(b) is:

3088 (A) over 18 years [~~of age~~] old;

3089 (B) has health care decision making capacity;

3090 (C) is reasonably available; and

3091 (D) has not been disqualified by the adult or a court.

3092 (b) Except as provided in Subsection (1)(a), and subject to Subsection (1)(c), the
3093 following classes of the adult's family, in descending order of priority, may act as the adult's

3094 surrogate:

3095 (i) the adult's spouse, unless the adult is divorced or legally separated; or

3096 (ii) the following family members:

3097 (A) a child;

3098 (B) a parent;

3099 (C) a sibling;

3100 (D) a grandchild; or

3101 (E) a grandparent.

3102 (c) A person described in Subsection (1)(b), may not direct an adult's care if a person of
3103 a higher priority class is able and willing to act as a surrogate for the adult.

3104 (d) A court may disqualify a person described in Subsection (1)(b) from acting as a
3105 surrogate if the court finds that the person has acted in a manner that is inconsistent with the
3106 position of trust in which a surrogate is placed.

3107 (2) If the family members designated in Subsection (1)(b) are not reasonably available
3108 to act as a surrogate, a person who is 18 years [~~of age~~] old or older, other than those designated
3109 in Subsection (1) may act as a surrogate if the person:

3110 (a) has health care decision making capacity;

3111 (b) has exhibited special care and concern for the patient;

3112 (c) knows the patient and the patient's personal values; and

3113 (d) is reasonably available to act as a surrogate.

3114 (3) The surrogate shall communicate the surrogate's assumption of authority as
3115 promptly as practicable to the members of a class who:

3116 (a) have an equal or higher priority and are not acting as surrogate; and

3117 (b) can be readily contacted.

3118 (4) A health care provider shall comply with the decision of a majority of the members
3119 of the highest priority class who have communicated their views to the provider if:

3120 (a) more than one member of the highest priority class assumes authority to act as
3121 default surrogate;

3122 (b) the members of the class do not agree on a health care decision; and

3123 (c) the health care provider is informed of the disagreement among the members of the
3124 class.

3125 (5) (a) An adult may at any time disqualify a default surrogate, including a member of
3126 the adult's family, from acting as the adult's surrogate by:

- 3127 (i) a signed writing;
- 3128 (ii) personally informing a witness of the disqualification; or
- 3129 (iii) informing the surrogate of the disqualification.

3130 (b) Disqualification of a surrogate is effective even if the adult has been found to lack
3131 health care decision making capacity.

3132 (6) If reasonable doubt exists regarding the status of an adult claiming the right to act
3133 as a default surrogate, the health care provider may:

- 3134 (a) require the person to provide a sworn statement giving facts and circumstances
3135 reasonably sufficient to establish the claimed authority; or
- 3136 (b) seek a ruling from the court under Section ~~[75-2a-120]~~ [75A-3-107](#).

3137 (7) A health care provider may seek a ruling from a court pursuant to Section
3138 ~~[75-2a-120]~~ [75A-3-107](#) if the health care provider has evidence that a surrogate is making
3139 decisions that are inconsistent with an adult patient's wishes or preferences.

3140 Section 79. Section **75A-3-204**, which is renumbered from Section 75-2a-110 is
3141 renumbered and amended to read:

3142 ~~[75-2a-110]~~. **75A-3-204. Surrogate decision making -- Scope of authority.**

3143 (1) A surrogate acting under the authority of ~~[either Section 75-2a-107 or 75-2a-108]~~
3144 Section 75A-3-203 or 75A-3-301 shall make health care decisions in accordance with:

- 3145 (a) the adult's current preferences, to the extent possible;
- 3146 (b) the adult's written or oral health care directions, if any; or
- 3147 (c) the substituted judgment standard.

3148 (2) A surrogate acting under the authority of ~~[Sections 75-2a-107 and 75-2a-108]~~
3149 Section 75A-3-203 or 75A-3-301:

3150 (a) may not admit the adult to a licensed health care facility for long-term custodial
3151 placement other than for assessment, rehabilitative, or respite care over the objection of the
3152 adult; and

3153 (b) may make health care decisions, including decisions to terminate life sustaining
3154 treatment for the adult patient in accordance with Subsection (1).

3155 (3) A surrogate acting under authority of this section is not subject to civil or criminal

3156 liability or claims of unprofessional conduct for surrogate health care decisions made:

3157 (a) in accordance with this section; and

3158 (b) in good faith.

3159 Section 80. Section **75A-3-205**, which is renumbered from Section 75-2a-112 is

3160 renumbered and amended to read:

3161 ~~[75-2a-112]~~. **75A-3-205. Health care decisions by guardian.**

3162 (1) A court-appointed guardian shall comply with an adult's advance health care

3163 directive and may not revoke the adult's advance health care directive unless the court, for

3164 cause, expressly revokes the adult's directive.

3165 (2) A health care decision of an agent takes precedence over that of a guardian, in the

3166 absence of a court order to the contrary.

3167 (3) Except as provided in Subsections (1) and (2), a health care decision made by a

3168 guardian for the adult patient is effective without judicial approval.

3169 (4) A guardian is not subject to civil or criminal liability or to claims of unprofessional

3170 conduct for a surrogate health care decision made:

3171 (a) in good faith; and

3172 (b) in accordance with Section ~~[75-2a-110]~~ 75A-3-204.

3173 Section 81. Section **75A-3-206**, which is renumbered from Section 75-2a-111 is

3174 renumbered and amended to read:

3175 ~~[75-2a-111]~~. **75A-3-206. Priority of decision makers.**

3176 (1) The following is the order of priority of those authorized to make health care

3177 decisions on behalf of an adult who has been found to lack health care decision making

3178 capacity under Section ~~[75-2a-104]~~ 75A-3-201:

3179 (a) a health care agent appointed by an adult under the provisions of Section

3180 ~~[75-2a-107]~~ 75A-3-301 unless the agent has been disqualified by:

3181 (i) the adult; or

3182 (ii) a court of law;

3183 (b) a court-appointed guardian; or

3184 (c) the highest priority default surrogate acting under authority of Section ~~[75-2a-108]~~

3185 75A-3-203.

3186 (2) A health care provider or health care facility obtaining consent for health care from

3187 a surrogate shall make a reasonable effort to identify and obtain consent from the surrogate
3188 with the highest priority.

3189 Section 82. Section **75A-3-207**, which is renumbered from Section 75-2a-115 is
3190 renumbered and amended to read:

3191 ~~[75-2a-115]~~. **75A-3-207. Notification to health care provider --**
3192 **Obligations of health care providers -- Liability.**

3193 (1) It is the responsibility of the declarant or surrogate, to the extent that the
3194 responsibility is not assigned to a health care provider or health care facility by state or federal
3195 law, to notify or provide for notification to a health care provider and a health care facility of:

- 3196 (a) the existence of a health care directive;
- 3197 (b) the revocation of a health care directive;
- 3198 (c) the existence or revocation of appointment of an agent or default surrogate;
- 3199 (d) the disqualification of a default surrogate; or
- 3200 (e) the appointment or revocation of appointment of a guardian.

3201 (2) (a) A health care provider or health care facility is not subject to civil or criminal
3202 liability or to claims of unprofessional conduct for failing to act upon a health care directive, a
3203 revocation of a health care directive, or a disqualification of a surrogate until the health care
3204 provider or health care facility has received an oral directive from an adult or a copy of a
3205 written directive or revocation of the health care directive, or the disqualification of the
3206 surrogate.

3207 (b) A health care provider and health care facility that is notified under Subsection (1)
3208 shall include in the adult patient's medical record:

- 3209 (i) the health care directive or a copy of it, a revocation of a health care directive, or a
3210 disqualification of a surrogate; and
- 3211 (ii) the date, time, and place in which any written or oral notice of the document
3212 described in this Subsection (2)(b) is received.

3213 (3) A health care provider or health care facility acting in good faith and in accordance
3214 with generally accepted health care standards is not subject to civil or criminal liability or to
3215 discipline for unprofessional conduct for:

- 3216 (a) complying with a health care decision made by an adult with health care decision
3217 making capacity;

3218 (b) complying with a health care decision made by a surrogate apparently having
3219 authority to make a health care decision for a person, including a decision to withhold or
3220 withdraw health care;

3221 (c) declining to comply with a health care decision of a surrogate based on a belief that
3222 the surrogate then lacked authority;

3223 (d) declining to comply with a health care decision of an adult who lacks decision
3224 making capacity;

3225 (e) seeking a judicial determination, or requiring a surrogate to obtain a judicial
3226 determination, under Section [~~75-2a-120~~] 75A-3-107 of:

3227 (i) the validity of a health care directive;

3228 (ii) the validity of directions from a surrogate or guardian;

3229 (iii) the decision making capacity of an adult who challenges a physician's finding of
3230 incapacity; or

3231 (iv) the authority of a guardian or surrogate; or

3232 (f) complying with an advance health care directive and assuming that the directive
3233 was valid when made, and has not been revoked or terminated.

3234 (4) (a) Health care providers and health care facilities shall:

3235 (i) cooperate with a person authorized under this chapter to make written directives
3236 concerning health care;

3237 (ii) unless the provisions of Subsection (4)(b) apply, comply with:

3238 (A) a health care decision of an adult; and

3239 (B) a health care decision made by the highest ranking surrogate then authorized to
3240 make health care decisions for an adult, to the same extent as if the decision had been made by
3241 the adult;

3242 (iii) before implementing a health care decision made by a surrogate, make a
3243 reasonable attempt to communicate to the adult on whose behalf the decision is made:

3244 (A) the decision made; and

3245 (B) the identity of the surrogate making the decision.

3246 (b) A health care provider or health care facility may decline to comply with a health
3247 care decision if:

3248 (i) in the opinion of the health care provider:

- 3249 (A) the adult who made the decision lacks health care decision making capacity;
- 3250 (B) the surrogate who made the decision lacks health care decision making capacity;
- 3251 (C) the health care provider has evidence that the surrogate's instructions are
- 3252 inconsistent with the adult's health care instructions, or, for a person who has always lacked
- 3253 health care decision making capacity, that the surrogate's instructions are inconsistent with the
- 3254 best interest of the adult; or
- 3255 (D) there is reasonable doubt regarding the status of a person claiming the right to act
- 3256 as a default surrogate, in which case the health care provider shall comply with Subsection
- 3257 ~~[75-2a-108(6)]~~ [75A-3-203\(6\)](#); or
- 3258 (ii) the health care provider declines to comply for reasons of conscience.
- 3259 (c) A health care provider or health care facility that declines to comply with a health
- 3260 care decision in accordance with Subsection (4)(b) must:
- 3261 (i) promptly inform the adult and any acting surrogate of the reason for refusing to
- 3262 comply with the health care decision;
- 3263 (ii) make a good faith attempt to resolve the conflict; and
- 3264 (iii) provide continuing care to the patient until the issue is resolved or until a transfer
- 3265 can be made to a health care provider or health care facility that will implement the requested
- 3266 instruction or decision.
- 3267 (d) A health care provider or health care facility that declines to comply with a health
- 3268 care instruction, after meeting the obligations set forth in Subsection (4)(c) may transfer the
- 3269 adult to a health care provider or health care facility that will carry out the requested health care
- 3270 decisions.
- 3271 (e) A health care facility may decline to follow a health care decision for reasons of
- 3272 conscience under Subsection (4)(b)(ii) if:
- 3273 (i) the health care decision is contrary to a policy of the facility that is expressly based
- 3274 on reasons of conscience;
- 3275 (ii) the policy was timely communicated to the adult and an adult's surrogate;
- 3276 (iii) the facility promptly informs the adult, if possible, and any surrogate then
- 3277 authorized to make decisions for the adult;
- 3278 (iv) the facility provides continuing care to the adult until a transfer can be made to a
- 3279 health care facility that will implement the requested instruction or decision; and

3280 (v) unless an adult or surrogate then authorized to make health care decisions for the
3281 adult refuses assistance, immediately make all reasonable efforts to assist in the transfer of the
3282 adult to another health care facility that will carry out the instructions or decisions.

3283 (5) A health care provider and health care facility:

3284 (a) may not require or prohibit the creation or revocation of an advance health care
3285 directive as a condition for providing health care; and

3286 (b) shall comply with all state and federal laws and regulations governing advance
3287 health care directives.

3288 Section 83. Section **75A-3-208**, which is renumbered from Section 75-2a-113 is
3289 renumbered and amended to read:

3290 ~~[75-2a-113]~~. **75A-3-208. Personal representative status.**

3291 A surrogate becomes a personal representative for an adult under the Health Insurance
3292 Portability and Accountability Act of 1996 when:

3293 (1) the adult has been found to lack health care decision making capacity under Section

3294 ~~[75-2a-104]~~ 75A-3-201;

3295 (2) the adult grants current authority to the surrogate either:

3296 (a) in writing; or

3297 (b) by other expression before a witness who is not the surrogate or agent; or

3298 (3) the court appoints a guardian authorized to make health care decisions on behalf of
3299 the adult.

3300 Section 84. Section **75A-3-301**, which is renumbered from Section 75-2a-107 is
3301 renumbered and amended to read:

3302 **Part 3. Advance Health Care Directive for Adult**

3303 ~~[75-2a-107]~~. **75A-3-301. Advance health care directive -- Appointment of**
3304 **agent -- Powers of agent .**

3305 (1) (a) An adult may make an advance health care directive in which the adult may:

3306 (i) appoint a health care agent or choose not to appoint a health care agent;

3307 (ii) give directions for the care of the adult after the adult loses health care decision
3308 making capacity;

3309 (iii) choose not to give directions;

3310 (iv) state conditions that must be met before life sustaining treatment may be withheld

- 3311 or withdrawn;
- 3312 (v) authorize an agent to consent to the adult's participation in medical research;
- 3313 (vi) nominate a guardian;
- 3314 (vii) authorize an agent to consent to organ donation;
- 3315 (viii) expand or limit the powers of a health care agent; and
- 3316 (ix) designate the agent's access to the adult's medical records.
- 3317 (b) An advance health care directive may be oral or written.
- 3318 (c) An advance health care directive shall be witnessed by a disinterested adult. The
- 3319 witness may not be:
- 3320 (i) the person who signed the directive on behalf of the declarant;
- 3321 (ii) related to the declarant by blood or marriage;
- 3322 (iii) entitled to any portion of the declarant's estate according to the laws of intestate
- 3323 succession of this state or under any will or codicil of the declarant;
- 3324 (iv) the beneficiary of any of the following that are held, owned, made, or established
- 3325 by, or on behalf of, the declarant:
- 3326 (A) a life insurance policy;
- 3327 (B) a trust;
- 3328 (C) a qualified plan;
- 3329 (D) a pay on death account; or
- 3330 (E) a transfer on death deed;
- 3331 (v) entitled to benefit financially upon the death of the declarant;
- 3332 (vi) entitled to a right to, or interest in, real or personal property upon the death of the
- 3333 declarant;
- 3334 (vii) directly financially responsible for the declarant's medical care;
- 3335 (viii) a health care provider who is:
- 3336 (A) providing care to the declarant; or
- 3337 (B) an administrator at a health care facility in which the declarant is receiving care; or
- 3338 (ix) the appointed agent.
- 3339 (d) The witness to an oral advance health care directive shall state the circumstances
- 3340 under which the directive was made.
- 3341 (2) An agent appointed under the provisions of this section may not be a health care

3342 provider for the declarant, or an owner, operator, or employee of the health care facility at
3343 which the declarant is receiving care unless the agent is related to the declarant by blood,
3344 marriage, or adoption.

3345 Section 85. Section **75A-3-302**, which is renumbered from Section 75-2a-105 is
3346 renumbered and amended to read:

3347 ~~[75-2a-105]~~. **75A-3-302. Capacity to complete an advance health care**
3348 **directive.**

3349 (1) An adult is presumed to have the capacity to complete an advance health care
3350 directive.

3351 (2) An adult who is found to lack health care decision making capacity under the
3352 provisions of Section ~~[75-2a-104]~~ 75A-3-201:

3353 (a) lacks the capacity to give an advance health care directive, including Part II of the
3354 form created in Section ~~[75-2a-117]~~ 75A-3-303, or any other substantially similar form
3355 expressing a health care preference; and

3356 (b) may retain the capacity to appoint an agent and complete Part I of the form created
3357 in Section ~~[75-2a-117]~~ 75A-3-303.

3358 (3) The following factors shall be considered by a health care provider, attorney, or
3359 court when determining whether an adult described in Subsection (2)(b) has retained the
3360 capacity to appoint an agent:

3361 (a) whether the adult has expressed over time an intent to appoint the same person as
3362 agent;

3363 (b) whether the choice of agent is consistent with past relationships and patterns of
3364 behavior between the adult and the prospective agent, or, if inconsistent, whether there is a
3365 reasonable justification for the change; and

3366 (c) whether the adult's expression of the intent to appoint the agent occurs at times
3367 when, or in settings where, the adult has the greatest ability to make and communicate
3368 decisions.

3369 Section 86. Section **75A-3-303**, which is renumbered from Section 75-2a-117 is
3370 renumbered and amended to read:

3371 ~~[75-2a-117]~~. **75A-3-303. Optional form for advance health care directive.**

3372 (1) The form created in Subsection (2), or a substantially similar form, is presumed
3373 valid under this chapter.

3374 (2) The following form is presumed valid under Subsection (1):

3375 Utah Advance Health Care Directive

3376 (Pursuant to Utah Code Section [~~75-2a-117~~75A-3-303])

3377 Part I: Allows you to name another person to make health care decisions for you when you
3378 cannot make decisions or speak for yourself.

3379 Part II: Allows you to record your wishes about health care in writing.

3380 Part III: Tells you how to revoke or change this directive.

3381 Part IV: Makes your directive legal.

3382 _____

3383 My Personal Information

3384 Name: _____

3385 Street Address: _____

3386 City, State, Zip Code:

3387 _____

3388 Telephone: _____ Cell Phone: _____

3389 Birth date: _____

3390 _____

3391 Part I: My Agent (Health Care Power of Attorney)

3392 A. No Agent

3393 If you do not want to name an agent: initial the box below, then go to Part II; do not name an
3394 agent in B or C below. No one can force you to name an agent.

3395 _____ I do not want to choose an agent.

3396 B. My Agent

3397 Agent's Name:

3398 _____

3399 Street Address:

3400 _____

3401 City, State, Zip Code:

3402 _____

3403 Home Phone: () _____ Cell Phone: () _____ Work Phone: () _____

3404 C. My Alternate Agent

3405 This person will serve as your agent if your agent, named above, is unable or unwilling to
3406 serve.

3407 Alternate Agent's Name:

3408 _____

3409 Street Address:

3410 _____

3411 City, State, Zip Code:

3412 _____

3413 Home Phone: () _____ Cell Phone: () _____ Work Phone: () _____

3414 D. Agent's Authority

3415 If I cannot make decisions or speak for myself (in other words, after my physician or another
3416 authorized provider finds that I lack health care decision making capacity under Section
3417 ~~[75-2a-104]~~[75A-3-201](#) of the Advance Health Care Directive Act), my agent has the power to
3418 make any health care decision I could have made such as, but not limited to:

3419 • Consent to, refuse, or withdraw any health care. This may include care to prolong my life
3420 such as food and fluids by tube, use of antibiotics, CPR (cardiopulmonary resuscitation), and
3421 dialysis, and mental health care, such as convulsive therapy and psychoactive medications.
3422 This authority is subject to any limits in paragraph F of Part I or in Part II of this directive.

- 3423 • Hire and fire health care providers.
- 3424 • Ask questions and get answers from health care providers.
- 3425 • Consent to admission or transfer to a health care provider or health care facility, including a
3426 mental health facility, subject to any limits in paragraphs E and F of Part I.
- 3427 • Get copies of my medical records.
- 3428 • Ask for consultations or second opinions.

3429 My agent cannot force health care against my will, even if a physician has found that I lack
3430 health care decision making capacity.

3431 E. Other Authority

3432 My agent has the powers below ONLY IF I initial the "yes" option that precedes the statement.

3433 I authorize my agent to:

3434 YES _____ NO _____ Get copies of my medical records at any time, even when I can
3435 speak for myself.

3436 YES _____ NO _____ Admit me to a licensed health care facility, such as a hospital,
3437 nursing home, assisted living, or other facility for long-term placement other than convalescent
3438 or recuperative care.

3439 F. Limits/Expansion of Authority

3440 I wish to limit or expand the powers of my health care agent as follows:

3441 _____
3442 _____

3443 G. Nomination of Guardian

3444 Even though appointing an agent should help you avoid a guardianship, a guardianship may
3445 still be necessary. Initial the "YES" option if you want the court to appoint your agent or, if
3446 your agent is unable or unwilling to serve, your alternate agent, to serve as your guardian, if a
3447 guardianship is ever necessary.

3448 YES _____ NO _____

3449 I, being of sound mind and not acting under duress, fraud, or other undue influence, do hereby
3450 nominate my agent, or if my agent is unable or unwilling to serve, I hereby nominate my
3451 alternate agent, to serve as my guardian in the event that, after the date of this instrument, I
3452 become incapacitated.

3453 H. Consent to Participate in Medical Research

3454 YES _____ NO _____ I authorize my agent to consent to my participation in medical
3455 research or clinical trials, even if I may not benefit from the results.

3456 I. Organ Donation

3457 YES _____ NO _____ If I have not otherwise agreed to organ donation, my agent may
3458 consent to the donation of my organs for the purpose of organ transplantation.

3459 _____

3460 Part II: My Health Care Wishes (Living Will)

3461 I want my health care providers to follow the instructions I give them when I am being treated,
3462 even if my instructions conflict with these or other advance directives. My health care
3463 providers should always provide health care to keep me as comfortable and functional as
3464 possible.

3465 Choose only one of the following options, numbered Option 1 through Option 4, by placing
3466 your initials before the numbered statement. Do not initial more than one option. If you do not
3467 wish to document end-of-life wishes, initial Option 4. You may choose to draw a line through
3468 the options that you are not choosing.

3469 Option 1

3470 _____ Initial

3471 I choose to let my agent decide. I have chosen my agent carefully. I have talked with my agent
3472 about my health care wishes. I trust my agent to make the health care decisions for me that I
3473 would make under the circumstances.

3474 Additional Comments:

3475 _____

3476 Option 2

3477 _____ Initial

3478 I choose to prolong life. Regardless of my condition or prognosis, I want my health care team
3479 to try to prolong my life as long as possible within the limits of generally accepted health care
3480 standards.

3481 Other:

3482 _____

3483 Option 3

3484 _____ Initial

3485 I choose not to receive care for the purpose of prolonging life, including food and fluids by
3486 tube, antibiotics, CPR, or dialysis being used to prolong my life. I always want comfort care
3487 and routine medical care that will keep me as comfortable and functional as possible, even if
3488 that care may prolong my life.

3489 If you choose this option, you must also choose either (a) or (b), below.

3490 _____ Initial

3491 (a) I put no limit on the ability of my health care provider or agent to withhold or withdraw
3492 life-sustaining care.

3493 If you selected (a), above, do not choose any options under (b).

3494 _____ Initial

3495 (b) My health care provider should withhold or withdraw life-sustaining care if at least one of

3496 the following initialed conditions is met:

3497 _____ I have a progressive illness that will cause death.

3498 _____ I am close to death and am unlikely to recover.

3499 _____ I cannot communicate and it is unlikely that my condition will improve.

3500 _____ I do not recognize my friends or family and it is unlikely that my condition will
3501 improve.

3502 _____ I am in a persistent vegetative state.

3503 Other:

3504 _____

3505 Option 4

3506 _____ Initial

3507 I do not wish to express preferences about health care wishes in this directive.

3508 Other:

3509 _____

3510 Additional instructions about your health care wishes:

3511 _____

3512 _____

3513 If you do not want emergency medical service providers to provide CPR or other life sustaining
3514 measures, you must work with a physician or APRN to complete an order that reflects your
3515 wishes on a form approved by the Utah Department of Health.

3516 Part III: Revoking or Changing a Directive

3517 I may revoke or change this directive by:

3518 1. Writing "void" across the form, or burning, tearing, or otherwise destroying or defacing this
3519 document or directing another person to do the same on my behalf;

3520 2. Signing a written revocation of the directive, or directing another person to sign a
3521 revocation on my behalf;

3522 3. Stating that I wish to revoke the directive in the presence of a witness who: is 18 years [of
3523 age]old or older; will not be appointed as my agent in a substitute directive; will not become a
3524 default surrogate if the directive is revoked; and signs and dates a written document confirming
3525 my statement; or

3526 4. Signing a new directive. (If you sign more than one Advance Health Care Directive, the

3527 most recent one applies.)

3528 Part IV: Making My Directive Legal

3529 I sign this directive voluntarily. I understand the choices I have made and declare that I am
3530 emotionally and mentally competent to make this directive. My signature on this form revokes
3531 any living will or power of attorney form, naming a health care agent, that I have completed in
3532 the past.

3533 _____

3534 Date

3535 _____

3536 Signature

3537 _____

3538 City, County, and State of Residence

3539 I have witnessed the signing of this directive, I am 18 years [~~of age~~]old or older, and I am not:

- 3540 1. related to the declarant by blood or marriage;
- 3541 2. entitled to any portion of the declarant's estate according to the laws of intestate succession
- 3542 of any state or jurisdiction or under any will or codicil of the declarant;
- 3543 3. a beneficiary of a life insurance policy, trust, qualified plan, pay on death account, or
- 3544 transfer on death deed that is held, owned, made, or established by, or on behalf of, the
- 3545 declarant;
- 3546 4. entitled to benefit financially upon the death of the declarant;
- 3547 5. entitled to a right to, or interest in, real or personal property upon the death of the declarant;
- 3548 6. directly financially responsible for the declarant's medical care;
- 3549 7. a health care provider who is providing care to the declarant or an administrator at a health
- 3550 care facility in which the declarant is receiving care; or
- 3551 8. the appointed agent or alternate agent.

3552 _____

3553 Signature of Witness

Printed Name of Witness

3554 _____

3555 Street Address

City

State

Zip Code

3556 If the witness is signing to confirm an oral directive, describe below the circumstances under
3557 which the directive was made.

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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.

(2) (a) Notwithstanding any terms of an insurance policy to the contrary, an insurance policy is not legally impaired or invalidated in any manner by:

- (i) withholding or withdrawing life sustaining procedures; or
- (ii) following directions in ~~[a]~~ an advance health care directive executed as provided in this chapter.

3589 (b) Following health care instructions in [~~a~~] an advance health care directive does not
3590 constitute legal cause for failing to pay life or health insurance benefits.

3591 (c) Death that occurs after following the instructions of an advance health care
3592 directive or a surrogate's instructions does not for any purpose constitute a suicide or homicide
3593 or legally impair or invalidate a policy of insurance or an annuity providing a death benefit.

3594 (3) (a) The following may not require an adult to execute [~~a directive~~] an advance
3595 health care directive or to make any particular choices or entries in [~~a directive~~] an advance
3596 health care directive under this chapter as a condition for being insured for or receiving health
3597 care or life insurance contract services:

3598 (i) a health care provider;

3599 (ii) a health care facility;

3600 (iii) a health maintenance organization;

3601 (iv) an insurer issuing disability, health, or life insurance;

3602 (v) a self-insured employee welfare or benefit plan;

3603 (vi) a nonprofit medical service corporation or mutual nonprofit hospital service
3604 corporation; or

3605 (vii) any other person, firm, or entity.

3606 (b) Nothing in this chapter:

3607 (i) may be construed to require an insurer to insure risks otherwise considered by the
3608 insurer as not a covered risk;

3609 (ii) is intended to impair or supersede any other legal right or legal responsibility which
3610 an adult may have to effect the withholding or withdrawal of life sustaining procedures in any
3611 lawful manner; or

3612 (iii) creates any presumption concerning the intention of an adult who has not executed
3613 [~~a~~] an advance health care directive.

3614 Section 89. Section **75A-3-306**, which is renumbered from Section 75-2a-123 is
3615 renumbered and amended to read:

3616 [~~75-2a-123~~]. **75A-3-306. Advance health care directive effect during**
3617 **pregnancy.**

3618 (1) [~~A~~] An advance health care directive that provides for the withholding or
3619 withdrawal of life sustaining procedures has no force during the course of a declarant's

3620 pregnancy.

3621 (2) Subsection (1) does not negate the appointment of a health care agent during the
3622 course of a declarant's pregnancy.

3623 Section 90. Section ~~75A-3-307~~, which is renumbered from Section 75-2a-114 is
3624 renumbered and amended to read:

3625 ~~[75-2a-114]~~. **75A-3-307. Revocation of advance health care directive.**

3626 (1) An advance health care directive may be revoked at any time by the declarant by:

3627 (a) writing "void" across the document;

3628 (b) obliterating, burning, tearing, or otherwise destroying or defacing the document in
3629 any manner indicating an intent to revoke;

3630 (c) instructing another to do one of the acts described in Subsection (1)(a) or (b);

3631 (d) a written revocation of the directive signed and dated by:

3632 (i) the declarant; or

3633 (ii) an adult:

3634 (A) signing on behalf of the declarant; and

3635 (B) acting at the direction of the declarant; or

3636 (e) an oral expression of an intent to revoke the directive in the presence of a witness
3637 who is age 18 years old or older and who is not:

3638 (i) related to the declarant by blood or marriage;

3639 (ii) entitled to any portion of the declarant's estate according to the laws of intestate
3640 succession of this state or under any will or codicil of the declarant;

3641 (iii) the beneficiary of any of the following that are held, owned, made, or established
3642 by, or on behalf of, the declarant:

3643 (A) a life insurance policy;

3644 (B) a trust;

3645 (C) a qualified plan;

3646 (D) a pay on death account; or

3647 (E) a transfer on death deed;

3648 (iv) entitled to benefit financially upon the death of the declarant;

3649 (v) entitled to a right to, or interest in, real or personal property upon the death of the
3650 declarant;

- 3651 (vi) directly financially responsible for the declarant's medical care;
- 3652 (vii) a health care provider who is:
- 3653 (A) providing care to the declarant; or
- 3654 (B) an administrator at a health care facility in which the declarant is receiving care; or
- 3655 (viii) the adult who will become agent or default surrogate after the revocation.
- 3656 (2) A decree of annulment, divorce, dissolution of marriage, or legal separation
- 3657 revokes the designation of a spouse as an agent, unless:
- 3658 (a) otherwise specified in the decree; or
- 3659 (b) the declarant has affirmed the intent to retain the agent subsequent to the
- 3660 annulment, divorce, or legal separation.
- 3661 (3) An advance health care directive that conflicts with an earlier advance health care
- 3662 directive revokes the earlier directive to the extent of the conflict.

3663 Section 91. Section **75A-3-308**, which is renumbered from Section 75-2a-118 is

3664 renumbered and amended to read:

3665 ~~[75-2a-118].~~ **75A-3-308. Illegal destruction or falsification of advance**

3666 **health care directive.**

- 3667 (1) A person is guilty of a class B misdemeanor if the person:
- 3668 (a) willfully conceals, cancels, defaces, obliterates, or damages [a] an advance health
- 3669 care directive of another without the declarant's consent; or
- 3670 (b) falsifies, forges, or alters a health care directive or a revocation of the advance
- 3671 health care directive of another person.
- 3672 (2) A person is guilty of criminal homicide if:
- 3673 (a) the person:
- 3674 (i) falsifies or forges the advance health care directive of an adult; or
- 3675 (ii) willfully conceals or withholds personal knowledge of:
- 3676 (A) the existence of [a] an advance health care directive;
- 3677 (B) the revocation of [a] an advance health care directive; or
- 3678 (C) the disqualification of a surrogate; and
- 3679 (b) the actions described in Subsection (2)(a) cause a withholding or withdrawal of life
- 3680 sustaining procedures contrary to the wishes of a declarant resulting in the death of the
- 3681 declarant.

3682 Section 92. Section **75A-3-309**, which is renumbered from Section 75-2a-121 is
3683 renumbered and amended to read:

3684 ~~[75-2a-121].~~ **75A-3-309. Reciprocity of advance health care directive --**
3685 **Application of former provisions of law.**

3686 Unless otherwise provided in the advance health care directive:

3687 (1) a health care provider or health care facility may, in good faith, rely on any advance
3688 health care directive, power of attorney, or similar instrument:

3689 (a) executed in another state; or

3690 (b) executed prior to January 1, 2008, in this state [~~under the provisions of Chapter 2,~~
3691 ~~Part 11, Personal Choice and Living Will Act~~];

3692 (2) [a] an advance health care directive executed under the provisions of this chapter
3693 shall be governed pursuant to the provisions of this chapter that were in effect at that time,
3694 unless it appears from the directive that the declarant intended the current provisions of this
3695 chapter to apply; and

3696 (3) the advance health care directive described in Subsection (1) is presumed to comply
3697 with the requirements of this chapter.

