

SB0079S01 compared with SB0079

~~text~~ shows text that was in SB0079 but was deleted in SB0079S01.

inserted text shows text that was not in SB0079 but was inserted into SB0079S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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: {} _____

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

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- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ None }~~ This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ENACTS:

75A-1-101, Utah Code Annotated 1953

75A-1-102, Utah Code Annotated 1953

75A-2-101, Utah Code Annotated 1953

75A-4-101, Utah Code Annotated 1953

75A-5-101, Utah Code Annotated 1953

75A-6-101, Utah Code Annotated 1953

75A-7-101, Utah Code Annotated 1953

75A-8-101, Utah Code Annotated 1953

75B-1-101, Utah Code Annotated 1953

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75B-1-102, Utah Code Annotated 1953

75B-1-201, Utah Code Annotated 1953

75B-1-301, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

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

75A-1-202, (Renumbered from 22-1-11, as last amended by Laws of Utah 2011, Chapter 297)

75A-1-203, (Renumbered from 22-1-2, Utah Code Annotated 1953)

75A-1-204, (Renumbered from 22-1-4, Utah Code Annotated 1953)

75A-1-205, (Renumbered from 22-1-5, Utah Code Annotated 1953)

75A-1-206, (Renumbered from 22-1-6, Utah Code Annotated 1953)

75A-1-207, (Renumbered from 22-1-7, Utah Code Annotated 1953)

75A-1-208, (Renumbered from 22-1-8, Utah Code Annotated 1953)

75A-1-209, (Renumbered from 22-1-9, Utah Code Annotated 1953)

75A-1-210, (Renumbered from 22-1-10, Utah Code Annotated 1953)

~~75A-2-101~~ 75A-2-102, (Renumbered from 75-9-102, as enacted by Laws of Utah 2016, Chapter 256)

~~75A-2-102~~ 75A-2-103, (Renumbered from 75-9-103, as enacted by Laws of Utah 2016, Chapter 256)

~~75A-2-103~~ 75A-2-104, (Renumbered from 75-9-104, as enacted by Laws of Utah 2016, Chapter 256)

~~75A-2-104~~ 75A-2-105, (Renumbered from 75-9-105, as last amended by Laws of Utah 2022, Chapter 430)

~~75A-2-105~~ 75A-2-106, (Renumbered from 75-9-106, as enacted by Laws of Utah 2016, Chapter 256)

~~75A-2-106~~ 75A-2-107, (Renumbered from 75-9-107, as enacted by Laws of Utah 2016, Chapter 256)

~~75A-2-107~~ 75A-2-108, (Renumbered from 75-9-108, as last amended by Laws of Utah 2022, Chapter 138)

~~75A-2-108~~ 75A-2-109, (Renumbered from 75-9-109, as enacted by Laws of Utah 2016, Chapter 256)

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~~{75A-2-109}~~75A-2-110, (Renumbered from 75-9-110, as enacted by Laws of Utah 2016, Chapter 256)

~~{75A-2-110}~~75A-2-111, (Renumbered from 75-9-111, as enacted by Laws of Utah 2016, Chapter 256)

~~{75A-2-111}~~75A-2-112, (Renumbered from 75-9-112, as enacted by Laws of Utah 2016, Chapter 256)

~~{75A-2-112}~~75A-2-113, (Renumbered from 75-9-113, as enacted by Laws of Utah 2016, Chapter 256)

~~{75A-2-113}~~75A-2-114, (Renumbered from 75-9-114, as enacted by Laws of Utah 2016, Chapter 256)

~~{75A-2-114}~~75A-2-115, (Renumbered from 75-9-115, as enacted by Laws of Utah 2016, Chapter 256)

~~{75A-2-115}~~75A-2-116, (Renumbered from 75-9-116, as enacted by Laws of Utah 2016, Chapter 256)

~~{75A-2-116}~~75A-2-117, (Renumbered from 75-9-117, as enacted by Laws of Utah 2016, Chapter 256)

~~{75A-2-117}~~75A-2-118, (Renumbered from 75-9-118, as enacted by Laws of Utah 2016, Chapter 256)

~~{75A-2-118}~~75A-2-119, (Renumbered from 75-9-119, as enacted by Laws of Utah 2016, Chapter 256)

~~{75A-2-119}~~75A-2-120, (Renumbered from 75-9-120, as enacted by Laws of Utah 2016, Chapter 256)

~~{75A-2-120}~~75A-2-121, (Renumbered from 75-9-121, as enacted by Laws of Utah 2016, Chapter 256)

~~{75A-2-121}~~75A-2-122, (Renumbered from 75-9-122, as enacted by Laws of Utah 2016, Chapter 256)

~~{75A-2-122}~~75A-2-123, (Renumbered from 75-9-123, as enacted by Laws of Utah 2016, Chapter 256)

75A-2-201, (Renumbered from 75-9-201, as enacted by Laws of Utah 2016, Chapter 256)

75A-2-202, (Renumbered from 75-9-202, as enacted by Laws of Utah 2016, Chapter

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75A-2-203, (Renumbered from 75-9-203, as enacted by Laws of Utah 2016, Chapter 256)

75A-2-204, (Renumbered from 75-9-204, as enacted by Laws of Utah 2016, Chapter 256)

75A-2-205, (Renumbered from 75-9-205, as enacted by Laws of Utah 2016, Chapter 256)

75A-2-206, (Renumbered from 75-9-206, as enacted by Laws of Utah 2016, Chapter 256)

75A-2-207, (Renumbered from 75-9-207, as enacted by Laws of Utah 2016, Chapter 256)

75A-2-208, (Renumbered from 75-9-208, as enacted by Laws of Utah 2016, Chapter 256)

75A-2-209, (Renumbered from 75-9-209, as enacted by Laws of Utah 2016, Chapter 256)

75A-2-210, (Renumbered from 75-9-210, as enacted by Laws of Utah 2016, Chapter 256)

75A-2-211, (Renumbered from 75-9-211, as enacted by Laws of Utah 2016, Chapter 256)

75A-2-212, (Renumbered from 75-9-212, as enacted by Laws of Utah 2016, Chapter 256)

75A-2-213, (Renumbered from 75-9-213, as enacted by Laws of Utah 2016, Chapter 256)

75A-2-214, (Renumbered from 75-9-214, as enacted by Laws of Utah 2016, Chapter 256)

75A-2-215, (Renumbered from 75-9-215, as enacted by Laws of Utah 2016, Chapter 256)

75A-2-216, (Renumbered from 75-9-216, as enacted by Laws of Utah 2016, Chapter 256)

75A-2-217, (Renumbered from 75-9-217, as enacted by Laws of Utah 2016, Chapter 256)

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- 75A-2-301**, (Renumbered from 75-9-301, as enacted by Laws of Utah 2016, Chapter 256)
- 75A-2-302**, (Renumbered from 75-9-302, as enacted by Laws of Utah 2016, Chapter 256)
- 75A-2-401**, (Renumbered from 75-9-401, as enacted by Laws of Utah 2016, Chapter 256)
- 75A-2-402**, (Renumbered from 75-9-402, as enacted by Laws of Utah 2016, Chapter 256)
- 75A-2-403**, (Renumbered from 75-9-403, as enacted by Laws of Utah 2016, Chapter 256)
- 75A-3-101**, (Renumbered from 75-2a-103, as last amended by Laws of Utah 2023, Chapters 139, 330)
- 75A-3-102**, (Renumbered from 75-2a-102, as last amended by Laws of Utah 2008, Chapter 107)
- 75A-3-103**, (Renumbered from 75-2a-122, as last amended by Laws of Utah 2008, Chapter 107)
- 75A-3-104**, (Renumbered from 75-2a-124, as last amended by Laws of Utah 2008, Chapter 107)
- 75A-3-105**, (Renumbered from 75-2a-125, as enacted by Laws of Utah 2008, Chapter 107)
- 75A-3-106**, (Renumbered from 75-2a-106, as last amended by Laws of Utah 2023, Chapter 330)
- 75A-3-107**, (Renumbered from 75-2a-120, as enacted by Laws of Utah 2007, Chapter 31)
- 75A-3-201**, (Renumbered from 75-2a-104, as last amended by Laws of Utah 2009, Chapter 99)
- 75A-3-202**, (Renumbered from 75-2a-109, as last amended by Laws of Utah 2009, Chapter 99)
- 75A-3-203**, (Renumbered from 75-2a-108, as last amended by Laws of Utah 2008, Chapter 107)
- 75A-3-204**, (Renumbered from 75-2a-110, as last amended by Laws of Utah 2008,

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Chapter 107)

75A-3-205, (Renumbered from 75-2a-112, as last amended by Laws of Utah 2008, Chapter 107)

75A-3-206, (Renumbered from 75-2a-111, as last amended by Laws of Utah 2008, Chapter 107)

75A-3-207, (Renumbered from 75-2a-115, as last amended by Laws of Utah 2008, Chapter 107)

75A-3-208, (Renumbered from 75-2a-113, as last amended by Laws of Utah 2008, Chapter 107)

75A-3-301, (Renumbered from 75-2a-107, as last amended by Laws of Utah 2008, Chapter 107)

75A-3-302, (Renumbered from 75-2a-105, as last amended by Laws of Utah 2008, Chapter 107)

75A-3-303, (Renumbered from 75-2a-117, as last amended by Laws of Utah 2009, Chapter 99)

75A-3-304, (Renumbered from 75-2a-116, as enacted by Laws of Utah 2007, Chapter 31)

75A-3-305, (Renumbered from 75-2a-119, as last amended by Laws of Utah 2008, Chapter 107)

75A-3-306, (Renumbered from 75-2a-123, as last amended by Laws of Utah 2008, Chapter 107)

75A-3-307, (Renumbered from 75-2a-114, as last amended by Laws of Utah 2008, Chapter 107)

75A-3-308, (Renumbered from 75-2a-118, as last amended by Laws of Utah 2008, Chapter 107)

75A-3-309, (Renumbered from 75-2a-121, as last amended by Laws of Utah 2008, Chapter 107)

~~75A-4-101~~75A-4-102, (Renumbered from 75-10-102, as enacted by Laws of Utah 2017, Chapter 125)

~~75A-4-102~~75A-4-103, (Renumbered from 75-10-103, as enacted by Laws of Utah 2017, Chapter 125)

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~~75A-4-103~~75A-4-104, (Renumbered from 75-10-104, as enacted by Laws of Utah 2017, Chapter 125)

75A-4-201, (Renumbered from 75-10-201, as last amended by Laws of Utah 2018, Chapter 244)

75A-4-202, (Renumbered from 75-10-202, as enacted by Laws of Utah 2017, Chapter 125)

75A-4-203, (Renumbered from 75-10-203, as enacted by Laws of Utah 2017, Chapter 125)

75A-4-204, (Renumbered from 75-10-204, as enacted by Laws of Utah 2017, Chapter 125)

75A-4-205, (Renumbered from 75-10-205, as enacted by Laws of Utah 2017, Chapter 125)

75A-4-206, (Renumbered from 75-10-206, as enacted by Laws of Utah 2017, Chapter 125)

75A-4-301, (Renumbered from 75-10-301, as enacted by Laws of Utah 2017, Chapter 125)

75A-4-302, (Renumbered from 75-10-302, as enacted by Laws of Utah 2017, Chapter 125)

75A-4-303, (Renumbered from 75-10-303, as enacted by Laws of Utah 2017, Chapter 125)

75A-4-304, (Renumbered from 75-10-304, as enacted by Laws of Utah 2017, Chapter 125)

75A-4-305, (Renumbered from 75-10-305, as last amended by Laws of Utah 2019, Chapter 153)

75A-4-306, (Renumbered from 75-10-306, as enacted by Laws of Utah 2017, Chapter 125)

75A-4-307, (Renumbered from 75-10-307, as enacted by Laws of Utah 2017, Chapter 125)

75A-4-308, (Renumbered from 75-10-308, as enacted by Laws of Utah 2017, Chapter 125)

75A-4-309, (Renumbered from 75-10-309, as enacted by Laws of Utah 2017, Chapter

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75A-4-310, (Renumbered from 75-10-310, as enacted by Laws of Utah 2017, Chapter 125)

75A-4-311, (Renumbered from 75-10-311, as enacted by Laws of Utah 2017, Chapter 125)

75A-4-312, (Renumbered from 75-10-312, as enacted by Laws of Utah 2017, Chapter 125)

75A-4-313, (Renumbered from 75-10-313, as enacted by Laws of Utah 2017, Chapter 125)