3698 Section 93. Section **75A-4-101** is enacted to read:

3699 **CHAPTER 4. UNIFORM POWERS OF APPOINTMENT ACT**

3700 **75A-4-101. Reserved.**

3701 Reserved.

3702 Section 94. Section **75A-4-102**, which is renumbered from Section 75-10-102 is
3703 renumbered and amended to read:

3704 ~~[75-10-102].~~ **75A-4-102. Definitions for chapter.**

3705 As used in this chapter:

3706 (1) "Appointee" means a person to which a powerholder makes an appointment of
3707 appointive property.

3708 (2) "Appointive property" means the property or property interest subject to a power of
3709 appointment.

3710 (3) (a) "Blanket-exercise clause" means a clause in an instrument that exercises a
3711 power of appointment and is not a specific-exercise clause. [~~The term~~]

3712 (b) "Blanket-exercise clause" includes a clause that:

3713 [(a)] (i) expressly uses the words "any power" in exercising any power of appointment
3714 the powerholder has;

3715 [(b)] (ii) expressly uses the words "any property" in appointing any property over
3716 which the powerholder has a power of appointment; or

3717 [(c)] (iii) disposes of all property subject to disposition by the powerholder.

3718 (4) "Descendant" means the same as that term is defined in Section [75-1-201](#).

3719 [(4)] (5) "Donor" means a person that creates a power of appointment.

3720 (6) "Estate" means the same as that term is defined in Section [75-1-201](#).

3721 [(5)] (7) "Exclusionary power of appointment" means a power of appointment
3722 exercisable in favor of any one or more of the permissible appointees to the exclusion of the
3723 other permissible appointees.

3724 [(6)] (8) "General power of appointment" means a power of appointment exercisable in
3725 favor of the powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor
3726 of the powerholder's estate.

3727 [(7)] (9) "Gift-in-default clause" means a clause identifying a taker in default of
3728 appointment.

3729 [(8)] (10) "Impermissible appointee" means a person that is not a permissible
3730 appointee.

3731 [(9)] (11) "Instrument" means a record.

3732 [(10)] (12) (a) "Nongeneral power of appointment" means a power of appointment that
3733 is not a general power of appointment. [~~The terms "special power of appointment," "limited~~
3734 ~~power of appointment,"~~]

3735 (b) "Nongeneral power of appointment" includes a special power of appointment, a
3736 limited power of appointment, or similar terminology that is used in an instrument creating a
3737 power that does not grant powers making it a general power of appointment [~~as defined in this~~
3738 ~~chapter mean the same as and may be used interchangeably with the term nongeneral power of~~
3739 ~~appointment~~].

3740 [(11)] (13) "Permissible appointee" means a person in whose favor a powerholder may
3741 exercise a power of appointment.

3742 [(12)] (14) "Person" means an individual, estate, trust, business or nonprofit entity,
3743 public corporation, government or governmental subdivision, agency, instrumentality, or other

3744 legal entity.

3745 ~~[(13)]~~ (15) "Powerholder" means a person in whom a donor creates a power of
3746 appointment.

3747 ~~[(14)]~~ (16) (a) "Power of appointment" means a power that enables a powerholder
3748 acting in a nonfiduciary capacity to designate a recipient of an interest in, or another power of
3749 appointment over, the appointive property. ~~[The term]~~

3750 (b) "Power of appointment" does not include a power of attorney.

3751 ~~[(15)]~~ (17) (a) "Presently exercisable power of appointment" means a power of
3752 appointment exercisable by the powerholder at a relevant time. ~~[The term:]~~

3753 ~~[(a)]~~ (b) "Presently exercisable power of appointment" includes a power of
3754 appointment not exercisable until the occurrence of a specified event, the satisfaction of an
3755 ascertainable standard, or the passage of a specified time only after:

3756 (i) the occurrence of the specified event;

3757 (ii) the satisfaction of the ascertainable standard; or

3758 (iii) the passage of the specified time~~[-and]~~.

3759 ~~[(b)]~~ (c) "Presently exercisable power of appointment" does not include a power
3760 exercisable only at the powerholder's death.

3761 (18) "Property" means the same as that term is defined in Section [75-1-201](#).

3762 ~~[(16)]~~ (19) "Record" means information that is inscribed on a tangible medium or that
3763 is stored in an electronic or other medium and is retrievable in perceivable form.

3764 ~~[(17)]~~ (20) "Specific-exercise clause" means a clause in an instrument that specifically
3765 refers to and exercises a particular power of appointment.

3766 ~~[(18)]~~ (21) "Taker in default of appointment" means a person that takes all or part of
3767 the appointive property to the extent the powerholder does not effectively exercise the power of
3768 appointment.

3769 ~~[(19)]~~ (22) "Terms of the instrument" means the manifestation of the intent of the
3770 maker of the instrument regarding the instrument's provisions as expressed in the instrument or
3771 as may be established by other evidence that would be admissible in a legal proceeding.

3772 (23) "Trust" means the same as that term is defined in Section [75-1-201](#).

3773 (24) "Will" means the same as that term is defined in Section [75-1-201](#).

3774 Section 95. Section **75A-4-103**, which is renumbered from Section 75-10-103 is

3775 renumbered and amended to read:

3776 ~~[75-10-103]~~. 75A-4-103. Governing law.

3777 (1) Unless the terms of the instrument creating a power of appointment manifest a
3778 contrary intent:

3779 (a) the creation, revocation, amendment, interpretation and definition of terms, or the
3780 determination of the rights of the appointee of the power is governed by the law of the donor's
3781 domicile at the relevant time; and

3782 (b) the formalities for the exercise, release, or disclaimer of the power, or the
3783 revocation or amendment of the exercise, release, or disclaimer of the power is governed by the
3784 law of the powerholder's state of domicile at the relevant time.

3785 (2) The law of the powerholder's state of domicile may not govern the interpretation
3786 and definition of terms, or the determination of the rights of the appointee of the power, which
3787 shall be governed by the law of the donor's domicile at the relevant time.

3788 (3) Claims of creditors, including creditor claims regarding a power not created by a
3789 powerholder as set forth in Section ~~[75-10-502]~~ 75A-4-502, and other parties claiming an
3790 interest in property or rights subject to a power will be governed by the laws of the donor's
3791 domicile at the time of the creation of the power and not the powerholder's state of domicile
3792 either at the time of the creation of the power or at the time of exercise of the power.

3793 Section 96. Section **75A-4-104**, which is renumbered from Section 75-10-104 is
3794 renumbered and amended to read:

3795 ~~[75-10-104]~~. 75A-4-104. Common law and principles of equity.

3796 The common law and principles of equity supplement this chapter, except to the extent
3797 modified by this chapter or laws of this state other than this chapter.

3798 Section 97. Section **75A-4-201**, which is renumbered from Section 75-10-201 is
3799 renumbered and amended to read:

3800 **Part 2. Creation, Revocation, and Amendment of Power of Appointment**

3801 ~~[75-10-201]~~. 75A-4-201. Creation of power of appointment.

3802 (1) A power of appointment is created only if:

3803 (a) the instrument creating the power is valid under applicable law; and

3804 (b) the terms of the instrument creating the power manifest the donor's intent to create
3805 in a powerholder a power of appointment over the appointive property exercisable in favor of a

3806 permissible appointee.

3807 (2) A power of appointment may be created by the exercise of a power of appointment.

3808 (3) A power of appointment may not be created in a deceased individual.

3809 (4) Subject to an applicable rule against perpetuities, a power of appointment may be

3810 created in an unborn or unascertained powerholder.

3811 Section 98. Section **75A-4-202**, which is renumbered from Section 75-10-202 is

3812 renumbered and amended to read:

3813 ~~[75-10-202]~~. **75A-4-202. Nontransferability.**

3814 (1) A powerholder may not transfer a power of appointment.

3815 (2) If a powerholder dies without exercising or releasing a power, the power lapses.

3816 Section 99. Section **75A-4-203**, which is renumbered from Section 75-10-203 is

3817 renumbered and amended to read:

3818 ~~[75-10-203]~~. **75A-4-203. Presumption of unlimited authority.**

3819 Subject to Section ~~[75-10-205]~~ 75A-4-205, and unless the terms of the instrument

3820 creating a power of appointment manifest a contrary intent, the power is:

3821 (1) presently exercisable;

3822 (2) exclusionary; and

3823 (3) except as otherwise provided in Section ~~[75-10-204]~~ 75A-4-204, general.

3824 Section 100. Section **75A-4-204**, which is renumbered from Section 75-10-204 is

3825 renumbered and amended to read:

3826 ~~[75-10-204]~~. **75A-4-204. Exception to presumption of unlimited authority.**

3827 Unless the terms of the instrument creating a power of appointment manifest a contrary

3828 intent, the power is nongeneral if:

3829 (1) the power is exercisable only at the powerholder's death; and

3830 (2) the permissible appointees of the power are a defined and limited class that does

3831 not include the powerholder's estate, the powerholder's creditors, or the creditors of the

3832 powerholder's estate.

3833 Section 101. Section **75A-4-205**, which is renumbered from Section 75-10-205 is

3834 renumbered and amended to read:

3835 ~~[75-10-205]~~. **75A-4-205. Rules of classification.**

3836 (1) ~~[In this section]~~ As used in this section, "adverse party" means a person with a

3837 substantial beneficial interest in property that would be affected adversely by a powerholder's
3838 exercise or nonexercise of a power of appointment in favor of the powerholder, the
3839 powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.

3840 (2) If a powerholder may exercise a power of appointment only with the consent or
3841 joinder of an adverse party, the power is nongeneral.

3842 (3) If the permissible appointees of a power of appointment are not defined and
3843 limited, the power is exclusionary.

3844 Section 102. Section **75A-4-206**, which is renumbered from Section 75-10-206 is
3845 renumbered and amended to read:

3846 ~~[75-10-206].~~ **75A-4-206. Donor's power to revoke or amend.**

3847 A donor may revoke or amend a power of appointment unless or to the extent the
3848 instrument creating the power is made irrevocable by the donor or the exercise of a presently
3849 exercisable power has been irrevocably made or effected.

3850 Section 103. Section **75A-4-301**, which is renumbered from Section 75-10-301 is
3851 renumbered and amended to read:

3852 **Part 3. Exercise of Power of Appointment**

3853 ~~[75-10-301].~~ **75A-4-301. Requisites for exercise of power of appointment.**

3854 A power of appointment is exercised only:

3855 (1) if the instrument exercising the power is valid under applicable law;

3856 (2) if the terms of the instrument exercising the power:

3857 (a) manifest the powerholder's intent to exercise the power; and

3858 (b) satisfy the requirements of exercise, if any, imposed by the donor; and

3859 (3) to the extent the appointment is a permissible exercise of the power.

3860 Section 104. Section **75A-4-302**, which is renumbered from Section 75-10-302 is
3861 renumbered and amended to read:

3862 ~~[75-10-302].~~ **75A-4-302. Intent to exercise -- Determining intent from**
3863 **residuary clause.**

3864 (1) As used in this section:

3865 (a) "Residuary clause" does not include a residuary clause containing a
3866 blanket-exercise clause or a specific-exercise clause.

3867 (b) "Will" includes a codicil and a testamentary instrument that revises another will.

3868 (2) A residuary clause in a powerholder's will, or a comparable clause in the
3869 powerholder's revocable trust, manifests the powerholder's intent to exercise a power of
3870 appointment only if:

- 3871 (a) the terms of the instrument containing the residuary clause do not manifest a
3872 contrary intent;
- 3873 (b) the power is a general power exercisable in favor of the powerholder's estate;
- 3874 (c) there is no gift-in-default clause or the clause is ineffective; and
- 3875 (d) the powerholder did not release the power.

3876 Section 105. Section **75A-4-303**, which is renumbered from Section 75-10-303 is
3877 renumbered and amended to read:

3878 ~~[75-10-303]~~. **75A-4-303. Intent to exercise -- After-acquired power.**

3879 Unless the terms of the instrument exercising a power of appointment manifest a
3880 contrary intent:

3881 (1) except as otherwise provided in Subsection (2), a blanket-exercise clause extends to
3882 a power acquired by the powerholder after executing the instrument containing the clause; and

3883 (2) if the powerholder is also the donor of the power, the clause does not extend to the
3884 power unless there is no gift-in-default clause or the gift-in-default clause is ineffective.

3885 Section 106. Section **75A-4-304**, which is renumbered from Section 75-10-304 is
3886 renumbered and amended to read:

3887 ~~[75-10-304]~~. **75A-4-304. Compliance with donor-imposed formal**
3888 **requirements.**

3889 (1) (a) A powerholder's compliance with formal requirements of appointment imposed
3890 by the donor is sufficient only if the powerholder substantially complies with the conditions,
3891 requirements, and formalities set forth in the power of appointment, including complying with
3892 all the requirements for making specific reference to the power, that the power shall be
3893 exercised in a specific document such as a will, or that the document exercising the power shall
3894 be witnessed or notarized.

3895 (b) If the donor limited the powerholder's exercise to a validly executed will,
3896 substantial compliance may not include the exercise of the power by a trust or another
3897 document not meeting the requirements of a properly executed will.

3898 (2) Unless required by the instrument creating the power, the probate of a properly

3899 executed will is not required for the exercise of a power to be valid and complete.

3900 Section 107. Section **75A-4-305**, which is renumbered from Section 75-10-305 is
3901 renumbered and amended to read:

3902 ~~[75-10-305]~~. **75A-4-305. Permissible appointment.**

3903 (1) A powerholder of a general power of appointment that permits appointment to the
3904 powerholder or the powerholder's estate may make any appointment, including an appointment
3905 in trust or creating a new power of appointment, that the powerholder could make in disposing
3906 of the powerholder's own property.

3907 (2) A powerholder of a general power of appointment that permits appointment only to
3908 the creditors of the powerholder or of the powerholder's estate may appoint only to those
3909 creditors.

3910 (3) Unless the terms of the instrument creating a power of appointment manifest a
3911 contrary intent, the powerholder of a nongeneral power may:

3912 (a) make an appointment in any form, including an appointment in trust, in favor of a
3913 permissible appointee;

3914 (b) create a general power in a permissible appointee;

3915 (c) create a nongeneral power in any person to appoint one or more of the permissible
3916 appointees of the original nongeneral power; or

3917 (d) create a nongeneral power in a permissible appointee to appoint one or more
3918 persons if the permissible appointees of the new nongeneral power include the permissible
3919 appointees of the original nongeneral power.

3920 Section 108. Section **75A-4-306**, which is renumbered from Section 75-10-306 is
3921 renumbered and amended to read:

3922 ~~[75-10-306]~~. **75A-4-306. Appointment to deceased appointee or
3923 permissible appointee's descendant.**

3924 (1) Subject to Sections [75-2-603](#) and [75-2-604](#), an appointment to a deceased appointee
3925 is ineffective.

3926 (2) Unless the terms of the instrument creating a power of appointment manifest a
3927 contrary intent, a powerholder of a nongeneral power may exercise the power in favor of, or
3928 create a new power of appointment in, a descendant of a deceased permissible appointee
3929 whether or not the descendant is described by the donor as a permissible appointee.

3930 Section 109. Section **75A-4-307**, which is renumbered from Section 75-10-307 is
3931 renumbered and amended to read:

3932 ~~[75-10-307]~~. **75A-4-307. Impermissible appointment.**

3933 (1) Except as otherwise provided in Section ~~[75-10-306]~~ 75A-4-306, an exercise of a
3934 power of appointment in favor of an impermissible appointee is ineffective.

3935 (2) An exercise of a power of appointment in favor of a permissible appointee is
3936 ineffective to the extent the appointment is a fraud on the power.

3937 Section 110. Section **75A-4-308**, which is renumbered from Section 75-10-308 is
3938 renumbered and amended to read:

3939 ~~[75-10-308]~~. **75A-4-308. Elective allocation doctrine.**

3940 If a powerholder exercises a power of appointment in a disposition that also disposes of
3941 property the powerholder owns, the owned property and the appointive property shall be
3942 allocated in the permissible manner that best carries out the powerholder's intent.

3943 Section 111. Section **75A-4-309**, which is renumbered from Section 75-10-309 is
3944 renumbered and amended to read:

3945 ~~[75-10-309]~~. **75A-4-309. Capture doctrine -- Disposition of ineffectively**
3946 **appointed property under general power.**

3947 To the extent a powerholder of a general power of appointment, other than a power to
3948 withdraw property from, revoke, or amend a trust, makes an ineffective appointment:

3949 (1) the gift-in-default clause controls the disposition of the ineffectively appointed
3950 property; or

3951 (2) if there is no gift-in-default clause or to the extent the clause is ineffective, the
3952 ineffectively appointed property:

3953 (a) passes to:

3954 (i) the powerholder if the powerholder is a permissible appointee and is living; or

3955 (ii) if the powerholder is an impermissible appointee or is deceased, the powerholder's
3956 estate if the estate is a permissible appointee; or

3957 (b) if there is no taker under Subsection (2)(a), passes under a reversionary interest to
3958 the donor or the donor's transferee or successor in interest.

3959 Section 112. Section **75A-4-310**, which is renumbered from Section 75-10-310 is
3960 renumbered and amended to read:

3961 ~~[75-10-310]~~. 75A-4-310. **Disposition of unappointed property under**
3962 **released or unexercised general power.**

3963 To the extent a powerholder releases or fails to exercise a general power of appointment
3964 other than a power to withdraw property from, revoke, or amend a trust:

3965 (1) the gift-in-default clause controls the disposition of the unappointed property; or

3966 (2) if there is no gift-in-default clause or to the extent the clause is ineffective:

3967 (a) except as otherwise provided in Subsection (2)(b), the unappointed property passes
3968 to:

3969 (i) the powerholder if the powerholder is a permissible appointee and is living; or

3970 (ii) if the powerholder is an impermissible appointee or is deceased, the powerholder's
3971 estate if the estate is a permissible appointee; or

3972 (b) to the extent the powerholder released the power, or if there is no taker under
3973 Subsection (2)(a), the unappointed property passes under a reversionary interest to the donor or
3974 the donor's transferee or successor in interest.

3975 Section 113. Section **75A-4-311**, which is renumbered from Section 75-10-311 is
3976 renumbered and amended to read:

3977 ~~[75-10-311]~~. 75A-4-311. **Disposition of unappointed property under**
3978 **released or unexercised nongeneral power.**

3979 To the extent a powerholder releases, ineffectively exercises, or fails to exercise a
3980 nongeneral power of appointment:

3981 (1) the gift-in-default clause controls the disposition of the unappointed property; or

3982 (2) if there is no gift-in-default clause or to the extent the clause is ineffective, the
3983 unappointed property:

3984 (a) passes to the permissible appointees if:

3985 (i) the permissible appointees are defined and limited; and

3986 (ii) the terms of the instrument creating the power do not manifest a contrary intent; or

3987 (b) if there is no taker under Subsection (2)(a), passes under a reversionary interest to
3988 the donor or the donor's transferee or successor in interest.

3989 Section 114. Section **75A-4-312**, which is renumbered from Section 75-10-312 is
3990 renumbered and amended to read:

3991 ~~[75-10-312]~~. 75A-4-312. **Disposition of unappointed property if partial**

3992 **appointment to taker in default.**

3993 Unless the terms of the instrument creating or exercising a power of appointment
3994 manifest a contrary intent, if the powerholder makes a valid partial appointment to a taker in
3995 default of appointment, the taker in default of appointment may share fully in unappointed
3996 property.

3997 Section 115. Section **75A-4-313**, which is renumbered from Section 75-10-313 is
3998 renumbered and amended to read:

3999 ~~[75-10-313]~~. **75A-4-313. Appointment to taker in default.**

4000 If a powerholder makes an appointment to a taker in default of appointment and the
4001 appointee would have taken the property under a gift-in-default clause had the property not
4002 been appointed, the power of appointment is considered not to have been exercised and the
4003 appointee takes under the clause.

4004 Section 116. Section **75A-4-314**, which is renumbered from Section 75-10-314 is
4005 renumbered and amended to read:

4006 ~~[75-10-314]~~. **75A-4-314. Powerholder's authority to revoke or amend**
4007 **exercise.**

4008 Unless the terms of the instrument creating the power of appointment or the instrument
4009 exercising the power of appointment provide that the exercise is irrevocable or unamendable, a
4010 powerholder may revoke or amend an exercise of a power of appointment made by an
4011 instrument effective during the life of the powerholder where the exercise is to become
4012 effective at some future time or contingency and where that future time and contingency has
4013 not yet occurred, as long as the revocation or amendment is done with the same formality as the
4014 original exercise of the power of appointment.

4015 Section 117. Section **75A-4-401**, which is renumbered from Section 75-10-401 is
4016 renumbered and amended to read:

4017 **Part 4. Disclaimer or Release - Contract to Appoint or Not to Appoint**

4018 ~~[75-10-401]~~. **75A-4-401. Disclaimer.**

4019 As provided by Section [75-2-801](#):

4020 (1) A powerholder may disclaim all or part of a power of appointment.

4021 (2) A permissible appointee, an appointee, or a taker in default of appointment may
4022 disclaim all or part of an interest in appointive property.

4023 Section 118. Section ~~75A-4-402~~, which is renumbered from Section 75-10-402 is
4024 renumbered and amended to read:

4025 ~~[75-10-402]~~. 75A-4-402. **Authority to release.**

4026 A powerholder may release a power of appointment, in whole or in part, except to the
4027 extent the terms of the instrument creating the power prevent the release.

4028 Section 119. Section ~~75A-4-403~~, which is renumbered from Section 75-10-403 is
4029 renumbered and amended to read:

4030 ~~[75-10-403]~~. 75A-4-403. **Method of release.**

4031 A powerholder of a releasable power of appointment may release the power in whole or
4032 in part:

4033 (1) by substantial compliance with a method provided in the terms of the instrument
4034 creating the power; or

4035 (2) if the terms of the instrument creating the power do not provide a method or the
4036 method provided in the terms of the instrument is not expressly made exclusive, by a record
4037 manifesting the powerholder's intent by clear and convincing evidence.

4038 Section 120. Section ~~75A-4-404~~, which is renumbered from Section 75-10-404 is
4039 renumbered and amended to read:

4040 ~~[75-10-404]~~. 75A-4-404. **Revocation or amendment of release.**

4041 A powerholder may revoke or amend a release of a power of appointment only to the
4042 extent that:

4043 (1) the instrument of release is revocable by the powerholder; or

4044 (2) the powerholder reserves a power of revocation or amendment in the instrument of
4045 release.

4046 Section 121. Section ~~75A-4-405~~, which is renumbered from Section 75-10-405 is
4047 renumbered and amended to read:

4048 ~~[75-10-405]~~. 75A-4-405. **Power to contract -- Presently exercisable power
4049 of appointment.**

4050 A powerholder of a presently exercisable power of appointment may contract:

4051 (1) not to exercise the power; or

4052 (2) to exercise the power if the contract when made does not confer a benefit on an
4053 impermissible appointee.

4054 Section 122. Section ~~75A-4-406~~, which is renumbered from Section 75-10-406 is
4055 renumbered and amended to read:

4056 ~~[75-10-406]~~. 75A-4-406. **Power to contract -- Power of appointment not**
4057 **presently exercisable.**

4058 A powerholder of a power of appointment that is not presently exercisable may contract
4059 to exercise or not to exercise the power only if the powerholder:

- 4060 (1) is also the donor of the power; and
4061 (2) has reserved the power in a revocable trust.

4062 Section 123. Section ~~75A-4-407~~, which is renumbered from Section 75-10-407 is
4063 renumbered and amended to read:

4064 ~~[75-10-407]~~. 75A-4-407. **Remedy for breach of contract to appoint or not**
4065 **to appoint.**

4066 The remedy for a powerholder's breach of a contract to appoint or not to appoint
4067 appointive property is limited to damages payable out of the appointive property or, if
4068 appropriate, specific performance of the contract.

4069 Section 124. Section ~~75A-4-501~~, which is renumbered from Section 75-10-501 is
4070 renumbered and amended to read:

4071 **Part 5. Rights of Powerholder's Creditors in Appointive Property**
4072 ~~[75-10-501]~~. 75A-4-501. **Creditor claim -- General power created by**
4073 **powerholder.**

4074 (1) ~~[In this section]~~ As used in this section, "power of appointment created by the
4075 powerholder" includes a power of appointment created in a transfer by another person to the
4076 extent the powerholder contributed value to the transfer.

4077 (2) Appointive property subject to a general power of appointment created by the
4078 powerholder is subject to a claim of a creditor of the powerholder or of the powerholder's estate
4079 to the extent provided in Title 25, Chapter 6, Uniform Voidable Transactions Act.

4080 (3) Subject to Subsection (2), appointive property subject to a general power of
4081 appointment created by the powerholder is not subject to a claim of a creditor of the
4082 powerholder or the powerholder's estate to the extent the powerholder irrevocably appointed
4083 the property in favor of a person other than the powerholder or the powerholder's estate.

4084 (4) Subject to Subsections (2) and (3), and notwithstanding the presence of a

4085 spendthrift provision or whether the claim arose before or after the creation of the power of
4086 appointment, appointive property subject to a general power of appointment created by the
4087 powerholder is subject to a claim of a creditor of:

4088 (a) the powerholder, to the same extent as if the powerholder owned the appointive
4089 property, if the power is presently exercisable; and

4090 (b) the powerholder's estate, to the extent the estate is insufficient to satisfy the claim
4091 and subject to the right of a decedent to direct the source from which liabilities are paid, if the
4092 power is exercisable at the powerholder's death.

4093 Section 125. Section **75A-4-502**, which is renumbered from Section 75-10-502 is
4094 renumbered and amended to read:

4095 ~~[75-10-502]~~. **75A-4-502. Creditor claim -- Power not created by**
4096 **powerholder.**

4097 (1) (a) The property subject to a general or a nongeneral power of appointment not
4098 created by the powerholder, including a presently exercisable general or nongeneral power of
4099 appointment, is exempt from a claim of a creditor of the powerholder or the powerholder's
4100 estate.

4101 (b) The powerholder of such a power may not be compelled to exercise the power and
4102 the powerholder's creditors may not acquire the power, any rights thereto, or reach the trust
4103 property or beneficial interests by any other means.

4104 (c) A court may not exercise or require the powerholder to exercise the power of
4105 appointment.

4106 (2) As set forth in Section ~~[75-10-103]~~ 75A-4-103, the law of the donor's domicile at
4107 the time of creation shall govern claims of creditors and other parties claiming an interest in
4108 property or rights subject to a power of appointment.

4109 Section 126. Section **75A-4-503**, which is renumbered from Section 75-10-503 is
4110 renumbered and amended to read:

4111 ~~[75-10-503]~~. **75A-4-503. Power to withdraw.**

4112 (1) For purposes of this part, and except as otherwise provided in Subsection (2), a
4113 power to withdraw property from a trust is treated, during the time the power may be exercised,
4114 as a presently exercisable general power of appointment to the extent of the property subject to
4115 the power to withdraw.

4116 (2) On the lapse, release, or waiver of a power to withdraw property from a trust, the
4117 power is treated as a presently exercisable general power of appointment only to the extent the
4118 value of the property affected by the lapse, release, or waiver exceeds the greater of the amount
4119 specified in 26 U.S.C. Sec. 2041(b)(2) and 26 U.S.C. Sec. 2514(e) or the amount specified in
4120 26 U.S.C. Sec. 2503(b).

4121 Section 127. Section **75A-4-601**, which is renumbered from Section 75-10-601 is
4122 renumbered and amended to read:

4123 **Part 6. Applicability Provisions**

4124 ~~[75-10-601]~~. **75A-4-601. Uniformity of application and construction.**

4125 In applying and construing this uniform act, consideration shall be given to the need to
4126 promote uniformity of the law with respect to its subject matter among states that enact ~~[it]~~ this
4127 uniform law.

4128 Section 128. Section **75A-4-602**, which is renumbered from Section 75-10-602 is
4129 renumbered and amended to read:

4130 ~~[75-10-602]~~. **75A-4-602. Relation to Electronic Signatures in Global and**
4131 **National Commerce Act.**

4132 This chapter modifies, limits, or supersedes the Electronic Signatures in Global and
4133 National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede
4134 Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the
4135 notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

4136 Section 129. Section **75A-4-603**, which is renumbered from Section 75-10-603 is
4137 renumbered and amended to read:

4138 ~~[75-10-603]~~. **75A-4-603. Application to existing relationships.**

4139 (1) Except as otherwise provided in this chapter, on and after May 9, 2017:

4140 (a) this chapter applies to a power of appointment created before, on, or after May 9,
4141 2017;

4142 (b) this chapter applies to a judicial proceeding concerning a power of appointment
4143 commenced on or after May 9, 2017;

4144 (c) this chapter applies to a judicial proceeding concerning a power of appointment
4145 commenced before May 9, 2017, unless the court finds that application of a particular
4146 provision of this chapter would interfere substantially with the effective conduct of the judicial

4147 proceeding or prejudice a right of a party, in which case the particular provision of this chapter
4148 does not apply and the superseded law applies; and

4149 (d) a rule of construction or presumption provided in this chapter applies to an
4150 instrument executed before May 9, 2017, unless there is a clear indication of a contrary intent
4151 in the terms of the instrument.

4152 (2) Except as otherwise provided in Subsections (1)(a) through (d), an action done
4153 before May 9, 2017, is not affected by this chapter.

4154 (3) If a right is acquired, extinguished, or barred on the expiration of a prescribed
4155 period that commenced under law of this state other than this chapter before May 9, 2017, the
4156 law continues to apply to the right.

4157 Section 130. Section **75A-5-101** is enacted to read:

4158 **CHAPTER 5. UNIFORM FIDUCIARY INCOME AND PRINCIPAL ACT**

4159 **Part 1. General Provisions**

4160 **75A-5-101. Reserved.**

4161 Reserved.

4162 Section 131. Section **75A-5-102**, which is renumbered from Section 22-3-102 is
4163 renumbered and amended to read:

4164 ~~[22-3-102].~~ **75A-5-102. Definitions for chapter.**

4165 ~~[It]~~ As used in this chapter:

4166 (1) (a) "Accounting period" means a calendar year, unless a fiduciary selects another
4167 period of 12 calendar months or approximately 12 calendar months.

4168 (b) "Accounting period" includes a part of a calendar year or another period of 12
4169 calendar months or approximately 12 calendar months that begins when an income interest
4170 begins or ends when an income interest ends.

4171 (2) (a) "Asset-backed security" means a security that is serviced primarily by the cash
4172 flows of a discrete pool of fixed or revolving receivables or other financial assets that by the
4173 financial assets' terms convert into cash within a finite time.

4174 (b) "Asset-backed security" includes rights or other assets that ensure the servicing or
4175 timely distribution of proceeds to the holder of the asset-backed security.

4176 (c) "Asset-backed security" does not include an asset to which Section ~~[22-3-401;~~
4177 ~~22-3-409, or 22-3-414]~~ 75A-5-401, 75A-5-409, or 75A-5-414 applies.

- 4178 (3) "Beneficiary" includes:
- 4179 (a) for a trust:
- 4180 (i) a current beneficiary, including a current income beneficiary and a beneficiary that
- 4181 may receive only principal;
- 4182 (ii) a remainder beneficiary; and
- 4183 (iii) any other successor beneficiary;
- 4184 (b) for an estate, an heir and devisee; and
- 4185 (c) for a life estate or term interest, a person that holds a life estate, term interest, or
- 4186 remainder, or other interest following a life estate or term interest.
- 4187 (4) "Court" means a court in this state with jurisdiction over a trust or estate, or a life
- 4188 estate or other term interest described in Subsection [~~22-3-103(2)~~] [75A-5-103\(2\)](#).
- 4189 (5) "Current income beneficiary" means a beneficiary to which a fiduciary may
- 4190 distribute net income, even if the fiduciary also may distribute principal to the beneficiary.
- 4191 (6) (a) "Distribution" means a payment or transfer by a fiduciary to a beneficiary in the
- 4192 beneficiary's capacity as a beneficiary, made under the terms of the trust, without consideration
- 4193 other than the beneficiary's right to receive the payment or transfer under the terms of the trust.
- 4194 (b) "Distribute," "distributed," and "distributee" have corresponding meanings.
- 4195 (7) (a) "Estate" means a decedent's estate.
- 4196 (b) "Estate" includes the property of the decedent as the estate is originally constituted
- 4197 and the property of the estate as it exists at any time during administration.
- 4198 (8) "Fiduciary" includes:
- 4199 (a) a trustee, trust director as defined in Section [75-12-102](#), personal representative, life
- 4200 tenant, holder of a term interest, and person acting under a delegation from a fiduciary;
- 4201 (b) a person that holds property for a successor beneficiary whose interest may be
- 4202 affected by an allocation of receipts and expenditures between income and principal; and
- 4203 (c) if there are two or more co-fiduciaries, all co-fiduciaries acting under the terms of
- 4204 the trust and applicable law.
- 4205 (9) (a) "Income" means money or other property a fiduciary receives as current return
- 4206 from principal.
- 4207 (b) "Income" includes a part of receipts from a sale, exchange, or liquidation of a
- 4208 principal asset to the extent provided in Part 4, Allocation of Receipts.

4209 (10) (a) "Income interest" means the right of a current income beneficiary to receive all
4210 or part of net income, whether the terms of the trust require the net income to be distributed or
4211 authorize the net income to be distributed in the fiduciary's discretion.

4212 (b) "Income interest" includes the right of a current beneficiary to use property held by
4213 a fiduciary.

4214 (11) "Independent person" means a person that is not:

4215 (a) for a trust:

4216 (i) a qualified beneficiary as determined under Section [75-7-103](#);

4217 (ii) a settlor of the trust; or

4218 (iii) an individual whose legal obligation to support a beneficiary may be satisfied by a
4219 distribution from the trust;

4220 (b) for an estate, a beneficiary;

4221 (c) a spouse, parent, brother, sister, or issue of an individual described in Subsection
4222 (11)(a) or (b);

4223 (d) a corporation, partnership, limited liability company, or other entity in which
4224 persons described in Subsections (11)(a) through (c), in the aggregate, have voting control; or

4225 (e) an employee of a person described in Subsection (11)(a), (b), (c), or (d).

4226 (12) "Mandatory income interest" means the right of a current income beneficiary to
4227 receive net income that the terms of the trust require the fiduciary to distribute.

4228 (13) (a) "Net income" means:

4229 (i) the total allocations during an accounting period to income under the terms of a trust
4230 and this chapter minus the disbursements during the accounting period, other than
4231 distributions, allocated to income under the terms of the trust and this chapter; and

4232 (ii) to the extent the trust is a unitrust under Part 3, Unitrust, the unitrust amount
4233 determined under Part 3, Unitrust.

4234 (b) "Net income" includes an adjustment from principal to income under Section
4235 ~~[22-3-203]~~ [75A-5-203](#).

4236 (c) "Net income" does not include an adjustment from income to principal under
4237 Section ~~[22-3-203]~~ [75A-5-203](#).

4238 (14) "Person" means:

4239 (a) an individual;

4240 (b) an estate;

4241 (c) a trust;

4242 (d) a business or nonprofit entity;

4243 (e) a public corporation, government or governmental subdivision, agency, or

4244 instrumentality; or

4245 (f) any other legal entity.

4246 (15) "Personal representative" means an executor, administrator, successor personal

4247 representative, special administrator, or person that performs substantially the same function

4248 with respect to an estate under the law governing the person's status.

4249 (16) "Principal" means property held in trust for distribution to, production of income

4250 for, or use by a current or successor beneficiary.

4251 (17) "Record" means information that is inscribed on a tangible medium or that is

4252 stored in an electronic or other medium and is retrievable in perceivable form.

4253 (18) "Settlor" means the same as that term is defined in Section [75-7-103](#).

4254 (19) "Special tax benefit" means:

4255 (a) exclusion of a transfer to a trust from gifts described in Section 2503(b) of the

4256 Internal Revenue Code because of the qualification of an income interest in the trust as a

4257 present interest in property;

4258 (b) status as a qualified subchapter S trust described in Section 1361(d)(3) of the

4259 Internal Revenue Code at a time the trust holds stock of an S corporation described in Section

4260 1361(a)(1) of the Internal Revenue Code;

4261 (c) an estate or gift tax marital deduction for a transfer to a trust under Section 2056 or

4262 2523 of the Internal Revenue Code that depends or depended in whole or in part on the right of

4263 the settlor's spouse to receive the net income of the trust;

4264 (d) exemption in whole or in part of a trust from the federal generation-skipping

4265 transfer tax imposed by Section 2601 of the Internal Revenue Code because the trust was

4266 irrevocable on September 25, 1985, if there is any possibility that:

4267 (i) a taxable distribution, as defined in Section 2612(b) of the Internal Revenue Code,

4268 could be made from the trust; or

4269 (ii) a taxable termination, as defined in Section 2612(a) of the Internal Revenue Code,

4270 could occur with respect to the trust; or

4271 (e) an inclusion ratio, as defined in Section 2642(a) of the Internal Revenue Code, of
4272 the trust which is less than one, if there is any possibility that:

4273 (i) a taxable distribution, as defined in Section 2612(b) of the Internal Revenue Code,
4274 could be made from the trust; or

4275 (ii) a taxable termination, as defined in Section 2612(a) of the Internal Revenue Code,
4276 could occur with respect to the trust.

4277 (20) "Successive interest" means the interest of a successor beneficiary.

4278 (21) "Successor beneficiary" means a person entitled to receive income or principal or
4279 to use property when an income interest or other current interest ends.

4280 (22) "Terms of a trust" means:

4281 (a) except as otherwise provided in Subsection (22)(b), the manifestation of the
4282 settlor's intent regarding a trust's provisions as:

4283 (i) expressed in the trust instrument; or

4284 (ii) established by other evidence that would be admissible in a judicial proceeding;

4285 (b) the trust's provisions as established, determined, or amended by:

4286 (i) a trustee or trust director in accordance with applicable law;

4287 (ii) a court order; or

4288 (iii) a nonjudicial settlement agreement under Section [75-7-110](#);

4289 (c) for an estate, a will; or

4290 (d) for a life estate or term interest, the corresponding manifestation of the rights of the
4291 beneficiaries.

4292 (23) (a) "Trust" includes:

4293 (i) an express trust, private or charitable, with additions to the trust, wherever and
4294 however created; and

4295 (ii) a trust created or determined by judgment or decree under which the trust is to be
4296 administered in the manner of an express trust.

4297 (b) "Trust" does not include:

4298 (i) a constructive trust;

4299 (ii) a resulting trust, conservatorship, guardianship, multi-party account, custodial
4300 arrangement for a minor, business trust, voting trust, security arrangement, liquidation trust, or
4301 trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits,

4302 pensions, retirement benefits, or employee benefits of any kind; or

4303 (iii) an arrangement under which a person is a nominee, escrowee, or agent for another.

4304 (24) (a) "Trustee" means a person, other than a personal representative, that owns or
4305 holds property for the benefit of a beneficiary.

4306 (b) "Trustee" includes an original, additional, or successor trustee, whether appointed
4307 or confirmed by a court.

4308 (25) (a) "Will" means any testamentary instrument recognized by applicable law that
4309 makes a legally effective disposition of an individual's property effective at the individual's
4310 death.

4311 (b) "Will" includes a codicil or other amendment to a testamentary instrument.

4312 Section 132. Section **75A-5-103**, which is renumbered from Section 22-3-103 is
4313 renumbered and amended to read:

4314 ~~[22-3-103]~~. **75A-5-103**. **Scope.**

4315 Except as otherwise provided in the terms of a trust or this chapter, this chapter applies
4316 to:

4317 (1) a trust or estate; and

4318 (2) a life estate or other term interest in which the interest of one or more persons will
4319 be succeeded by the interest of one or more other persons.

4320 Section 133. Section **75A-5-104**, which is renumbered from Section 22-3-104 is
4321 renumbered and amended to read:

4322 ~~[22-3-104]~~. **75A-5-104**. **Governing law.**

4323 (1) Except as otherwise provided in the terms of a trust or this chapter, this chapter
4324 applies when this state is:

4325 (a) the principal place of administration of a trust or estate; or

4326 (b) the situs of property that is not held in a trust or estate and is subject to a life estate
4327 or other term interest described in Subsection ~~[22-3-103(2)]~~ 75A-5-103(2).

4328 (2) By accepting the trusteeship of a trust having the trust's principal place of
4329 administration in this state or by moving the principal place of administration of a trust to this
4330 state, the trustee submits to the application of this chapter to any matter within the scope of this
4331 chapter involving the trust.

4332 Section 134. Section **75A-5-201**, which is renumbered from Section 22-3-201 is

4333 renumbered and amended to read:

4334 **Part 2. Fiduciary Duties and Judicial Review**

4335 ~~[22-3-201]~~. 75A-5-201. **Fiduciary duties -- General principles.**

4336 (1) In making an allocation or determination or exercising discretion under this
4337 chapter, a fiduciary shall:

4338 (a) act in good faith, based on what is fair and reasonable to all beneficiaries;

4339 (b) administer a trust or estate impartially, except to the extent the terms of the trust
4340 manifest an intent that the fiduciary shall or may favor one or more beneficiaries;

4341 (c) administer the trust or estate in accordance with the terms of the trust, even if there
4342 is a different provision in this chapter; and

4343 (d) administer the trust or estate in accordance with this chapter, except to the extent
4344 the terms of the trust provide otherwise or authorize the fiduciary to determine otherwise.

4345 (2) (a) A fiduciary's allocation, determination, or exercise of discretion under this
4346 chapter is presumed to be fair and reasonable to all beneficiaries.

4347 (b) A fiduciary may exercise a discretionary power of administration given to the
4348 fiduciary by the terms of the trust, and an exercise of the power that produces a result different
4349 from a result required or permitted by this chapter does not create an inference that the
4350 fiduciary abused the fiduciary's discretion.

4351 (3) A fiduciary shall:

4352 (a) add a receipt to principal, to the extent neither the terms of the trust nor this chapter
4353 allocates the receipt between income and principal; and

4354 (b) charge a disbursement to principal, to the extent neither the terms of the trust nor
4355 this chapter allocates the disbursement between income and principal.

4356 (4) If a fiduciary determines an exercise of discretionary power will assist the fiduciary
4357 to administer the trust or estate impartially, the fiduciary may:

4358 (a) exercise the power to adjust under Section ~~[22-3-203]~~ 75A-5-203;

4359 (b) convert an income trust to a unitrust under Subsection ~~[22-3-303(1)(a)]~~
4360 75A-5-303(1)(a);

4361 (c) change the percentage or method used to calculate a unitrust amount under
4362 Subsection ~~[22-3-303(1)(b)]~~ 75A-5-303(1)(b); or

4363 (d) convert a unitrust to an income trust under Subsection ~~[22-3-303(1)(c)]~~

4364 [75A-5-303\(1\)\(c\)](#).

4365 (5) In making the determination under Subsection (4), the fiduciary shall consider the
4366 following factors:

4367 (a) the terms of the trust;

4368 (b) the nature, distribution standards, and expected duration of the trust;

4369 (c) the effect of the allocation rules, including specific adjustments between income
4370 and principal, under Part 4, Allocation of Receipts, Part 5, Allocation of Disbursements, Part 6,
4371 Death of Individual or Termination of Income Interest, and Part 7, Apportionment at Beginning
4372 and End of Income Interest;

4373 (d) the desirability of liquidity and regularity of income;

4374 (e) the desirability of the preservation and appreciation of principal;

4375 (f) the extent to which an asset is used or may be used by a beneficiary;

4376 (g) the increase or decrease in the value of principal assets, reasonably determined by
4377 the fiduciary;

4378 (h) whether and to what extent the terms of the trust:

4379 (i) give the fiduciary power to accumulate income or invade principal; or

4380 (ii) prohibit the fiduciary from accumulating income or invading principal;

4381 (i) the extent to which the fiduciary has accumulated income or invaded principal in
4382 preceding accounting periods;

4383 (j) the effect of current and reasonably expected economic conditions; and

4384 (k) the reasonably expected tax consequences of the exercise of the power.

4385 Section 135. Section **75A-5-202**, which is renumbered from Section 22-3-202 is
4386 renumbered and amended to read:

4387 ~~[22-3-202]~~. **75A-5-202**. **Judicial review of exercise of discretionary power --**

4388 **Request for instruction.**

4389 (1) In this section, "fiduciary decision" means:

4390 (a) a fiduciary's allocation between income and principal or other determination
4391 regarding income and principal required or authorized by the terms of the trust or this chapter;

4392 (b) the fiduciary's exercise or nonexercise of a discretionary power regarding income
4393 and principal granted by the terms of the trust or this chapter, including the power to:

4394 (i) adjust under Section ~~[22-3-203]~~ [75A-5-203](#);

- 4395 (ii) convert an income trust to a unitrust under Subsection [~~22-3-303(1)(a)~~]
4396 [75A-5-303\(1\)\(a\)](#);
- 4397 (iii) change the percentage or method used to calculate a unitrust amount under
4398 Subsection [~~22-3-303(1)(b)~~] [75A-5-303\(1\)\(b\)](#); or
- 4399 (iv) convert a unitrust to an income trust under Subsection [~~22-3-303(1)(c)~~]
4400 [75A-5-303\(1\)\(c\)](#); or
- 4401 (c) the fiduciary's implementation of a decision described in Subsection (1)(a) or (b).
- 4402 (2) The court may not order a fiduciary to change a fiduciary decision, unless the court
4403 determines that the fiduciary decision was an abuse of the fiduciary's discretion.
- 4404 (3) (a) If the court determines that a fiduciary decision was an abuse of the fiduciary's
4405 discretion, the court may order a remedy authorized by law, including a remedy authorized in
4406 Section [75-7-1001](#).
- 4407 (b) To place the beneficiaries in the positions that the beneficiaries would have
4408 occupied if there had not been an abuse of the fiduciary's discretion, the court may order:
- 4409 (i) the fiduciary to exercise or refrain from exercising the power to adjust under Section
4410 [~~22-3-203~~] [75A-5-203](#);
- 4411 (ii) the fiduciary to exercise or refrain from exercising the power to:
- 4412 (A) convert an income trust to a unitrust under Subsection [~~22-3-303(1)(a)~~]
4413 [75A-5-303\(1\)\(a\)](#);
- 4414 (B) change the percentage or method used to calculate a unitrust amount under
4415 Subsection [~~22-3-303(1)(b)~~] [75A-5-303\(1\)\(b\)](#); or
- 4416 (C) convert a unitrust to an income trust under Subsection [~~22-3-303(1)(c)~~]
4417 [75A-5-303\(1\)\(c\)](#);
- 4418 (iii) the fiduciary to distribute an amount to a beneficiary;
- 4419 (iv) a beneficiary to return some or all of a distribution; or
- 4420 (v) the fiduciary to withhold an amount from one or more future distributions to a
4421 beneficiary.
- 4422 (4) (a) On petition by a fiduciary for instruction, the court may determine whether a
4423 proposed fiduciary decision will result in an abuse of the fiduciary's discretion.
- 4424 (b) A beneficiary that opposes the proposed decision has the burden to establish that
4425 the proposed decision will result in an abuse of the fiduciary's discretion if the petition:

- 4426 (i) describes the proposed decision;
- 4427 (ii) contains sufficient information to inform the beneficiary of the reasons for making
- 4428 the proposed decision and the facts on which the fiduciary relies; and
- 4429 (iii) explains how the beneficiary will be affected by the proposed decision.

4430 Section 136. Section **75A-5-203**, which is renumbered from Section 22-3-203 is

4431 renumbered and amended to read:

4432 ~~[22-3-203]~~. **75A-5-203. Fiduciary's power to adjust.**

4433 (1) Except as otherwise provided in the terms of a trust or this section, a fiduciary, in a

4434 record, without court approval, may adjust between income and principal if the fiduciary

4435 determines the exercise of the power to adjust will assist the fiduciary to administer the trust or

4436 estate impartially.

4437 (2) This section does not create a duty to exercise or consider the power to adjust under

4438 Subsection (1) or to inform a beneficiary about the applicability of this section.

4439 (3) A fiduciary that in good faith exercises or fails to exercise the power to adjust under

4440 Subsection (1) is not liable to a person affected by the exercise or failure to exercise.

4441 (4) In deciding whether and to what extent to exercise the power to adjust under

4442 Subsection (1), a fiduciary shall consider all factors the fiduciary considers relevant, including

4443 the relevant factors in Subsection ~~[22-3-201(5)]~~ 75A-5-201(5) and the application of

4444 Subsection ~~[22-3-401(9)]~~ 75A-5-401(9), Section ~~[22-3-408]~~ 75A-5-408, and Section

4445 ~~[22-3-413]~~ 75A-5-413.

4446 (5) A fiduciary may not exercise the power to make an adjustment under Subsection

4447 (1) or the power to make a determination that an allocation is insubstantial under Section

4448 ~~[22-3-408]~~ 75A-5-408 if:

4449 (a) the adjustment or determination would reduce the amount payable to a current

4450 income beneficiary from a trust that qualifies for a special tax benefit, except to the extent the

4451 adjustment is made to provide for a reasonable apportionment of the total return of the trust

4452 between the current income beneficiary and successor beneficiaries;

4453 (b) the adjustment or determination would change the amount payable to a beneficiary,

4454 as a fixed annuity or a fixed fraction of the value of the trust assets, under the terms of the trust;

4455 (c) the adjustment or determination would reduce an amount that is permanently set

4456 aside for a charitable purpose under the terms of the trust, unless both income and principal are

4457 set aside for the charitable purpose;

4458 (d) possessing or exercising the power would cause a person to be treated as the owner
4459 of all or part of the trust for federal income tax purposes;

4460 (e) possessing or exercising the power would cause all or part of the value of the trust
4461 assets to be included in the gross estate of an individual for federal estate tax purposes;

4462 (f) possessing or exercising the power would cause an individual to be treated as
4463 making a gift for federal gift tax purposes;

4464 (g) the fiduciary is not an independent person;

4465 (h) the trust is irrevocable and provides for income to be paid to the settlor and
4466 possessing or exercising the power would cause the adjusted principal or income to be
4467 considered an available resource or available income under a public-benefit program; or

4468 (i) the trust is a unitrust under Part 3, Unitrust.

4469 (6) If Subsection (5)(d), (e), (f), or (g) applies to a fiduciary:

4470 (a) a co-fiduciary to which Subsections (5)(d) through (g) do not apply may exercise
4471 the power to adjust, unless the exercise of the power to adjust by the remaining co-fiduciary or
4472 co-fiduciaries is not permitted by the terms of the trust or law other than this chapter; or

4473 (b) (i) if there is no co-fiduciary to which Subsections (5)(d) through (g) do not apply:

4474 (A) except as otherwise provided in Subsection (6)(b)(ii)(A), the fiduciary may
4475 appoint a co-fiduciary to which Subsections (5)(d) through (g) do not apply;

4476 (B) except as otherwise provided in Subsection (6)(b)(ii)(B), the appointed co-fiduciary
4477 may exercise the power to adjust under Subsection (1); and

4478 (C) the appointed co-fiduciary may be a special fiduciary with limited powers.

4479 (ii) (A) If the appointment of a co-fiduciary is not permitted by the terms of the trust or
4480 by a provision of law outside this chapter, a fiduciary may not appoint a co-fiduciary.

4481 (B) If the exercise of the power to adjust by a co-fiduciary is not permitted by the terms
4482 of the trust or by a provision of law outside this chapter, the co-fiduciary may not exercise the
4483 power to adjust under Subsection (1).

4484 (7) A fiduciary may release or delegate to a co-fiduciary the power to adjust under
4485 Subsection (1) if the fiduciary determines that the fiduciary's possession or exercise of the
4486 power to adjust will or may:

4487 (a) cause a result described in Subsections (5)(a) through (f) or (h); or

- 4488 (b) deprive the trust of a tax benefit or impose a tax burden not described in
4489 Subsections (5)(a) through (f).
- 4490 (8) A fiduciary's release or delegation to a co-fiduciary under Subsection (7) of the
4491 power to adjust under Subsection (1):
- 4492 (a) must be in a record;
- 4493 (b) applies to the entire power to adjust, unless the release or delegation provides a
4494 limitation, which may be a limitation to the power to adjust:
- 4495 (i) from income to principal;
- 4496 (ii) from principal to income;
- 4497 (iii) for specified property; or
- 4498 (iv) in specified circumstances;
- 4499 (c) for a delegation, may be modified by a redelegation under this subsection by the
4500 co-fiduciary to which the delegation is made; and
- 4501 (d) subject to Subsection (8)(c), is permanent, unless the release or delegation provides
4502 a specified period, including a period measured by the life of an individual or the lives of more
4503 than one individual.
- 4504 (9) Terms of a trust that deny or limit the power to adjust between income and
4505 principal do not affect the application of this section, unless the terms of the trust expressly
4506 deny or limit the power to adjust under Subsection (1).
- 4507 (10) The exercise of the power to adjust under Subsection (1) in any accounting period
4508 may apply to the current accounting period, the immediately preceding accounting period, and
4509 one or more subsequent accounting periods.
- 4510 (11) A description of the exercise of the power to adjust under Subsection (1) shall be:
- 4511 (a) included in a report, if any, sent to beneficiaries under Subsection 75-7-811(3); or
- 4512 (b) communicated at least annually to the qualified beneficiaries determined under
4513 Subsection 75-7-103(1)(h).

4514 Section 137. Section **75A-5-301**, which is renumbered from Section 22-3-301 is
4515 renumbered and amended to read:

4516 **Part 3. Unitrust**

4517 ~~[22-3-301]~~. **75A-5-301. Definitions for part.**

4518 ~~[It]~~ As used in this part:

4519 (1) "Applicable value" means the amount of the net fair market value of a trust taken
4520 into account under Section [~~22-3-307~~] [75A-5-307](#).

4521 (2) "Express unitrust" means a trust for which, under the terms of the trust without
4522 regard to this part, income or net income is permitted or required to be calculated as a unitrust
4523 amount.

4524 (3) "Income trust" means a trust that is not a unitrust.

4525 (4) "Net fair market value of a trust" means the fair market value of the assets of the
4526 trust minus the noncontingent liabilities of the trust.

4527 (5) (a) "Unitrust" means a trust for which net income is a unitrust amount.

4528 (b) "Unitrust" includes an express unitrust.

4529 (6) "Unitrust amount" means:

4530 (a) an amount computed by multiplying a determined value of a trust by a determined
4531 percentage; and

4532 (b) for a unitrust administered under a unitrust policy, the applicable value multiplied
4533 by the unitrust rate.

4534 (7) "Unitrust policy" means a policy described in Sections [~~22-3-305~~] [75A-5-305](#)
4535 through [~~22-3-309~~] [75A-5-309](#) and adopted under Section [~~22-3-303~~] [75A-5-303](#).

4536 (8) "Unitrust rate" means the rate used to compute the unitrust amount under
4537 Subsection (6) for a unitrust administered under a unitrust policy.

4538 Section 138. Section **75A-5-302**, which is renumbered from Section 22-3-302 is
4539 renumbered and amended to read:

4540 ~~[22-3-302]~~. **75A-5-302. Application -- Duties and remedies.**

4541 (1) Except as otherwise provided in Subsection (2), this part applies to:

4542 (a) an income trust, unless the terms of the trust expressly prohibit use of this part by:

4543 (i) a specific reference to this part; or

4544 (ii) an explicit expression of intent that net income not be calculated as a unitrust
4545 amount; and

4546 (b) an express unitrust, except to the extent the terms of the trust explicitly:

4547 (i) prohibit use of this part by a specific reference to this part;

4548 (ii) prohibit conversion to an income trust; or

4549 (iii) limit changes to the method of calculating the unitrust amount.

4550 (2) This part does not apply to a trust described in Section 170(f)(2)(B), 642(c)(5),
4551 664(d), 2702(a)(3)(A)(ii) or (iii), or 2702(b) of the Internal Revenue Code.

4552 (3) (a) An income trust to which this part applies under Subsection (1)(a) may be
4553 converted to a unitrust under this part regardless of the terms of the trust concerning
4554 distributions.

4555 (b) Conversion to a unitrust under this part does not affect other terms of the trust
4556 concerning distributions of income or principal.

4557 (4) (a) This part applies to an estate only to the extent a trust is a beneficiary of the
4558 estate.

4559 (b) To the extent of the trust's interest in the estate, and in the same manner as for a
4560 trust under this part:

4561 (i) the estate may be administered as a unitrust;

4562 (ii) the administration of the estate as a unitrust may be discontinued; or

4563 (iii) the percentage or method used to calculate the unitrust amount may be changed.

4564 (5) This part does not create a duty to take or consider action under this part or to
4565 inform a beneficiary about the applicability of this part.

4566 (6) A fiduciary that in good faith takes or fails to take an action under this part is not
4567 liable to a person affected by the action or inaction of the fiduciary.

4568 Section 139. Section **75A-5-303**, which is renumbered from Section 22-3-303 is
4569 renumbered and amended to read:

4570 **[22-3-303]. 75A-5-303. Authority of fiduciary.**

4571 (1) A fiduciary, without court approval, by complying with Subsections (2) and (6),
4572 may:

4573 (a) convert an income trust to a unitrust if the fiduciary adopts, in a record, a unitrust
4574 policy for the trust providing:

4575 (i) that, in administering the trust, the net income of the trust will be a unitrust amount
4576 rather than net income determined without regard to this part; and

4577 (ii) the percentage and method used to calculate the unitrust amount;

4578 (b) change the percentage or method used to calculate a unitrust amount for a unitrust
4579 if the fiduciary adopts in a record a unitrust policy or an amendment or replacement of a
4580 unitrust policy providing changes in the percentage or method used to calculate the unitrust

4581 amount; or

4582 (c) convert a unitrust to an income trust if the fiduciary adopts, in a record, a
4583 determination that, in administering the trust, the net income of the trust will be net income
4584 determined without regard to this part rather than a unitrust amount.

4585 (2) A fiduciary may take an action under Subsection (1) if:

4586 (a) the fiduciary determines that the action will assist the fiduciary to administer a trust
4587 impartially;

4588 (b) the fiduciary sends a notice in a record, in the manner required by Section

4589 ~~[22-3-304]~~ [75A-5-304](#), describing and proposing to take the action;

4590 (c) the fiduciary sends a copy of the notice under Subsection (2)(b) to each settlor of
4591 the trust which is:

4592 (i) if an individual, living; or

4593 (ii) if not an individual, in existence;

4594 (d) at least one member of each class of the qualified beneficiaries determined under
4595 Subsection [75-7-103](#)(1)(h) receiving the notice under Subsection (2)(b) is:

4596 (i) if an individual, legally competent;

4597 (ii) if not an individual, in existence; or

4598 (iii) represented in the manner provided in Subsection ~~[22-3-304(2)]~~ [75A-5-304\(2\)](#);

4599 and

4600 (e) the fiduciary does not receive, by the date specified in the notice under Subsection
4601 ~~[22-3-304(4)(e)]~~ [75A-5-304\(4\)\(e\)](#), an objection in a record to the action proposed under
4602 Subsection (2)(b) from a person to which the notice under Subsection (2)(b) is sent.

4603 (3) (a) If a fiduciary receives, not later than the date stated in the notice under
4604 Subsection ~~[22-3-304(4)(e)]~~ [75A-5-304\(4\)\(e\)](#), an objection in a record described in Subsection
4605 ~~[22-3-304(4)(d)]~~ [75A-5-304\(4\)\(d\)](#) to a proposed action, the fiduciary or a beneficiary may
4606 request that the court:

4607 (i) require the fiduciary to take the proposed action;

4608 (ii) require the fiduciary to take the proposed action with modifications; or

4609 (iii) prevent the proposed action.

4610 (b) A person described in Subsection ~~[22-3-304(1)]~~ [75A-5-304\(1\)](#) may oppose the
4611 proposed action in the proceeding under Subsection (3)(a), regardless of whether the person:

4612 (i) consented under Subsection [~~22-3-304(3)~~] [75A-5-304\(3\)](#); or

4613 (ii) objected under Subsection [~~22-3-304(4)(d)~~] [75A-5-304\(4\)\(d\)](#).

4614 (4) If, after sending a notice under Subsection (2)(b), a fiduciary decides not to take the
4615 action proposed in the notice, the fiduciary shall notify each person described in Subsection
4616 [~~22-3-304(1)~~] [75A-5-304\(1\)](#) in a record of the decision not to take the action and the reasons
4617 for the decision.

4618 (5) If a beneficiary requests in a record that a fiduciary take an action described in
4619 Subsection (1) and the fiduciary declines to act or does not act within 90 days after receiving
4620 the request, the beneficiary may request the court to direct the fiduciary to take the action
4621 requested.

4622 (6) In deciding whether and how to take an action authorized by Subsection (1), or
4623 whether and how to respond to a request by a beneficiary under Subsection (5), a fiduciary
4624 shall consider all factors relevant to the trust and the beneficiaries, including the relevant
4625 factors in Subsection [~~22-3-201(5)~~] [75A-5-201\(5\)](#).

4626 (7) For a reason described in Subsection [~~22-3-203(7)~~] [75A-5-203\(7\)](#), and in the
4627 manner described in Subsection [~~22-3-203(8)~~] [75A-5-203\(8\)](#), a fiduciary may:

4628 (a) release or delegate the power to convert an income trust to a unitrust under
4629 Subsection (1)(a);

4630 (b) change the percentage or method used to calculate a unitrust amount under
4631 Subsection (1)(b); or

4632 (c) convert a unitrust to an income trust under Subsection (1)(c).

4633 Section 140. Section **75A-5-304**, which is renumbered from Section 22-3-304 is
4634 renumbered and amended to read:

4635 [~~22-3-304~~]. **75A-5-304**. **Notice.**

4636 (1) A fiduciary shall send a notice required by Subsection [~~22-3-303(2)(b)~~]
4637 [75A-5-303\(2\)\(b\)](#) in a manner authorized under Section [75-7-109](#) to:

4638 (a) the qualified beneficiaries determined under Subsection [75-7-103\(1\)\(h\)](#);

4639 (b) each person acting, in accordance with Title 75, Chapter 12, Uniform Directed
4640 Trust Act, as trust director of the trust; and

4641 (c) each person that is granted a power by the terms of the trust to appoint or remove a
4642 trustee or person described in Subsection (1)(b), to the extent the power is exercisable when the

4643 person that exercises the power is not then serving as trustee or is a person described in
4644 Subsection (1)(b).

4645 (2) The representation provisions of Sections [75-7-301](#) through [75-7-305](#) apply to
4646 notice under this section.

4647 (3) (a) A person may consent in a record at any time to action proposed under
4648 Subsection [~~22-3-303(2)(b)~~] [75A-5-303\(2\)\(b\)](#).

4649 (b) If a person required to receive a notice under Subsection (1) consents under
4650 Subsection (3)(a) to not receive the notice, the fiduciary is not required to send the person the
4651 notice.

4652 (4) A notice required by Subsection [~~22-3-303(2)(b)~~] [75A-5-303\(2\)\(b\)](#) shall include:

4653 (a) the action proposed under Subsection [~~22-3-303(2)(b)~~] [75A-5-303\(2\)\(b\)](#);

4654 (b) for a conversion of an income trust to a unitrust, a copy of the unitrust policy
4655 adopted under Subsection [~~22-3-303(1)(a)~~] [75A-5-303\(1\)\(a\)](#);

4656 (c) for a change in the percentage or method used to calculate the unitrust amount, a
4657 copy of the unitrust policy or amendment or replacement of the unitrust policy adopted under
4658 Subsection [~~22-3-303(1)(b)~~] [75A-5-303\(1\)\(b\)](#);

4659 (d) a statement that the person to which the notice is sent may object to the proposed
4660 action by stating in a record the basis for the objection and sending or delivering the record to
4661 the fiduciary;

4662 (e) the date by which the fiduciary shall receive an objection under Subsection (4)(d),
4663 which shall be at least 30 days after the date the notice is sent;

4664 (f) the date on which the action is proposed to be taken and the date on which the
4665 action is proposed to take effect;

4666 (g) the name and contact information of the fiduciary; and

4667 (h) the name and contact information of a person that may be contacted for additional
4668 information.