75A-4-314, (Renumbered from 75-10-314, as enacted by Laws of Utah 2017, Chapter 125)

75A-4-401, (Renumbered from 75-10-401, as enacted by Laws of Utah 2017, Chapter 125)

75A-4-402, (Renumbered from 75-10-402, as enacted by Laws of Utah 2017, Chapter 125)

75A-4-403, (Renumbered from 75-10-403, as enacted by Laws of Utah 2017, Chapter 125)

75A-4-404, (Renumbered from 75-10-404, as enacted by Laws of Utah 2017, Chapter 125)

75A-4-405, (Renumbered from 75-10-405, as enacted by Laws of Utah 2017, Chapter 125)

75A-4-406, (Renumbered from 75-10-406, as enacted by Laws of Utah 2017, Chapter 125)

75A-4-407, (Renumbered from 75-10-407, as enacted by Laws of Utah 2017, Chapter 125)

75A-4-501, (Renumbered from 75-10-501, as enacted by Laws of Utah 2017, Chapter 125)

75A-4-502, (Renumbered from 75-10-502, as enacted by Laws of Utah 2017, Chapter 125)

75A-4-503, (Renumbered from 75-10-503, as enacted by Laws of Utah 2017, Chapter 125)

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75A-4-601, (Renumbered from 75-10-601, as enacted by Laws of Utah 2017, Chapter 125)

75A-4-602, (Renumbered from 75-10-602, as enacted by Laws of Utah 2017, Chapter 125)

75A-4-603, (Renumbered from 75-10-603, as enacted by Laws of Utah 2017, Chapter 125)

~~**75A-5-101**~~**75A-5-102**, (Renumbered from 22-3-102, as last amended by Laws of Utah 2020, Chapter 348)

~~**75A-5-102**~~**75A-5-103**, (Renumbered from 22-3-103, as repealed and reenacted by Laws of Utah 2019, Chapter 495)

~~**75A-5-103**~~**75A-5-104**, (Renumbered from 22-3-104, as last amended by Laws of Utah 2020, Chapter 348)

75A-5-201, (Renumbered from 22-3-201, as last amended by Laws of Utah 2020, Chapter 348)

75A-5-202, (Renumbered from 22-3-202, as last amended by Laws of Utah 2020, Chapter 348)

75A-5-203, (Renumbered from 22-3-203, as last amended by Laws of Utah 2020, Chapter 348)

75A-5-301, (Renumbered from 22-3-301, as last amended by Laws of Utah 2020, Chapter 348)

75A-5-302, (Renumbered from 22-3-302, as last amended by Laws of Utah 2020, Chapter 348)

75A-5-303, (Renumbered from 22-3-303, as last amended by Laws of Utah 2020, Chapter 348)

75A-5-304, (Renumbered from 22-3-304, as last amended by Laws of Utah 2020, Chapter 348)

75A-5-305, (Renumbered from 22-3-305, as last amended by Laws of Utah 2020, Chapter 348)

75A-5-306, (Renumbered from 22-3-306, as enacted by Laws of Utah 2019, Chapter 495)

75A-5-307, (Renumbered from 22-3-307, as last amended by Laws of Utah 2020,

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Chapter 348)

75A-5-308, (Renumbered from 22-3-308, as last amended by Laws of Utah 2020,
Chapter 348)

75A-5-309, (Renumbered from 22-3-309, as last amended by Laws of Utah 2020,
Chapter 348)

75A-5-401, (Renumbered from 22-3-401, as last amended by Laws of Utah 2020,
Chapter 348)

75A-5-402, (Renumbered from 22-3-402, as last amended by Laws of Utah 2020,
Chapter 348)

75A-5-403, (Renumbered from 22-3-403, as last amended by Laws of Utah 2020,
Chapter 348)

75A-5-404, (Renumbered from 22-3-404, as last amended by Laws of Utah 2020,
Chapter 348)

75A-5-405, (Renumbered from 22-3-405, as last amended by Laws of Utah 2020,
Chapter 348)

75A-5-406, (Renumbered from 22-3-406, as repealed and reenacted by Laws of Utah
2019, Chapter 495)

75A-5-407, (Renumbered from 22-3-407, as last amended by Laws of Utah 2020,
Chapter 348)

75A-5-408, (Renumbered from 22-3-408, as repealed and reenacted by Laws of Utah
2019, Chapter 495)

75A-5-409, (Renumbered from 22-3-409, as last amended by Laws of Utah 2020,
Chapter 348)

75A-5-410, (Renumbered from 22-3-410, as repealed and reenacted by Laws of Utah
2019, Chapter 495)

75A-5-411, (Renumbered from 22-3-411, as last amended by Laws of Utah 2020,
Chapter 348)

75A-5-412, (Renumbered from 22-3-412, as last amended by Laws of Utah 2020,
Chapter 348)

75A-5-413, (Renumbered from 22-3-413, as repealed and reenacted by Laws of Utah
2019, Chapter 495)

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- 75A-5-414**, (Renumbered from 22-3-414, as last amended by Laws of Utah 2020, Chapter 348)
- 75A-5-415**, (Renumbered from 22-3-415, as last amended by Laws of Utah 2020, Chapter 348)
- 75A-5-416**, (Renumbered from 22-3-416, as enacted by Laws of Utah 2019, Chapter 495)
- 75A-5-501**, (Renumbered from 22-3-501, as repealed and reenacted by Laws of Utah 2019, Chapter 495)
- 75A-5-502**, (Renumbered from 22-3-502, as repealed and reenacted by Laws of Utah 2019, Chapter 495)
- 75A-5-503**, (Renumbered from 22-3-503, as repealed and reenacted by Laws of Utah 2019, Chapter 495)
- 75A-5-504**, (Renumbered from 22-3-504, as repealed and reenacted by Laws of Utah 2019, Chapter 495)
- 75A-5-505**, (Renumbered from 22-3-505, as last amended by Laws of Utah 2020, Chapter 348)
- 75A-5-506**, (Renumbered from 22-3-506, as last amended by Laws of Utah 2020, Chapter 348)
- 75A-5-507**, (Renumbered from 22-3-507, as last amended by Laws of Utah 2020, Chapter 348)
- 75A-5-601**, (Renumbered from 22-3-601, as last amended by Laws of Utah 2020, Chapter 348)
- 75A-5-602**, (Renumbered from 22-3-602, as last amended by Laws of Utah 2020, Chapter 348)
- 75A-5-701**, (Renumbered from 22-3-701, as last amended by Laws of Utah 2020, Chapter 348)
- 75A-5-702**, (Renumbered from 22-3-702, as last amended by Laws of Utah 2020, Chapter 348)
- 75A-5-703**, (Renumbered from 22-3-703, as last amended by Laws of Utah 2020, Chapter 348)
- 75A-5-801**, (Renumbered from 22-3-801, as last amended by Laws of Utah 2020,

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75A-5-802, (Renumbered from 22-3-802, as enacted by Laws of Utah 2019, Chapter 495)

75A-5-803, (Renumbered from 22-3-803, as last amended by Laws of Utah 2020, Chapter 348)

75A-5-804, (Renumbered from 22-3-804, as last amended by Laws of Utah 2020, Chapter 348)

~~{75A-6-101}~~**75A-6-102**, (Renumbered from 75-11-102, as enacted by Laws of Utah 2017, Chapter 16)

~~{75A-6-102}~~**75A-6-103**, (Renumbered from 75-11-103, as enacted by Laws of Utah 2017, Chapter 16)

~~{75A-6-103}~~**75A-6-104**, (Renumbered from 75-11-104, as enacted by Laws of Utah 2017, Chapter 16)

~~{75A-6-104}~~**75A-6-105**, (Renumbered from 75-11-105, as enacted by Laws of Utah 2017, Chapter 16)

~~{75A-6-105}~~**75A-6-106**, (Renumbered from 75-11-106, as enacted by Laws of Utah 2017, Chapter 16)

~~{75A-6-106}~~**75A-6-107**, (Renumbered from 75-11-107, as enacted by Laws of Utah 2017, Chapter 16)

~~{75A-6-107}~~**75A-6-108**, (Renumbered from 75-11-108, as enacted by Laws of Utah 2017, Chapter 16)

~~{75A-6-108}~~**75A-6-109**, (Renumbered from 75-11-109, as enacted by Laws of Utah 2017, Chapter 16)

~~{75A-6-109}~~**75A-6-110**, (Renumbered from 75-11-110, as enacted by Laws of Utah 2017, Chapter 16)

~~{75A-6-110}~~**75A-6-111**, (Renumbered from 75-11-111, as enacted by Laws of Utah 2017, Chapter 16)

~~{75A-6-111}~~**75A-6-112**, (Renumbered from 75-11-112, as enacted by Laws of Utah 2017, Chapter 16)

~~{75A-6-112}~~**75A-6-113**, (Renumbered from 75-11-113, as enacted by Laws of Utah 2017, Chapter 16)

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~~{75A-6-113}~~75A-6-114, (Renumbered from 75-11-114, as last amended by Laws of Utah 2018, Chapter 27)

~~{75A-6-114}~~75A-6-115, (Renumbered from 75-11-115, as enacted by Laws of Utah 2017, Chapter 16)

~~{75A-6-115}~~75A-6-116, (Renumbered from 75-11-116, as enacted by Laws of Utah 2017, Chapter 16)

~~{75A-6-116}~~75A-6-117, (Renumbered from 75-11-117, as enacted by Laws of Utah 2017, Chapter 16)

~~{75A-6-117}~~75A-6-118, (Renumbered from 75-11-118, as enacted by Laws of Utah 2017, Chapter 16)

~~{75A-7-101}~~75A-7-102, (Renumbered from 22-5-2, as last amended by Laws of Utah 1995, Chapter 20)

~~{75A-7-102}~~75A-7-103, (Renumbered from 22-5-3, as enacted by Laws of Utah 1961, Chapter 46)

~~{75A-7-103}~~75A-7-104, (Renumbered from 22-5-4, as last amended by Laws of Utah 1995, Chapter 20)

~~{75A-7-104}~~75A-7-105, (Renumbered from 22-5-5, as last amended by Laws of Utah 1995, Chapter 20)

~~{75A-7-105}~~75A-7-106, (Renumbered from 22-5-6, as last amended by Laws of Utah 1995, Chapter 20)

~~{75A-7-106}~~75A-7-107, (Renumbered from 22-5-7, as enacted by Laws of Utah 1961, Chapter 46)

~~{75A-7-107}~~75A-7-108, (Renumbered from 22-5-8, as last amended by Laws of Utah 1995, Chapter 20)

~~{75A-7-108}~~75A-7-109, (Renumbered from 22-5-9, as last amended by Laws of Utah 1995, Chapter 20)

~~{75A-7-109}~~75A-7-110, (Renumbered from 22-5-10, as enacted by Laws of Utah 1961, Chapter 46)

~~{75A-7-110}~~75A-7-111, (Renumbered from 22-5-11, as enacted by Laws of Utah 1961, Chapter 46)

~~{75A-8-101}~~75A-8-102, (Renumbered from 75-5a-102, as enacted by Laws of Utah

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1990, Chapter 272)

~~{75A-8-102}~~75A-8-103, (Renumbered from 75-5a-103, as enacted by Laws of Utah
1990, Chapter 272)

~~{75A-8-103}~~75A-8-104, (Renumbered from 75-5a-104, as enacted by Laws of Utah
1990, Chapter 272)

~~{75A-8-104}~~75A-8-105, (Renumbered from 75-5a-105, as enacted by Laws of Utah
1990, Chapter 272)

~~{75A-8-105}~~75A-8-106, (Renumbered from 75-5a-106, as enacted by Laws of Utah
1990, Chapter 272)

~~{75A-8-106}~~75A-8-107, (Renumbered from 75-5a-107, as enacted by Laws of Utah
1990, Chapter 272)

~~{75A-8-107}~~75A-8-108, (Renumbered from 75-5a-108, as enacted by Laws of Utah
1990, Chapter 272)

~~{75A-8-108}~~75A-8-109, (Renumbered from 75-5a-109, as enacted by Laws of Utah
1990, Chapter 272)

~~{75A-8-109}~~75A-8-110, (Renumbered from 75-5a-110, as last amended by Laws of
Utah 2016, Chapter 15)

~~{75A-8-110}~~75A-8-111, (Renumbered from 75-5a-111, as enacted by Laws of Utah
1990, Chapter 272)

~~{75A-8-111}~~75A-8-112, (Renumbered from 75-5a-112, as enacted by Laws of Utah
1990, Chapter 272)

~~{75A-8-112}~~75A-8-113, (Renumbered from 75-5a-113, as enacted by Laws of Utah
1990, Chapter 272)

~~{75A-8-113}~~75A-8-114, (Renumbered from 75-5a-114, as enacted by Laws of Utah
1990, Chapter 272)

~~{75A-8-114}~~75A-8-115, (Renumbered from 75-5a-115, as enacted by Laws of Utah
1990, Chapter 272)

~~{75A-8-115}~~75A-8-116, (Renumbered from 75-5a-116, as enacted by Laws of Utah
1990, Chapter 272)

~~{75A-8-116}~~75A-8-117, (Renumbered from 75-5a-117, as enacted by Laws of Utah
1990, Chapter 272)

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~~{75A-8-117}~~75A-8-118, (Renumbered from 75-5a-118, as enacted by Laws of Utah 1990, Chapter 272)

~~{75A-8-118}~~75A-8-119, (Renumbered from 75-5a-119, as last amended by Laws of Utah 2005, Chapter 71)

~~{75A-8-119}~~75A-8-120, (Renumbered from 75-5a-120, as enacted by Laws of Utah 1990, Chapter 272)

~~{75A-8-120}~~75A-8-121, (Renumbered from 75-5a-121, as enacted by Laws of Utah 1990, Chapter 272)

~~{75A-8-121}~~75A-8-122, (Renumbered from 75-5a-122, as enacted by Laws of Utah 1990, Chapter 272)

~~{75A-8-122}~~75A-8-123, (Renumbered from 75-5a-123, as enacted by Laws of Utah 1990, Chapter 272)

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

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

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

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

REPEALS:

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

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

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

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

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

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

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

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

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

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

26B-6-201. Definitions.