4669 Section 141. Section **75A-5-305**, which is renumbered from Section 22-3-305 is
4670 renumbered and amended to read:

4671 ~~[22-3-305]~~. **75A-5-305. Unitrust policy.**

4672 (1) In administering a unitrust under this part, a fiduciary shall follow a unitrust policy:

4673 (a) adopted under Subsection [~~22-3-303(1)(a)~~] [75A-5-303\(1\)\(a\)](#) or (b); or

- 4674 (b) amended or replaced under Subsection ~~[22-3-303(1)(b)]~~ 75A-5-303(1)(b).
- 4675 (2) A unitrust policy shall provide:
- 4676 (a) the unitrust rate or the method for determining the unitrust rate under Section
- 4677 ~~[22-3-306]~~ 75A-5-306;
- 4678 (b) the method for determining the applicable value under Section ~~[22-3-307]~~
- 4679 75A-5-307; and
- 4680 (c) the rules described in Sections ~~[22-3-306]~~ 75A-5-306 through ~~[22-3-309]~~
- 4681 75A-5-309 that apply in the administration of the unitrust, regardless of whether the rules are:
- 4682 (i) mandatory, as provided in Subsections ~~[22-3-307(1)]~~ 75A-5-307(1) and
- 4683 ~~[22-3-308(1)]~~ 75A-5-308(1); or
- 4684 (ii) optional, as provided in Section ~~[22-3-306]~~ 75A-5-306 and Subsections
- 4685 ~~[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),
- 4686 to the extent the fiduciary elects to adopt those rules.
- 4687 Section 142. Section **75A-5-306**, which is renumbered from Section 22-3-306 is
- 4688 renumbered and amended to read:
- 4689 ~~[22-3-306]~~. **75A-5-306. Unitrust rate.**
- 4690 (1) Except as otherwise provided in Subsection ~~[22-3-309(2)(a)]~~ 75A-5-309(2)(a), a
- 4691 unitrust rate may be:
- 4692 (a) a fixed unitrust rate; or
- 4693 (b) a unitrust rate that is determined for each period using:
- 4694 (i) a market index or other published data; or
- 4695 (ii) a mathematical blend of market indices or other published data over a stated
- 4696 number of preceding periods.
- 4697 (2) Except as otherwise provided in Subsection ~~[22-3-309(2)(a)]~~ 75A-5-309(2)(a), a
- 4698 unitrust policy may provide:
- 4699 (a) a limit on how high the unitrust rate determined under Subsection (1)(b) may rise;
- 4700 (b) a limit on how low the unitrust rate determined under Subsection (1)(b) may fall;
- 4701 (c) a limit on how much the unitrust rate determined under Subsection (1)(b) may
- 4702 increase over the unitrust rate for the preceding period or a mathematical blend of unitrust rates
- 4703 over a stated number of preceding periods;
- 4704 (d) a limit on how much the unitrust rate determined under Subsection (1)(b) may

4705 decrease below the unitrust rate for the preceding period or a mathematical blend of unitrust
4706 rates over a stated number of preceding periods; or

4707 (e) a mathematical blend of any of the unitrust rates determined under Subsection
4708 (1)(b) and Subsections (2)(a) through (d).

4709 Section 143. Section **75A-5-307**, which is renumbered from Section 22-3-307 is
4710 renumbered and amended to read:

4711 ~~[22-3-307]~~. **75A-5-307. Applicable value.**

4712 (1) A unitrust policy shall provide the method for determining the fair market value of
4713 an asset for the purpose of determining the unitrust amount, including:

4714 (a) the frequency of valuing the asset, which need not require a valuation in every
4715 period; and

4716 (b) the date for valuing the asset in each period that the asset is valued.

4717 (2) Except as otherwise provided in Subsection ~~[22-3-309(2)(b)]~~ 75A-5-309(2)(b), a
4718 unitrust policy may provide methods for determining the amount of the net fair market value of
4719 the trust to take into account in determining the applicable value, including:

4720 (a) obtaining an appraisal of an asset for which fair market value is not readily
4721 available;

4722 (b) exclusion of specific assets or groups or types of assets;

4723 (c) other exceptions or modifications of the treatment of specific assets or groups or
4724 types of assets;

4725 (d) identification and treatment of cash or property held for distribution;

4726 (e) use of:

4727 (i) an average of fair market values over a stated number of preceding periods; or

4728 (ii) another mathematical blend of fair market values over a stated number of preceding
4729 periods;

4730 (f) a limit on how much the applicable value of all assets, groups of assets, or
4731 individual assets may increase over:

4732 (i) the corresponding applicable value for the preceding period; or

4733 (ii) a mathematical blend of applicable values over a stated number of preceding time
4734 periods;

4735 (g) a limit on how much the applicable value of all assets, groups of assets, or

4736 individual assets may decrease below:

4737 (i) the corresponding applicable value for the preceding period; or
4738 (ii) a mathematical blend of applicable values over a stated number of preceding
4739 periods;

4740 (h) the treatment of accrued income and other features of an asset that affect value; and
4741 (i) determining the liabilities of the trust, including treatment of liabilities to conform
4742 with the treatment of assets under Subsections (2)(a) through (h).

4743 Section 144. Section **75A-5-308**, which is renumbered from Section 22-3-308 is
4744 renumbered and amended to read:

4745 ~~[22-3-308]~~. **75A-5-308. Period.**

4746 (1) (a) A unitrust policy shall provide the period used under Sections ~~[22-3-306 and~~
4747 ~~22-3-307]~~ 75A-5-306 and 75A-5-307.

4748 (b) Except as otherwise provided in Subsection ~~[22-3-309(2)(e)]~~ 75A-5-309(2)(c), the
4749 period may be:

4750 (i) a calendar year;
4751 (ii) a 12-month period other than a calendar year;
4752 (iii) a calendar quarter;
4753 (iv) a three-month period other than a calendar quarter; or
4754 (v) another period.

4755 (2) Except as otherwise provided in Subsection ~~[22-3-309(2)]~~ 75A-5-309(2), a unitrust
4756 policy may provide standards for:

4757 (a) using fewer preceding periods under Subsection ~~[22-3-306(1)(b)(ii)]~~
4758 75A-5-306(1)(b)(ii), (2)(c), or (2)(d) if:

4759 (i) the trust was not in existence in a preceding period; or
4760 (ii) market indices or other published data are not available for a preceding period;

4761 (b) using fewer preceding periods under Subsection ~~[22-3-307(2)(e)(i) or (ii)]~~

4762 75A-5-307(2)(e)(i), (e)(ii), (f)(ii), or (g)(ii) if:

4763 (i) the trust was not in existence in a preceding period; or
4764 (ii) fair market values are not available for a preceding period; and
4765 (c) prorating the unitrust amount on a daily basis for a part of a period in which the

4766 trust or the administration of the trust as a unitrust or the interest of any beneficiary commences

4767 or terminates.

4768 Section 145. Section **75A-5-309**, which is renumbered from Section 22-3-309 is
4769 renumbered and amended to read:

4770 ~~[22-3-309]~~. **75A-5-309. Special tax benefits -- Other rules.**

4771 (1) A unitrust policy may:

4772 (a) provide methods and standards for:

4773 (i) determining the timing of distributions;

4774 (ii) making distributions in cash or in kind or partly in cash and partly in kind; or

4775 (iii) correcting an underpayment or overpayment to a beneficiary based on the unitrust
4776 amount if there is an error in calculating the unitrust amount;

4777 (b) specify sources and the order of sources, including categories of income for federal
4778 income tax purposes, from which distributions of a unitrust amount are paid; or

4779 (c) provide other standards and rules the fiduciary determines serve the interests of the
4780 beneficiaries.

4781 (2) If a trust qualifies for a special tax benefit or a fiduciary is not an independent
4782 person:

4783 (a) the unitrust rate established under Section ~~[22-3-306]~~ 75A-5-306 may not be less
4784 than 3% or more than 5%;

4785 (b) the only provisions of Section ~~[22-3-307]~~ 75A-5-307 that apply are Subsections
4786 ~~[22-3-307(1)]~~ 75A-5-307(1) and (2)(a), (d), (e)(i), and (i);

4787 (c) the only period that may be used under Section ~~[22-3-308]~~ 75A-5-308 is a calendar
4788 year under Subsection ~~[22-3-308(1)]~~ 75A-5-308(1); and

4789 (d) the only other provisions of Section ~~[22-3-308]~~ 75A-5-308 that apply are
4790 ~~[Subsection 22-3-308(2)(b)(i)]~~ Subsections 75A-5-308(2)(b)(i) and (c).

4791 Section 146. Section **75A-5-401**, which is renumbered from Section 22-3-401 is
4792 renumbered and amended to read:

4793 **Part 4. Allocation of Receipts**

4794 ~~[22-3-401]~~. **75A-5-401. Receipts from entity -- Character of receipts from**
4795 **entity.**

4796 (1) ~~[In]~~ As used in this section:

4797 (a) "Capital distribution" means an entity distribution of money that is a:

- 4798 (i) return of capital; or
- 4799 (ii) distribution in total or partial liquidation of the entity.
- 4800 (b) (i) "Entity" means a corporation, partnership, limited liability company, regulated
- 4801 investment company, real estate investment trust, common trust fund, or any other organization
- 4802 or arrangement in which a fiduciary owns or holds an interest, regardless of whether the entity
- 4803 is a taxpayer for federal income tax purposes.
- 4804 (ii) "Entity" does not include:
- 4805 (A) a trust or estate to which Section [~~22-3-402~~] [75A-5-402](#) applies;
- 4806 (B) a business or other activity to which Section [~~22-3-403~~] [75A-5-403](#) applies that is
- 4807 not conducted by an entity described in Subsection (1)(b)(i);
- 4808 (C) an asset-backed security; or
- 4809 (D) an instrument or arrangement to which Section [~~22-3-416~~] [75A-5-416](#) applies.
- 4810 (c) "Entity distribution" means a payment or transfer by an entity made to a person in
- 4811 the person's capacity as an owner or holder of an interest in the entity.
- 4812 (2) In this section, an attribute or action of an entity includes an attribute or action of
- 4813 any other entity in which the entity owns or holds an interest, including an interest owned or
- 4814 held indirectly through another entity.
- 4815 (3) Except as otherwise provided in Subsections (4)(b) through (d), a fiduciary shall
- 4816 allocate to income:
- 4817 (a) money received in an entity distribution; and
- 4818 (b) tangible personal property of nominal value received from the entity.
- 4819 (4) A fiduciary shall allocate to principal:
- 4820 (a) property received in an entity distribution that is not:
- 4821 (i) money; or
- 4822 (ii) tangible personal property of nominal value;
- 4823 (b) money received in an entity distribution in an exchange for part or all of the
- 4824 fiduciary's interest in the entity, to the extent the entity distribution reduces the fiduciary's
- 4825 interest in the entity relative to the interests of other persons that own or hold interests in the
- 4826 entity;
- 4827 (c) money received in an entity distribution that the fiduciary determines or estimates is
- 4828 a capital distribution; and

- 4829 (d) money received in an entity distribution from an entity that is:
- 4830 (i) a regulated investment company or real estate investment trust if the money
- 4831 received is a capital gain dividend for federal income tax purposes; or
- 4832 (ii) treated for federal income tax purposes in a comparable manner to the treatment
- 4833 described in Subsection (4)(d)(i).
- 4834 (5) A fiduciary may determine or estimate that money received in an entity distribution
- 4835 is a capital distribution:
- 4836 (a) by relying without inquiry or investigation on a characterization of the entity
- 4837 distribution provided by or on behalf of the entity, unless the fiduciary:
- 4838 (i) determines, on the basis of information known to the fiduciary, that the
- 4839 characterization is or may be incorrect; or
- 4840 (ii) owns or holds more than 50% of the voting interest in the entity;
- 4841 (b) by determining or estimating, on the basis of information known to the fiduciary or
- 4842 provided to the fiduciary by or on behalf of the entity, that the total amount of money and
- 4843 property received by the fiduciary in the entity distribution or a series of related entity
- 4844 distributions is or will be greater than 20% of the fair market value of the fiduciary's interest in
- 4845 the entity; or
- 4846 (c) if neither Subsection (5)(a) nor (b) applies, by considering the factors in Subsection
- 4847 (6) and the information known to the fiduciary or provided to the fiduciary by or on behalf of
- 4848 the entity.
- 4849 (6) In making a determination or estimate under Subsection (5)(c), a fiduciary may
- 4850 consider:
- 4851 (a) a characterization of an entity distribution provided by or on behalf of the entity;
- 4852 (b) the amount of money or property received in:
- 4853 (i) the entity distribution; or
- 4854 (ii) what the fiduciary determines is or will be a series of related entity distributions;
- 4855 (c) the amount described in Subsection (6)(b) compared to the amount that the
- 4856 fiduciary determines or estimates is, during the current or preceding accounting periods:
- 4857 (i) the entity's operating income;
- 4858 (ii) the proceeds of the entity's sale or other disposition of:
- 4859 (A) all or part of the business or other activity conducted by the entity;

4860 (B) one or more business assets that are not sold to customers in the ordinary course of
4861 the business or other activity conducted by the entity; or

4862 (C) one or more assets other than business assets, unless the entity's primary activity is
4863 to invest in assets to realize gain on the disposition of all or some of the assets;

4864 (iii) if the entity's primary activity is to invest in assets to realize gain on the disposition
4865 of all or some of the assets, the gain realized on the disposition;

4866 (iv) the entity's regular, periodic entity distributions;

4867 (v) the amount of money that the entity has accumulated;

4868 (vi) the amount of money that the entity has borrowed;

4869 (vii) the amount of money that the entity has received from the sources described in
4870 Sections [~~22-3-407, 22-3-410, 22-3-411, and 22-3-412~~] [75A-5-407](#), [75A-5-410](#), [75A-5-411](#),
4871 [and 75A-5-412](#); and

4872 (viii) the amount of money that the entity has received from a source not otherwise
4873 described in this subsection; and

4874 (d) any other factor the fiduciary determines is relevant.

4875 (7) If, after applying Subsections (3) through (6), a fiduciary determines that a part of
4876 an entity distribution is a capital distribution but the fiduciary is in doubt about the amount of
4877 the entity distribution that is a capital distribution, the fiduciary shall allocate to principal the
4878 amount of the entity distribution that is in doubt.

4879 (8) If a fiduciary receives additional information about the application of this section to
4880 an entity distribution before the fiduciary has paid part of the entity distribution to a
4881 beneficiary, the fiduciary may consider the additional information before making the payment
4882 to the beneficiary and may change a decision to make the payment to the beneficiary.

4883 (9) If a fiduciary receives additional information about the application of this section to
4884 an entity distribution after the fiduciary has paid part of the entity distribution to a beneficiary,
4885 the fiduciary is not required to change or recover the payment to the beneficiary but may
4886 consider that information in determining whether to exercise the power to adjust under Section
4887 [~~22-3-203~~] [75A-5-203](#).

4888 Section 147. Section ~~75A-5-402~~, which is renumbered from Section 22-3-402 is
4889 renumbered and amended to read:

4890 [~~22-3-402~~]. [75A-5-402](#). **Receipts from entity -- Distribution from trust or estate.**

4891 (1) A fiduciary shall allocate:

4892 (a) to income an amount received as a distribution of income, including a unitrust
4893 distribution under Part 3, Unitrust, from a trust or estate in which the fiduciary has an interest,
4894 other than an interest the fiduciary purchased in a trust that is an investment entity; and

4895 (b) to principal an amount received as a distribution of principal from the trust or
4896 estate.

4897 (2) If a fiduciary purchases, or receives from a settlor, an interest in a trust that is an
4898 investment entity, Section [~~22-3-401, 22-3-415, or 22-3-416~~] 75A-5-401, 75A-5-415, or
4899 75A-5-416 applies to a receipt from the trust.

4900 Section 148. Section **75A-5-403**, which is renumbered from Section 22-3-403 is
4901 renumbered and amended to read:

4902 [~~22-3-403~~]. **75A-5-403. Receipts from entity -- Business or other activity**
4903 **conducted by fiduciary.**

4904 (1) This section applies to a business or other activity conducted by a fiduciary if the
4905 fiduciary determines that it is in the interests of the beneficiaries to account separately for the
4906 business or other activity instead of:

4907 (a) accounting for the business or other activity as part of the fiduciary's general
4908 accounting records; or

4909 (b) conducting the business or other activity through an entity described in Subsection
4910 [~~22-3-401(1)(b)(i)~~] 75A-5-401(1)(b)(i).

4911 (2) A fiduciary may account separately under this section for the transactions of a
4912 business or other activity, whether or not assets of the business or other activity are segregated
4913 from other assets held by the fiduciary.

4914 (3) A fiduciary that accounts separately under this section for a business or other
4915 activity:

4916 (a) may determine:

4917 (i) the extent to which the net cash receipts of the business or other activity shall be
4918 retained for:

4919 (A) working capital;

4920 (B) the acquisition or replacement of fixed assets; and

4921 (C) other reasonably foreseeable needs of the business or other activity; and

4922 (ii) the extent that the remaining net cash receipts are accounted for as principal or
4923 income in the fiduciary's general accounting records for the trust;

4924 (b) may make a determination under Subsection (3)(a) separately and differently from
4925 the fiduciary's decisions concerning distributions of income or principal; and

4926 (c) shall account for the net amount received from the sale of an asset of the business
4927 or other activity, other than a sale in the ordinary course of the business or other activity, as
4928 principal in the fiduciary's general accounting records for the trust, to the extent the fiduciary
4929 determines that the net amount received is no longer required in the conduct of the business or
4930 other activity.

4931 (4) A fiduciary may account separately under this section for activities that include:

4932 (a) retail, manufacturing, service, and other traditional business activities;

4933 (b) farming;

4934 (c) raising and selling livestock and other animals;

4935 (d) managing rental properties;

4936 (e) extracting minerals, water, and other natural resources;

4937 (f) growing and cutting timber;

4938 (g) an activity to which [~~Section 22-3-414, 22-3-415, or 22-3-416~~] Section 75A-5-414,
4939 75A-5-415, or 75A-5-416 applies; and

4940 (h) any other business conducted by the fiduciary.

4941 Section 149. Section **75A-5-404**, which is renumbered from Section 22-3-404 is
4942 renumbered and amended to read:

4943 ~~[22-3-404].~~ **75A-5-404. Receipts not normally apportioned -- Principal receipts.**

4944 A fiduciary shall allocate to principal:

4945 (1) to the extent not allocated to income under this chapter, an asset received from:

4946 (a) an individual during the individual's lifetime;

4947 (b) an estate;

4948 (c) a trust on termination of an income interest; or

4949 (d) a payor under a contract naming the fiduciary as beneficiary;

4950 (2) except as otherwise provided in this part, money or other property received from
4951 the sale, exchange, liquidation, or change in form of a principal asset;

4952 (3) an amount recovered from a third party to reimburse the fiduciary because of a

4953 disbursement described in Subsection [~~22-3-502(1)~~] 75A-5-502(1) or for another reason to the
4954 extent not based on loss of income;

4955 (4) proceeds of property taken by eminent domain, except that proceeds awarded for
4956 loss of income in an accounting period are income if a current income beneficiary had a
4957 mandatory income interest during the accounting period;

4958 (5) net income received in an accounting period during which there is no beneficiary to
4959 which a fiduciary is permitted or required to distribute income; and

4960 (6) other receipts as provided in Part 3, Unitrust.

4961 Section 150. Section **75A-5-405**, which is renumbered from Section 22-3-405 is
4962 renumbered and amended to read:

4963 ~~[22-3-405]~~. **75A-5-405. Receipts not normally apportioned -- Rental property.**

4964 (1) To the extent a fiduciary does not account for the management of rental property as
4965 a business under Section [~~22-3-403~~] 75A-5-403, the fiduciary shall allocate to income an
4966 amount received as rent of real or personal property, including an amount received for
4967 cancellation or renewal of a lease.

4968 (2) An amount received as a refundable deposit, including a security deposit or a
4969 deposit that is to be applied as rent for future periods:

4970 (a) shall be added to principal and held subject to the terms of the lease, except as
4971 otherwise provided by law other than this chapter; and

4972 (b) is not allocated to income or available for distribution to a beneficiary until the
4973 fiduciary's contractual obligations have been satisfied with respect to that amount.

4974 Section 151. Section **75A-5-406**, which is renumbered from Section 22-3-406 is
4975 renumbered and amended to read:

4976 ~~[22-3-406]~~. **75A-5-406. Receipts not normally apportioned -- Receipt on**
4977 **obligation to be paid in money.**

4978 (1) This section does not apply to an obligation to which Section [~~22-3-409, 22-3-410,~~
4979 ~~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,
4980 75A-5-412, 75A-5-414, 75A-5-415, or 75A-5-416 applies.

4981 (2) A fiduciary shall allocate to income, without provision for amortization of
4982 premium, an amount received as interest on an obligation to pay money to the fiduciary,
4983 including an amount received as consideration for prepaying principal.

4984 (3) (a) A fiduciary shall allocate to principal an amount received from the sale,
4985 redemption, or other disposition of an obligation to pay money to the fiduciary.

4986 (b) A fiduciary shall allocate to income the increment in value of a bond or other
4987 obligation for the payment of money bearing no stated interest but payable or redeemable, at
4988 maturity or another future time, in an amount that exceeds the amount in consideration of
4989 which it was issued.

4990 Section 152. Section ~~75A-5-407~~, which is renumbered from Section 22-3-407 is
4991 renumbered and amended to read:

4992 ~~[22-3-407]~~. 75A-5-407. **Receipts not normally apportioned -- Insurance policy**
4993 **or contract.**

4994 (1) This section does not apply to a contract to which Section ~~[22-3-409]~~ 75A-5-409
4995 applies.

4996 (2) (a) Except as otherwise provided in Subsection (3), a fiduciary shall allocate to
4997 principal the proceeds of a life insurance policy or other contract received by the fiduciary as
4998 beneficiary, including a contract that insures against damage to, destruction of, or loss of title to
4999 an asset.

5000 (b) The fiduciary shall allocate dividends on an insurance policy:

5001 (i) to income, to the extent premiums on the policy are paid from income; and

5002 (ii) to principal, to the extent premiums on the policy are paid from principal.

5003 (3) A fiduciary shall allocate to income proceeds of a contract that insures the fiduciary
5004 against loss of:

5005 (a) occupancy or other use by a current income beneficiary;

5006 (b) income; or

5007 (c) subject to Section ~~[22-3-403]~~ 75A-5-403, profits from a business.

5008 Section 153. Section ~~75A-5-408~~, which is renumbered from Section 22-3-408 is
5009 renumbered and amended to read:

5010 ~~[22-3-408]~~. 75A-5-408. **Receipts normally apportioned -- Insubstantial**
5011 **allocation not required.**

5012 (1) If a fiduciary determines that an allocation between income and principal required
5013 by Section ~~[22-3-409, 22-3-410, 22-3-411, 22-3-412, or 22-3-415]~~ 75A-5-409, 75A-5-410,
5014 75A-5-411, 75A-5-412, or 75A-5-415 is insubstantial, the fiduciary may allocate the entire

5015 amount to principal, unless Subsection [~~22-3-203(5)~~] 75A-5-203(5) applies to the allocation.

5016 (2) A fiduciary may presume an allocation is insubstantial under Subsection (1) if:

5017 (a) the amount of the allocation would increase or decrease net income in an
5018 accounting period, as determined before the allocation, by less than 10%; and

5019 (b) the asset producing the receipt to be allocated has a fair market value less than 10%
5020 of the total fair market value of the assets owned or held by the fiduciary at the beginning of the
5021 accounting period.

5022 (3) The power to make a determination under Subsection (1) may be:

5023 (a) exercised by a co-fiduciary in the manner described in Subsection [~~22-3-203(6)~~]
5024 75A-5-203(6); or

5025 (b) released or delegated for a reason described in Subsection [~~22-3-203(7)~~]
5026 75A-5-203(7) and in the manner described in Subsection [~~22-3-203(8)~~] 75A-5-203(8).

5027 Section 154. Section **75A-5-409**, which is renumbered from Section 22-3-409 is
5028 renumbered and amended to read:

5029 [~~22-3-409~~]. **75A-5-409. Receipts normally apportioned -- Deferred**
5030 **compensation, annuity, or similar payment.**

5031 (1) [~~It~~] As used in this section:

5032 (a) "Internal income of a separate fund" means the amount determined under
5033 Subsection (2).

5034 (b) "Marital trust" means a trust:

5035 (i) of which the settlor's surviving spouse is the only current income beneficiary and is
5036 entitled to a distribution of all the current net income of the trust; and

5037 (ii) that qualifies for a marital deduction with respect to the settlor's estate under
5038 Section 2056 of the Internal Revenue Code because:

5039 (A) an election to qualify for a marital deduction under Section 2056(b)(7) of the
5040 Internal Revenue Code has been made; or

5041 (B) the trust qualifies for a marital deduction under Section 2056(b)(5) of the Internal
5042 Revenue Code.

5043 (c) (i) "Payment" means an amount a fiduciary may receive over a fixed number of
5044 years or during the life of one or more individuals because of services rendered or property
5045 transferred to the payor in exchange for future amounts the fiduciary may receive.

5046 (ii) "Payment" includes an amount received in money or property from the payor's
5047 general assets or from a separate fund created by the payor.

5048 (d) "Separate fund" includes a private or commercial annuity, an individual retirement
5049 account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

5050 (2) For each accounting period, and for each separate fund:

5051 (a) the fiduciary shall determine the internal income of the separate fund as if the
5052 separate fund were a trust subject to this chapter;

5053 (b) if the fiduciary cannot determine the internal income of the separate fund under
5054 Subsection (2)(a), the internal income of the separate fund is deemed to equal 3% of the value
5055 of the separate fund, according to the most recent statement of value preceding the beginning of
5056 the accounting period; and

5057 (c) if the fiduciary cannot determine the value of the separate fund under Subsection
5058 (2)(b), the value of the separate fund is deemed to equal the present value of the expected
5059 future payments, as determined under Section 7520 of the Internal Revenue Code, for the
5060 month preceding the beginning of the accounting period for which the computation is made.

5061 (3) A fiduciary shall allocate a payment received from a separate fund during an
5062 accounting period to income, to the extent of the internal income of the separate fund during
5063 the accounting period, and the balance to principal.

5064 (4) The fiduciary of a marital trust shall:

5065 (a) withdraw from a separate fund the amount the current income beneficiary of the
5066 trust requests the fiduciary to withdraw, not greater than the amount by which the internal
5067 income of the separate fund during the accounting period exceeds the amount the fiduciary
5068 otherwise receives from the separate fund during the accounting period;

5069 (b) transfer from principal to income the amount the current income beneficiary
5070 requests the fiduciary to transfer, not greater than the amount by which the internal income of
5071 the separate fund during the accounting period exceeds the amount the fiduciary receives from
5072 the separate fund during the accounting period after the application of Subsection (4)(a); and

5073 (c) distribute to the current income beneficiary as income:

5074 (i) the amount of the internal income of the separate fund received or withdrawn during
5075 the accounting period; and

5076 (ii) the amount transferred from principal to income under Subsection (4)(b).

5077 (5) For a trust, other than a marital trust, of which one or more current income
5078 beneficiaries are entitled to a distribution of all the current net income, the fiduciary shall
5079 transfer from principal to income the amount by which the internal income of a separate fund
5080 during the accounting period exceeds the amount the fiduciary receives from the separate fund
5081 during the accounting period.

5082 Section 155. Section **75A-5-410**, which is renumbered from Section 22-3-410 is
5083 renumbered and amended to read:

5084 ~~[22-3-410]~~. **75A-5-410. Receipts normally apportioned -- Liquidating asset.**

5085 (1) ~~[It]~~ As used in this section:

5086 (a) "Liquidating asset" means an asset whose value will diminish or terminate because
5087 the asset is expected to produce receipts for a limited time.

5088 (b) "Liquidating asset" includes a leasehold, patent, copyright, royalty right, and right
5089 to receive payments during a period of more than one year under an arrangement that does not
5090 provide for the payment of interest on the unpaid balance.

5091 (2) This section does not apply to a receipt subject to Section [~~22-3-401, 22-3-409,~~
5092 ~~22-3-411, 22-3-412, 22-3-414, 22-3-415, 22-3-416, or 22-3-503~~] 75A-5-401, 75A-5-409,
5093 75A-5-411, 75A-5-412, 75A-5-414, 75A-5-415, 75A-5-416, or 75A-5-503.

5094 (3) A fiduciary shall allocate:

5095 (a) to income:

5096 (i) a receipt produced by a liquidating asset, to the extent the receipt does not exceed
5097 3% of the value of the asset; or

5098 (ii) if the fiduciary cannot determine the value of the asset, 10% of the receipt; and

5099 (b) to principal, the balance of the receipt.

5100 Section 156. Section **75A-5-411**, which is renumbered from Section 22-3-411 is
5101 renumbered and amended to read:

5102 ~~[22-3-411]~~. **75A-5-411. Receipts normally apportioned -- Minerals, water, and**
5103 **other natural resources.**

5104 (1) To the extent that a fiduciary does not account for a receipt from an interest in
5105 minerals, water, or other natural resources as a business under Section [~~22-3-403~~] 75A-5-403,
5106 the fiduciary shall allocate the receipt:

5107 (a) to income, to the extent received:

5108 (i) as delay rental or annual rent on a lease;
5109 (ii) as a factor for interest or the equivalent of interest under an agreement creating a
5110 production payment; or

5111 (iii) on account of an interest in renewable water;
5112 (b) to principal, if received from a production payment, to the extent that Subsection
5113 (1)(a)(ii) does not apply; or

5114 (c) between income and principal equitably, to the extent received:

5115 (i) on account of an interest in nonrenewable water;
5116 (ii) as a royalty, shut-in-well payment, take-or-pay payment, or bonus; or
5117 (iii) from a working interest or any other interest not provided for in Subsection (1)(a)
5118 or (b) or Subsection (1)(c)(i) or (ii).

5119 (2) This section applies to an interest owned or held by a fiduciary regardless of
5120 whether a settlor was extracting minerals, water, or other natural resources before the fiduciary
5121 owned or held the interest.

5122 (3) An allocation of a receipt under Subsection (1)(c) is presumed to be equitable if the
5123 amount allocated to principal is equal to the amount allowed by the Internal Revenue Code as a
5124 deduction for depletion of the interest.

5125 (4) (a) If a fiduciary owns or holds an interest in minerals, water, or other natural
5126 resources before July 1, 2020, the fiduciary may allocate receipts from the interest as provided
5127 in this section or in the manner used by the fiduciary before July 1, 2020.

5128 (b) If the fiduciary acquires an interest in minerals, water, or other natural resources on
5129 or after July 1, 2020, the fiduciary shall allocate receipts from the interest as provided in this
5130 section.

5131 Section 157. Section ~~75A-5-412~~, which is renumbered from Section 22-3-412 is
5132 renumbered and amended to read:

5133 ~~[22-3-412]~~. 75A-5-412. **Receipts normally apportioned -- Timber.**

5134 (1) To the extent that a fiduciary does not account for receipts from the sale of timber
5135 and related products as a business under Section ~~[22-3-403]~~ 75A-5-403, the fiduciary shall
5136 allocate the net receipts:

5137 (a) to income, to the extent that the amount of timber cut from the land does not exceed
5138 the rate of growth of the timber;

5139 (b) to principal, to the extent that the amount of timber cut from the land exceeds the
5140 rate of growth of the timber or the net receipts are from the sale of standing timber;

5141 (c) between income and principal if the net receipts are from the lease of land used for
5142 growing and cutting timber or from a contract to cut timber from land, by determining the
5143 amount of timber cut from the land under the lease or contract and applying the rules in
5144 Subsections (1)(a) and (b); or

5145 (d) to principal, to the extent that advance payments, bonuses, and other payments are
5146 not allocated under Subsection (1)(a), (b), or (c).

5147 (2) In determining net receipts to be allocated under Subsection (1), a fiduciary shall
5148 deduct and transfer to principal a reasonable amount for depletion.

5149 (3) This section applies to land owned or held by a fiduciary regardless of whether a
5150 settlor was cutting timber from the land before the fiduciary owned or held the property.

5151 (4) (a) If a fiduciary owns or holds an interest in land used for growing and cutting
5152 timber before July 1, 2020, the fiduciary may allocate net receipts from the sale of timber and
5153 related products as provided in this section or in the manner used by the fiduciary before July 1,
5154 2020.

5155 (b) If the fiduciary acquires an interest in land used for growing and cutting timber on
5156 or after July 1, 2020, the fiduciary shall allocate net receipts from the sale of timber and related
5157 products as provided in this section.

5158 Section 158. Section ~~75A-5-413~~, which is renumbered from Section 22-3-413 is
5159 renumbered and amended to read:

5160 ~~[22-3-413]~~. 75A-5-413. **Receipts normally apportioned -- Marital deduction**
5161 **property not productive of income.**

5162 (1) If a trust received property for which a gift or estate tax marital deduction was
5163 allowed and the settlor's spouse holds a mandatory income interest in the trust, the spouse may
5164 require the trustee, to the extent the trust assets otherwise do not provide the spouse with
5165 sufficient income from or use of the trust assets to qualify for the deduction, to:

5166 (a) make property productive of income;

5167 (b) convert property to property productive of income within a reasonable time; or

5168 (c) exercise the power to adjust under Section ~~[22-3-203]~~ 75A-5-203.

5169 (2) The trustee may decide which action or combination of actions in Subsection (1) to

5170 take.

5171 Section 159. Section **75A-5-414**, which is renumbered from Section 22-3-414 is
5172 renumbered and amended to read:

5173 ~~[22-3-414]~~. **75A-5-414. Receipts normally apportioned -- Derivative or option.**

5174 (1) ~~[It]~~ As used in this section:

5175 (a) "Derivative" means a contract, instrument, other arrangement, or combination of
5176 contracts, instruments, or other arrangements, for which the value, rights, and obligations are,
5177 in whole or in part, dependent on or derived from an underlying tangible or intangible asset,
5178 group of tangible or intangible assets, index, or occurrence of an event.

5179 (b) "Derivative" includes stocks, fixed income securities, and financial instruments and
5180 arrangements based on indices, commodities, interest rates, weather-related events, and
5181 credit-default events.

5182 (2) To the extent that a fiduciary does not account for a transaction in derivatives as a
5183 business under Section ~~[22-3-403]~~ 75A-5-403, the fiduciary shall allocate:

5184 (a) 10% of receipts from the transaction and 10% of disbursements made in connection
5185 with the transaction to income; and

5186 (b) the balance to principal.

5187 (3) Subsection (4) applies if:

5188 (a) a fiduciary:

5189 (i) grants an option to buy property from a trust, regardless of whether the trust owns
5190 the property when the option is granted;

5191 (ii) grants an option that permits another person to sell property to the trust; or

5192 (iii) acquires an option to buy property for the trust or an option to sell an asset owned
5193 by the trust; and

5194 (b) the fiduciary or other owner of the asset is required to deliver the asset if the option
5195 is exercised.

5196 (4) If this subsection applies, the fiduciary shall allocate 10% to income and the
5197 balance to principal of the following amounts:

5198 (a) an amount received for granting the option;

5199 (b) an amount paid to acquire the option; and

5200 (c) gain or loss realized on the exercise, exchange, settlement, offset, closing, or

5201 expiration of the option.

5202 Section 160. Section **75A-5-415**, which is renumbered from Section 22-3-415 is
5203 renumbered and amended to read:

5204 ~~[22-3-415]~~. **75A-5-415**. **Receipts normally apportioned -- Asset-backed security.**

5205 (1) Except as otherwise provided in Subsection (2), a fiduciary shall allocate:

5206 (a) to income, a receipt from or related to an asset-backed security, to the extent that
5207 the payor identifies the payment as being from interest or other current return; and

5208 (b) to principal, the balance of the receipt.

5209 (2) If a fiduciary receives one or more payments in exchange for part or all of the
5210 fiduciary's interest in an asset-backed security, including a liquidation or redemption of the
5211 fiduciary's interest in the security, the fiduciary shall allocate:

5212 (a) to income, 10% of receipts from the transaction and 10% of disbursements made in
5213 connection with the transaction; and

5214 (b) to principal, the balance of the receipts and disbursements.

5215 Section 161. Section **75A-5-416**, which is renumbered from Section 22-3-416 is
5216 renumbered and amended to read:

5217 ~~[22-3-416]~~. **75A-5-416**. **Receipts normally apportioned -- Other financial
5218 instrument or arrangement.**

5219 (1) A fiduciary shall allocate receipts from or related to a financial instrument or
5220 arrangement not otherwise addressed by this chapter.

5221 (2) The allocation must be consistent with Sections ~~[22-3-414 and 22-3-415]~~
5222 [75A-5-414](#) and [75A-5-415](#).

5223 Section 162. Section **75A-5-501**, which is renumbered from Section 22-3-501 is
5224 renumbered and amended to read:

5225 **Part 5. Allocation of Disbursements**

5226 ~~[22-3-501]~~. **75A-5-501**. **Disbursement from income.**

5227 Subject to Section ~~[22-3-504]~~ [75A-5-504](#), and except as otherwise provided in
5228 Subsection ~~[22-3-601(3)(b)]~~ [75A-5-601\(3\)\(b\)](#) or (c), a fiduciary shall disburse from income:

5229 (1) one-half of:

5230 (a) the regular compensation of the fiduciary and any person providing investment
5231 advisory, custodial, or other services to the fiduciary, to the extent income is sufficient; and

5232 (b) an expense for an accounting, judicial or nonjudicial proceeding, or other matter
5233 that involves both income and successive interests, to the extent income is sufficient;

5234 (2) the balance of the disbursements described in Subsection (1), to the extent a
5235 fiduciary that is an independent person determines that making those disbursements from
5236 income would be in the interests of the beneficiaries;

5237 (3) another ordinary expense incurred in connection with administration, management,
5238 or preservation of property and distribution of income, including interest, an ordinary repair,
5239 regularly recurring tax assessed against principal, and an expense of an accounting, judicial or
5240 nonjudicial proceeding, or other matter that involves primarily an income interest, to the extent
5241 income is sufficient; and

5242 (4) a premium on insurance covering loss of a principal asset or income from or use of
5243 the asset.

5244 Section 163. Section **75A-5-502**, which is renumbered from Section 22-3-502 is
5245 renumbered and amended to read:

5246 ~~[22-3-502]~~. **75A-5-502. Disbursement from principal.**

5247 (1) Subject to Section ~~[22-3-505]~~ 75A-5-505, and except as otherwise provided in
5248 Subsection ~~[22-3-601(3)(b)]~~ 75A-5-601(3)(b) or (c), a fiduciary shall disburse from principal:

5249 (a) the balance of the disbursements described in Subsections ~~[22-3-501(1)]~~
5250 75A-5-501(1) and (3), after application of Subsection ~~[22-3-501(2)]~~ 75A-5-501(2);

5251 (b) the fiduciary's compensation calculated on principal as a fee for acceptance,
5252 distribution, or termination;

5253 (c) a payment of an expense to prepare for or execute a sale or other disposition of
5254 property;

5255 (d) a payment on the principal of a trust debt;

5256 (e) a payment of an expense of an accounting, judicial or nonjudicial proceeding, or
5257 other matter that involves primarily principal, including a proceeding to construe the terms of
5258 the trust or protect property;

5259 (f) a payment of a premium for insurance, including title insurance, not described in
5260 Subsection ~~[22-3-501(4)]~~ 75A-5-501(4), of which the fiduciary is the owner and beneficiary;

5261 (g) a payment of an estate or inheritance tax or other tax imposed because of the death
5262 of a decedent, including penalties, apportioned to the trust; and

- 5263 (h) a payment:
- 5264 (i) related to environmental matters, including:
- 5265 (A) reclamation;
- 5266 (B) assessing environmental conditions;
- 5267 (C) remedying and removing environmental contamination;
- 5268 (D) monitoring remedial activities and the release of substances;
- 5269 (E) preventing future releases of substances;
- 5270 (F) collecting amounts from persons liable or potentially liable for the costs of
- 5271 activities described in Subsections (1)(h)(i)(A) through (E);
- 5272 (G) penalties imposed under environmental laws or regulations;
- 5273 (H) other actions to comply with environmental laws or regulations;
- 5274 (I) statutory or common law claims by third parties; and
- 5275 (J) defending claims based on environmental matters; and
- 5276 (ii) for a premium for insurance for matters described in Subsection (1)(h)(i).
- 5277 (2) If a principal asset is encumbered with an obligation that requires income from the
- 5278 asset to be paid directly to a creditor, the fiduciary shall transfer from principal to income an
- 5279 amount equal to the income paid to the creditor in reduction of the principal balance of the
- 5280 obligation.
- 5281 Section 164. Section **75A-5-503**, which is renumbered from Section 22-3-503 is
- 5282 renumbered and amended to read:
- 5283 **[22-3-503]. 75A-5-503. Transfer from income to principal for depreciation.**
- 5284 (1) [In] As used in this section, "depreciation" means a reduction in value due to wear,
- 5285 tear, decay, corrosion, or gradual obsolescence of a tangible asset having a useful life of more
- 5286 than one year.
- 5287 (2) A fiduciary may transfer to principal a reasonable amount of the net cash receipts
- 5288 from a principal asset that is subject to depreciation, but may not transfer any amount for
- 5289 depreciation:
- 5290 (a) of the part of real property used or available for use by a beneficiary as a residence;
- 5291 (b) of tangible personal property held or made available for the personal use or
- 5292 enjoyment of a beneficiary; or
- 5293 (c) under this section, to the extent the fiduciary accounts:

5294 (i) under Section [~~22-3-410~~] [75A-5-410](#) for the asset; or
5295 (ii) under Section [~~22-3-403~~] [75A-5-403](#) for the business or other activity in which the
5296 asset is used.

5297 (3) An amount transferred to principal under this section need not be separately held.
5298 Section 165. Section **75A-5-504**, which is renumbered from Section 22-3-504 is
5299 renumbered and amended to read:

5300 ~~[22-3-504]~~. **75A-5-504. Reimbursement of income from principal.**

5301 (1) If a fiduciary makes or expects to make an income disbursement described in
5302 Subsection (2), the fiduciary may transfer an appropriate amount from principal to income in
5303 one or more accounting periods to reimburse income.

5304 (2) To the extent the fiduciary has not been and does not expect to be reimbursed by a
5305 third party, income disbursements to which Subsection (1) applies include:

5306 (a) an amount chargeable to principal but paid from income because principal is
5307 illiquid;

5308 (b) a disbursement made to prepare property for sale, including improvements and
5309 commissions; and

5310 (c) a disbursement described in Subsection [~~22-3-502~~(+)] [75A-5-502](#)(1).

5311 (3) If an asset whose ownership gives rise to an income disbursement becomes subject
5312 to a successive interest after an income interest ends, the fiduciary may continue to make
5313 transfers under Subsection (1).

5314 Section 166. Section **75A-5-505**, which is renumbered from Section 22-3-505 is
5315 renumbered and amended to read:

5316 ~~[22-3-505]~~. **75A-5-505. Reimbursement of principal from income.**

5317 (1) If a fiduciary makes or expects to make a principal disbursement described in
5318 Subsection (2), the fiduciary may transfer an appropriate amount from income to principal in
5319 one or more accounting periods to reimburse principal or provide a reserve for future principal
5320 disbursements.

5321 (2) To the extent that a fiduciary has not been and does not expect to be reimbursed by
5322 a third party, principal disbursements to which Subsection (1) applies include:

5323 (a) an amount chargeable to income but paid from principal because income is not
5324 sufficient;

5325 (b) the cost of an improvement to principal, regardless of whether the improvement is a
5326 change to an existing asset or the construction of a new asset, including a special assessment;

5327 (c) a disbursement made to prepare property for rental, including tenant allowances,
5328 leasehold improvements, and commissions;

5329 (d) a periodic payment on an obligation secured by a principal asset, to the extent that
5330 the amount transferred from income to principal for depreciation is less than the periodic
5331 payment; and

5332 (e) a disbursement described in Subsection [~~22-3-502(1)~~] [75A-5-502\(1\)](#).

5333 (3) If an asset whose ownership gives rise to a principal disbursement becomes subject
5334 to a successive interest after an income interest ends, the fiduciary may continue to make
5335 transfers under Subsection (1).

5336 Section 167. Section **75A-5-506**, which is renumbered from Section 22-3-506 is
5337 renumbered and amended to read:

5338 [~~22-3-506~~]. **75A-5-506. Income taxes.**

5339 (1) A tax required to be paid by a fiduciary that is based on receipts allocated to income
5340 shall be paid from income.

5341 (2) A tax required to be paid by a fiduciary that is based on receipts allocated to
5342 principal shall be paid from principal, even if the tax is called an income tax by the taxing
5343 authority.

5344 (3) Subject to Subsection (4) and Sections [~~22-3-504, 22-3-505, and 22-3-507~~]
5345 [75A-5-504](#), [75A-5-505](#), and [75A-5-507](#), a tax required to be paid by a fiduciary on a share of
5346 an entity's taxable income in an accounting period shall be paid from:

5347 (a) income and principal proportionately to the allocation between income and
5348 principal of receipts from the entity in the period; and

5349 (b) principal, to the extent that the tax exceeds the receipts from the entity in the
5350 accounting period.

5351 (4) After applying Subsections (1) through (3), a fiduciary shall adjust income or
5352 principal receipts, to the extent that the taxes the fiduciary pays are reduced because of a
5353 deduction for a payment made to a beneficiary.

5354 Section 168. Section **75A-5-507**, which is renumbered from Section 22-3-507 is
5355 renumbered and amended to read:

5356 [22-3-507]. 75A-5-507. **Adjustment between income and principal because of**
5357 **taxes.**

5358 (1) A fiduciary may make an adjustment between income and principal to offset the
5359 shifting of economic interests or tax benefits between current income beneficiaries and
5360 successor beneficiaries that arises from:

5361 (a) an election or decision the fiduciary makes regarding a tax matter, other than a
5362 decision to claim an income tax deduction to which Subsection (2) applies;

5363 (b) an income tax or other tax imposed on the fiduciary or a beneficiary as a result of a
5364 transaction involving the fiduciary or a distribution by the fiduciary; or

5365 (c) ownership by the fiduciary of an interest in an entity, a part of whose taxable
5366 income, regardless of whether the taxable income is distributed, is includable in the taxable
5367 income of the fiduciary or a beneficiary.

5368 (2) (a) If the amount of an estate tax marital or charitable deduction is reduced because
5369 a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting
5370 the amount for estate tax purposes and, as a result, estate taxes paid from principal are
5371 increased and income taxes paid by the fiduciary or a beneficiary are decreased, the fiduciary
5372 shall charge each beneficiary that benefits from the decrease in income tax to reimburse the
5373 principal from which the increase in estate tax is paid.

5374 (b) The total reimbursement must equal the increase in the estate tax, to the extent that
5375 the principal used to pay the increase would have qualified for a marital or charitable deduction
5376 but for the payment.

5377 (c) The share of the reimbursement for each fiduciary or beneficiary whose income
5378 taxes are reduced shall be the same as the fiduciary's or beneficiary's share of the total decrease
5379 in income tax.

5380 (3) A fiduciary that charges a beneficiary under Subsection (2) may offset the charge
5381 by obtaining payment from the beneficiary, withholding an amount from future distributions to
5382 the beneficiary, or adopting another method or combination of methods.

5383 Section 169. Section **75A-5-601**, which is renumbered from Section 22-3-601 is
5384 renumbered and amended to read:

5385 **Part 6. Death of Individual or Termination of Income Interest**

5386 [~~22-3-601~~]. 75A-5-601. **Determination and distribution of net income.**

- 5387 (1) This section applies when:
- 5388 (a) the death of an individual results in the creation of an estate or trust; or
- 5389 (b) an income interest in a trust terminates, regardless of whether the trust continues or
- 5390 is distributed.
- 5391 (2) A fiduciary of an estate or trust with an income interest that terminates shall:
- 5392 (a) determine, in accordance with Subsection (8) and Part 4, Allocation of Receipts,
- 5393 Part 5, Allocation of Disbursements, and Part 7, Apportionment at Beginning and End of
- 5394 Income Interest, the amount of net income and net principal receipts received from property
- 5395 specifically given to a beneficiary; and
- 5396 (b) distribute the net income and net principal receipts to the beneficiary that is to
- 5397 receive the specific property.
- 5398 (3) Subject to Subsection (4), a fiduciary shall determine the income and net income of
- 5399 an estate or income interest in a trust that terminates, other than the amount of net income
- 5400 determined in accordance with Subsection (2), and in accordance with Part 4, Allocation of
- 5401 Receipts, Part 5, Allocation of Disbursements, and Part 7, Apportionment at Beginning and
- 5402 End of Income Interest, and by:
- 5403 (a) including in net income all income from property used or sold to discharge
- 5404 liabilities;
- 5405 (b) paying from income or principal, in the fiduciary's discretion:
- 5406 (i) fees of attorneys, accountants, and fiduciaries;
- 5407 (ii) court costs and other expenses of administration;
- 5408 (iii) interest on estate taxes, inheritance taxes, and other taxes imposed because of the
- 5409 decedent's death; and
- 5410 (c) paying from principal other disbursements made or incurred in connection with the
- 5411 settlement of the estate or the winding up of an income interest that terminates, including:
- 5412 (i) to the extent authorized by the decedent's will, the terms of the trust, or applicable
- 5413 law, debts, funeral expenses, disposition of remains, family allowances, estate and inheritance
- 5414 taxes, and other taxes imposed because of the decedent's death; and
- 5415 (ii) related penalties that are apportioned, by the decedent's will, the terms of the trust,
- 5416 or applicable law, to the estate or income interest that terminates.
- 5417 (4) A fiduciary may pay the expenses from income of property passing to a trust for

5418 which the fiduciary claims a federal estate tax marital or charitable deduction only to the
5419 extent:

5420 (a) the payment of the expenses from income will not cause the reduction or loss of the
5421 deduction; or

5422 (b) the fiduciary makes an adjustment under Subsection [~~22-3-507(2)~~] [75A-5-507\(2\)](#).

5423 (5) If a decedent's will, the terms of a trust, or applicable law provides for the payment
5424 of interest or the equivalent of interest to a beneficiary that receives a pecuniary amount
5425 outright, the fiduciary shall make the payment from net income determined under Subsection
5426 (3) or from principal to the extent that net income is insufficient.

5427 (6) If a beneficiary is to receive a pecuniary amount outright from a trust after an
5428 income interest ends because of an income beneficiary's death, and no payment of interest or
5429 the equivalent of interest is provided for by the terms of the trust or applicable law, the
5430 fiduciary shall pay the interest or the equivalent of interest to which the beneficiary would be
5431 entitled under applicable law if the pecuniary amount were required to be paid under a will.

5432 (7) A fiduciary shall distribute net income remaining after payments required by
5433 Subsections (5) and (6) in the manner described in Section [~~22-3-602~~] [75A-5-602](#) to all other
5434 beneficiaries, including a beneficiary that receives a pecuniary amount in trust, even if the
5435 beneficiary holds an unqualified power to withdraw assets from the trust or other presently
5436 exercisable general power of appointment over the trust.

5437 (8) (a) A fiduciary may not reduce principal or income receipts from property described
5438 in Subsection (2) because of a payment described in Section [~~22-3-501 or 22-3-502~~] [75A-5-501](#)
5439 [or 75A-5-502](#), to the extent the decedent's will, the terms of the trust, or applicable law requires
5440 the fiduciary to make the payment from assets other than the property or to the extent the
5441 fiduciary recovers or expects to recover the payment from a third party.

5442 (b) The net income and principal receipts from the property shall be determined by
5443 including the amount the fiduciary receives or pays regarding the property, whether the amount
5444 accrued or became due before, on, or after the date of the decedent's death or an income
5445 interest's terminating event, and making a reasonable provision for an amount the estate or
5446 income interest may become obligated to pay after the property is distributed.

5447 Section 170. Section **75A-5-602**, which is renumbered from Section 22-3-602 is
5448 renumbered and amended to read:

5449 ~~[22-3-602]~~. 75A-5-602. **Distribution to successor beneficiary.**

5450 (1) (a) Except to the extent Part 3, Unitrust, applies for a beneficiary that is a trust, each
5451 beneficiary described in Subsection ~~[22-3-601(6)]~~ 75A-5-601(6) is entitled to receive a share of
5452 the net income equal to the beneficiary's fractional interest in undistributed principal assets,
5453 using values of the undistributed principal assets as of the distribution date.

5454 (b) If a fiduciary makes more than one distribution of assets to beneficiaries to which
5455 this section applies, each beneficiary, including a beneficiary that does not receive part of the
5456 distribution, is entitled, as of each distribution date, to a share of the net income the fiduciary
5457 received after the decedent's death, an income interest's other terminating event, or the
5458 preceding distribution by the fiduciary.

5459 (2) In determining a beneficiary's share of net income under Subsection (1):

5460 (a) the beneficiary is entitled to receive a share of the net income equal to the
5461 beneficiary's fractional interest in the undistributed principal assets immediately before the
5462 distribution date;

5463 (b) the beneficiary's fractional interest under Subsection (2)(a) shall be calculated:

5464 (i) on the aggregate value of the assets as of the distribution date without reducing the
5465 value by any unpaid principal obligation; and

5466 (ii) without regard to:

5467 (A) property specifically given to a beneficiary under the decedent's will or the terms of
5468 the trust; and

5469 (B) property required to pay pecuniary amounts not in trust; and

5470 (c) the distribution date under Subsection (2)(a) may be the date on which the fiduciary
5471 calculates the value of the assets if that date is reasonably near the date on which the assets are
5472 distributed.

5473 (3) To the extent that a fiduciary does not distribute under this section all the collected
5474 but undistributed net income to each beneficiary on or before a distribution date, the fiduciary
5475 shall maintain records showing the interest of each beneficiary in the net income.

5476 (4) If this section applies to income from an asset, a fiduciary may apply Subsection (2)
5477 to net gain or loss realized from the disposition of the asset after the decedent's death, an
5478 income interest's terminating event, or the preceding distribution by the fiduciary.

5479 Section 171. Section **75A-5-701**, which is renumbered from Section 22-3-701 is

5480 renumbered and amended to read:

5481 **Part 7. Apportionment at Beginning and End of Income Interest**

5482 **~~[22-3-701]~~. 75A-5-701. When right to income begins and ends.**

5483 (1) (a) An income beneficiary is entitled to net income in accordance with the terms of
5484 the trust from the date on which an income interest begins.

5485 (b) The income interest begins on the date that is specified in the terms of the trust or,
5486 if no date is specified, on the date an asset becomes subject to:

5487 (i) the trust for the current income beneficiary; or

5488 (ii) a successive interest for a successor beneficiary.

5489 (2) An asset becomes subject to a trust under Subsection (1)(b)(i):

5490 (a) for an asset that is transferred to the trust during the settlor's life, on the date the
5491 asset is transferred;

5492 (b) for an asset that becomes subject to the trust because of a decedent's death, on the
5493 date of the decedent's death, even if there is an intervening period of administration of the
5494 decedent's estate; or

5495 (c) for an asset that is transferred to a fiduciary by a third party because of a decedent's
5496 death, on the date of the decedent's death.

5497 (3) An asset becomes subject to a successive interest under Subsection (1)(b)(ii) on the
5498 day after the preceding income interest ends, as determined under Subsection (4), even if there
5499 is an intervening period of administration to wind up the preceding income interest.

5500 (4) An income interest ends on the day before an income beneficiary dies or another
5501 terminating event occurs or on the last day of a period during which there is no beneficiary to
5502 which a fiduciary is permitted or required to distribute income.

5503 Section 172. Section **75A-5-702**, which is renumbered from Section 22-3-702 is
5504 renumbered and amended to read:

5505 **~~[22-3-702]~~. 75A-5-702. Apportionment of receipts and disbursements when
5506 decedent dies or income interest begins.**

5507 (1) A fiduciary shall allocate an income receipt or disbursement, other than a receipt to
5508 which Subsection ~~[22-3-601(2)]~~ 75A-5-601(2) applies, to principal if the due date of the
5509 income receipt or disbursement occurs before the date on which:

5510 (a) for an estate, the decedent died; or

- 5511 (b) for a trust or successive interest, an income interest begins.
- 5512 (2) If the due date of a periodic income receipt or disbursement occurs on or after the
- 5513 date on which a decedent died or an income interest begins, a fiduciary shall allocate the
- 5514 receipt or disbursement to income.
- 5515 (3) If an income receipt or disbursement is not periodic or has no due date, a fiduciary
- 5516 shall:
- 5517 (a) treat the receipt or disbursement under this section as accruing from day to day; and
- 5518 (b) allocate:
- 5519 (i) to principal, the portion of the receipt or disbursement accruing before the date on
- 5520 which a decedent died or an income interest begins; and
- 5521 (ii) to income, the balance.
- 5522 (4) A receipt or disbursement is periodic under Subsections (2) and (3) if:
- 5523 (a) the receipt or disbursement shall be paid at regular intervals under an obligation to
- 5524 make payments; or
- 5525 (b) the payor customarily makes payments at regular intervals.
- 5526 (5) (a) An item of income or obligation is due under this section on the date on which
- 5527 the payor is required to make a payment.
- 5528 (b) If a payment date is not stated, there is no due date.
- 5529 (6) Distributions to shareholders or other owners from an entity to which Section
- 5530 ~~[22-3-401]~~ 75A-5-401 applies are due:
- 5531 (a) on the date fixed by or on behalf of the entity for determining the persons entitled to
- 5532 receive the distribution;
- 5533 (b) if no date is fixed, on the date of the decision by or on behalf of the entity to make
- 5534 the distribution; or
- 5535 (c) if no date is fixed and the fiduciary does not know the date of the decision by or on
- 5536 behalf of the entity to make the distribution, on the date the fiduciary learns of the decision.
- 5537 Section 173. Section **75A-5-703**, which is renumbered from Section 22-3-703 is
- 5538 renumbered and amended to read:
- 5539 ~~[22-3-703]~~. **75A-5-703. Apportionment when income interest ends.**
- 5540 (1) ~~[It]~~ As used in this section:
- 5541 (a) "Undistributed income" means net income received on or before the date on which

5542 an income interest ends.

5543 (b) "Undistributed income" does not include an item of income or expense that is due
5544 or accrued or net income that has been added or is required to be added, to principal under the
5545 terms of the trust.

5546 (2) Except as otherwise provided in Subsection (3), when a mandatory income interest
5547 of a beneficiary ends, the fiduciary shall pay the beneficiary's share of the undistributed income
5548 that is not disposed of under the terms of the trust to the beneficiary or, if the beneficiary does
5549 not survive the date that the interest ends, to the beneficiary's estate.

5550 (3) If a beneficiary has an unqualified power to withdraw more than 5% of the value of
5551 a trust immediately before an income interest ends:

5552 (a) the fiduciary shall allocate to principal the undistributed income from the portion of
5553 the trust that may be withdrawn; and

5554 (b) Subsection (2) applies only to the balance of the undistributed income.

5555 (4) When a fiduciary's obligation to pay a fixed annuity or a fixed fraction of the value
5556 of assets ends, the fiduciary shall prorate the final payment as required to preserve an income
5557 tax, gift tax, estate tax, or other tax benefit.

5558 Section 174. Section **75A-5-801**, which is renumbered from Section 22-3-801 is
5559 renumbered and amended to read:

5560 **Part 8. Applicability Provisions**

5561 **[22-3-801]. 75A-5-801. Uniformity of application and construction.**

5562 In applying and construing this uniform act, consideration must be given to the need to
5563 promote uniformity of the law with respect to the uniform act's subject matter among states that
5564 enact [it] this uniform law.

5565 Section 175. Section **75A-5-802**, which is renumbered from Section 22-3-802 is
5566 renumbered and amended to read:

5567 **[22-3-802]. 75A-5-802. Relation to Electronic Signatures in Global and**
5568 **National Commerce Act.**

5569 This chapter modifies, limits, or supersedes the Electronic Signatures in Global and
5570 National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede
5571 Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the
5572 notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

5573 Section 176. Section ~~75A-5-803~~, which is renumbered from Section 22-3-803 is
5574 renumbered and amended to read:

5575 ~~[22-3-803]~~. 75A-5-803. **Application to trust or estate.**

5576 This chapter applies to a trust or estate existing or created on or after July 1, 2020,
5577 except as otherwise expressly provided in the terms of the trust or this chapter.

5578 Section 177. Section ~~75A-5-804~~, which is renumbered from Section 22-3-804 is
5579 renumbered and amended to read:

5580 ~~[22-3-804]~~. 75A-5-804. **Severability.**

5581 If any provision of this chapter or the application of this chapter to any person or
5582 circumstance is held invalid, the invalidity does not affect other provisions or applications of
5583 this chapter that can be given effect without the invalid provision or application, and to this end
5584 the provisions of this chapter are severable.

5585 Section 178. Section ~~75A-6-101~~ is enacted to read:

5586 **CHAPTER 6. UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT**

5587 75A-6-101. **Reserved.**

5588 Reserved.

5589 Section 179. Section ~~75A-6-102~~, which is renumbered from Section 75-11-102 is
5590 renumbered and amended to read:

5591 ~~[75-11-102]~~. 75A-6-102. **Definitions for chapter.**

5592 As used in this chapter:

5593 (1) "Account" means an arrangement under a terms of service agreement in which a
5594 custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides
5595 goods or services to the user.

5596 (2) "Agent" means an attorney in fact granted authority under a durable or nondurable
5597 power of attorney.

5598 (3) "Carries" means engages in the transmission of an electronic communication.

5599 (4) "Catalogue of electronic communications" means information that identifies each
5600 person with which a user has had an electronic communication, the time and date of the
5601 communication, and the electronic address of the person.

5602 (5) (a) "Conservator" means a person appointed by a court to manage the estate of a
5603 living individual.

- 5604 (b) "Conservator" includes a limited conservator.
- 5605 (6) "Content of an electronic communication" means information concerning the
5606 substance or meaning of the communication that:
- 5607 (a) has been sent or received by a user;
- 5608 (b) is in electronic storage by a custodian providing an electronic communication
5609 service to the public or is carried or maintained by a custodian providing a remote computing
5610 service to the public; and
- 5611 (c) is not readily accessible to the public.
- 5612 (7) "Court" means the district court.
- 5613 (8) "Custodian" means a person that carries, maintains, processes, receives, or stores a
5614 digital asset of a user.
- 5615 (9) "Designated recipient" means a person chosen by a user using an online tool to
5616 administer digital assets of the user.
- 5617 (10) (a) "Digital asset" means an electronic record in which an individual has a right or
5618 interest.
- 5619 (b) "Digital asset" does not include an underlying asset or liability unless the asset or
5620 liability is itself an electronic record.
- 5621 (11) "Electronic" means relating to technology having electrical, digital, magnetic,
5622 wireless, optical, electromagnetic, or similar capabilities.
- 5623 (12) "Electronic communication" has the same meaning as the definition in 18 U.S.C.
5624 Sec. 2510(12).
- 5625 (13) "Electronic communication service" means a custodian that provides to a user the
5626 ability to send or receive an electronic communication.
- 5627 (14) "Estate" means the same as that term is defined in Section [75-1-201](#).
- 5628 [~~14~~] (15) "Fiduciary" means an original, additional, or successor personal
5629 representative, conservator, guardian, agent, or trustee.
- 5630 [~~15~~] (16) (a) "Guardian" means a person appointed by a court to manage the affairs of
5631 a living individual.
- 5632 (b) "Guardian" includes a limited guardian.
- 5633 [~~16~~] (17) "Information" means data, text, images, videos, sounds, codes, computer
5634 programs, software, databases, or the like.

5635 [~~(17)~~] (18) "Online tool" means an electronic service provided by a custodian that
5636 allows the user, in an agreement distinct from the terms of service agreement between the
5637 custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a
5638 third person.

5639 [~~(18)~~] (19) "Person" means an individual, estate, business or nonprofit entity, public
5640 corporation, government or governmental subdivision, agency, instrumentality, or other legal
5641 entity.

5642 [~~(19)~~] (20) "Personal representative" means an executor, administrator, special
5643 administrator as defined in Section 75-1-201, or person that performs substantially the same
5644 function under the law of this state other than this chapter.

5645 [~~(20)~~] (21) "Power of attorney" means a record that grants an agent authority to act in
5646 the place of a principal.

5647 [~~(21)~~] (22) "Principal" means an individual who grants authority to an agent in a power
5648 of attorney.

5649 [~~(22)~~] (23) (a) "Protected person" means an individual for whom a conservator or
5650 guardian has been appointed.

5651 (b) "Protected person" includes an individual for whom an application for the
5652 appointment of a conservator or guardian is pending.

5653 [~~(23)~~] (24) "Record" means information that is inscribed on a tangible medium or that
5654 is stored in an electronic or other medium and is retrievable in perceivable form.

5655 [~~(24)~~] (25) "Remote computing service" means a custodian that provides to a user
5656 computer processing services or the storage of digital assets by means of an electronic
5657 communications system, as defined in 18 U.S.C. Sec. 2510(14).

5658 (26) "Successor personal representative" means the same as that term is defined in
5659 Section 75-1-201.

5660 [~~(25)~~] (27) "Terms of service agreement" means an agreement that controls the
5661 relationship between a user and a custodian.

5662 (28) "Trust" means the same as that term is defined in Section 75-1-201.

5663 [~~(26)~~] (29) (a) "Trustee" means a fiduciary with legal title to property pursuant to an
5664 agreement or declaration that creates a beneficial interest in another.

5665 (b) "Trustee" includes a successor trustee.

5666 [(27)] (30) "User" means a person that has an account with a custodian.

5667 [(28)] (31) "Will" includes a codicil, a testamentary instrument that only appoints an
5668 executor, and an instrument that revokes or revises a testamentary instrument.

5669 Section 180. Section **75A-6-103**, which is renumbered from Section 75-11-103 is
5670 renumbered and amended to read:

5671 ~~[75-11-103]~~. **75A-6-103. Applicability.**

5672 (1) This chapter applies to:

5673 (a) a fiduciary or agent acting under a will or power of attorney executed before, on, or
5674 after May 9, 2017;

5675 (b) a personal representative acting for a decedent who died before, on, or after May 9,
5676 2017;

5677 (c) a conservatorship or guardianship proceeding commenced before, on, or after May
5678 9, 2017; and

5679 (d) a trustee acting under a trust created before, on, or after May 9, 2017.