As used in this part:

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

(2) "Abuse" means:

(a) knowingly or intentionally:

(i) attempting to cause harm;

(ii) causing harm; or

(iii) placing another in fear of harm;

(b) unreasonable or inappropriate use of physical restraint, medication, or isolation that causes or is likely to cause harm to a vulnerable adult;

(c) emotional or psychological abuse;

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

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

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

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

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

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

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

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

(7) "Caretaker" means a person or public institution that is entrusted with or assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing, supervision,

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medical or other health care, resource management, or other necessities for pecuniary gain, by contract, or as a result of friendship, or who is otherwise in a position of trust and confidence with a vulnerable adult, including a relative, a household member, an attorney-in-fact, a neighbor, a person who is employed or who provides volunteer work, a court-appointed or voluntary guardian, or a person who contracts or is under court order to provide care.

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

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

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

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

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

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

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

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

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

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

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

(i) engage in the conduct; or

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

(16) "Exploitation" means an offense described in Section 76-5-111.3, 76-5-111.4, or

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76-5b-202.

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

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

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

(20) (a) "Isolation" means knowingly or intentionally preventing a vulnerable adult from having contact with another person, unless the restriction of personal rights is authorized by court order, by:

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

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

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

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

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

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

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

(22) (a) "Neglect" means:

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

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assistance; or

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

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

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

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

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

(vi) abandonment by a caretaker.

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

(23) "Physical injury" includes the damage and conditions described in Section 76-5-111.

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

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

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

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

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

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

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

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impairment; or

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

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

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

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

(a) provide personal protection;

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

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

(d) carry out the activities of daily living;

(e) manage the adult's own financial resources; or

(f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

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

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

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

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

(1) the person designated:

(a) in a written instrument, excluding a power of attorney that terminates at death under Section [75-9-110] ~~{75A-2-109}~~75A-2-110, if the written instrument is acknowledged before a Notary Public or executed with the same formalities required of a will under Section 75-2-502; or

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

(2) the surviving, legally recognized spouse of the decedent, unless a personal representative was nominated by the decedent subsequent to the marriage, in which case the

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personal representative shall take priority over the spouse;

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

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

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

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

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

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

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

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

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

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

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

(10) in the absence of any person under Subsections (1) through (9), any other person willing to assume the responsibilities to act and arrange the final disposition of the decedent's remains, including the personal representative of the decedent's estate or the funeral service

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director with custody of the body, after attesting in writing that a good faith effort has been made to no avail to contact the individuals referred to in Subsections (1) through (9).

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

75-1-201. Title definitions.

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

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

(2) "Application" means a written request to the registrar for an order of informal probate or appointment under ~~[Title 75, Chapter 3, Part 3, Informal Probate and Appointment Proceedings]~~ Chapter 3, Part 3, Informal Probate and Appointment Proceedings.

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

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

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

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

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

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

(ii) an account with POD designation~~[-, or];~~

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

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

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

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

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

(ii) a person in whose favor a power of attorney or a power held in any individual,

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fiduciary, or representative capacity is exercised.

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

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

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

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

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

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

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

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

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

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

~~[(11)]~~ (12) "Devisee" means any person designated in a will to receive a devise. For the purposes of ~~[Title 75, Chapter 3, Probate of Wills and Administration]~~ Chapter 3, Probate

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of Wills and Administration, in the case of a devise to an existing trust or trustee, or to a trustee in trust described by will, the trust or trustee is the devisee, and the beneficiaries are not devisees.

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

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

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

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

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

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

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

~~[(19)]~~ 20 "General personal representative" does not include a special administrator.

~~[(19)]~~ ~~[(20)]~~ 21 "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with POD designation, security registered in beneficiary form (TOD), pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.

~~[(20)]~~ ~~[(21)]~~ 22 (a) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, or by written

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instrument as provided in Section 75-5-202.5~~[, but excludes one]~~.

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

~~[(21)]~~ ~~(~~22~~;23)~~ "Heirs," except as controlled by Section 75-2-711, means persons, including the surviving spouse and state, who are entitled under the statutes of intestate succession to the property of a decedent.

~~[(22)]~~ ~~(~~23~~;24)~~ "Incapacitated" ~~[or "incapacity" is measured by functional limitations and]~~ means a judicial determination after proof by clear and convincing evidence that an adult's ability to do the following is impaired to the extent that the individual lacks the ability, even with appropriate technological assistance, to meet the essential requirements for financial protection or physical health, safety, or self-care:

- (a) receive and evaluate information;
- (b) make and communicate decisions; or
- (c) provide for necessities such as food, shelter, clothing, health care, or safety.

~~(~~24~~;25)~~ "Incapacity" means incapacitated.

~~[(23)]~~ ~~(~~25~~;26)~~ "Informal proceedings" mean ~~[those]~~ a proceeding conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.

~~[(24)]~~ ~~(~~26~~;27)~~ (a) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person. ~~[It also]~~ The meaning of interested person as it relates to particular persons may vary from time to time and is determined according to the particular purposes of, and matter involved in, any proceeding.

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

~~[(25)]~~ ~~(~~27~~;28)~~ "Issue" ~~[of a person]~~ means a descendant ~~[as defined in Subsection (9)]~~ of an individual.

~~[(26)]~~ ~~(~~28~~;29)~~ (a) "Joint tenants with the right of survivorship" ~~[and "community property with the right of survivorship"]~~ includes coowners of property held under

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circumstances that entitle one or more to the whole of the property on the death of the other [~~or others, but excludes~~].

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

~~[(27)]~~ ~~(~~29~~~~30~~)~~ "Lease" includes an oil, gas, or other mineral lease.

~~[(28)]~~ ~~(~~30~~~~31~~)~~ "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

~~[(29)]~~ ~~(~~31~~~~32~~)~~ "Minor" means a person who is under 18 years [~~of age~~] old.

~~(~~32~~~~33~~)~~ "Minor protected person" means a minor for whom a conservator has been appointed because of minority.

~~(~~33~~~~34~~)~~ "Minor ward" means a minor for whom a guardian has been appointed solely because of minority.

~~[(30)]~~ ~~(~~34~~~~35~~)~~ "Mortgage" means any conveyance, agreement, or arrangement in which property is used as security.

~~[(31)]~~ ~~(~~35~~~~36~~)~~ "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of [~~his~~] the decedent's death.

~~[(32)]~~ ~~(~~36~~~~37~~)~~ "Organization" includes a corporation, limited liability company, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity.

~~[(33)]~~ ~~(~~37~~~~38~~)~~ (a) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this [~~code~~] title by intestate succession from the child whose relationship is in question [~~and excludes~~].

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

~~[(34)]~~ ~~(~~38~~~~39~~)~~ "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

~~[(35)]~~ ~~(~~39~~~~40~~)~~ "Person" means an individual or an organization.

~~[(36)]~~ ~~(~~40~~~~41~~)~~ [~~(a)~~] "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially

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the same function under the law governing their status.

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

~~[(37) ~~(41)~~42~~ "Petition" means a written request to the court for an order after notice.

~~[(38) ~~(42)~~43~~ "Proceeding" includes action at law and suit in equity.

~~[(39) ~~(43)~~44~~ "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

~~[(40) ~~(44)~~45~~ "Protected person" means a person for whom a conservator has been appointed. [A "minor protected person" means a minor for whom a conservator has been appointed because of minority].

~~[(41) ~~(45)~~46~~ "Protective proceeding" means a proceeding described in Section 75-5-401.

~~[(42) ~~(46)~~47~~ "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~[(43) ~~(47)~~48~~ "Registrar" ~~[refers to]~~ means the official of the court designated to perform the functions of registrar as provided in Section 75-1-307.

~~[(44) ~~(48)~~49~~ "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest, or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate, and, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

~~[(45) ~~(49)~~50~~ "Settlement," in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

~~[(46) ~~(50)~~51~~ "Sign" means, with present intent to authenticate or adopt a record other than a will:

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

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

~~[(47) ~~(51)~~52~~ "Special administrator" means a personal representative as described in Sections 75-3-614 through 75-3-618.

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~~[(48)]~~ ~~(~~52~~;53)~~ "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or insular possession subject to the jurisdiction of the United States, or a Native American tribe or band recognized by federal law or formally acknowledged by a state.

~~[(49)]~~ ~~(~~53~~;54)~~ "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

~~[(50)]~~ ~~(~~54~~;55)~~ "Successors" means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or this title.

~~[(51)]~~ ~~(~~55~~;56)~~ "Supervised administration" ~~[refers to]~~ means the proceedings described in ~~[Title 75, Chapter 3, Part 5, Supervised Administration]~~ Chapter 3, Part 5, Supervised Administration.

~~[(52)]~~ ~~(~~56~~;57)~~ (a) ~~["Survive," except for purposes of Part 3 of Article VI, Uniform TOD Security Registration Act, means]~~ "Survive" means, except for Chapter 6, Part 3, Uniform Transfer on Death Security Registration Act, that an individual has neither predeceased an event, including the death of another individual, nor is considered to have predeceased an event under Section 75-2-104 or 75-2-702. ~~[The term]~~

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

~~[(53)]~~ ~~(~~57~~;58)~~ "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

~~[(54)]~~ ~~(~~58~~;59)~~ "Testator" includes an individual of either sex.

~~[(55)]~~ ~~(~~59~~;60)~~ (a) "Trust" includes:

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

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

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

(b) "Trust" does not include:

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- (i) a constructive trust;
 - (ii) a resulting trust;
 - (iii) a conservatorship;
 - (iv) a personal representative;
 - (v) a trust account as defined in ~~Title 75, Chapter 6, Nonprobate Transfers~~,
custodial arrangements pursuant to any] Chapter 6, Nonprobate Transfers;
 - (vi) a custodial arrangement under Title 75A, Chapter 8, Uniform Transfers To Minors
Act~~[, business trusts];~~
 - (vii) a business trust providing for certificates to be issued to beneficiaries~~];~~
 - (viii) a common trust ~~[funds;] fund;~~
 - (ix) a voting ~~[trusts;] trust;~~
 - (x) a preneed funeral ~~[plans] plan~~ under Title 58, Chapter 9, Funeral Services
Licensing Act~~[, security arrangements, liquidation trusts, and trusts];~~
 - (xi) a security arrangement;
 - (xii) a liquidation trust;
 - (xiii) a trust for the primary purpose of paying debts, dividends, interest, salaries,
wages, profits, pensions, or employee benefits of any kind~~[, and]; or~~
 - (xiv) any arrangement under which a person is nominee or escrowee for another.
- ~~(56)~~ ~~(60;61)~~ "Trustee" includes an original, additional, and successor trustee, and cotrustee, whether or not appointed or confirmed by the court.
- ~~(57)~~ ~~(61;62)~~ "Ward" means a person for whom a guardian has been appointed. ~~[A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.]~~
- ~~(58)~~ ~~(62;63)~~ "Will" includes codicil and any testamentary instrument which merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

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

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

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

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transfer:

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

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

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

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

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

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

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

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

(ii) The amount included:

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

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

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

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

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

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

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

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

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

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

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

(ii) The amount included is the value of the property that would have been included under Subsection (1)(a), (b), (c), or Subsection (2) if the property were valued at the time the right, interest, or power terminated, and is included only to the extent the property passed upon

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

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

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

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

(ii) The amount included:

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

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

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

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

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

75-7-105. Default and mandatory rules.