5680 (2) This chapter applies to a custodian if the user resides in this state or resided in this
5681 state at the time of the user's death.

5682 (3) This chapter does not apply to a digital asset of an employer used by an employee
5683 in the ordinary course of the employer's business.

5684 Section 181. Section **75A-6-104**, which is renumbered from Section 75-11-104 is
5685 renumbered and amended to read:

5686 ~~[75-11-104]~~. **75A-6-104. User direction for disclosure of digital assets.**

5687 (1) A user may use an online tool to direct the custodian to disclose or not to disclose
5688 to a designated recipient some or all of the user's digital assets, including the content of
5689 electronic communications. If the online tool allows the user to modify or delete a direction at
5690 all times, a direction regarding disclosure using an online tool overrides a contrary direction by
5691 the user in a will, trust, power of attorney, or other record.

5692 (2) If a user has not used an online tool to give direction under Subsection (1) or if the
5693 custodian has not provided an online tool, the user may allow or prohibit in a will, trust, power
5694 of attorney, or other record disclosure to a fiduciary of some or all of the user's digital assets,
5695 including the content of electronic communications sent or received by the user.

5696 (3) A user's direction under Subsection (1) or (2) overrides a contrary provision in a

5697 terms of service agreement that does not require the user to act affirmatively and distinctly
5698 from the user's assent to the terms of service.

5699 Section 182. Section **75A-6-105**, which is renumbered from Section 75-11-105 is
5700 renumbered and amended to read:

5701 ~~[75-11-105]~~. **75A-6-105. Terms of service agreement.**

5702 (1) This chapter does not change or impair a right of a custodian or a user under a
5703 terms of service agreement to access and use digital assets of the user.

5704 (2) This chapter does not give a fiduciary or designated recipient any new or expanded
5705 rights other than those held by the user for whom, or for whose estate, the fiduciary or
5706 designated recipient acts or represents.

5707 (3) A fiduciary's or designated recipient's access to digital assets may be modified or
5708 eliminated by a user, by federal law, or by a terms of service agreement if the user has not
5709 provided direction under Section ~~[75-11-104]~~ 75A-6-104.

5710 Section 183. Section **75A-6-106**, which is renumbered from Section 75-11-106 is
5711 renumbered and amended to read:

5712 ~~[75-11-106]~~. **75A-6-106. Procedure for disclosing digital assets.**

5713 (1) When disclosing digital assets of a user under this chapter, the custodian may at the
5714 custodian's sole discretion:

5715 (a) grant a fiduciary or designated recipient full access to the user's account;

5716 (b) grant a fiduciary or designated recipient partial access to the user's account

5717 sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or

5718 (c) provide a fiduciary or designated recipient a copy in a record of any digital asset
5719 that, on the date the custodian received the request for disclosure, the user could have accessed
5720 if the user were alive and had full capacity and access to the account.

5721 (2) A custodian may assess a reasonable administrative charge for the cost of
5722 disclosing digital assets under this chapter.

5723 (3) A custodian need not disclose under this chapter a digital asset deleted by a user.

5724 (4) If a user directs or a fiduciary requests a custodian to disclose under this chapter
5725 some, but not all, of the user's digital assets, the custodian need not disclose the assets if
5726 segregation of the assets would impose an undue burden on the custodian. If the custodian
5727 believes the direction or request imposes an undue burden, the custodian or fiduciary may seek

5728 an order from the court to disclose:

- 5729 (a) a subset limited by date of the user's digital assets;
- 5730 (b) all of the user's digital assets to the fiduciary or designated recipient;
- 5731 (c) none of the user's digital assets; or
- 5732 (d) all of the user's digital assets to the court for review in camera.

5733 Section 184. Section **75A-6-107**, which is renumbered from Section 75-11-107 is
5734 renumbered and amended to read:

5735 ~~[75-11-107]~~. **75A-6-107. Disclosure of content of electronic**
5736 **communications of deceased user.**

5737 If a deceased user consented to or a court directs disclosure of the contents of electronic
5738 communications of the user, the custodian shall disclose to the personal representative of the
5739 estate of the user the content of an electronic communication sent or received by the user if the
5740 representative gives the custodian:

- 5741 (1) a written request for disclosure in physical or electronic form;
- 5742 (2) a certified copy of the death certificate of the user;
- 5743 (3) a certified copy of the letter of appointment of the representative or a small estate
5744 affidavit or court order;
- 5745 (4) unless the user provided direction using an online tool, a copy of the user's will,
5746 trust, power of attorney, or other record evidencing the user's consent to disclosure of the
5747 content of electronic communications; and
- 5748 (5) if requested by the custodian:
 - 5749 (a) a number, username, address, or other unique subscriber or account identifier
5750 assigned by the custodian to identify the user's account;
 - 5751 (b) evidence linking the account to the user; or
 - 5752 (c) a finding by the court that:
 - 5753 (i) the user had a specific account with the custodian, identifiable by the information
5754 specified in Subsection (5)(a);
 - 5755 (ii) disclosure of the content of electronic communications of the user would not
5756 violate 18 U.S.C. Sec. 2701 et seq., 47 U.S.C. Sec. 222, or other applicable law;
 - 5757 (iii) unless the user provided direction using an online tool, the user consented to
5758 disclosure of the content of electronic communications; or

5759 (iv) disclosure of the content of electronic communications of the user is reasonably
5760 necessary for administration of the estate.

5761 Section 185. Section **75A-6-108**, which is renumbered from Section 75-11-108 is
5762 renumbered and amended to read:

5763 ~~[75-11-108]~~. **75A-6-108. Disclosure of other digital assets of deceased**
5764 **user.**

5765 Unless the user prohibited disclosure of digital assets or the court directs otherwise, a
5766 custodian shall disclose to the personal representative of the estate of a deceased user a
5767 catalogue of electronic communications sent or received by the user and digital assets, other
5768 than the content of electronic communications, of the user, if the representative gives the
5769 custodian:

5770 (1) a written request for disclosure in physical or electronic form;

5771 (2) a certified copy of the death certificate of the user;

5772 (3) a certified copy of the letter of appointment of the representative, a small estate
5773 affidavit, or court order; and

5774 (4) if requested by the custodian:

5775 (a) a number, username, address, or other unique subscriber or account identifier
5776 assigned by the custodian to identify the user's account;

5777 (b) evidence linking the account to the user;

5778 (c) an affidavit stating that disclosure of the user's digital assets is reasonably necessary
5779 for administration of the estate; or

5780 (d) a finding by the court that:

5781 (i) the user had a specific account with the custodian, identifiable by the information
5782 specified in Subsection (4)(a); or

5783 (ii) disclosure of the user's digital assets is reasonably necessary for administration of
5784 the estate.

5785 Section 186. Section **75A-6-109**, which is renumbered from Section 75-11-109 is
5786 renumbered and amended to read:

5787 ~~[75-11-109]~~. **75A-6-109. Disclosure of content of electronic**
5788 **communications of principal.**

5789 To the extent a power of attorney expressly grants an agent authority over the content of

5790 electronic communications sent or received by the principal and unless directed otherwise by
5791 the principal or the court, a custodian shall disclose to the agent the content if the agent gives
5792 the custodian:

- 5793 (1) a written request for disclosure in physical or electronic form;
- 5794 (2) an original or copy of the power of attorney expressly granting the agent authority
5795 over the content of electronic communications of the principal;
- 5796 (3) a certification by the agent, under penalty of perjury, that the power of attorney is in
5797 effect; and
- 5798 (4) if requested by the custodian:
 - 5799 (a) a number, username, address, or other unique subscriber or account identifier
5800 assigned by the custodian to identify the principal's account; or
 - 5801 (b) evidence linking the account to the principal.

5802 Section 187. Section **75A-6-110**, which is renumbered from Section 75-11-110 is
5803 renumbered and amended to read:

5804 ~~[75-11-110]~~. **75A-6-110. Disclosure of other digital assets of principal.**

5805 Unless otherwise ordered by the court, directed by the principal, or provided by a power
5806 of attorney, a custodian shall disclose to an agent with specific authority over digital assets, or
5807 general authority to act on behalf of a principal, a catalogue of electronic communications sent
5808 or received by the principal and digital assets, other than the content of electronic
5809 communications, of the principal if the agent gives the custodian:

- 5810 (1) a written request for disclosure in physical or electronic form;
- 5811 (2) an original or a copy of the power of attorney that gives the agent specific authority
5812 over digital assets or general authority to act on behalf of the principal;
- 5813 (3) a certification by the agent, under penalty of perjury, that the power of attorney is in
5814 effect; and
- 5815 (4) if requested by the custodian:
 - 5816 (a) a number, username, address, or other unique subscriber or account identifier
5817 assigned by the custodian to identify the principal's account; or
 - 5818 (b) evidence linking the account to the principal.

5819 Section 188. Section **75A-6-111**, which is renumbered from Section 75-11-111 is
5820 renumbered and amended to read:

5821 ~~[75-11-111].~~ 75A-6-111. **Disclosure of digital assets held in trust when**
5822 **trustee is original user.**

5823 Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose
5824 to a trustee that is an original user of an account any digital asset of the account held in trust,
5825 including a catalogue of electronic communications of the trustee and the content of electronic
5826 communications.

5827 Section 189. Section **75A-6-112**, which is renumbered from Section 75-11-112 is
5828 renumbered and amended to read:

5829 ~~[75-11-112].~~ 75A-6-112. **Disclosure of contents of electronic**
5830 **communications held in trust when trustee not original user.**

5831 Unless otherwise ordered by the court, directed by the user, or provided in a trust, a
5832 custodian shall disclose to a trustee that is not an original user of an account the content of an
5833 electronic communication sent or received by an original or successor user and carried,
5834 maintained, processed, received, or stored by the custodian in the account of the trust if the
5835 trustee gives the custodian:

- 5836 (1) a written request for disclosure in physical or electronic form;
- 5837 (2) a certified copy of the trust instrument or a certification of the trust under Section
5838 [75-7-1013](#) that includes consent to disclosure of the content of electronic communications to
5839 the trustee;
- 5840 (3) a certification by the trustee, under penalty of perjury, that the trust exists and the
5841 trustee is a currently acting trustee of the trust; and
- 5842 (4) if requested by the custodian:
- 5843 (a) a number, username, address, or other unique subscriber or account identifier
5844 assigned by the custodian to identify the trust's account; or
- 5845 (b) evidence linking the account to the trust.

5846 Section 190. Section **75A-6-113**, which is renumbered from Section 75-11-113 is
5847 renumbered and amended to read:

5848 ~~[75-11-113].~~ 75A-6-113. **Disclosure of other digital assets held in trust**
5849 **when trustee not original user.**

5850 Unless otherwise ordered by the court, directed by the user, or provided in a trust, a
5851 custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of

5852 electronic communications sent or received by an original or successor user and stored, carried,
5853 or maintained by the custodian in an account of the trust and any digital assets, other than the
5854 content of electronic communications, in which the trust has a right or interest if the trustee
5855 gives the custodian:

5856 (1) a written request for disclosure in physical or electronic form;
5857 (2) a certified copy of the trust instrument or a certification of the trust under Section
5858 [75-7-1013](#);

5859 (3) a certification by the trustee, under penalty of perjury, that the trust exists and the
5860 trustee is a currently acting trustee of the trust; and

5861 (4) if requested by the custodian:

5862 (a) a number, username, address, or other unique subscriber or account identifier
5863 assigned by the custodian to identify the trust's account; or

5864 (b) evidence linking the account to the trust.

5865 Section 191. Section **75A-6-114**, which is renumbered from Section 75-11-114 is
5866 renumbered and amended to read:

5867 ~~[75-11-114]~~. **75A-6-114. Disclosure of digital assets to conservator or**
5868 **guardian of protected person.**

5869 (1) After an opportunity for a hearing under Chapter 5, Protection of Persons Under
5870 Disability and Their Property, the court may grant a conservator or guardian access to the
5871 digital assets of a protected person.

5872 (2) Unless otherwise ordered by the court or directed by the user, a custodian shall
5873 disclose to a conservator or guardian the catalogue of electronic communications sent or
5874 received by a protected person and any digital assets, other than the content of electronic
5875 communications, in which the protected person has a right or interest if the conservator or
5876 guardian gives the custodian:

5877 (a) a written request for disclosure in physical or electronic form;

5878 (b) a certified copy of the court order that gives the conservator or guardian authority
5879 over the digital assets of the protected person; and

5880 (c) if requested by the custodian:

5881 (i) a number, username, address, or other unique subscriber or account identifier
5882 assigned by the custodian to identify the account of the protected person; or

5883 (ii) evidence linking the account to the protected person.

5884 (3) A conservator or guardian with general authority to manage the assets of a
5885 protected person may request a custodian of the digital assets of the protected person to
5886 suspend or terminate an account of the protected person for good cause. A request made under
5887 this section must be accompanied by a certified copy of the court order giving the conservator
5888 or guardian authority over the protected person's property.

5889 Section 192. Section **75A-6-115**, which is renumbered from Section 75-11-115 is
5890 renumbered and amended to read:

5891 ~~[75-11-115]~~. **75A-6-115. Fiduciary duty and authority.**

5892 (1) The legal duties imposed on a fiduciary charged with managing tangible property
5893 apply to the management of digital assets, including:

- 5894 (a) the duty of care;
5895 (b) the duty of loyalty; and
5896 (c) the duty of confidentiality.

5897 (2) A fiduciary's or designated recipient's authority with respect to a digital asset of a
5898 user:

5899 (a) except as otherwise provided in Section ~~[75-11-104]~~ 75A-6-104, is subject to the
5900 applicable terms of service;

5901 (b) is subject to other applicable law, including copyright law;

5902 (c) in the case of a fiduciary, is limited by the scope of the fiduciary's duties; and

5903 (d) may not be used to impersonate the user.

5904 (3) A fiduciary with authority over the property of a decedent, protected person,
5905 principal, or settlor has the right to access any digital asset in which the decedent, protected
5906 person, principal, or settlor had a right or interest and that is not held by a custodian or subject
5907 to a terms of service agreement.

5908 (4) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of
5909 the property of the decedent, protected person, principal, or settlor for the purpose of applicable
5910 computer fraud and unauthorized computer access laws.

5911 (5) A fiduciary with authority over the tangible, personal property of a decedent,
5912 protected person, principal, or settlor:

5913 (a) has the right to access the property and any digital asset stored in it; and

5914 (b) is an authorized user for the purpose of computer fraud and unauthorized computer
5915 access laws.

5916 (6) A custodian may disclose information in an account to a fiduciary of the user when
5917 the information is required to terminate an account used to access digital assets licensed to the
5918 user.

5919 (7) A fiduciary of a user may request a custodian to terminate the user's account. A
5920 request for termination shall be in writing, in either physical or electronic form, and
5921 accompanied by:

5922 (a) if the user is deceased, a certified copy of the death certificate of the user;

5923 (b) a certified copy of the letter of appointment of the representative, a small estate
5924 affidavit, or court order, power of attorney, or trust giving the fiduciary authority over the
5925 account; and

5926 (c) if requested by the custodian:

5927 (i) a number, username, address, or other unique subscriber or account identifier
5928 assigned by the custodian to identify the user's account;

5929 (ii) evidence linking the account to the user; or

5930 (iii) a finding by the court that the user had a specific account with the custodian,
5931 identifiable by the information specified in Subsection (7)(c)(i).

5932 Section 193. Section **75A-6-116**, which is renumbered from Section 75-11-116 is
5933 renumbered and amended to read:

5934 ~~[75-11-116].~~ **75A-6-116. Custodian compliance and immunity.**

5935 (1) Not later than 60 days after receipt of the information required under Sections
5936 ~~[75-11-107 through 75-11-115]~~ 75A-6-107 through 75A-6-115, a custodian shall comply with
5937 a request under this chapter from a fiduciary or designated recipient to disclose digital assets or
5938 terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may
5939 apply to the court for an order directing compliance.

5940 (2) An order under Subsection (1) directing compliance shall contain a finding that
5941 compliance is not in violation of 18 U.S.C. Sec. 2702.

5942 (3) A custodian may notify the user that a request for disclosure or to terminate an
5943 account was made under this chapter.

5944 (4) A custodian may deny a request under this chapter from a fiduciary or designated

5945 recipient for disclosure of digital assets or to terminate an account if the custodian is aware of
5946 any lawful access to the account following the receipt of the fiduciary's request.

5947 (5) This chapter does not limit a custodian's ability to obtain or require a fiduciary or
5948 designated recipient requesting disclosure or termination under this chapter to obtain a court
5949 order that:

5950 (a) specifies that an account belongs to the protected person or principal;

5951 (b) specifies that there is sufficient consent from the protected person or principal to
5952 support the requested disclosure; and

5953 (c) contains a finding required by law other than this chapter.

5954 (6) A custodian and its officers, employees, and agents are immune from liability for
5955 an act or omission done in good faith in compliance with this chapter.

5956 Section 194. Section **75A-6-117**, which is renumbered from Section 75-11-117 is
5957 renumbered and amended to read:

5958 ~~[75-11-117]~~. **75A-6-117. Uniformity of application and construction.**

5959 In applying and construing this uniform act, consideration shall be given to the need to
5960 promote uniformity of the law with respect to its subject matter among states that enact ~~[it]~~ this
5961 uniform law.

5962 Section 195. Section **75A-6-118**, which is renumbered from Section 75-11-118 is
5963 renumbered and amended to read:

5964 ~~[75-11-118]~~. **75A-6-118. Relation to Electronic Signatures in Global and**
5965 **National Commerce Act.**

5966 This chapter modifies, limits, or supersedes the Electronic Signatures in Global and
5967 National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede
5968 Section 101(c) of that act or 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of
5969 the notices described in Section 103(b) of that act or 15 U.S.C. Sec. 7003(b).

5970 Section 196. Section **75A-7-101** is enacted to read:

5971 **CHAPTER 7. UNIFORM ACT FOR SIMPLIFICATION OF FIDUCIARY SECURITY**
5972 **TRANSFERS**

5973 **75A-7-101. Reserved.**

5974 Reserved.

5975 Section 197. Section **75A-7-102**, which is renumbered from Section 22-5-2 is

5976 renumbered and amended to read:

5977 ~~[22-5-2]~~. 75A-7-102. Definitions for chapter.

5978 ~~[It]~~ As used in this chapter~~[, unless the context otherwise requires]:~~

5979 (1) "Assignment" includes any written stock power, bond power, bill of sale, deed,
5980 declaration of trust or other instrument of transfer.

5981 (2) "Claim of beneficial interest" includes:

5982 (a) a claim of any interest by a decedent's legatee, distributee, heir or creditor, a
5983 beneficiary under a trust, a ward, a beneficial owner of a security registered in the name of a
5984 nominee, or a minor owner of a security registered in the name of a custodian, or a claim of any
5985 similar interest, whether the claim is asserted by the claimant or by a fiduciary or by any other
5986 authorized person in his behalf~~[, and includes]~~];and

5987 (b) a claim that the transfer would be in breach of fiduciary duties.

5988 (3) "Corporation" means a private or public corporation, association or trust issuing a
5989 security.

5990 (4) "Fiduciary" means an executor, administrator, trustee, guardian, committee,
5991 conservator, curator, tutor, custodian or nominee.

5992 (5) "Person" includes an individual, a corporation, government or governmental
5993 subdivision or agency, business trust, estate, trust, partnership or association, two or more
5994 persons having a joint or common interest, or any other legal or commercial entity.

5995 (6) "Security" includes any share of stock, bond, debenture, note or other security
5996 issued by a corporation which is registered as to ownership on the books of the corporation.

5997 (7) "Transfer" means a change on the books of a corporation in the registered
5998 ownership of a security.

5999 (8) "Transfer agent" means a person employed or authorized by a corporation to
6000 transfer securities issued by the corporation.

6001 Section 198. Section ~~75A-7-103~~, which is renumbered from Section 22-5-3 is
6002 renumbered and amended to read:

6003 ~~[22-5-3]~~. 75A-7-103. Registration of security in the name of a fiduciary.

6004 A corporation or transfer agent registering a security in the name of a person who is a
6005 fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or
6006 correct description of the fiduciary relationship, and thereafter the corporation and its transfer

6007 agent may assume without inquiry that the newly registered owner continues to be the fiduciary
6008 until the corporation or transfer agent receives written notice that the fiduciary is no longer
6009 acting as such with respect to the particular security.

6010 Section 199. Section **75A-7-104**, which is renumbered from Section 22-5-4 is
6011 renumbered and amended to read:

6012 ~~[22-5-4]~~. **75A-7-104. Assignment of security by a fiduciary.**

6013 Except as otherwise provided in this chapter, a corporation or transfer agent making a
6014 transfer of a security pursuant to an assignment by a fiduciary:

6015 (1) may assume without inquiry that the assignment, even though to the fiduciary
6016 himself or to his nominee, is within his authority and capacity and is not in breach of his
6017 fiduciary duties;

6018 (2) may assume without inquiry that the fiduciary has complied with any controlling
6019 instrument and with the law of the jurisdiction governing the fiduciary relationship, including
6020 any law requiring the fiduciary to obtain court approval of the transfer; and

6021 (3) is not charged with notice of and is not bound to obtain or examine any court record
6022 or any recorded or unrecorded document relating to the fiduciary relationship or the
6023 assignment, even though the record or document is in its possession.

6024 Section 200. Section **75A-7-105**, which is renumbered from Section 22-5-5 is
6025 renumbered and amended to read:

6026 ~~[22-5-5]~~. **75A-7-105. Assignment of security by a fiduciary -- Evidence of**
6027 **appointment or incumbency.**

6028 (1) A corporation or transfer agent making a transfer pursuant to an assignment by a
6029 fiduciary who is not the registered owner shall obtain the following evidence of appointment or
6030 incumbency:

6031 ~~[(1)]~~ (a) in the case of a fiduciary appointed or qualified by a court, a certificate issued
6032 by or under the direction or supervision of that court or an officer thereof and dated within 60
6033 days before the transfer; or

6034 ~~[(2)]~~ (b) in any other case, a copy of a document showing the appointment or a
6035 certificate issued by or on behalf of a person reasonably believed by the corporation or transfer
6036 agent to be responsible or, in the absence of such a document or certificate, other evidence
6037 reasonably deemed by the corporation or transfer agent to be appropriate.

6038 (2) Corporations and transfer agents may adopt standards with respect to evidence of
6039 appointment or incumbency under this subsection provided such standards are not manifestly
6040 unreasonable.

6041 (3) Neither the corporation nor transfer agent is charged with notice of the contents of
6042 any document obtained pursuant to this subsection except to the extent that the contents relate
6043 directly to the appointment or incumbency.

6044 Section 201. Section **75A-7-106**, which is renumbered from Section 22-5-6 is
6045 renumbered and amended to read:

6046 ~~[22-5-6].~~ **75A-7-106. Adverse claims to transfer of security by a fiduciary --**
6047 **Notice.**

6048 (1) (a) A person asserting a claim of beneficial interest adverse to the transfer of a
6049 security pursuant to an assignment by a fiduciary may give the corporation or transfer agent
6050 written notice of the claim.

6051 (b) The corporation or transfer agent is not put on notice unless the written notice
6052 identifies the claimant, the registered owner and the issue of which the security is a part,
6053 provides an address for communications directed to the claimant and is received before the
6054 transfer.

6055 (c) Nothing in this ~~[act]~~ chapter relieves the corporation or transfer agent of any
6056 liability for making or refusing to make the transfer after it is so put on notice, unless it
6057 proceeds in the manner authorized in Subsection (2).

6058 (2) (a) As soon as practicable after the presentation of a security for transfer pursuant to
6059 an assignment by a fiduciary, a corporation or transfer agent which has received notice of a
6060 claim of beneficial interest adverse to the transfer may send notice of the presentation by
6061 registered or certified mail to the claimant at the address given by him.

6062 (b) If the corporation or transfer agent so mails such a notice it shall withhold the
6063 transfer for 30 days after the mailing and shall then make the transfer unless restrained by a
6064 court order.

6065 Section 202. Section **75A-7-107**, which is renumbered from Section 22-5-7 is
6066 renumbered and amended to read:

6067 ~~[22-5-7].~~ **75A-7-107. Nonliability of corporation or transfer agent.**

6068 A corporation or transfer agent incurs no liability to any person by making a transfer or

6069 otherwise acting in a manner authorized by this ~~[act]~~ chapter.

6070 Section 203. Section **75A-7-108**, which is renumbered from Section 22-5-8 is
6071 renumbered and amended to read:

6072 ~~[22-5-8]~~. **75A-7-108. Nonliability of third persons.**

6073 (1) ~~[No]~~ A person who participates in the acquisition, disposition, assignment or
6074 transfer of a security by or to a fiduciary₂ including a person who guarantees the signature of
6075 the fiduciary₂ is not liable for participation in any breach of fiduciary duty by reason of failure
6076 to inquire whether the transaction involves such a breach unless it is shown that ~~[he]~~ the person
6077 acted with actual knowledge that the proceeds of the transaction were being or were to be used
6078 wrongfully for the individual benefit of the fiduciary or that the transaction was otherwise in
6079 breach of duty.

6080 (2) If a corporation or transfer agent makes a transfer pursuant to an assignment by a
6081 fiduciary, a person who guaranteed the signature of the fiduciary is not liable on the guarantee
6082 to any person to whom the corporation or transfer agent by reason of this ~~[act]~~ chapter incurs
6083 no liability.

6084 (3) This section does not impose any liability upon the corporation or ~~[its]~~ the
6085 corporation's transfer agent.

6086 Section 204. Section **75A-7-109**, which is renumbered from Section 22-5-9 is
6087 renumbered and amended to read:

6088 ~~[22-5-9]~~. **75A-7-109. Territorial application of law to rights and duties of**
6089 **corporation or third persons.**

6090 (1) The rights and duties of a corporation and ~~[its]~~ the corporation's transfer agents in
6091 registering a security in the name of a fiduciary or in making a transfer of a security pursuant to
6092 an assignment by a fiduciary are governed by the law of the jurisdiction under whose laws the
6093 corporation is organized.

6094 (2) This chapter applies to the rights and duties of a person other than the corporation
6095 and its transfer agents with regard to acts and omissions in this state in connection with the
6096 acquisition, disposition, assignment, or transfer of a security by or to a fiduciary and of a
6097 person who guarantees in this state the signature of a fiduciary in connection with such a
6098 transaction.

6099 Section 205. Section **75A-7-110**, which is renumbered from Section 22-5-10 is

6100 renumbered and amended to read:

6101 ~~[22-5-10]~~. 75A-7-110. **Tax obligations not affected .**

6102 This ~~[act]~~ chapter does not affect any obligation of a corporation or transfer agent with
6103 respect to estate, inheritance, succession or other taxes imposed by the laws of this state.

6104 Section 206. Section **75A-7-111**, which is renumbered from Section 22-5-11 is
6105 renumbered and amended to read:

6106 ~~[22-5-11]~~. 75A-7-111. **Construction.**

6107 This ~~[act]~~ uniform act shall be so construed as to effectuate ~~[its]~~ the act's general
6108 purpose to make uniform the law of those states which enact ~~[it]~~ this uniform act.

6109 Section 207. Section **75A-8-101** is enacted to read:

6110 **CHAPTER 8. UNIFORM TRANSFERS TO MINOR ACT**

6111 75A-8-101. **Reserved.**

6112 Reserved.

6113 Section 208. Section **75A-8-102**, which is renumbered from Section 75-5a-102 is
6114 renumbered and amended to read:

6115 ~~[75-5a-102]~~. 75A-8-102. **Definitions for chapter.**

6116 As used in this ~~[part]~~ chapter:

6117 (1) "Adult" means an individual who is 21 years ~~[of age]~~ old or older.

6118 (2) "Beneficiary" means the same as that term is defined in Section 75-1-201.

6119 ~~[(2)]~~ (3) "Benefit plan" means an employer's plan for the benefit of an employee or
6120 partner.

6121 ~~[(3)]~~ (4) "Broker" means a person lawfully engaged in the business of effecting
6122 transactions in securities or commodities for the person's own account or for the accounts of
6123 others.

6124 ~~[(4)]~~ (5) "Conservator" means a person appointed or qualified by a court to act as
6125 general, limited, or temporary guardian of a minor's property or a person legally authorized to
6126 perform substantially the same functions.

6127 ~~[(5)]~~ (6) "Court" means the ~~[probate division of the district court for the]~~ court in the
6128 county in which the custodian resides.

6129 ~~[(6)]~~ (7) "Custodial property" means:

6130 (a) any interest in property transferred to a custodian under this ~~[part]~~ chapter; and

- 6131 (b) the income from and proceeds of that interest in property.
- 6132 [~~7~~] (8) "Custodian" means a person so designated under Section [~~75-5a-110~~]
- 6133 [75A-8-110](#) or a successor or substitute custodian designated under Section [~~75-5a-119~~]
- 6134 [75A-8-119](#).
- 6135 (9) "Estate" means the same as that term is defined in Section [75-1-201](#).
- 6136 (10) "Fiduciary" means the same as that term is defined in Section [75-1-201](#).
- 6137 [~~8~~] (11) "Financial institution" means a bank, trust company, savings institution, or
- 6138 credit union, chartered and supervised under state or federal law.
- 6139 (12) "Guardian" means the same as that term is defined in Section [75-1-201](#).
- 6140 (13) "Incapacitated" means the same as that term is defined in Section [75-1-201](#).
- 6141 (14) "Incapacity" means the same as that term is defined in Section [75-1-201](#).
- 6142 (15) "Interested person" means the same as that term is defined in Section [75-1-201](#).
- 6143 [~~9~~] (16) "Legal representative" means an individual's personal representative or
- 6144 conservator.
- 6145 [~~10~~] (17) "Member of the minor's family" means the minor's parent, stepparent,
- 6146 spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by
- 6147 adoption.
- 6148 [~~11~~] (18) "Minor" means an individual who is [~~not yet 21 years of age~~] under 21
- 6149 years old.
- 6150 (19) "Parent" means the same as that term is defined in Section [75-1-201](#).
- 6151 (20) "Payor" means the same as that term is defined in Section [75-1-201](#).
- 6152 [~~12~~] (21) "Person" means an individual, corporation, organization as defined in
- 6153 Section [75-1-201](#), or other legal entity.
- 6154 [~~13~~] (22) "Personal representative" means an executor, administrator, successor
- 6155 personal representative as defined in Section [75-1-201](#), or special administrator as defined in
- 6156 Section [75-1-201](#), of a decedent's estate or a person legally authorized to perform substantially
- 6157 the same functions.
- 6158 (23) "Petition" means the same as that term is defined in Section [75-1-201](#).
- 6159 (24) "Property" means the same as that term is defined in Section [75-1-201](#).
- 6160 (25) "Record" means the same as that term is defined in Section [75-1-201](#).
- 6161 (26) "Security" means the same as that term is defined in Section [75-1-201](#).

6162 [~~(14)~~] (27) "State" includes any state of the United States, the district of Columbia, the
6163 Commonwealth of Puerto Rico, and any territory or possession subject to the legislative
6164 authority of the United States.

6165 (28) "Testator" means the same as that term is defined in Section [75-1-201](#).

6166 [~~(15)~~] (29) "Transfer" means a transaction that creates custodial property under Section
6167 [~~75-5a-110~~] [75A-8-109](#).

6168 [~~(16)~~] (30) "Transferor" means a person who makes a transfer under this ~~[part]~~ chapter.

6169 (31) "Trust" means the same as that term is defined in Section [75-1-201](#).

6170 [~~(17)~~] (32) "Trust company" means a financial institution, corporation, or other legal
6171 entity, authorized to exercise general trust powers.

6172 (33) "Trustee" means the same as that term is defined in Section [75-1-201](#).

6173 (34) "Will" means the same as that term is defined in Section [75-1-201](#).

6174 Section 209. Section **75A-8-103**, which is renumbered from Section 75-5a-103 is
6175 renumbered and amended to read:

6176 [~~75-5a-103~~]. **75A-8-103. Scope and jurisdiction.**

6177 (1) (a) This ~~[part]~~ chapter applies to a transfer that refers to this ~~[part]~~ chapter in the
6178 designation under Subsection [~~75-5a-110(1)~~] [75A-8-110\(1\)](#) by which the transfer is made if at
6179 the time of the transfer, the transferor, the minor, or the custodian is a resident of this state, or
6180 the custodial property is located in this state.

6181 (b) The custodianship created remains subject to this ~~[part]~~ chapter despite a
6182 subsequent change in residence of a transferor, the minor, or the custodian, or the removal of
6183 custodial property from this state.

6184 (2) A person designated as custodian under this ~~[part]~~ chapter is subject to personal
6185 jurisdiction in this state regarding any matter relating to the custodianship.

6186 (3) A transfer that purports to be made and is valid under the Uniform Transfers to
6187 Minors Act, the Uniform Gifts to Minors Act, or a substantially similar act of another state is
6188 governed by the laws of the designated state and may be executed and is enforceable in this
6189 state if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the
6190 designated state, or the custodial property is located in the designated state.

6191 Section 210. Section **75A-8-104**, which is renumbered from Section 75-5a-104 is
6192 renumbered and amended to read:

6193 ~~[75-5a-104]~~. 75A-8-104. Nomination of custodian.

6194 (1) (a) A person having the right to designate the recipient of property transferable
6195 upon the occurrence of a future event may revocably nominate a custodian to receive the
6196 property for a minor beneficiary upon the occurrence of the event by naming the custodian
6197 followed in substance by the words: "as custodian for (name of minor) under the
6198 Uniform Transfers to Minors Act."

6199 (b) The nomination may name one or more persons as substitute custodians to whom
6200 the property must be transferred, in the order named, if the first nominated custodian dies
6201 before the transfer or is unable, declines, or is ineligible to serve.

6202 (c) The nomination may be made in a will, a trust, a deed, an instrument exercising a
6203 power of appointment, or in a writing designating a beneficiary of contractual rights which is
6204 registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

6205 (2) A custodian nominated under this section must be a person to whom a transfer of
6206 property of that kind may be made under Subsection ~~[75-5a-110(+)]~~ 75A-8-110(1).

6207 (3) (a) The nomination of a custodian under this section does not create custodial
6208 property until the nominating instrument becomes irrevocable or a transfer to the nominated
6209 custodian is completed under Section ~~[75-5a-110]~~ 75A-8-110.

6210 (b) Unless the nomination of a custodian has been revoked, upon the occurrence of the
6211 future event the custodianship becomes effective and the custodian shall enforce a transfer of
6212 the custodial property under Section ~~[75-5a-110]~~ 75A-8-110.

6213 Section 211. Section **75A-8-105**, which is renumbered from Section 75-5a-105 is
6214 renumbered and amended to read:

6215 ~~[75-5a-105]~~. 75A-8-105. Transfer by gift or exercise of power of
6216 **appointment.**

6217 A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a
6218 power of appointment in favor of, a custodian for the benefit of a minor under Section
6219 ~~[75-5a-110]~~ 75A-8-110.

6220 Section 212. Section **75A-8-106**, which is renumbered from Section 75-5a-106 is
6221 renumbered and amended to read:

6222 ~~[75-5a-106]~~. 75A-8-106. Transfer authorized by will or trust.

6223 (1) A personal representative or trustee may make an irrevocable transfer under Section

6224 ~~[75-5a-110]~~ [75A-8-110](#) to a custodian for the benefit of a minor as authorized in the governing
6225 will or trust.

6226 (2) If the testator or settlor has nominated a custodian under Section ~~[75-5a-104]~~
6227 [75A-8-104](#) to receive the custodial property, the transfer must be made to that person.

6228 (3) If the testator or settlor has not nominated a custodian under Section ~~[75-5a-104]~~
6229 [75A-8-104](#), or all persons nominated as custodian die before the transfer or are unable, decline,
6230 or are ineligible to serve, the personal representative or the trustee, as the case may be, shall
6231 designate the custodian from among those eligible to serve as custodian for property of that
6232 kind under Subsection ~~[75-5a-110(1)]~~ [75A-8-110\(1\)](#).

6233 Section 213. Section **75A-8-107**, which is renumbered from Section 75-5a-107 is
6234 renumbered and amended to read:

6235 ~~[75-5a-107]~~. **75A-8-107. Other transfer by fiduciary.**

6236 (1) Subject to Subsection (3), a personal representative or trustee may make an
6237 irrevocable transfer to another adult or trust company as custodian for the benefit of a minor
6238 under Section ~~[75-5a-110]~~ [75A-8-110](#), in the absence of a will or under a will or trust that does
6239 not contain an authorization to do so.

6240 (2) Subject to Subsection (3), a conservator may make an irrevocable transfer to
6241 another adult or trust company as custodian for the benefit of the minor pursuant to Section
6242 ~~[75-5a-110]~~ [75A-8-110](#).

6243 (3) A transfer under Subsection ~~[75-5a-110(1)]~~ [75A-8-110\(1\)](#) or (2) may be made only
6244 if:

6245 (a) the personal representative, trustee, or conservator considers the transfer to be in the
6246 best interest of the minor;

6247 (b) the transfer is not prohibited by or inconsistent with provisions of the applicable
6248 will, trust agreement, or other governing instrument, as defined in Section [75-1-201](#); and

6249 (c) the transfer is authorized by the court, if it exceeds \$10,000 in value.

6250 Section 214. Section **75A-8-108**, which is renumbered from Section 75-5a-108 is
6251 renumbered and amended to read:

6252 ~~[75-5a-108]~~. **75A-8-108. Transfer by obligor.**

6253 (1) Subject to Subsections (2) and (3), a person not subject to Section ~~[75-5a-106 or~~
6254 [75A-8-106](#) or [75A-8-107](#) who holds property of or owes a liquidated debt to a

6255 minor not having a conservator, may make an irrevocable transfer to a custodian for the benefit
6256 of the minor under Section [~~75-5a-110~~] 75A-8-110.

6257 (2) If a person having the right under Section [~~75-5a-104~~] 75A-8-104 has nominated a
6258 custodian under that section to receive the custodial property, the transfer must be made to that
6259 person.

6260 (3) If no custodian has been nominated under Section [~~75-5a-104~~] 75A-8-104, or all
6261 persons nominated as custodian die before the transfer or are unable, decline, or are ineligible
6262 to serve, a transfer under this section may be made to an adult member of the minor's family or
6263 to a trust company unless the property exceeds \$10,000 in value.

6264 Section 215. Section **75A-8-109**, which is renumbered from Section 75-5a-109 is
6265 renumbered and amended to read:

6266 [~~75-5a-109~~]. **75A-8-109. Receipt for custodial property.**

6267 A written acknowledgment of delivery by a custodian is sufficient receipt and discharge
6268 for custodial property transferred to the custodian under this [~~part~~] chapter.

6269 Section 216. Section **75A-8-110**, which is renumbered from Section 75-5a-110 is
6270 renumbered and amended to read:

6271 [~~75-5a-110~~]. **75A-8-110. Manner of creating custodial property and**
6272 **effecting transfer -- Designation of initial custodian -- Control.**

6273 (1) Custodial property is created and a transfer is made when:

6274 (a) an uncertificated security or a certificated security in registered form is either:

6275 (i) registered in the name of the transferor, an adult other than the transferor, or a trust
6276 company, followed in substance by the words: "as custodian for (name of minor)
6277 under the Uniform Transfers to Minors Act"; or

6278 (ii) delivered if in certificated form, or any document necessary for the transfer of an
6279 uncertificated security is delivered, together with any necessary endorsement, to an adult other
6280 than the transferor or to a trust company as custodian, accompanied by an instrument in
6281 substantially the form in Subsection (2);

6282 (b) money is paid or delivered, or a security held in the name of a broker, financial
6283 institution, or its nominee is transferred to a broker, or financial institution for credit to an
6284 account in the name of the transferor, an adult other than the transferor, or a trust company,
6285 followed in substance by the words: "as custodian for (name of minor) under the

6286 Uniform Transfers to Minors Act";

6287 (c) the ownership of a life or endowment insurance policy or annuity contract is either:

6288 (i) registered with the issuer in the name of the transferor, an adult other than the
6289 transferor, or a trust company, followed in substance by the words: "as custodian for
6290 (name of minor) under the Uniform Transfers to Minors Act"; or

6291 (ii) assigned in a writing delivered to an adult other than the transferor or to a trust
6292 company whose name in the assignment is followed in substance by the words: "as custodian
6293 for (name of minor) under the Uniform Transfers to Minors Act";

6294 (d) an irrevocable exercise of a power of appointment or an irrevocable present right to
6295 future payment under a contract is the subject of a written notification delivered to the payor,
6296 issuer, or other obligor that the right is transferred to the transferor, an adult other than the
6297 transferor, or a trust company, whose name in the notification is followed in substance by the
6298 words: "as custodian for (name of minor) under the Uniform Transfers to Minors
6299 Act";

6300 (e) an interest in real property is recorded in the name of the transferor, an adult other
6301 than the transferor, or a trust company, followed in substance by the words: "as custodian for
6302 (name of minor) under the Uniform Transfers to Minors Act";

6303 (f) a certificate of title issued by a department or agency of a state or of the United
6304 States which evidences title to tangible personal property is either:

6305 (i) issued in the name of the transferor, an adult other than the transferor, or a trust
6306 company, followed in substance by the words: "as custodian for (name of minor)
6307 under the Uniform Transfers to Minors Act"; or

6308 (ii) delivered to an adult other than the transferor or to a trust company, endorsed to
6309 that person followed in substance by the words: "as custodian for (name of minor)
6310 under the Uniform Transfers to Minors Act";

6311 (g) an interest in any property not described in Subsections (1)(a) through (f) is
6312 transferred to an adult other than the transferor or to a trust company by a written instrument in
6313 substantially the form set forth in Subsection (2); or

6314 (h) contributions are made into a custodial account at the Utah Educational Savings
6315 Plan in accordance with Title 53B, Chapter 8a, Utah Educational Savings Plan.

6316 (2) An instrument in the following form satisfies the requirements of Subsections

6317 (1)(a)(ii) and (1)(g): "Transfer Under the Uniform Transfers to Minors Act
 6318 I, (name of transferor or name and representative capacity if a fiduciary)
 6319 hereby transfer to (name of custodian), as custodian for (name of minor)
 6320 under the Uniform Transfers to Minors Act, the following: (insert a description of the custodial
 6321 property sufficient to identify it).

6322 Dated:
 6323
 6324 (Signature)

6325 (name of custodian) acknowledges receipt of the property described above
 6326 as custodian for the minor named above under the Uniform Transfers to Minors Act.

6327 Dated:
 6328
 6329 (Signature of Custodian)"

6330 (3) A transferor shall place the custodian in control of the custodial property as soon as
 6331 practicable. Section 217. Section **75A-8-111**, which is renumbered from Section 75-5a-111
 6332 is renumbered and amended to read:

6333 ~~[75-5a-111].~~ **75A-8-111. Single custodianship.**

6334 (1) A transfer may be made only for one minor, and only one person may be the
 6335 custodian.

6336 (2) All custodial property held under this [part] chapter by the same custodian for the
 6337 benefit of the same minor constitutes a single custodianship.

6338 Section 218. Section **75A-8-112**, which is renumbered from Section 75-5a-112 is
 6339 renumbered and amended to read:

6340 ~~[75-5a-112].~~ **75A-8-112. Validity and effect of transfer.**

6341 (1) The validity of a transfer made in a manner prescribed in this [part] chapter is not
 6342 affected by:

6343 (a) failure of the transferor to comply with Subsection ~~[75-5a-110(3)]~~ 75A-8-110(3)
 6344 concerning possession and control;

6345 (b) designation of an ineligible custodian, except designation of the transferor in the
 6346 case of property for which the transferor is ineligible to serve as custodian under Subsection
 6347 ~~[75-5a-110(1)]~~ 75A-8-110(1); or

6348 (c) death or incapacity of a person nominated under Section ~~[75-5a-104]~~ 75A-8-104 or
6349 designated under Section ~~[75-5a-110]~~ 75A-8-110 as custodian or the disclaimer of the office by
6350 that person.

6351 (2) (a) A transfer made under Section ~~[75-5a-110]~~ 75A-8-110 is irrevocable, and the
6352 custodial property is indefeasibly vested in the minor, but the custodian has all the rights,
6353 powers, duties, and authority provided in this ~~[part]~~ chapter.

6354 (b) ~~[Neither the minor nor the minor's legal representative has]~~ A minor, or a minor's
6355 representative, does not have any right, power, duty, or authority regarding the custodial
6356 property except as provided in this [part] chapter.

6357 (3) By making a transfer, the transferor incorporates in the disposition all the
6358 provisions of this ~~[part]~~ chapter and grants to the custodian, and to any third person dealing
6359 with a person designated as custodian, the respective powers, rights, and immunities provided
6360 in this ~~[part]~~ chapter.

6361 Section 219. Section **75A-8-113**, which is renumbered from Section 75-5a-113 is
6362 renumbered and amended to read:

6363 ~~[75-5a-113].~~ **75A-8-113. Care of custodial property.**

6364 (1) A custodian shall:

6365 (a) take control of custodial property;

6366 (b) register or record title to custodial property if appropriate; and

6367 (c) collect, hold, manage, invest, and reinvest custodial property.

6368 (2) (a) In dealing with custodial property, a custodian shall observe the standard of care
6369 that would be observed by a prudent person dealing with property of another and is not limited
6370 by any other statute restricting investments by fiduciaries.

6371 (b) If a custodian has a special skill or expertise or is named custodian on the basis of
6372 representations of a special skill or expertise, the custodian shall use the skill or expertise.

6373 (c) However, a custodian may, in ~~[his]~~ the custodian's discretion and without liability
6374 to the minor or the minor's estate, retain any custodial property received from a transferor.

6375 (3) A custodian may invest in or pay premiums on life insurance or endowment
6376 policies on:

6377 (a) the life of the minor only if the minor or the minor's estate is the sole beneficiary; or

6378 (b) the life of another person in whom the minor has an insurable interest only to the

6379 extent the minor, the minor's estate, or the custodian in the capacity of custodian, is the
6380 irrevocable beneficiary.

6381 (4) (a) A custodian shall at all times keep custodial property separate and distinct from
6382 all other property in a manner sufficient to identify it clearly as custodial property of the minor.

6383 (b) (i) Custodial property consisting of an undivided interest is so identified if the
6384 minor's interest is held as a tenant in common and is fixed.

6385 (ii) Custodial property subject to recordation is so identified if it is recorded, and
6386 custodial property subject to registration is so identified if it is either registered, or held in an
6387 account designated, in the name of the custodian, followed in substance by the words: "as a
6388 custodian for (name of minor) under the Uniform Transfers to Minors Act."

6389 (5) A custodian shall keep records of all transactions with respect to custodial property,
6390 including information necessary for the preparation of the minor's tax returns, and shall make
6391 them available for inspection at reasonable intervals by a parent or legal representative of the
6392 minor or by the minor if the minor is 14 years ~~[of age]~~ old or older.

6393 Section 220. Section ~~75A-8-114~~, which is renumbered from Section 75-5a-114 is
6394 renumbered and amended to read:

6395 ~~[75-5a-114]~~. 75A-8-114. Powers of custodian.

6396 (1) A custodian, acting in a custodial capacity, has all the rights, powers, and authority
6397 over custodial property that unmarried adult owners have over their own property, but a
6398 custodian may exercise those rights, powers, and authority in that capacity only.

6399 (2) This section does not relieve a custodian from liability for breach of Section
6400 ~~[75-5a-113]~~ 75A-8-113.

6401 Section 221. Section ~~75A-8-115~~, which is renumbered from Section 75-5a-115 is
6402 renumbered and amended to read:

6403 ~~[75-5a-115]~~. 75A-8-115. Use of custodial property.

6404 (1) A custodian may deliver or pay to the minor or expend for the minor's benefit so
6405 much of the custodial property as the custodian considers advisable for the use and benefit of
6406 the minor, without court order and without regard to:

6407 (a) the duty or ability of the custodian personally or of any other person to support the
6408 minor; or

6409 (b) any other income or property of the minor which may be applicable or available for

6410 that purpose.

6411 (2) On petition of an interested person, or the minor if the minor is 14 years [of age]
6412 old or older, the court may order the custodian to deliver or pay to the minor or expend for the
6413 minor's benefit so much of the custodial property as the court considers advisable for the use
6414 and benefit of the minor.

6415 (3) A delivery, payment, or expenditure under this section is in addition to, not in
6416 substitution for, and does not affect any obligation of a person to support the minor.

6417 Section 222. Section **75A-8-116**, which is renumbered from Section 75-5a-116 is
6418 renumbered and amended to read:

6419 ~~[75-5a-116]~~. **75A-8-116. Custodian's expenses, compensation, and bond.**

6420 (1) A custodian is entitled to reimbursement from custodial property for reasonable
6421 expenses incurred in the performance of the custodian's duties.

6422 (2) Except for one who is a transferor under Section ~~[75-5a-105]~~ 75A-8-105, a
6423 custodian has a noncumulative election during each calendar year to charge reasonable
6424 compensation for services performed during that year.

6425 (3) Except as provided in Subsection ~~[75-5a-119(6)]~~ 75A-8-119(6), a custodian need
6426 not give a bond.

6427 Section 223. Section **75A-8-117**, which is renumbered from Section 75-5a-117 is
6428 renumbered and amended to read:

6429 ~~[75-5a-117]~~. **75A-8-117. Exemption of third person from liability.**

6430 A third person in good faith and without court order may act on the instructions of or
6431 otherwise deal with any person purporting to make a transfer or purporting to act in the
6432 capacity of a custodian and, in the absence of knowledge, is not responsible for determining:

6433 (1) the validity of the purported custodian's designation;

6434 (2) the propriety of, or the authority under this ~~[part]~~ chapter for, any act of the
6435 purported custodian;

6436 (3) the validity or propriety under this ~~[part]~~ chapter of any instrument or instructions
6437 executed or given either by the person purporting to make transfer or by the purported
6438 custodian; or

6439 (4) the propriety of the application of any property of the minor delivered to the
6440 purported custodian.

6441 Section 224. Section **75A-8-118**, which is renumbered from Section 75-5a-118 is
6442 renumbered and amended to read:

6443 ~~[75-5a-118]~~. **75A-8-118. Liability to third persons.**

6444 (1) A claim may be asserted against the custodial property by proceeding against the
6445 custodian in the custodial capacity, whether or not the custodian or the minor is personally
6446 liable, if the claim is based on:

6447 (a) a contract entered into by a custodian acting in a custodial capacity;

6448 (b) an obligation arising from the ownership or control of custodial property; or

6449 (c) a tort committed during the custodianship.

6450 (2) A custodian is not personally liable:

6451 (a) on a contract properly entered into in the custodial capacity unless the custodian
6452 fails to reveal that capacity and to identify the custodianship in the contract; or

6453 (b) for an obligation arising from control of custodial property or for a tort committed
6454 during the custodianship unless the custodian is personally at fault.

6455 (3) A minor is not personally liable for an obligation arising from ownership of
6456 custodial property or for a tort committed during the custodianship unless the minor is
6457 personally at fault.

6458 Section 225. Section **75A-8-119**, which is renumbered from Section 75-5a-119 is
6459 renumbered and amended to read:

6460 ~~[75-5a-119]~~. **75A-8-119. Renunciation, resignation, death, or removal of**
6461 **custodian -- Designation of successor custodian.**

6462 (1) (a) A person nominated under Section ~~[75-5a-104]~~ 75A-8-104 or designated under
6463 Section ~~[75-5a-110]~~ 75A-8-110 as custodian may decline to serve by delivering a valid
6464 disclaimer to the person who made the nomination or to the transferor or the transferor's legal
6465 representative.

6466 (b) If the event giving rise to a transfer has not occurred and no substitute custodian
6467 able, willing, and eligible to serve was nominated under Section ~~[75-5a-104]~~ 75A-8-104, the
6468 person who made the nomination may nominate a substitute custodian under Section
6469 ~~[75-5a-104]~~ 75A-8-104; otherwise the transferor or the transferor's legal representative shall
6470 designate a substitute custodian at the time of the transfer, in either case from among the
6471 persons eligible to serve as custodian for that kind of property under Subsection ~~[75-5a-110(1)]~~

6472 [75A-8-110\(1\)](#).

6473 (c) The custodian designated has the rights of a successor custodian.

6474 (2) (a) A custodian at any time may designate a trust company or an adult other than a
6475 transferor under Section [~~75-5a-105~~] [75A-8-105](#) as successor custodian by executing and
6476 dating an instrument of designation before a subscribing witness other than the successor.

6477 (b) If the instrument of designation does not contain or is not accompanied by the
6478 resignation of the custodian, the designation of the successor does not take effect until the
6479 custodian resigns, dies, becomes incapacitated, or is removed.

6480 (3) A custodian may resign at any time by delivering written notice to the minor if the
6481 minor is 14 years [~~of age~~] old or older and to the successor custodian and by delivering the
6482 custodial property to the successor custodian.

6483 (4) (a) (i) If a custodian is ineligible, dies, or becomes incapacitated without having
6484 effectively designated a successor and the minor is 14 years [~~of age~~] old or older, the minor
6485 may designate as successor custodian, in the manner prescribed in Subsection (2), an adult
6486 member of the minor's family, a conservator of the minor, or a trust company.

6487 (ii) If the minor is not yet 14 years [~~of age~~] old or fails to act within 60 days after the
6488 ineligibility, death, or incapacity, the conservator of the minor becomes successor custodian.

6489 (b) If the minor has no conservator or the conservator declines to act, the transferor, the
6490 legal representative of the transferor or of the custodian, an adult member of the minor's family,
6491 or any other interested person may petition the court to designate a successor custodian.

6492 (5) (a) A custodian who declines to serve under Subsection (1) or resigns under
6493 Subsection (3), or the legal representative of a deceased or incapacitated custodian shall as
6494 soon as practicable place the custodial property and records in the possession and control of the
6495 successor custodian.

6496 (b) The successor custodian by action may enforce the obligation to deliver custodial
6497 property and records and becomes responsible for each item as received.

6498 (6) A transferor, the legal representative of a transferor, an adult member of the minor's
6499 family, a guardian of the person of the minor, the conservator of the minor, or the minor if [~~he~~
6500 ~~is 14 years of age~~] the minor is 14 years old or older, may petition the court to remove the
6501 custodian for cause and to designate a successor custodian other than a transferor under Section
6502 [~~75-5a-105~~] [75A-8-105](#) or to require the custodian to give appropriate bond.

6503 Section 226. Section **75A-8-120**, which is renumbered from Section 75-5a-120 is
6504 renumbered and amended to read:

6505 ~~[75-5a-120]~~. **75A-8-120. Accounting by and determination of liability of**
6506 **custodian.**

6507 (1) A minor who is 14 years [~~of age~~] old or older, the minor's guardian of the person or
6508 legal representative, an adult member of the minor's family, a transferor, or a transferor's legal
6509 representative may petition the court:

6510 (a) for an accounting by the custodian or the custodian's legal representative; or

6511 (b) for a determination of responsibility, as between the custodial property and the
6512 custodian personally, for claims against the custodial property unless the responsibility has
6513 been adjudicated in an action under Section [~~75-5a-118~~] 75A-8-118 to which the minor or the
6514 minor's legal representative was a party.

6515 (2) A successor custodian may petition the court for an accounting by the predecessor
6516 custodian.

6517 (3) The court, in a proceeding under this [~~part~~] chapter or in any other proceeding, may
6518 require or permit the custodian or the custodian's legal representative to account.

6519 (4) If a custodian is removed under Subsection [~~75-5a-119(6)~~] 75A-8-119(6), the court
6520 shall require an accounting and order delivery of the custodial property and records to the
6521 successor custodian and the execution of all instruments required for transfer of the custodial
6522 property.

6523 Section 227. Section **75A-8-121**, which is renumbered from Section 75-5a-121 is
6524 renumbered and amended to read:

6525 ~~[75-5a-121]~~. **75A-8-121. Termination of custodianship.**

6526 The custodian shall transfer in an appropriate manner the custodial property to the
6527 minor or to the minor's estate upon the earlier of:

6528 (1) the minor's becoming 21 years [~~of age~~] old with respect to custodial property
6529 transferred under Section [~~75-5a-105 or 75-5a-106~~] 75A-8-105 or 75A-8-106;

6530 (2) the minor's attainment of majority under the laws of this state with respect to the
6531 custodial property transferred under Section [~~75-5a-107 or 75-5a-108~~] 75A-8-107 or
6532 75A-8-108; or

6533 (3) the minor's death.

6534 Section 228. Section **75A-8-122**, which is renumbered from Section 75-5a-122 is
6535 renumbered and amended to read:

6536 ~~[75-5a-122]~~. **75A-8-122. Applicability.**

6537 This ~~[part]~~ chapter applies to a transfer within the scope of Section ~~[75-5a-103]~~
6538 75A-8-103 made after its effective date if:

6539 (1) the transfer purports to have been made under the Uniform Gifts to Minors Act; or

6540 (2) the instrument by which the transfer purports to have been made uses in substance
6541 the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under
6542 the Uniform Transfers to Minors Act" of any other state, and the application of this part is
6543 necessary to validate the transfer.

6544 Section 229. Section **75A-8-123**, which is renumbered from Section 75-5a-123 is
6545 renumbered and amended to read:

6546 ~~[75-5a-123]~~. **75A-8-123. Effect on existing custodianships.**

6547 (1) Any transfer of custodial property as now defined in this ~~[part]~~ chapter made before
6548 July 1, 1990, is validated notwithstanding that there was no specific authority in the Uniform
6549 Gifts to Minors Act for the coverage of custodial property of that kind or for a transfer from
6550 that source at the time the transfer was made.

6551 (2) This ~~[part]~~ chapter applies to all transfers made before July 1, 1990, in a manner
6552 and form prescribed in the Uniform Gifts to Minors Act, except as the application impairs
6553 constitutionally vested rights or extends the duration of custodianships in existence on July 1,
6554 1990.

6555 (3) Sections ~~[75-5a-102 and 75-5a-121]~~ 75A-8-102 and 75A-8-121 regarding the age
6556 of a minor for whom custodial property is held under this ~~[part]~~ chapter do not apply to
6557 custodial property held in a custodianship that terminated because of the minor's attainment of
6558 the age of majority and before July 1, 1990.

6559 Section 230. Section **75B-1-101** is enacted to read:

6560 **TITLE 75B. TRUSTS**

6561 **CHAPTER 1. GENERAL PROVISIONS**

6562 **Part 1. General Provisions**

6563 **75B-1-101. Reserved for title definitions.**

6564 Reserved.

6565 Section 231. Section **75B-1-102** is enacted to read:

6566 **75B-1-102. Transition clause.**

6567 If, at the time a trust or another legal document was executed, the document contained a
6568 correct citation to a provision in Title 22, Fiduciaries and Trusts, and Title 75, Utah Uniform
6569 Probate Code, that, after the execution of the document, was renumbered and amended for
6570 inclusion in this title, that citation is a valid citation to the same provision in this title.

6571 Section 232. Section **75B-1-103**, which is renumbered from Section 22-2-1 is
6572 renumbered and amended to read:

6573 ~~[22-2-1].~~ **75B-1-103. Death of trustee -- Trust estate vests in successor.**

6574 Upon the death of a sole or surviving trustee of an express trust:

6575 (1) the trust estate does not descend to [his] the trustee's heirs or pass to [his] the
6576 trustee's personal representatives[~~], but shall by virtue hereof, upon the appointment and~~
6577 qualification of a successor to such trustee, become immediately vested in such successor in
6578 trust.]; and

6579 (2) the trust estate immediately vests in the successor trustee upon the appointment and
6580 qualification of a successor trustee.

6581 Section 233. Section **75B-1-201** is enacted to read:

6582 **Part 2. Retirement Trust**

6583 **75B-1-201. Definitions for part.**

6584 As used in this part:

6585 (1) "Income" means the same as that term is defined in Section [75A-5-101](#).

6586 (2) "Principal" means the same as that term is defined in Section [75A-5-101](#).

6587 (3) "Retirement trust" means a trust:

6588 (a) created by an employer as part of a pension, stock bonus, disability, death benefit,
6589 profit sharing, retirement, or similar plan primarily for the benefit of an employee or the
6590 employee's family, appointee, or beneficiary;

6591 (b) to which contributions are made by the employer or employee; and

6592 (c) that is created for the purpose of distributing principal or income to the employee or
6593 the employee's family, appointee, or beneficiary.

6594 Section 234. Section **75B-1-202**, which is renumbered from Section 22-6-1 is
6595 renumbered and amended to read:

6596 [22-6-1]. 75B-1-202. Retirement trusts exempted from rules against
6597 perpetuities, accumulations, or suspension of power of alienation.

6598 [No trust heretofore or hereafter created by an employer as part of a pension, stock
6599 bonus, disability, death benefit, profit sharing, retirement or similar plan, primarily for the
6600 benefit of some or all of such employers' employees, their families, appointees or beneficiaries,
6601 to which contributions are made by such employer or employees, or by both employer and
6602 employees, which trust is for the purpose of distributing to such employees or their families,
6603 beneficiaries, or appointees, the earnings or principal, or both, shall be deemed to be invalid by
6604 reason of any rule against perpetuities, or against accumulations, or concerning the suspension
6605 of the power of alienation of title to property, or any other law restricting or limiting the
6606 duration of trusts; and such a trust may continue in perpetuity or for such time as may be
6607 necessary to accomplish the purposes for which it was created.]

6608 (1) A retirement trust is not invalid as violating a rule against perpetuities, a rule
6609 against accumulations, a rule concerning the suspension of the power of alienation of title to
6610 property, or any other law restricting or limiting the duration of trusts.

6611 (2) A retirement trust may continue in perpetuity or for the time that is necessary to
6612 accomplish the purposes for which the retirement trust was created.

6613 Section 235. Section **75B-1-203**, which is renumbered from Section 22-6-2 is
6614 renumbered and amended to read:

6615 [22-6-2]. 75B-1-203. Income permitted to accumulate.

6616 The income arising from or earned by the property held in [~~such trust within the~~
6617 ~~classifications mentioned, may be~~] a retirement trust is permitted to accumulate, in accordance
6618 with the terms of [~~such trust, for so long a time as may be~~] the trust:

6619 (1) for the time period permitted by the instrument creating the trust[~~, or if no time is~~
6620 ~~so specified, for such time as the trustee or trustees may deem necessary~~]; or

6621 (2) if the instrument creating the trust does not specify a time period, for the time
6622 period that is necessary for a trustee of the trust to accomplish the purposes for which the trust
6623 was created.

6624 Section 236. Section **75B-1-301** is enacted to read:

6625 **Part 3. Asset Protection Trust**

6626 75B-1-301. Definitions for part.

6627 As used in this part:

6628 (1) "Creditor" means:

6629 (a) a creditor or other claimant of the settlor existing when the trust is created; or

6630 (b) a person who subsequently becomes a creditor, including whether or not reduced to

6631 judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed,

6632 undisputed, legal, equitable, secured, or unsecured:

6633 (i) holding or seeking to enforce a judgment entered by a court or other body having

6634 adjudicative authority; or

6635 (ii) with a right to payment.

6636 (2) "Domestic support obligation" means:

6637 (a) a child support judgment or order;

6638 (b) a spousal support judgment or order; or

6639 (c) an unsatisfied claim arising from a property division in a divorce proceeding.

6640 (3) "Insolvent" means:

6641 (a) having generally ceased to pay debts in the ordinary course of business other than as

6642 a result of a bona fide dispute;

6643 (b) being unable to pay debts as they become due; or

6644 (c) being insolvent within the meaning of federal bankruptcy law.

6645 (4) "Paid and delivered" does not include the settlor's use or occupancy of real property

6646 or personal property owned by the trust if the use or occupancy is in accordance with the

6647 trustee's discretionary authority under the trust instrument.

6648 (5) "Personal property" includes intangible and tangible personal property.

6649 (6) "Property" means real property, personal property, and interests in real or personal

6650 property.

6651 (7) "Settlor" means a person who transfers property in trust.

6652 (8) "Transfer" means any form of transfer of property, including gratuitous transfers,

6653 whether by deed, conveyance, or assignment.

6654 (9) "Trust" means the same as that term is defined in Section [75-1-201](#).