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

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

(a) the requirements for creating a trust;

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

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

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

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

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

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

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

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

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

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

75-7-107. Governing law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

75-7-301. Basic effect.

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

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

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

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

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

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

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appropriate under the circumstances.

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

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

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

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

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

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

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

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

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

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

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75-7-814. Specific powers of trustee.

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

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

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

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

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

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

(f) with respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;

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

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

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

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

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

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

(i) enter into a lease for any purpose as lessor or lessee, including a lease or other

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arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

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

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

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

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

(i) inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

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

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

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

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

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

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

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

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

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collect the proceeds;

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

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

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

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

(i) paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;

(ii) paying it to the beneficiary's custodian under [~~Title 75, Chapter 5a, Uniform Transfers to Minors Act~~] Title 75A, Chapter 8, Uniform Transfers to Minors Act;

(iii) if the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

(iv) managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

(v) on distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;

(w) resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

(x) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(y) sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers; and

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(z) on termination of the trust, exercise the powers appropriate to finalize the administration of the trust and distribute the trust property to the persons entitled to it.

(2) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances.

(a) The trustee shall exercise reasonable care, skill, and caution in:

(i) selecting the agent;

(ii) establishing the scope and terms of the delegation consistent with the purposes of the trust; and

(iii) periodically reviewing the agent's actions to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent has a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

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

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

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

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

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

(a) in the deed of transfer; or

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

(2) If the terms of the trust are not made public as required in Subsection (1), a conveyance from the trustee is absolute in favor of purchasers for value who take the property

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without notice of the terms of the trust.

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

- (a) the name of the trustee;
- (b) the address of the trustee; and
- (c) the name and date of the trust.

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

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

TITLE 75A. FIDUCIARIES
CHAPTER 1. FIDUCIARIES
Part 1. General Provisions

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

Reserved.

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

75A-1-102. Transition clause.

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

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

Part 2. Payments and Deposits by Fiduciaries

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

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

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

- (a) a trustee under any trust, expressed, implied, resulting or constructive[;];
- (b) an executor[;];
- (c) an administrator[;];

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- (d) a guardian[;];
- (e) a conservator[;];
- (f) a curator[;];
- (g) a receiver[;];
- (h) a trustee in bankruptcy[;];
- (i) an assignee for the benefit of creditors[;];
- (j) a partner[;];
- (k) an agent[;];
- (l) an officer of a corporation, public or private[;];

(m) a public officer[; and]; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) the person knows that the fiduciary is drawing and delivering the check or other bill

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of exchange for:

- (i) payment of, or as a security for, a personal debt of the fiduciary; or
- (ii) the personal benefit of the fiduciary; and
- (c) the fiduciary commits a breach of the fiduciary's obligation in drawing or delivering the check or other bill of exchange to the person.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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check.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 24. Section **75A-2-101** ~~{, which}~~ is ~~{renumbered from Section 75-9-102 is renumbered and amended}~~ enacted to read:

CHAPTER 2. UNIFORM POWER OF ATTORNEY ACT

Part 1. General Provisions

75A-2-101. Reserved.

Reserved.

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

~~[75-9-102].~~ **75A-2-101; 75A-2-102. Definitions for chapter.**

[It] As used in this chapter:

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

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

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

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

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

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

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

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

[(2)] (~~{7}~~8) "Durable," with respect to a power of attorney, means not terminated by the principal's incapacity.

[(3)] (~~{8}~~9) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(~~{9}~~10) "Estate" means the same as that term is defined in Section 75-1-201.

(~~{10}~~11) "Fiduciary" means the same as that term is defined in Section 75-1-201.

[(4)] (~~{11}~~12) "Good faith" means honesty in fact.

(~~{12}~~13) "Guardian" means the same as that term is defined in Section 75-1-201.

[(5)] (~~{13}~~14) "Incapacity" means the inability of an individual to manage property or business affairs because the individual:

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

(b) is:

(i) missing;

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

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

~~{~~ (14) "Interested person" means the same as that term is defined in Section 75-1-201.

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

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

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

[(6)] (18) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or

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commercial entity.

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

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

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

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

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

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

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

~~(11)~~ (24) "Protective Proceeding" means the same as that term is defined in Section 75-1-201.

~~(12)~~ (25) ~~(24)~~ "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~(26)~~ (25) "Security" means the same as that term is defined in Section 75-1-201.

~~(12)~~ (27) ~~(26)~~ "Sign" means, with present intent to authenticate or adopt a record:

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

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

~~(13)~~ (28) ~~(27)~~ "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to

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the jurisdiction of the United States.

~~[(14)]~~ ~~(~~29~~;28)~~ (a) "Stocks and bonds" means stocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly, indirectly, or in any other manner. [~~The term~~]

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

~~(~~30~~;29)~~ "Trust" means the same as that term is defined in Section 75-1-201.

~~(~~31~~;30)~~ "Trustee" means the same as that term is defined in Section 75-1-201.

~~(~~32~~;31)~~ "Will" means the same as that term is defined in Section 75-1-201.

Section ~~(25);26~~. Section ~~(75A-2-102);75A-2-103~~, which is renumbered from Section 75-9-103 is renumbered and amended to read:

~~[75-9-103].~~ ~~(75A-2-102);75A-2-103~~. **Applicability.**

This chapter applies to all powers of attorney except:

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

(2) a power to make health care decisions;

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

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

Section ~~(26);27~~. Section ~~(75A-2-103);75A-2-104~~, which is renumbered from Section 75-9-104 is renumbered and amended to read:

~~[75-9-104].~~ ~~(75A-2-103);75A-2-104~~. **Power of attorney is durable.**

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

Section ~~(27);28~~. Section ~~(75A-2-104);75A-2-105~~, which is renumbered from Section 75-9-105 is renumbered and amended to read:

~~[75-9-105].~~ ~~(75A-2-104);75A-2-105~~. **Execution of power of attorney.**

(1) (a) A power of attorney shall be signed by the principal or in the principal's conscious presence by another individual directed by the principal to sign the principal's name

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on the power of attorney before a notary public or other individual authorized by the law to take acknowledgments.

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

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

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

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

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

Section ~~{28}~~29. Section ~~{75A-2-105}~~75A-2-106, which is renumbered from Section 75-9-106 is renumbered and amended to read:

~~[75-9-106]~~. ~~{75A-2-105}~~75A-2-106. **Validity of power of attorney.**

(1) A power of attorney executed in this state on or after May 10, 2016, is valid if its execution complies with Section ~~[75-9-105]~~ ~~{75A-2-104}~~75A-2-105.

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

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

(a) the law of the jurisdiction that determines the meaning and effect of the power of attorney pursuant to Section ~~[75-9-107]~~ ~~{75A-2-106}~~75A-2-107; or

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

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

Section ~~{29}~~30. Section ~~{75A-2-106}~~75A-2-107, which is renumbered from Section

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75-9-107 is renumbered and amended to read:

~~[75-9-107].~~ ~~[§75A-2-106](#)~~[§75A-2-107](#). **Meaning and effect of power of attorney.**

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

Section ~~{30}~~[31](#). Section ~~{75A-2-107}~~[75A-2-108](#), which is renumbered from Section 75-9-108 is renumbered and amended to read:

~~[75-9-108].~~ ~~[§75A-2-107](#)~~[§75A-2-108](#). **Nomination of conservator or guardian -- Adequacy of power of attorney -- Relation of agent to conservator or other fiduciary.**

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

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

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

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

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

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

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

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

Section ~~{31}~~[32](#). Section ~~{75A-2-108}~~[75A-2-109](#), which is renumbered from Section 75-9-109 is renumbered and amended to read:

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~~[75-9-109].~~ ~~{75A-2-108}~~75A-2-109. **When power of attorney is effective.**

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

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

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

(a) a physician that the principal is incapacitated within the meaning of Subsection ~~[75-9-102(5)(a)]~~ ~~{75A-2-101}~~75A-2-102(~~{13}~~14)(a); or

(b) an attorney at law, a judge, or an appropriate governmental official that the principal is incapacitated within the meaning of Subsection ~~[75-9-102(5)(b)]~~ ~~{75A-2-101}~~75A-2-102(~~{13}~~14)(b).

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

Section ~~{32}~~33. Section ~~{75A-2-109}~~75A-2-110, which is renumbered from Section 75-9-110 is renumbered and amended to read:

~~[75-9-110].~~ ~~{75A-2-109}~~75A-2-110. **Termination of power of attorney or agent's authority.**

(1) A power of attorney terminates when:

(a) the principal dies;

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

(c) the principal revokes the power of attorney;

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

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

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

(2) An agent's authority terminates when:

(a) the principal revokes the authority;

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

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

(d) the power of attorney terminates.

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

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

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

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

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

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

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

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

(b) if the terms of the power of attorney do not provide a method or the method provided in the terms is not expressly made exclusive, by any other method manifesting clear

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and convincing evidence of the principal's intent.

Section ~~{33}~~34. Section ~~{75A-2-110}~~75A-2-111, which is renumbered from Section 75-9-111 is renumbered and amended to read:

~~[75-9-111]~~. ~~{75A-2-110}~~75A-2-111. **Coagents and successor agents.**

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

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

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

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

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

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

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

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

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

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

Section ~~{34}~~35. Section ~~{75A-2-111}~~75A-2-112, which is renumbered from Section 75-9-112 is renumbered and amended to read:

~~[75-9-112]~~. ~~{75A-2-111}~~75A-2-112. **Reimbursement and compensation of agent.**

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

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Section ~~{35}~~36. Section ~~{75A-2-112}~~75A-2-113, which is renumbered from Section 75-9-113 is renumbered and amended to read:

~~[75-9-113]~~. ~~{75A-2-112}~~75A-2-113. **Agent's acceptance.**

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

Section ~~{36}~~37. Section ~~{75A-2-113}~~75A-2-114, which is renumbered from Section 75-9-114 is renumbered and amended to read:

~~[75-9-114]~~. ~~{75A-2-113}~~75A-2-114. **Agent's duties.**

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

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

(b) act in good faith;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section ~~{37}~~38. Section ~~{75A-2-114}~~75A-2-115, which is renumbered from Section 75-9-115 is renumbered and amended to read:

~~[75-9-115]~~. ~~{75A-2-114}~~75A-2-115. Exoneration of agent.

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

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

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

Section ~~{38}~~39. Section ~~{75A-2-115}~~75A-2-116, which is renumbered from Section 75-9-116 is renumbered and amended to read:

~~[75-9-116]~~. ~~{75A-2-115}~~75A-2-116. Judicial relief.

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

(a) the principal or the agent;

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

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

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

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

(f) a person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate;

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

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

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

(2) Upon motion by the principal, the court shall dismiss a petition filed under this section, unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.

Section ~~{39}~~40. Section ~~{75A-2-116}~~75A-2-117, which is renumbered from Section 75-9-117 is renumbered and amended to read:

~~[75-9-117]~~. ~~{75A-2-116}~~75A-2-117. **Agent's liability.**

An agent that violates this chapter is liable to the principal or the principal's successors in interest for the amount required to:

(1) restore the value of the principal's property to what it would have been had the violation not occurred; and

(2) reimburse the principal or the principal's successors in interest for the attorney fees and costs paid on the agent's behalf.

Section ~~{40}~~41. Section ~~{75A-2-117}~~75A-2-118, which is renumbered from Section 75-9-118 is renumbered and amended to read:

~~[75-9-118]~~. ~~{75A-2-117}~~75A-2-118. **Agent's resignation -- Notice.**

Unless the power of attorney provides a different method for an agent's resignation, an agent may resign by giving notice to the principal and, if the principal is incapacitated:

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

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

(a) the principal's caregiver;

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

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

Section ~~{41}~~42. Section ~~{75A-2-118}~~75A-2-119, which is renumbered from Section 75-9-119 is renumbered and amended to read:

~~[75-9-119]~~. ~~{75A-2-118}~~75A-2-119. **Acceptance of and reliance upon acknowledged power of attorney.**

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

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authorized to take acknowledgements.

(2) A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the signature is not genuine may rely upon the presumption under Section ~~[75-9-105]~~ ~~{75A-2-104}~~ 75A-2-105 that the signature is genuine.

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

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

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

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

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

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

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

Section ~~{42}~~ 43. Section ~~{75A-2-119}~~ 75A-2-120, which is renumbered from Section 75-9-120 is renumbered and amended to read:

~~[75-9-120]~~. ~~{75A-2-119}~~ 75A-2-120. **Liability for refusal to accept acknowledged power of attorney.**

(1) As used in this section, "acknowledged" means ~~{purportedly verified before a notary public or other individual authorized to take acknowledgments}~~ the same as that term is

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defined in Section 75A-2-119.

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

(a) a person shall either accept an acknowledged power of attorney or request a certification, a translation, or an opinion of counsel under Subsection [75-9-119(4)] ~~{75A-2-118}~~ 75A-2-119(4) no later than seven business days after presentation of the power of attorney for acceptance;

(b) if a person requests a certification, a translation, or an opinion of counsel under Subsection [75-9-119(4)] ~~{75A-2-118}~~ 75A-2-119(4), the person shall accept the power of attorney no later than five business days after receipt of the certification, translation, or opinion of counsel; and

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

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

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

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

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

(d) a request for a certification, a translation, or an opinion of counsel under Subsection [75-9-119(4)] ~~{75A-2-118}~~ 75A-2-119(4) is refused;

(e) the person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification, a translation, or an opinion of counsel under Subsection [75-9-119(4)] ~~{75A-2-118}~~ 75A-2-119(4) has been requested or provided; or

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

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

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

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

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

Section ~~{43}~~44. Section ~~{75A-2-120}~~75A-2-121, which is renumbered from Section 75-9-121 is renumbered and amended to read:

~~[75-9-121]~~. ~~{75A-2-120}~~75A-2-121. **Principles of law and equity.**

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

Section ~~{44}~~45. Section ~~{75A-2-121}~~75A-2-122, which is renumbered from Section 75-9-122 is renumbered and amended to read:

~~[75-9-122]~~. ~~{75A-2-121}~~75A-2-122. **Laws applicable to financial institutions and entities.**

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

Section ~~{45}~~46. Section ~~{75A-2-122}~~75A-2-123, which is renumbered from Section 75-9-123 is renumbered and amended to read:

~~[75-9-123]~~. ~~{75A-2-122}~~75A-2-123. **Remedies under other law.**

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

Section ~~{46}~~47. Section 75A-2-201, which is renumbered from Section 75-9-201 is renumbered and amended to read:

Part 2. Authority

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

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

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- (a) create, amend, revoke, or terminate an inter vivos trust;
 - (b) make a gift;
 - (c) create or change rights of survivorship;
 - (d) create or change a beneficiary designation;
 - (e) delegate authority granted under the power of attorney;
 - (f) waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;
 - (g) exercise fiduciary powers that the principal has authority to delegate; or
 - (h) disclaim property or otherwise exercise a power of appointment.
- (2) Notwithstanding a grant of authority to do an act described in Subsection (1), unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, or descendant of the principal may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.
- (3) Subject to Subsections (1), (2), (4), and (5), if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in Sections ~~[75-9-204 through 75-9-216]~~ 75A-2-204 through 75A-2-216.
- (4) Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to Section ~~[75-9-217]~~ 75A-2-217.
- (5) Subject to Subsections (1), (2), and (4), if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.
- (6) Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this state and whether or not the authority is exercised or the power of attorney is executed in this state.
- (7) An act performed by an agent pursuant to a power of attorney has the same effect, inures to the benefit of, and binds the principal and the principal's successors in interest as if the principal had performed the act.

Section ~~{47}~~48. Section **75A-2-202**, which is renumbered from Section 75-9-202 is renumbered and amended to read:

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

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

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

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

Section ~~{48}~~49. Section **75A-2-203**, which is renumbered from Section 75-9-203 is renumbered and amended to read:

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

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

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

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

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

(4) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to a claim existing in favor of or against the

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principal or intervene in litigation relating to the claim;

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

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

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

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

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

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

Section ~~{49}~~50. Section **75A-2-204**, which is renumbered from Section 75-9-204 is renumbered and amended to read:

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

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

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

(2) (a) sell;

(b) exchange;

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

(d) quitclaim;

(e) release;

(f) surrender;

(g) retain title for security;

(h) encumber;

(i) partition;

(j) consent to partitioning;

(k) subject to an easement or covenant;

(l) subdivide;

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- (m) apply for zoning or other governmental permits;
 - (n) plat or consent to platting;
 - (o) develop;
 - (p) grant an option concerning;
 - (q) lease;
 - (r) sublease;
 - (s) contribute to an entity in exchange for an interest in that entity; or
 - (t) otherwise grant or dispose of an interest in real property or a right incident to real property;
- (3) pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;
- (4) release, assign, satisfy, or enforce by litigation or otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien, or other claim to real property that exists or is asserted;
- (5) manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including:
- (a) insuring against liability or casualty or other loss;
 - (b) obtaining or regaining possession of or protecting the interest or right by litigation or otherwise;
 - (c) paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments; and
 - (d) purchasing supplies, hiring assistance or labor, and making repairs or alterations to the real property;
- (6) use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;
- (7) participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, hold, and act with respect to stocks and bonds or other property received in a plan of reorganization, including:
- (a) selling or otherwise disposing of stocks and bonds;

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

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

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

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

Section ~~{50}~~51. Section **75A-2-205**, which is renumbered from Section 75-9-205 is renumbered and amended to read:

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

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

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

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

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

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

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

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

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

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

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- (d) moving the property from place to place;
- (e) storing the property for hire or on a gratuitous bailment; and
- (f) using and making repairs, alterations, or improvements to the property; and
- (6) change the form of title of an interest in tangible personal property.

Section ~~{51}~~52. Section **75A-2-206**, which is renumbered from Section 75-9-206 is renumbered and amended to read:

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

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

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

Section ~~{52}~~53. Section **75A-2-207**, which is renumbered from Section 75-9-207 is renumbered and amended to read:

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

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

- (1) buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call or put options on stocks or stock indexes traded on a regulated option exchange; and
- (2) establish, continue, modify, and terminate option accounts.

Section ~~{53}~~54. Section **75A-2-208**, which is renumbered from Section 75-9-208 is renumbered and amended to read:

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

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

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agent to:

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

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

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

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

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

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

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

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

(9) receive for the principal and act upon a sight draft, warehouse receipt, or other document of title whether tangible or electronic, or other negotiable or nonnegotiable instrument;

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

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

Section ~~{54}~~55. Section **75A-2-209**, which is renumbered from Section 75-9-209 is renumbered and amended to read:

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

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

- (1) operate, buy, sell, enlarge, reduce, or terminate an ownership interest;
- (2) perform a duty or discharge a liability and exercise in person or by proxy a right, power, privilege, or option that the principal has, may have, or claims to have;
- (3) enforce the terms of an ownership agreement;
- (4) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party because of an ownership interest;
- (5) exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of stocks and bonds;
- (6) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party concerning stocks and bonds;
- (7) with respect to an entity or business owned solely by the principal:
 - (a) continue, modify, renegotiate, extend, and terminate a contract made by or on behalf of the principal with respect to the entity or business before execution of the power of attorney;
 - (b) determine:
 - (i) the location of its operation;
 - (ii) the nature and extent of its business;
 - (iii) the methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation;
 - (iv) the amount and types of insurance carried; and
 - (v) the mode of engaging, compensating, and dealing with its employees and accountants, attorneys, or other advisors;
 - (c) change the name or form of organization under which the entity or business is operated and enter into an ownership agreement with other persons to take over all or part of the operation of the entity or business; and

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(d) demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the entity or business and control and disburse the money in the operation of the entity or business;

(8) put additional capital into an entity or business in which the principal has an interest;

(9) join in a plan of reorganization, consolidation, conversion, domestication, or merger of the entity or business;

(10) sell or liquidate all or part of an entity or business;

(11) establish the value of an entity or business under a buy-out agreement to which the principal is a party;

(12) prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to an entity or business and make related payments; and

(13) pay, compromise, or contest taxes, assessments, fines, or penalties and perform any other act to protect the principal from illegal or unnecessary taxation, assessments, fines, or penalties, with respect to an entity or business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

Section ~~55~~56. Section **75A-2-210**, which is renumbered from Section 75-9-210 is renumbered and amended to read:

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

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

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

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

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

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

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- (5) surrender and receive the cash surrender value on a contract of insurance or annuity;
- (6) exercise an election;
- (7) exercise investment powers available under a contract of insurance or annuity;
- (8) change the manner of paying premiums on a contract of insurance or annuity;
- (9) change or convert the type of insurance or annuity with respect to which the principal has or claims to have authority described in this section;
- (10) apply for and procure a benefit or assistance under a statute or regulation to guarantee or pay premiums of a contract of insurance on the life of the principal;
- (11) collect, sell, assign, hypothecate, borrow against, or pledge the interest of the principal in a contract of insurance or annuity;
- (12) select the form and timing of the payment of proceeds from a contract of insurance or annuity; and
- (13) pay, from proceeds or otherwise, compromise or contest, and apply for refunds in connection with a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

Section ~~56~~57. Section **75A-2-211**, which is renumbered from Section 75-9-211 is renumbered and amended to read:

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

(1) [~~In this section~~] As used in this section, "estate, trust, or other beneficial interest" means a trust, probate estate, guardianship, conservatorship, escrow, custodianship, or fund from which the principal is, may become, or claims to be entitled to a share or payment.

(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to estates, trusts, and other beneficial interests authorizes the agent to:

(a) accept, receive, receipt for, sell, assign, pledge, or exchange a share in or payment from an estate, trust, or other beneficial interest;

(b) demand or obtain money or another thing of value to which the principal is, may become, or claims to be entitled by reason of an estate, trust, or other beneficial interest, by litigation or otherwise;

(c) exercise for the benefit of the principal a presently exercisable general power of

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appointment held by the principal;

(d) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal;

(e) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to remove, substitute, or surcharge a fiduciary;

(f) conserve, invest, disburse, or use anything received for an authorized purpose;

(g) transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities, and other property to the trustee of a revocable trust created by the principal as settlor; and

(h) reject, renounce, disclaim, release, or consent to a reduction in or modification of a share in or payment from an estate, trust, or other beneficial interest.

Section ~~{57}~~58. Section **75A-2-212**, which is renumbered from Section 75-9-212 is renumbered and amended to read:

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

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to claims and litigation authorizes the agent to:

(1) assert and maintain before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment, or defense, including an action to recover property or other thing of value, recover damages sustained by the principal, eliminate or modify tax liability, or seek an injunction, specific performance, or other relief;

(2) bring an action to determine adverse claims or intervene or otherwise participate in litigation;

(3) seek an attachment, garnishment, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree;

(4) make or accept a tender, offer of judgment, or admission of facts, submit a controversy on an agreed statement of facts, consent to examination, and bind the principal in litigation;

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(5) submit to alternative dispute resolution, settle, and propose or accept a compromise;

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

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

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

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

Section ~~58~~59. Section **75A-2-213**, which is renumbered from Section 75-9-213 is renumbered and amended to read:

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

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

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

- (i) ~~[the principal's children]~~ a child of the principal;
- (ii) other individuals legally entitled to be supported by the principal; and
- (iii) the individuals whom the principal has customarily supported or indicated the intent to support;

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

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

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

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

(d) provide normal domestic help, usual vacations and travel expenses, and funds for shelter, clothing, food, appropriate education, including postsecondary and vocational education, and other current living costs for the individuals described in Subsection (1)(a);

(e) pay expenses for necessary health care and custodial care on behalf of the individuals described in Subsection (1)(a);

(f) act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act, Sections 1171 through 1179 of the Social Security Act, 42 U.S.C. Sec. 1320d, and applicable regulations, in making decisions related to the past, present, or future payment for the provision of health care consented to by the principal or anyone authorized under the law of this state to consent to health care on behalf of the principal;

(g) continue any provision made by the principal for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them, for the individuals described in Subsection (1)(a);

(h) maintain credit and debit accounts and open new accounts for the convenience of the individuals described in Subsection (1)(a); and

(i) continue payments incidental to the membership or affiliation of the principal in a religious institution, club, society, order, or other organization or to continue contributions to those organizations.

(2) Authority with respect to personal and family maintenance is neither dependent upon, nor limited by, authority that an agent may or may not have with respect to gifts under this chapter.