6655 Section 237. Section **75B-1-302**, which is renumbered from Section 25-6-502 is

6656 renumbered and amended to read:

6657 **[25-6-502]. 75B-1-302. Asset protection trust.**

6658 ~~[(1) As used in this section:]~~

6659 ~~[(a) "Creditor" means:]~~

6660 ~~[(i) a creditor or other claimant of the settlor existing when the trust is created; or]~~

6661 ~~[(ii) a person who subsequently becomes a creditor, including, whether or not reduced~~

6662 ~~to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed,~~

6663 ~~undisputed, legal, equitable, secured, or unsecured:]~~

6664 ~~[(A) one holding or seeking to enforce a judgment entered by a court or other body~~

6665 ~~having adjudicative authority; or]~~

6666 ~~[(B) one with a right to payment.]~~

6667 ~~[(b) "Domestic support obligation" means:]~~

6668 ~~[(i) a child support judgment or order;]~~

6669 ~~[(ii) a spousal support judgment or order; or]~~

6670 ~~[(iii) an unsatisfied claim arising from a property division in a divorce proceeding.]~~

6671 ~~[(c) "Insolvent" means:]~~

6672 ~~[(i) having generally ceased to pay debts in the ordinary course of business other than~~

6673 ~~as a result of a bona fide dispute;]~~

6674 ~~[(ii) being unable to pay debts as they become due; or]~~

6675 ~~[(iii) being insolvent within the meaning of federal bankruptcy law.]~~

6676 ~~[(d) (i) "Property" means real property, personal property, and interests in real or~~

6677 ~~personal property.]~~

6678 ~~[(ii) "Personal property" includes intangible and tangible personal property.]~~

6679 ~~[(e) "Settlor" means a person who transfers property in trust.]~~

6680 ~~[(f) "Transfer" means any form of transfer of property, including gratuitous transfers,~~

6681 ~~whether by deed, conveyance, or assignment.]~~

6682 ~~[(g) "Trust" has the same meaning as in Section [75-1-201](#).]~~

6683 ~~[(2) "Paid and delivered" to the settlor, as beneficiary, does not include the settlor's use~~

6684 ~~or occupancy of real property or personal property owned by the trust if the use or occupancy is~~

6685 ~~in accordance with the trustee's discretionary authority under the trust instrument.]~~

6686 ~~[(3)] (1) If the settlor of an irrevocable trust is also a beneficiary of the trust, and if the~~

6687 ~~requirements of Subsection ~~[(5)]~~ (3) are satisfied, a creditor of the settlor may not:~~

6688 (a) satisfy a claim or liability of the settlor in either law or equity out of the settlor's

6689 transfer to the trust or the settlor's beneficial interest in the trust;

6690 (b) force or require the trustee to make a distribution to the settlor, as beneficiary; or

6691 (c) require the trustee to pay any distribution directly to the creditor, or otherwise

6692 attach the distribution before it has been paid or delivered by the trustee to the settlor, as

6693 beneficiary.

6694 ~~[(4)]~~ (2) Notwithstanding Subsection ~~[(3)]~~ (1), nothing in this section:

6695 (a) prohibits a creditor from satisfying a claim or liability from the distribution once it
6696 has been paid or delivered by the trustee to the settlor, as beneficiary; or

6697 (b) nullifies or impairs a security interest that was granted by a settlor or a trustee with
6698 respect to property that is transferred to the trust.

6699 ~~[(5)]~~ (3) (a) In order for Subsection ~~[(3)]~~ (1) to apply, the conditions in this Subsection
6700 ~~[(5)]~~ (3) shall be satisfied.

6701 (b) Where this Subsection ~~[(5)]~~ (3) requires that a provision be included in the trust
6702 instrument, no particular language need be used in the trust instrument if the meaning of the
6703 trust provision otherwise complies with this Subsection ~~[(5)]~~ (3).

6704 ~~[(a)]~~ (c) An agreement or understanding, express or implied, between the settlor and
6705 the trustee that attempts to grant or permit the retention by the settlor of greater rights or
6706 authority than is stated in the trust instrument is void.

6707 ~~[(b)]~~ (d) The trust instrument shall provide that the trust is governed by Utah law and is
6708 established pursuant to this section.

6709 ~~[(c)]~~ (e) The trust instrument shall require that at all times at least one trustee shall be a
6710 Utah resident or Utah trust company, as the term "trust company" is defined in Section 7-5-1.

6711 ~~[(d)]~~ (f) (i) The trust instrument shall provide that neither the interest of the settlor, as
6712 beneficiary, nor the income or principal of the trust may be voluntarily or involuntarily
6713 transferred by the settlor, as beneficiary.

6714 (ii) The provision shall be considered to be a restriction on the transfer of the settlor's
6715 beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within
6716 the meaning of 11 U.S.C. Sec. 541(c)(2).

6717 ~~[(e)]~~ (g) The settlor may not have the ability under the trust instrument, without the
6718 consent of a person who has a substantial beneficial interest in the trust, which interest would
6719 be adversely affected by the exercise of the power held by the settlor:

6720 (i) to revoke, amend, or terminate all or any part of the trust; or

6721 (ii) to withdraw any property from the trust, except that the settlor, without the
6722 approval or consent of any person, may be given the power, under the trust agreement, to
6723 substitute assets of substantially equivalent value.

6724 ~~[(f)]~~ (h) The trust instrument may not provide for any mandatory distributions of either
6725 income or principal to the settlor, as beneficiary, except as provided in Subsection ~~[(7)(g)]~~
6726 (5)(g).

6727 ~~[(g)]~~ (i) (i) The trust instrument shall require that, at least 30 days before paying and
6728 delivering any distribution to the settlor, as beneficiary, the trustee notify in writing every
6729 person who has a domestic support obligation against the settlor.

6730 (ii) The trust instrument shall require that the notice state the date the distribution will
6731 be paid and delivered and the amount of the distribution.

6732 ~~[(h)]~~ (j) At the time that the settlor transfers any assets to the trust, the settlor may not
6733 be in default of making a payment due under a domestic support obligation.

6734 ~~[(i)]~~ (k) A transfer of assets to the trust may not render the settlor insolvent.

6735 ~~[(j)]~~ (l) At the time the settlor transfers any assets to the trust, the settlor may not intend
6736 to hinder, delay, or defraud a known creditor by transferring the assets to the trust. A settlor's
6737 expressed intention to protect trust assets from the settlor's potential future creditors is not
6738 evidence of an intent to hinder, delay, or defraud a known creditor.

6739 ~~[(k)]~~ (m) Assets transferred to the trust may not be derived from unlawful activities.

6740 ~~[(l)]~~ (n) With respect to each transfer of assets to the trust, the settlor shall sign a sworn
6741 affidavit stating that at the time of the transfer of the assets to the trust:

6742 (i) the settlor has full right, title, and authority to transfer the assets to the trust;

6743 (ii) the transfer of the assets to the trust will not render the settlor insolvent;

6744 (iii) the settlor does not intend to hinder, delay, or defraud a known creditor by
6745 transferring the assets to the trust;

6746 (iv) there is no pending or threatened court action against the settlor, except for a court
6747 action identified by the settlor on an attachment to the affidavit;

6748 (v) the settlor is not involved in an administrative proceeding that is reasonably
6749 expected to have a material adverse effect on the financial condition of the settlor, except an
6750 administrative proceeding identified on an attachment to the affidavit;

6751 (vi) at the time of the transfer of the assets to the trust, the settlor is not in default of a
6752 domestic support obligation;

6753 (vii) the settlor does not contemplate filing for relief under the provisions of United
6754 States Code, Title 11, Bankruptcy; and

6755 (viii) the assets being transferred to the trust were not derived from unlawful activities.

6756 ~~[(6)]~~ (4) Failure to satisfy the requirements of Subsection ~~[(5)]~~ (3) shall result in the
6757 consequences described in this Subsection ~~[(6)]~~ (4).

6758 (a) If any requirement of Subsections ~~[(5)(b)]~~ (3)(b) through (g) is not satisfied, none of
6759 the property held in the trust will at any time have the benefit of the protections described in
6760 Subsection ~~[(3)]~~ (1).

6761 (b) If the trustee does not send the notice required under Subsection ~~[(5)(g)]~~ (3)(g), the
6762 court may authorize any person with a domestic support obligation against the settlor to whom
6763 notice was not sent to attach the distribution or future distributions, but the person may not:

6764 (i) satisfy a claim or liability in either law or equity out of the settlor's transfer to the
6765 trust or the settlor's beneficial interest in the trust; or

6766 (ii) force or require the trustee to make a distribution to the settlor, as beneficiary.

6767 (c) If any requirement described in Subsections ~~[(5)(i)]~~ (3)(i) through (l) is not
6768 satisfied, the property transferred to the trust that does not satisfy the requirement may not have
6769 the benefit of the protections described in Subsection ~~[(3)]~~ (1).

6770 (d) If the requirement described in Subsection ~~[(5)(h)]~~ (3)(h) is not satisfied, the
6771 property transferred to the trust that does not satisfy the requirement does not have the benefit
6772 of the protections described in Subsection ~~[(3)]~~ (1) with respect to any person with a domestic
6773 support obligation.

6774 (e) A creditor of the settlor has the burden of proving that the requirement in
6775 Subsection ~~[(5)(i)]~~ (3)(i) or (j) is not satisfied by clear and convincing evidence.

6776 ~~[(7)]~~ (5) The provisions of Subsection ~~[(3)]~~ (1) may apply to a trust even if:

6777 (a) the settlor serves as a cotrustee or as an advisor to the trustee, except that the settlor
6778 may not determine whether a discretionary distribution will be made;

6779 (b) the settlor participates in a determination regarding whether a discretionary
6780 distribution is made to the settlor by:

6781 (i) requesting a distribution from the trust;

- 6782 (ii) consulting with the trustees regarding whether a discretionary distribution will be
6783 made;
- 6784 (iii) exercising a right to consent to or veto the distribution under a power described in
6785 Subsection [~~(7)(c)~~] (5)(e);
- 6786 (iv) signing documentation in the settlor's capacity as a cotrustee that implements a
6787 distribution when the other trustees use discretionary power to independently authorize a
6788 distribution; or
- 6789 (v) participating in an action authorizing a distribution if the other trustees can
6790 authorize the distribution without the settlor's participation.
- 6791 (c) the settlor has the authority under the terms of the trust instrument to appoint a
6792 nonsubordinate advisor or a trust protector who can remove and appoint trustees and who can
6793 direct, consent to, or disapprove distributions;
- 6794 (d) the settlor has the power under the terms of the trust instrument to serve as an
6795 investment director or to appoint an investment director under Section [75-7-906](#);
- 6796 (e) the trust instrument gives the settlor the power to consent to or veto a distribution
6797 from the trust;
- 6798 (f) the trust instrument gives the settlor an inter vivos or a testamentary nongeneral
6799 power of appointment or similar power;
- 6800 (g) the trust instrument gives the settlor the right to receive the following types of
6801 distributions:
- 6802 (i) income, principal, or both in the discretion of a person, including a trustee, other
6803 than the settlor;
- 6804 (ii) principal, subject to an ascertainable standard set forth in the trust;
- 6805 (iii) income or principal from a charitable remainder annuity trust or charitable
6806 remainder unitrust, as defined in 26 U.S.C. Sec. 664;
- 6807 (iv) a percentage of the value of the trust each year as determined under the trust
6808 instrument, but not exceeding the amount that may be defined as income under 26 U.S.C. Sec.
6809 643(b);
- 6810 (v) the transferor's potential or actual use of real property held under a qualified
6811 personal residence trust, or potential or actual possession of a qualified annuity interest, within
6812 the meaning of 26 U.S.C. Sec. 2702 and the accompanying regulations;

- 6813 (vi) income or principal from a grantor retained annuity trust or grantor retained
6814 unitrust that is allowed under 26 U.S.C. Sec. 2702; and
- 6815 (vii) income from a trust intended to qualify for the federal estate tax or gift tax marital
6816 deduction under 26 U.S.C. Sec. 2056(b)(7) or 2523(f);
- 6817 (h) the trust instrument authorizes the settlor to use real or personal property owned by
6818 the trust; or
- 6819 (i) with respect to the property held in the trust, the settlor may:
- 6820 (i) give a personal guarantee on a debt or obligation secured by the property;
- 6821 (ii) make payments, directly or indirectly, on a debt or obligation secured by the
6822 property;
- 6823 (iii) pay property taxes, casualty and liability insurance premiums, homeowner
6824 association dues, maintenance expenses, or other similar expenses on the property; or
- 6825 (iv) pay income tax on income attributable to the portion of property held in the trust,
6826 of which the settlor is considered to be the owner under 26 U.S.C. Secs. 671 through 678,
6827 which payments will not be considered additional transfers to the trust for purposes of this
6828 section.
- 6829 ~~[(8)]~~ (6) (a) If a trust instrument contains the provisions described in Subsections
6830 ~~[(5)(b)]~~ (3)(b) through (g), the transfer restrictions prevent a creditor or other person from
6831 asserting any cause of action or claim for relief against a trustee of the trust or against others
6832 involved in the counseling, drafting, preparation, execution, or funding of the trust for
6833 conspiracy to commit fraudulent conveyance or another voidable transfer, aiding and abetting a
6834 fraudulent conveyance or another voidable transfer, participation in the trust transaction, or
6835 similar cause of action or claim for relief.
- 6836 (b) For purposes of this ~~[subsection]~~ Subsection (6), counseling, drafting, preparation,
6837 execution, or funding of the trust includes the preparation and funding of a limited partnership,
6838 a limited liability company, or other entity if interests in the entity are subsequently transferred
6839 to the trust.
- 6840 (c) The creditor and other person prevented from asserting a cause of action or claim
6841 for relief may assert a cause of action against, and are limited to recourse against, only:
- 6842 ~~[(a)]~~ (i) the trust and the trust assets; and
- 6843 ~~[(b)]~~ (ii) the settlor, to the extent otherwise allowed in this section.

6844 [~~(9)~~] (7) (a) A cause of action or claim for relief under Subsection [~~(5)~~]~~(i)~~ (3)(i) or (j) is
6845 a cause of action or claim for relief under Section 25-6-202 or 25-6-203.

6846 (b) Except as provided in Subsection [~~(9)~~]~~(a)~~ (7)(a), a cause of action or claim for relief
6847 under this section is not a cause of action or claim for relief under Sections 25-6-101 through
6848 25-6-407.

6849 (c) Notwithstanding Section 25-6-305, a cause of action or claim for relief regarding a
6850 fraudulent conveyance or other voidable transfer of a settlor's assets under this section is
6851 extinguished unless the action is brought by a creditor of the settlor who was a creditor of the
6852 settlor before the assets in question were transferred to the trust and the action is brought within
6853 the earlier of:

6854 (i) the later of two years after the transfer is made, or one year after the transfer is or
6855 reasonably could have been discovered by the creditor if the creditor:

6856 (A) can demonstrate, by clear and convincing evidence, that the creditor asserted a
6857 specific claim against the settlor before the transfer; or

6858 (B) files another action, other than an action alleging a fraudulent conveyance or other
6859 voidable transfer against the settlor that asserts a claim based on an act or omission of the
6860 settlor that occurred before the transfer, and the action described in Subsection [~~(9)~~]~~(c)~~ (7)(c) is
6861 filed within two years after the transfer; or

6862 (ii) (A) with respect to a creditor known to the settlor, 120 days after the date on which
6863 notice of the transfer is mailed to the creditor, which notice shall state the name and address of
6864 the settlor or the settlor's representative, the name and address of the trustee or the trustee's
6865 representative, and also describe the assets that were transferred, but does not need to state the
6866 value of those assets if the assets are other than cash, and which shall inform the creditor that
6867 the creditor is required to bring the creditor's cause of action or claim for relief against the
6868 settlor and the trustee within 120 days from the mailing of the notice or be forever barred; or

6869 (B) with respect to a creditor not known to the settlor, 120 days after the date on which
6870 notice of the transfer is first published in a newspaper of general circulation in the county in
6871 which the settlor then resides, or is published on a public legal notice website as defined in
6872 Section 45-1-101, which notice shall state the name of the settlor or the settlor's representative,
6873 the address of the settlor or the settlor's representative, the name of the trustee or the trustee's
6874 representative, the address of the trustee or the trustee's representative, and also describe the

6875 assets that were transferred, but does not need to state the value of those assets.

6876 ~~[(10)]~~ (8) (a) The notice required in Subsection ~~[(9)(c)(ii)(B)]~~ (7)(c)(ii)(B) shall be
6877 published in accordance with the provisions of Section 45-1-101 for three consecutive weeks
6878 and inform creditors that they are required to bring a cause of action or claim for relief within
6879 120 days from the first publication of the notice or be forever barred.

6880 (b) Failure to give the notice required in Subsection ~~[(9)(c)(ii)]~~ (7)(c)(ii) to a creditor
6881 does not prevent the shortening of the limitations period under Subsection ~~[(9)(c)(ii)]~~ (7)(c)(ii)
6882 with respect to another creditor who properly received notice by mail or publication.

6883 ~~[(11)]~~ (9) (a) A trust is subject to this section if it is governed by Utah law, as provided
6884 in Section 75-7-107, and if it otherwise meets the requirements of this section.

6885 (b) A court of this state has exclusive jurisdiction over an action or claim for relief that
6886 is based on a transfer of property to a trust that is the subject of this section.

6887 ~~[(12)]~~ (10) (a) With respect to a trust that is subject to this section, a claim brought by a
6888 creditor of a beneficiary who is not the settlor is subject to Section 75-7-501 et. seq.

6889 (b) With respect to an irrevocable trust that is not subject to this section, a claim
6890 brought by a creditor of a beneficiary who is the settlor is subject to the provisions of
6891 Subsection 75-7-505(2).

6892 ~~[(13)]~~ (11) If a provision in this section conflicts with a provision in Sections 25-6-101
6893 through 25-6-407, the provision of this section shall supersede the conflicting provision in
6894 Sections 25-6-101 through 25-6-407.

6895 ~~[(14)]~~ (12) Nothing in this section alters rights vested or created under this section
6896 before May 14, 2019.

6897 Section 238. Section 76-5-111 is amended to read:

6898 **76-5-111. Abuse of a vulnerable adult -- Penalties.**

6899 (1) (a) As used in this section:

6900 (i) "Abandonment" means a knowing or intentional action or inaction, including
6901 desertion, by a person acting as a caretaker for a vulnerable adult that leaves the vulnerable
6902 adult without the means or ability to obtain necessary food, clothing, shelter, or medical or
6903 other health care.

6904 (ii) "Abuse" means:

6905 (A) attempting to cause harm, intentionally or knowingly causing harm, or

6906 intentionally or knowingly placing another in fear of imminent harm;

6907 (B) causing physical injury by knowing or intentional acts or omissions;

6908 (C) unreasonable or inappropriate use of physical restraint, medication, or isolation that
6909 causes or is likely to cause harm to a vulnerable adult that is in conflict with a physician's
6910 orders or used as an unauthorized substitute for treatment, unless that conduct furthers the
6911 health and safety of the vulnerable adult; or

6912 (D) deprivation of life-sustaining treatment, except:

6913 (I) as provided in [~~Title 75, Chapter 2a, Advance Health Care Directive Act~~] Title 75A,
6914 Chapter 3, Health Care Decisions; or

6915 (II) when informed consent, as defined in this section, has been obtained.

6916 (iii) "Caretaker" means a person or public institution that is entrusted with or assumes
6917 the responsibility to provide a vulnerable adult with care, food, shelter, clothing, supervision,
6918 medical or other health care, or other necessities for pecuniary gain, by contract, or as a result
6919 of friendship, or in a position of trust and confidence with a vulnerable adult, including a
6920 relative, a household member, an attorney-in-fact, a neighbor, a person who is employed or
6921 who provides volunteer work, a court-appointed or voluntary guardian, or a person who
6922 contracts or is under court order to provide care.

6923 (iv) (A) "Dependent adult" means an individual 18 years old or older, who has a
6924 physical or mental impairment that restricts the individual's ability to carry out normal
6925 activities or to protect the individual's rights.

6926 (B) "Dependent adult" includes an individual who has physical or developmental
6927 disabilities or whose physical or mental capacity has substantially diminished because of age.

6928 (v) "Elder adult" means an individual 65 years old or older.

6929 (vi) "Exploitation" means an offense described in Section [76-5-111.3](#), [76-5-111.4](#), or
6930 [76-5b-202](#).

6931 (vii) "Harm" means pain, mental anguish, emotional distress, hurt, physical or
6932 psychological damage, physical injury, suffering, or distress inflicted knowingly or
6933 intentionally.

6934 (viii) "Informed consent" means:

6935 (A) a written expression by the individual or authorized by the individual, stating that
6936 the individual fully understands the potential risks and benefits of the withdrawal of food,

6937 water, medication, medical services, shelter, cooling, heating, or other services necessary to
6938 maintain minimum physical or mental health, and that the individual desires that the services
6939 be withdrawn, except that a written expression is valid only if the individual is of sound mind
6940 when the consent is given, and the consent is witnessed by at least two individuals who do not
6941 benefit from the withdrawal of services; or

6942 (B) consent to withdraw food, water, medication, medical services, shelter, cooling,
6943 heating, or other services necessary to maintain minimum physical or mental health, as
6944 permitted by court order.

6945 (ix) (A) "Isolation" means knowingly or intentionally preventing a vulnerable adult
6946 from having contact with another person, unless the restriction of personal rights is authorized
6947 by court order, by:

6948 (I) preventing the vulnerable adult from communicating, visiting, interacting, or
6949 initiating interaction with others, including receiving or inviting visitors, mail, or telephone
6950 calls, contrary to the express wishes of the vulnerable adult, or communicating to a visitor that
6951 the vulnerable adult is not present or does not want to meet with or talk to the visitor, knowing
6952 that communication to be false;

6953 (II) physically restraining the vulnerable adult in order to prevent the vulnerable adult
6954 from meeting with a visitor; or

6955 (III) making false or misleading statements to the vulnerable adult in order to induce
6956 the vulnerable adult to refuse to receive communication from visitors or other family members.

6957 (B) "Isolation" does not include an act:

6958 (I) intended in good faith to protect the physical or mental welfare of the vulnerable
6959 adult; or

6960 (II) performed pursuant to the treatment plan or instructions of a physician or other
6961 professional advisor of the vulnerable adult.

6962 (x) "Neglect" means:

6963 (A) failure of a caretaker to provide nutrition, clothing, shelter, supervision, personal
6964 care, or dental or other health care, or failure to provide protection from health and safety
6965 hazards or maltreatment;

6966 (B) failure of a caretaker to provide care to a vulnerable adult in a timely manner and
6967 with the degree of care that a reasonable person in a like position would exercise;

6968 (C) a pattern of conduct by a caretaker, without the vulnerable adult's informed
6969 consent, resulting in deprivation of food, water, medication, health care, shelter, cooling,
6970 heating, or other services necessary to maintain the vulnerable adult's well being;

6971 (D) intentional failure by a caretaker to carry out a prescribed treatment plan that
6972 results or could result in physical injury or physical harm; or

6973 (E) abandonment by a caretaker.

6974 (xi) (A) "Physical injury" includes damage to any bodily tissue caused by
6975 nontherapeutic conduct, to the extent that the tissue must undergo a healing process in order to
6976 be restored to a sound and healthy condition, or damage to any bodily tissue to the extent that
6977 the tissue cannot be restored to a sound and healthy condition.

6978 (B) "Physical injury" includes skin bruising, a dislocation, physical pain, illness,
6979 impairment of physical function, a pressure sore, bleeding, malnutrition, dehydration, a burn, a
6980 bone fracture, a subdural hematoma, soft tissue swelling, injury to any internal organ, or any
6981 other physical condition that imperils the health or welfare of the vulnerable adult and is not a
6982 serious physical injury as defined in this section.

6983 (xii) "Position of trust and confidence" means the position of a person who:

6984 (A) is a parent, spouse, adult child, or other relative of a vulnerable adult;

6985 (B) is a joint tenant or tenant in common with a vulnerable adult;

6986 (C) has a legal or fiduciary relationship with a vulnerable adult, including a
6987 court-appointed or voluntary guardian, trustee, attorney, attorney-in-fact, or conservator; or

6988 (D) is a caretaker of a vulnerable adult.

6989 (xiii) "Serious physical injury" means any physical injury or set of physical injuries
6990 that:

6991 (A) seriously impairs a vulnerable adult's health;

6992 (B) was caused by use of a dangerous weapon;

6993 (C) involves physical torture or causes serious emotional harm to a vulnerable adult; or

6994 (D) creates a reasonable risk of death.

6995 (xiv) "Vulnerable adult" means an elder adult, or a dependent adult who has a mental
6996 or physical impairment which substantially affects that individual's ability to:

6997 (A) provide personal protection;

6998 (B) provide necessities such as food, shelter, clothing, or medical or other health care;

- 6999 (C) obtain services necessary for health, safety, or welfare;
- 7000 (D) carry out the activities of daily living;
- 7001 (E) manage the adult's own resources; or
- 7002 (F) comprehend the nature and consequences of remaining in a situation of abuse,
- 7003 neglect, or exploitation.
- 7004 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 7005 (2) An actor, including a caretaker, commits abuse of a vulnerable adult if the actor,
- 7006 under circumstances other than those likely to produce death or serious physical injury:
- 7007 (a) causes a vulnerable adult to suffer harm, abuse, or neglect;
- 7008 (b) having the care or custody of a vulnerable adult, causes or permits that vulnerable
- 7009 adult's person or health to be injured, abused, or neglected; or
- 7010 (c) causes or permits a vulnerable adult to be placed in a situation in which the
- 7011 vulnerable adult's person or health is endangered.
- 7012 (3) (a) A violation of Subsection (2):
- 7013 (i) is a class A misdemeanor if done intentionally or knowingly;
- 7014 (ii) is a class B misdemeanor if done recklessly; or
- 7015 (iii) is a class C misdemeanor if done with criminal negligence.
- 7016 (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) that is based on
- 7017 isolation of a vulnerable adult is a third degree felony.
- 7018 (4) (a) It does not constitute a defense to a prosecution for a violation of this section
- 7019 that the actor did not know the age of the vulnerable adult.
- 7020 (b) An adult is not considered abused, neglected, or a vulnerable adult for the reason
- 7021 that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of
- 7022 medical care.
- 7023 (5) If an actor, including a caretaker, violates this section by willfully isolating a
- 7024 vulnerable adult, in addition to the penalties under Subsection (3), the court may require that
- 7025 the actor:
- 7026 (a) undergo appropriate counseling as a condition of the sentence; and
- 7027 (b) pay for the costs of the ordered counseling.
- 7028 Section 239. Section 76-5-205 is amended to read:
- 7029 **76-5-205. Manslaughter -- Penalties.**

7030 (1) (a) As used in this section:

7031 (i) (A) "Aid" means the act of providing the physical means.

7032 (B) "Aid" does not include the withholding or withdrawal of life sustaining treatment
7033 procedures to the extent allowed under [~~Title 75, Chapter 2a, Advance Health Care Directive~~
7034 ~~Act~~] Title 75A, Chapter 3, Health Care Decisions, or any other laws of this state.

7035 (ii) "Practitioner" means an individual currently licensed, registered, or otherwise
7036 authorized by law to administer, dispense, distribute, or prescribe medications or procedures in
7037 the course of professional practice.

7038 (iii) "Provides" means to administer, prescribe, distribute, or dispense.

7039 (b) Terms defined in Section 76-1-101.5 apply to this section.

7040 (2) Except as provided in Subsection (5), an actor commits manslaughter if the actor:

7041 (a) recklessly causes the death of another individual;

7042 (b) intentionally, and with knowledge that another individual intends to commit suicide
7043 or attempt to commit suicide, aids the individual to commit suicide; or

7044 (c) commits a homicide which would be murder, but the offense is reduced in
7045 accordance with Subsection 76-5-203(4).

7046 (3) A violation of Subsection (2) is a felony of the second degree.

7047 (4) (a) In addition to the penalty described under this section or any other section, a
7048 defendant who is convicted of violating this section shall have the defendant's driver license
7049 revoked under Section 53-3-220 if the death of another individual results from driving a motor
7050 vehicle.

7051 (b) The court shall forward the report of the conviction resulting from driving a motor
7052 vehicle to the Driver License Division in accordance with Section 53-3-218.

7053 (5) (a) A practitioner does not violate Subsection (2)(b) if the practitioner provides
7054 medication or a procedure to treat an individual's illness or relieve an individual's pain or
7055 discomfort, regardless of whether the medication or procedure may hasten or increase the risk
7056 of death to the individual to whom the practitioner provides the medication or procedure.

7057 (b) Notwithstanding Subsection (5)(a), a practitioner violates Subsection (2)(b) if the
7058 practitioner intentionally and knowingly provides the medication or procedure to aid the
7059 individual to commit suicide or attempt to commit suicide.

7060 Section 240. Section 76-6-513 is amended to read:

7061 **76-6-513. Unlawful dealing of property by a fiduciary.**
7062 (1) (a) As used in this section:
7063 (i) "Fiduciary" means the same as that term is defined in Section [~~22-1-1~~] [75A-1-201](#).
7064 (ii) "Financial institution" means "depository institution" and "trust company" as
7065 defined in Section [7-1-103](#).
7066 (iii) "Governmental entity" is as defined in Section [63G-7-102](#).
7067 (iv) "Person" does not include a financial institution whose fiduciary functions are
7068 supervised by the Department of Financial Institutions or a federal regulatory agency.
7069 (v) "Property" means the same as that term is defined in Section [76-6-401](#).
7070 (b) Terms defined in Section [76-1-101.5](#) apply to this section.
7071 (2) An actor commits unlawfully dealing with property by a fiduciary if the actor:
7072 (a) deals with property:
7073 (i) that has been entrusted to the actor as a fiduciary, or property of a governmental
7074 entity, public money, or of a financial institution; and
7075 (ii) in a manner which:
7076 (A) the actor knows is a violation of the actor's duty; and
7077 (B) involves substantial risk of loss or detriment to the property owner or to a person
7078 for whose benefit the property was entrusted; or
7079 (b) acting as a fiduciary pledges:
7080 (i) as collateral for a personal loan, or as collateral for the benefit of some party, other
7081 than the owner or the person for whose benefit the property was entrusted, the property that has
7082 been entrusted to the fiduciary; and
7083 (ii) without permission of the owner of the property or some other authorized person.
7084 (3) (a) A violation of Subsection (2)(a) is:
7085 (i) a second degree felony if the:
7086 (A) value of the property is or exceeds \$5,000; or
7087 (B) property is stolen from the person of another;
7088 (ii) a third degree felony if:
7089 (A) the value of the property is or exceeds \$1,500 but is less than \$5,000;
7090 (B) the value of the property is or exceeds \$500 and the actor has been twice before
7091 convicted of any of the following offenses, if each prior offense was committed within 10 years

7092 before the date of the current conviction or the date of the offense upon which the current
7093 conviction is based and at least one of those convictions is for a class A misdemeanor:

- 7094 (I) any theft, any robbery, or any burglary with intent to commit theft;
- 7095 (II) any offense under Part 5, Fraud; or
- 7096 (III) any attempt to commit any offense under Subsection (3)(a)(ii)(B)(I) or (II);
- 7097 (C) the value of property is or exceeds \$500 but is less than \$1,500; or
- 7098 (D) the actor has been previously convicted of a felony violation of any of the offenses
7099 listed in Subsections (3)(a)(ii)(B)(I) through (3)(a)(ii)(B)(III), if the prior offense was
7100 committed within 10 years before the date of the current conviction or the date of the offense
7101 upon which the current conviction is based;

- 7102 (iii) a class A misdemeanor if:
 - 7103 (A) the value of the property stolen is or exceeds \$500 but is less than \$1,500; or
 - 7104 (B) the actor has been twice before convicted of any of the offenses listed in
7105 Subsections (3)(a)(ii)(B)(I) through (3)(a)(ii)(B)(III), if each prior offense was committed
7106 within 10 years before the date of the current conviction or the date of the offense upon which
7107 the current conviction is based; or
 - 7108 (iv) a class B misdemeanor if the value of the property stolen is less than \$500 and the
7109 theft is not an offense under Subsection (3)(a)(iii)(B).
- 7110 (b) A violation of Subsection (2)(b) is:
 - 7111 (i) a second degree felony if the value of the property wrongfully pledged is or exceeds
7112 \$5,000;
 - 7113 (ii) a third degree felony if the value of the property wrongfully pledged is or exceeds
7114 \$1,500 but is less than \$5,000;
 - 7115 (iii) a class A misdemeanor if the value of the property is or exceeds \$500, but is less
7116 than \$1,500 or the actor has been twice before convicted of theft, robbery, burglary with intent
7117 to commit theft, or unlawful dealing with property by a fiduciary; or
 - 7118 (iv) a class B misdemeanor if the value of the property is less than \$500.
- 7119 (4) This section may not be construed to impose criminal or civil liability on any law
7120 enforcement officer acting within the scope of a criminal investigation.
- 7121 (5) The forfeiture of property under this section, including any seizure and disposition
7122 of the property and any related judicial or administrative proceeding, shall be conducted in

7123 accordance with Title 77, Chapter 11a, Seizure of Property and Contraband, through Chapter
7124 11c, Retention of Evidence.

7125 Section 241. **Repealer.**

7126 This bill repeals:

7127 Section **22-3-101, Title.**

7128 Section **22-5-1, Title.**

7129 Section **25-6-501, Title.**

7130 Section **75-2a-101, Title.**

7131 Section **75-5a-101, Short title.**

7132 Section **75-9-101, Title.**

7133 Section **75-10-101, Title.**

7134 Section **75-11-101, Title.**

7135 Section 242. **Effective date.**

7136 This bill takes effect on September 1, 2024.