Section ~~59~~60. Section **75A-2-214**, which is renumbered from Section 75-9-214 is renumbered and amended to read:

~~[75-9-214]~~. **75A-2-214**. **Benefits from governmental programs or civil or**

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military service.

(1) [~~In this section~~] As used in this section, "benefits from governmental programs or civil or military service" means any benefit, program, or assistance provided under a statute or regulation, including social security, Medicare, and Medicaid.

(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to benefits from governmental programs or civil or military service authorizes the agent to:

(a) execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in Subsection [~~75-9-213(1)(a)~~] 75A-2-213(1)(a), and for shipment of their household effects;

(b) take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose;

(c) enroll in, apply for, select, reject, change, amend, or discontinue, on the principal's behalf, a benefit or program;

(d) prepare, file, and maintain a claim of the principal for a benefit or assistance, financial or otherwise, to which the principal may be entitled under a statute or regulation;

(e) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation concerning any benefit or assistance the principal may be entitled to receive under a statute or regulation; and

(f) receive the financial proceeds of a claim described in Subsection (2)(d) and conserve, invest, disburse, or use for a lawful purpose anything received.

Section ~~60~~61. Section **75A-2-215**, which is renumbered from Section 75-9-215 is renumbered and amended to read:

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

(1) [~~In this section~~] As used in this section, "retirement plan" means a plan or account created by an employer, the principal, or another individual to provide retirement benefits or deferred compensation of which the principal is a participant, beneficiary, or owner, including

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a plan or account under the following sections of the Internal Revenue Code:

- (a) an individual retirement account under Section 408, Internal Revenue Code;
- (b) a Roth individual retirement account under Section 408A, Internal Revenue Code;
- (c) a deemed individual retirement account under Section 408(q), Internal Revenue Code;
- (d) an annuity or mutual fund custodial account under Section 403(b), Internal Revenue Code;
- (e) a pension, profit-sharing, stock bonus, or other retirement plan qualified under Section 401(a), Internal Revenue Code;
- (f) a plan under Section 457(b), Internal Revenue Code; and
- (g) a nonqualified deferred compensation plan under Section 409A, Internal Revenue Code.

(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to retirement plans authorizes the agent to:

- (a) select the form and timing of payments under a retirement plan and withdraw benefits from a plan;
- (b) make a rollover, including a direct trustee-to-trustee rollover, of benefits from one retirement plan to another;
- (c) establish a retirement plan in the principal's name;
- (d) make contributions to a retirement plan;
- (e) exercise investment powers available under a retirement plan; and
- (f) borrow from, sell assets to, or purchase assets from a retirement plan.

Section ~~61~~62. Section **75A-2-216**, which is renumbered from Section 75-9-216 is renumbered and amended to read:

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

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

- (1) prepare, sign, and file federal, state, local, and foreign income, gift, payroll, property, Federal Insurance Contributions Act, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements

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under Section 2032A, Internal Revenue Code, closing agreements, and any power of attorney required by the Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax years;

(2) pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority;

(3) exercise any election available to the principal under federal, state, local, or foreign tax law; and

(4) act for the principal in all tax matters for all periods before the Internal Revenue Service or other taxing authority.

Section ~~62~~63. Section **75A-2-217**, which is renumbered from Section 75-9-217 is renumbered and amended to read:

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

(1) ~~[In this section, a gift "for the benefit of" a person]~~ As used in this section, "for the benefit of" includes a gift to a trust, an account under [the Uniform Transfers to Minors Act (1983/1986)] Chapter 8, Uniform Transfers to Minors Act, and a tuition savings account or prepaid tuition plan as defined under Section 529, Internal Revenue Code.

(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to gifts authorizes the agent only to:

(a) make outright to, or for the benefit of, a person a gift of any of the principal's property, including by the exercise of a presently exercisable general power of appointment held by the principal, in an amount per donee not to exceed the annual dollar limits of the federal gift tax exclusion under Section 2503(b), Internal Revenue Code, without regard to whether the federal gift tax exclusion applies to the gift, or if the principal's spouse agrees to consent to a split gift pursuant to Section 2513, Internal Revenue Code, in an amount per donee not to exceed twice the annual federal gift tax exclusion limit; and

(b) consent, pursuant to Section 2513, Internal Revenue Code, to the splitting of a gift made by the principal's spouse in an amount per donee not to exceed the aggregate annual gift tax exclusions for both spouses.

(3) An agent may make a gift of the principal's property only as the agent determines is consistent with the principal's objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors,

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including:

- (a) the value and nature of the principal's property;
- (b) the principal's foreseeable obligations and need for maintenance;
- (c) minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes;
- (d) eligibility for a benefit, program, or assistance under a statute or regulation; and
- (e) the principal's personal history of making or joining in making gifts.

Section ~~63~~64. Section **75A-2-301**, which is renumbered from Section 75-9-301 is renumbered and amended to read:

Part 3. Statutory Forms

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

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

STATUTORY FORM POWER OF ATTORNEY

IMPORTANT INFORMATION

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

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

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

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

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

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

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

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

DESIGNATION OF AGENT

I _____ name the following
(Name of Principal)

person as my agent:

Name of Agent: _____

Agent's Address: _____

Agent's Telephone Number: _____

DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

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

Name of Successor Agent: _____

Successor Agent's Address: _____

Successor Agent's Telephone Number: _____

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

Name of Second Successor Agent: _____

Second Successor Agent's Address: _____

Second Successor Agent's Telephone Number: _____

GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in [~~Title 75, Chapter 9, Uniform Power of Attorney Act~~] Title 75A, Chapter 2, Uniform Power of Attorney Act:

(INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects you may initial "All Preceding Subjects" instead of initialing each subject.)

() Real Property

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- Tangible Personal Property
- Stocks and Bonds
- Commodities and Options
- Banks and Other Financial Institutions
- Operation of Entity or Business
- Insurance and Annuities
- Estates, Trusts, and Other Beneficial Interests
- Claims and Litigation
- Personal and Family Maintenance
- Benefits from Governmental Programs or Civil or Military Service
- Retirement Plans
- Taxes
- All Preceding Subjects

GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent.)

- Create, amend, revoke, or terminate an inter vivos trust
- Make a gift, subject to the limitations of Section [75-9-217] ~~§~~ 75A-2-217, and any special instructions in this power of attorney
- Create or change rights of survivorship
- Create or change a beneficiary designation
- Authorize another person to exercise the authority granted under this power of attorney
- Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan
- Exercise fiduciary powers that the principal has authority to delegate
- Disclaim or refuse an interest in property, including a power of appointment

LIMITATION ON AGENT'S AUTHORITY

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

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the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the Special Instructions.

SPECIAL INSTRUCTIONS (OPTIONAL)

You may give special instructions on the following lines:

EFFECTIVE DATE

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

NOMINATION OF CONSERVATOR OR GUARDIAN (OPTIONAL)

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

Name of Nominee for conservator of my estate: _____

Nominee's Address: _____

Nominee's Telephone Number: _____

Name of Nominee for guardian of my person: _____

Nominee's Address: _____

Nominee's Telephone Number: _____

RELIANCE ON THIS POWER OF ATTORNEY

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

SIGNATURE AND ACKNOWLEDGMENT

Your Signature

Date

Your Name Printed

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Your Address

Your Telephone Number

State of _____

County of _____

This document was acknowledged before me on _____,
(Date)

by _____.

(Name of Principal)

(Seal, if any)

Signature of Notary

My commission expires: _____

[This document prepared by:

_____]

IMPORTANT INFORMATION FOR AGENT

Agent's Duties

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

- (1) do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest;
- (2) act in good faith;
- (3) do nothing beyond the authority granted in this power of attorney; and
- (4) disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as "agent" in the following manner:

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

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

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- (1) act loyally for the principal's benefit;
- (2) avoid conflicts that would impair your ability to act in the principal's best interest;
- (3) act with care, competence, and diligence;
- (4) keep a record of all receipts, disbursements, and transactions made on behalf of the principal;
- (5) cooperate with any person that has authority to make health care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interest; and
- (6) attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest.

Termination of Agent's Authority

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events that terminate a power of attorney or your authority to act under a power of attorney include:

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

Liability of Agent

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

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

Section ~~{64}~~65. Section **75A-2-302**, which is renumbered from Section 75-9-302 is renumbered and amended to read:

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

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

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

State of _____

[County] of _____

I, _____ (Name of Agent), certify under penalty of perjury that _____ (Name of Principal) granted me authority as an agent or successor agent in a power of attorney dated _____.

I further certify that to my knowledge:

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

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

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

(4) _____

(Insert other relevant statements)

SIGNATURE AND ACKNOWLEDGMENT

Agent's Signature

Date

Agent's Name Printed

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Agent's Address

Agent's Telephone Number

This document was acknowledged before me on _____,

(Date)

by _____.

(Name of Agent)

_____ (Seal, if any)

Signature of Notary

My commission expires: _____

This document prepared by:

Section ~~{65}~~66. Section **75A-2-401**, which is renumbered from Section 75-9-401 is renumbered and amended to read:

Part 4. Applicability Provisions

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

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

Section ~~{66}~~67. Section **75A-2-402**, which is renumbered from Section 75-9-402 is renumbered and amended to read:

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

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

Section ~~{67}~~68. Section **75A-2-403**, which is renumbered from Section 75-9-403 is renumbered and amended to read:

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

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Except as otherwise provided:

(1) this chapter applies to a power of attorney created before, on, or after May 10, 2016;

(2) this chapter applies to a judicial proceeding concerning a power of attorney commenced on or after May 10, 2016;

(3) this chapter applies to a judicial proceeding concerning a power of attorney commenced before May 10, 2016, unless the court finds that application of a provision of this chapter would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that provision does not apply and the superseded law applies; and

(4) an act done before May 10, 2016, is not affected by this chapter.

Section ~~{68}~~69. Section **75A-3-101**, which is renumbered from Section 75-2a-103 is renumbered and amended to read:

CHAPTER 3. HEALTH CARE DECISIONS

Part 1. General Provisions

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

As used in this chapter:

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

(a) at least 18 years old; or

(b) an emancipated minor.

(2) "Advance health care directive":

(a) includes:

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

(ii) an expression of preferences about health care decisions;

(b) may take one of the following forms:

(i) a written document, voluntarily executed by an adult in accordance with the requirements of this chapter; or

(ii) a witnessed oral statement, made in accordance with the requirements of this chapter; and

(c) does not include a POLST order.

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

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

(a) certified or licensed as an advance practice registered nurse under Subsection 58-31b-301(2)(e);

(b) an independent practitioner;

(c) acting under a consultation and referral plan with a physician; and

(d) acting within the scope of practice for that individual, as provided by law, rule, and specialized certification and training in that individual's area of practice.

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

(a) the effect of the treatment on the physical, emotional, and cognitive functions of the person;

(b) the degree of physical pain or discomfort caused to the person by the treatment or the withholding or withdrawal of treatment;

(c) the degree to which the person's medical condition, the treatment, or the withholding or withdrawal of treatment, result in a severe and continuing impairment of the dignity of the person by subjecting the person to humiliation and dependency;

(d) the effect of the treatment on the life expectancy of the person;

(e) the prognosis of the person for recovery with and without the treatment;

(f) the risks, side effects, and benefits of the treatment, or the withholding or withdrawal of treatment; and

(g) the religious beliefs and basic values of the person receiving treatment, to the extent these may assist the decision maker in determining the best interest.

(6) "Capacity to appoint an agent" means that the adult understands the consequences of appointing a particular person as agent.

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

~~{ (8) "Court" means the same as that term is defined in Section 75-1-201.~~

~~†~~ [(7)] ~~(19)~~ (8) "Declarant" means an adult who has completed and signed or directed the signing of an advance health care directive.

[(8)] ~~(10)~~ (9) "Default surrogate" means the adult who may make decisions for an

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individual when either:

- (a) an agent or guardian has not been appointed; or
- (b) an agent is not able, available, or willing to make decisions for an adult.

~~(9)~~ ~~(11)~~10 "Emergency medical services provider" means a person that is licensed, designated, or certified under Title 26B, Chapter 4, Part 1, Utah Emergency Medical Services System.

~~(12)~~11 "Estate" means the same as that term is defined in Section 75-1-201.

~~(10)~~ ~~(13)~~12 "Generally accepted health care standards":

- (a) is defined only for the purpose of:
 - (i) this chapter and does not define the standard of care for any other purpose under Utah law; and
 - (ii) enabling health care providers to interpret the statutory form set forth in Section ~~[75-2a-117]~~ 75A-3-303; and

(b) means the standard of care that justifies a provider in declining to provide life sustaining care because the proposed life sustaining care:

- (i) will not prevent or reduce the deterioration in the health or functional status of an individual;
- (ii) will not prevent the impending death of an individual; or
- (iii) will impose more burden on the individual than any expected benefit to the individual.

~~(14)~~13 "Guardian" means the same as that term is defined in Section 75-1-201.

~~(11)~~ ~~(15)~~14 "Health care" means any care, treatment, service, or procedure to improve, maintain, diagnose, or otherwise affect an individual's physical or mental condition.

~~(12)~~ ~~(16)~~15 "Health care decision":

- (a) means a decision about an adult's health care made by, or on behalf of, an adult, that is communicated to a health care provider;
- (b) includes:
 - (i) selection and discharge of a health care provider and a health care facility;
 - (ii) approval or disapproval of diagnostic tests, procedures, programs of medication, and orders not to resuscitate; and
 - (iii) directions to provide, withhold, or withdraw artificial nutrition and hydration and

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all other forms of health care; and

(c) does not include decisions about an adult's financial affairs or social interactions other than as indirectly affected by the health care decision.

~~[(13)]~~ ~~(~~17~~;16)~~ "Health care decision making capacity" means an adult's ability to make an informed decision about receiving or refusing health care, including:

(a) the ability to understand the nature, extent, or probable consequences of health status and health care alternatives;

(b) the ability to make a rational evaluation of the burdens, risks, benefits, and alternatives of accepting or rejecting health care; and

(c) the ability to communicate a decision.

~~[(14)]~~ ~~(~~18~~;17)~~ "Health care facility" means:

(a) a health care facility as defined in Title 26B, Chapter 2, Part 2, Health Care Facility Licensing and Inspection; and

(b) private offices of physicians, dentists, and other health care providers licensed to provide health care under Title 58, Occupations and Professions.

~~[(15)]~~ ~~(~~19~~;18)~~ "Health care provider" means the same as that term is defined in Section 78B-3-403, except that "health care provider" does not include an emergency medical services provider.

~~[(16)]~~ ~~(~~20~~;19)~~ (a) "Life sustaining care" means any medical intervention, including procedures, administration of medication, or use of a medical device, that maintains life by sustaining, restoring, or supplanting a vital function.

(b) "Life sustaining care" does not include care provided for the purpose of keeping an individual comfortable.

(20) "Incapacitated" means the same as that term is defined in Section 75-1-201.

(21) "Incapacity" means the same as that term is defined in Section 75-1-201.

~~[(17)]~~ ~~(~~21~~;22)~~ "Minor" means an individual who:

(a) is under 18 years old; and

(b) is not an emancipated minor.

(~~22~~;23) "Parent" means the same as that term is defined in Section 75-1-201.

(~~23~~;24) "Personal representative" means the same as that term is defined in Section 75-1-201.

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~~[(18)]~~ ~~(24;25)~~ "Physician" means a physician and surgeon or osteopathic surgeon licensed under Title 58, Chapter 67, Utah Medical Practice Act or Chapter 68, Utah Osteopathic Medical Practice Act.

~~[(19)]~~ ~~(25;26)~~ "Physician assistant" means an individual licensed as a physician assistant under Title 58, Chapter 70a, Utah Physician Assistant Act.

~~[(20)]~~ ~~(26;27)~~ "POLST order" means an order, on a form designated by the Department of Health and Human Services under Section ~~[75-2a-106]~~ 75A-3-106, that gives direction to health care providers, health care facilities, and emergency medical services providers regarding the specific health care decisions of the individual to whom the order relates.

~~[(21)]~~ ~~(27;28)~~ "Reasonably available" means:

- (a) readily able to be contacted without undue effort; and
- (b) willing and able to act in a timely manner considering the urgency of the circumstances.

~~(28;29)~~ "State" means the same as that term is defined in Section 75-1-201.

~~[(22)]~~ ~~(29;30)~~ "Substituted judgment" means the standard to be applied by a surrogate when making a health care decision for an adult who previously had the capacity to make health care decisions, which requires the surrogate to consider:

- (a) specific preferences expressed by the adult:
 - (i) when the adult had the capacity to make health care decisions; and
 - (ii) at the time the decision is being made;
- (b) the surrogate's understanding of the adult's health care preferences;
- (c) the surrogate's understanding of what the adult would have wanted under the circumstances; and
- (d) to the extent that the preferences described in ~~[Subsections (22)(a) through (c)]~~ Subsections (30)(a) through (c) are unknown, the best interest of the adult.

~~[(23)]~~ ~~(30;31)~~ "Surrogate" means a health care decision maker who is:

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

~~(31;32)~~ "Trust" means the same as that term is defined in Section 75-1-201.

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~~(32)33~~ "Will" means the same as that term is defined in Section 75-1-201.

Section ~~69~~70. Section 75A-3-102, which is renumbered from Section 75-2a-102 is renumbered and amended to read:

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

(1) The Legislature finds:

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

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

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

(ii) be spared unwanted procedures; and

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

(c) Utah law should:

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

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

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

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

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

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

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

(e) surrogate decisions made on behalf of an adult who has never had health care decision making capacity should be made on the basis of the adult's best interest.

(2) In recognition of the dignity and privacy that each adult is entitled to expect, and to

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protect the right of an adult to refuse to be treated without the adult's consent, the Legislature declares that this state recognizes the right to make binding advance health care directives directing health care providers to:

- (a) provide life sustaining medically indicated health care;
- (b) withhold or withdraw health care; or
- (c) provide health care only to the extent set forth in an advance health care directive.

Section ~~{70}~~71. Section **75A-3-103**, which is renumbered from Section 75-2a-122 is renumbered and amended to read:

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

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

- (1) create a presumption concerning the intention of an adult who has not made or who has revoked an advance health care directive;
- (2) authorize mercy killing, assisted suicide, or euthanasia; or
- (3) authorize the provision, withholding, or withdrawal of health care, to the extent prohibited by the laws of this state.

Section ~~{71}~~72. Section **75A-3-104**, which is renumbered from Section 75-2a-124 is renumbered and amended to read:

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

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

Section ~~{72}~~73. Section **75A-3-105**, which is renumbered from Section 75-2a-125 is renumbered and amended to read:

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

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

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

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

Section ~~{73}~~74. Section **75A-3-106**, which is renumbered from Section 75-2a-106 is renumbered and amended to read:

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

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

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

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

(b) a health care provider who:

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

(ii) is:

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

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

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

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

(3) A POLST order shall be signed:

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

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

(A) the person; or

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

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

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

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

(C) a person directed to sign the POLST order by, and on behalf of, the persons described in Subsection (3)(b)(ii)(A) or (B); or

(iii) if the person to whom the POLST order relates is a minor, by a parent or guardian of the minor.

(4) If a POLST order relates to a minor and directs that life sustaining treatment be withheld or withdrawn from the minor, the order shall include a certification by two physicians that, in their clinical judgment, an order to withhold or withdraw life sustaining treatment is in the best interest of the minor.

(5) A POLST order:

(a) shall be in writing, on a form designated by the Department of Health and Human Services;

(b) shall state the date on which the POLST order was made;

(c) may specify the level of life sustaining care to be provided to the person to whom the order relates; and

(d) may direct that life sustaining care be withheld or withdrawn from the person to whom the order relates.

(6) A health care provider or emergency medical service provider, licensed or certified under Title 26B, Chapter 4, Part 1, Utah Emergency Medical Services System, is immune from civil or criminal liability, and is not subject to discipline for unprofessional conduct, for:

(a) complying with a POLST order in good faith; or

(b) providing life sustaining treatment to a person when a POLST order directs that the life sustaining treatment be withheld or withdrawn.

(7) To the extent that the provisions of a POLST order described in this section conflict with the provisions of an advance health care directive made under Section ~~[75-2a-107]~~ 75A-3-301, the provisions of the POLST order take precedence.

(8) An adult, or a parent or guardian of a minor, may revoke a POLST order by:

(a) orally informing emergency service personnel;

(b) writing "void" across the POLST order form;

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(c) burning, tearing, or otherwise destroying or defacing:

(i) the POLST order form; or

(ii) a bracelet or other evidence of the POLST order;

(d) asking another adult to take the action described in this Subsection (8) on the person's behalf;

(e) signing or directing another adult to sign a written revocation on the person's behalf;

(f) stating, in the presence of an adult witness, that the person wishes to revoke the order; or

(g) completing a new POLST order.

(9) (a) Except as provided in Subsection (9)(c), a surrogate for an adult who lacks health care decision making capacity may only revoke a POLST order if the revocation is consistent with the substituted judgment standard.

(b) Except as provided in Subsection (9)(c), a surrogate who has authority under this section to sign a POLST order may revoke a POLST order, in accordance with Subsection (9)(a), by:

(i) signing a written revocation of the POLST order; or

(ii) completing and signing a new POLST order.

(c) A surrogate may not revoke a POLST order during the period of time beginning when an emergency service provider is contacted for assistance, and ending when the emergency ends.

(10) (a) The Department of Health and Human Services shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(i) create the forms and systems described in this section; and

(ii) develop uniform instructions for the form established in Section ~~[75-2a-117]~~ 75A-3-303.

(b) The Department of Health and Human Services may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to designate health care professionals, in addition to those described in Subsection (2)(b)(ii), who may prepare a POLST order.

(c) The Department of Health and Human Services may assist others with training of

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health care professionals regarding this chapter.

(11) A physician assistant may not prepare or sign a POLST order, unless the physician assistant is permitted to prepare or sign the POLST order under the physician assistant's delegation of services agreement~~[, as defined in Section 58-70a-102]~~.

(12) (a) Notwithstanding any other provision of this section:

(i) the provisions of Title 46, Chapter 4, Uniform Electronic Transactions Act, apply to any signature required on the POLST order; and

(ii) a verbal confirmation satisfies the requirement for a signature from an individual under Subsection (3)(b)(ii) or (iii), if:

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

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

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

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

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

Section ~~{74}~~75. Section **75A-3-107**, which is renumbered from Section 75-2a-120 is renumbered and amended to read:

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

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

- (1) a patient;
- (2) an agent of a patient;
- (3) a guardian of a patient;
- (4) a default surrogate of a patient;
- (5) a health care provider of a patient;
- (6) a health care facility providing care for a patient; or
- (7) an individual who meets the requirements of Section ~~[75-2a-108]~~ 75A-3-203.

Section ~~{75}~~76. Section **75A-3-201**, which is renumbered from Section 75-2a-104 is

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renumbered and amended to read:

Part 2. Health Care Decisions for Adult

~~[75-2a-104].~~ 75A-3-201. Capacity to make health care decisions --

Presumption -- Overcoming presumption.

- (1) An adult is presumed to have:
 - (a) health care decision making capacity; and
 - (b) capacity to make or revoke an advance health care directive.
- (2) To overcome the presumption of capacity described in Subsection (1)(a), a physician, an APRN, or, subject to Subsection (6), a physician assistant who has personally examined the adult and assessed the adult's health care decision making capacity must:
 - (a) find that the adult lacks health care decision making capacity;
 - (b) record the finding in the adult's medical chart including an indication of whether the adult is likely to regain health care decision making capacity; and
 - (c) make a reasonable effort to communicate the determination to:
 - (i) the adult;
 - (ii) other health care providers or health care facilities that the person who makes the finding would routinely inform of such a finding; and
 - (iii) if the adult has a surrogate, any known surrogate.
- (3) (a) An adult who is found to lack health care decision making capacity in accordance with Subsection (2) may, at any time, challenge the finding by:
 - (i) submitting to a health care provider a written notice stating that the adult disagrees with the physician's finding; or
 - (ii) orally informing the health care provider that the adult disagrees with the finding.
- (b) A health care provider who is informed of a challenge under Subsection (3)(a), shall, if the adult has a surrogate, promptly inform the surrogate of the adult's challenge.
- (c) A surrogate informed of a challenge to a finding under this section, or the adult if no surrogate is acting on the adult's behalf, shall inform the following of the adult's challenge:
 - (i) any other health care providers involved in the adult's care; and
 - (ii) the health care facility, if any, in which the adult is receiving care.
- (d) Unless otherwise ordered by a court, a finding, under Subsection (2), that the adult lacks health care decision making capacity, is not in effect if the adult challenges the finding

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under Subsection (3)(a).

(e) If an adult does not challenge the finding described in Subsection (2), the health care provider and health care facility may rely on a surrogate, pursuant to the provisions of this chapter, to make health care decisions for the adult.

(4) A health care provider or health care facility that relies on a surrogate to make decisions on behalf of an adult has an ongoing obligation to consider whether the adult continues to lack health care decision making capacity.

(5) If at any time a health care provider finds, based on an examination and assessment, that the adult has regained health care decision making capacity, the health care provider shall record the results of the assessment in the adult's medical record, and the adult can direct the adult's own health care.

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

Section ~~{76}~~77. Section **75A-3-202**, which is renumbered from Section 75-2a-109 is renumbered and amended to read:

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

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

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

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

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

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

(b) remains in effect during any period of time in which the declarant lacks capacity to

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make health care decisions; and

(c) ceases to be effective when:

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

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

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

(iv) the declarant has challenged the finding of incapacity under the provisions of

Subsection [~~75-2a-104(3)~~] 75A-3-201(3).

Section ~~{77}~~78. Section **75A-3-203**, which is renumbered from Section 75-2a-108 is renumbered and amended to read:

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

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

(i) (A) the adult has not appointed an agent;

(B) an appointed agent is not reasonably available; or

(C) a guardian has not been appointed; and

(ii) the member of the class described in Subsection (1)(b) is:

(A) over 18 years [~~of age~~] old;

(B) has health care decision making capacity;

(C) is reasonably available; and

(D) has not been disqualified by the adult or a court.

(b) Except as provided in Subsection (1)(a), and subject to Subsection (1)(c), the following classes of the adult's family, in descending order of priority, may act as the adult's surrogate:

(i) the adult's spouse, unless the adult is divorced or legally separated; or

(ii) the following family members:

(A) a child;

(B) a parent;

(C) a sibling;

(D) a grandchild; or

(E) a grandparent.

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(c) A person described in Subsection (1)(b), may not direct an adult's care if a person of a higher priority class is able and willing to act as a surrogate for the adult.

(d) A court may disqualify a person described in Subsection (1)(b) from acting as a surrogate if the court finds that the person has acted in a manner that is inconsistent with the position of trust in which a surrogate is placed.

(2) If the family members designated in Subsection (1)(b) are not reasonably available to act as a surrogate, a person who is 18 years [~~of age~~] old or older, other than those designated in Subsection (1) may act as a surrogate if the person:

- (a) has health care decision making capacity;
- (b) has exhibited special care and concern for the patient;
- (c) knows the patient and the patient's personal values; and
- (d) is reasonably available to act as a surrogate.

(3) The surrogate shall communicate the surrogate's assumption of authority as promptly as practicable to the members of a class who:

- (a) have an equal or higher priority and are not acting as surrogate; and
- (b) can be readily contacted.

(4) A health care provider shall comply with the decision of a majority of the members of the highest priority class who have communicated their views to the provider if:

- (a) more than one member of the highest priority class assumes authority to act as default surrogate;
- (b) the members of the class do not agree on a health care decision; and
- (c) the health care provider is informed of the disagreement among the members of the class.

(5) (a) An adult may at any time disqualify a default surrogate, including a member of the adult's family, from acting as the adult's surrogate by:

- (i) a signed writing;
- (ii) personally informing a witness of the disqualification; or
- (iii) informing the surrogate of the disqualification.

(b) Disqualification of a surrogate is effective even if the adult has been found to lack health care decision making capacity.

(6) If reasonable doubt exists regarding the status of an adult claiming the right to act

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as a default surrogate, the health care provider may:

(a) require the person to provide a sworn statement giving facts and circumstances reasonably sufficient to establish the claimed authority; or

(b) seek a ruling from the court under Section ~~[75-2a-120]~~ 75A-3-107.

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

Section ~~{78}~~79. Section **75A-3-204**, which is renumbered from Section 75-2a-110 is renumbered and amended to read:

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

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

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

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

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

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

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

- (a) in accordance with this section; and
- (b) in good faith.

Section ~~{79}~~80. Section **75A-3-205**, which is renumbered from Section 75-2a-112 is renumbered and amended to read:

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

(1) A court-appointed guardian shall comply with an adult's advance health care directive and may not revoke the adult's advance health care directive unless the court, for

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cause, expressly revokes the adult's directive.

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

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

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

(a) in good faith; and

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

Section ~~{80}~~81. Section **75A-3-206**, which is renumbered from Section 75-2a-111 is renumbered and amended to read:

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

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

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

(i) the adult; or

(ii) a court of law;

(b) a court-appointed guardian; or

(c) the highest priority default surrogate acting under authority of Section ~~[75-2a-108]~~ 75A-3-203.

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

Section ~~{81}~~82. Section **75A-3-207**, which is renumbered from Section 75-2a-115 is renumbered and amended to read:

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

(1) It is the responsibility of the declarant or surrogate, to the extent that the responsibility is not assigned to a health care provider or health care facility by state or federal

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law, to notify or provide for notification to a health care provider and a health care facility of:

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

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

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

(i) the health care directive or a copy of it, a revocation of a health care directive, or a disqualification of a surrogate; and

(ii) the date, time, and place in which any written or oral notice of the document described in this Subsection (2)(b) is received.

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

(a) complying with a health care decision made by an adult with health care decision making capacity;

(b) complying with a health care decision made by a surrogate apparently having authority to make a health care decision for a person, including a decision to withhold or withdraw health care;

(c) declining to comply with a health care decision of a surrogate based on a belief that the surrogate then lacked authority;

(d) declining to comply with a health care decision of an adult who lacks decision making capacity;

(e) seeking a judicial determination, or requiring a surrogate to obtain a judicial

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determination, under Section [~~75-2a-120~~] 75A-3-107 of:

(i) the validity of a health care directive;
(ii) the validity of directions from a surrogate or guardian;
(iii) the decision making capacity of an adult who challenges a physician's finding of incapacity; or

(iv) the authority of a guardian or surrogate; or

(f) complying with an advance health care directive and assuming that the directive was valid when made, and has not been revoked or terminated.

(4) (a) Health care providers and health care facilities shall:

(i) cooperate with a person authorized under this chapter to make written directives concerning health care;

(ii) unless the provisions of Subsection (4)(b) apply, comply with:

(A) a health care decision of an adult; and

(B) a health care decision made by the highest ranking surrogate then authorized to make health care decisions for an adult, to the same extent as if the decision had been made by the adult;

(iii) before implementing a health care decision made by a surrogate, make a reasonable attempt to communicate to the adult on whose behalf the decision is made:

(A) the decision made; and

(B) the identity of the surrogate making the decision.

(b) A health care provider or health care facility may decline to comply with a health care decision if:

(i) in the opinion of the health care provider:

(A) the adult who made the decision lacks health care decision making capacity;

(B) the surrogate who made the decision lacks health care decision making capacity;

(C) the health care provider has evidence that the surrogate's instructions are inconsistent with the adult's health care instructions, or, for a person who has always lacked health care decision making capacity, that the surrogate's instructions are inconsistent with the best interest of the adult; or

(D) there is reasonable doubt regarding the status of a person claiming the right to act as a default surrogate, in which case the health care provider shall comply with Subsection

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[~~75-2a-108(6)~~] 75A-3-203(6); or

(ii) the health care provider declines to comply for reasons of conscience.

(c) A health care provider or health care facility that declines to comply with a health care decision in accordance with Subsection (4)(b) must:

(i) promptly inform the adult and any acting surrogate of the reason for refusing to comply with the health care decision;

(ii) make a good faith attempt to resolve the conflict; and

(iii) provide continuing care to the patient until the issue is resolved or until a transfer can be made to a health care provider or health care facility that will implement the requested instruction or decision.

(d) A health care provider or health care facility that declines to comply with a health care instruction, after meeting the obligations set forth in Subsection (4)(c) may transfer the adult to a health care provider or health care facility that will carry out the requested health care decisions.

(e) A health care facility may decline to follow a health care decision for reasons of conscience under Subsection (4)(b)(ii) if:

(i) the health care decision is contrary to a policy of the facility that is expressly based on reasons of conscience;

(ii) the policy was timely communicated to the adult and an adult's surrogate;

(iii) the facility promptly informs the adult, if possible, and any surrogate then authorized to make decisions for the adult;

(iv) the facility provides continuing care to the adult until a transfer can be made to a health care facility that will implement the requested instruction or decision; and

(v) unless an adult or surrogate then authorized to make health care decisions for the adult refuses assistance, immediately make all reasonable efforts to assist in the transfer of the adult to another health care facility that will carry out the instructions or decisions.

(5) A health care provider and health care facility:

(a) may not require or prohibit the creation or revocation of an advance health care directive as a condition for providing health care; and

(b) shall comply with all state and federal laws and regulations governing advance health care directives.

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Section ~~{82}~~83. Section **75A-3-208**, which is renumbered from Section 75-2a-113 is renumbered and amended to read:

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

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

(1) the adult has been found to lack health care decision making capacity under Section ~~[75-2a-104]~~ **75A-3-201**;

(2) the adult grants current authority to the surrogate either:

(a) in writing; or

(b) by other expression before a witness who is not the surrogate or agent; or

(3) the court appoints a guardian authorized to make health care decisions on behalf of the adult.

Section ~~{83}~~84. Section **75A-3-301**, which is renumbered from Section 75-2a-107 is renumbered and amended to read:

Part 3. Advance Health Care Directive for Adult

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

(1) (a) An adult may make an advance health care directive in which the adult may:

(i) appoint a health care agent or choose not to appoint a health care agent;

(ii) give directions for the care of the adult after the adult loses health care decision making capacity;

(iii) choose not to give directions;

(iv) state conditions that must be met before life sustaining treatment may be withheld or withdrawn;

(v) authorize an agent to consent to the adult's participation in medical research;

(vi) nominate a guardian;

(vii) authorize an agent to consent to organ donation;

(viii) expand or limit the powers of a health care agent; and

(ix) designate the agent's access to the adult's medical records.

(b) An advance health care directive may be oral or written.

(c) An advance health care directive shall be witnessed by a disinterested adult. The

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witness may not be:

- (i) the person who signed the directive on behalf of the declarant;
 - (ii) related to the declarant by blood or marriage;
 - (iii) entitled to any portion of the declarant's estate according to the laws of intestate succession of this state or under any will or codicil of the declarant;
 - (iv) the beneficiary of any of the following that are held, owned, made, or established by, or on behalf of, the declarant:
 - (A) a life insurance policy;
 - (B) a trust;
 - (C) a qualified plan;
 - (D) a pay on death account; or
 - (E) a transfer on death deed;
 - (v) entitled to benefit financially upon the death of the declarant;
 - (vi) entitled to a right to, or interest in, real or personal property upon the death of the declarant;
 - (vii) directly financially responsible for the declarant's medical care;
 - (viii) a health care provider who is:
 - (A) providing care to the declarant; or
 - (B) an administrator at a health care facility in which the declarant is receiving care; or
 - (ix) the appointed agent.
- (d) The witness to an oral advance health care directive shall state the circumstances under which the directive was made.

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

Section ~~{84}~~85. Section **75A-3-302**, which is renumbered from Section 75-2a-105 is renumbered and amended to read:

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

- (1) An adult is presumed to have the capacity to complete an advance health care

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directive.

(2) An adult who is found to lack health care decision making capacity under the provisions of Section ~~[75-2a-104]~~ 75A-3-201:

(a) lacks the capacity to give an advance health care directive, including Part II of the form created in Section ~~[75-2a-117]~~ 75A-3-303, or any other substantially similar form expressing a health care preference; and

(b) may retain the capacity to appoint an agent and complete Part I of the form created in Section ~~[75-2a-117]~~ 75A-3-303.

(3) The following factors shall be considered by a health care provider, attorney, or court when determining whether an adult described in Subsection (2)(b) has retained the capacity to appoint an agent:

(a) whether the adult has expressed over time an intent to appoint the same person as agent;

(b) whether the choice of agent is consistent with past relationships and patterns of behavior between the adult and the prospective agent, or, if inconsistent, whether there is a reasonable justification for the change; and

(c) whether the adult's expression of the intent to appoint the agent occurs at times when, or in settings where, the adult has the greatest ability to make and communicate decisions.

Section ~~{85}~~86. Section **75A-3-303**, which is renumbered from Section 75-2a-117 is renumbered and amended to read:

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

(1) The form created in Subsection (2), or a substantially similar form, is presumed valid under this chapter.

(2) The following form is presumed valid under Subsection (1):

Utah Advance Health Care Directive

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

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

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

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

Part IV: Makes your directive legal.

My Personal Information

Name: _____

Street Address: _____

City, State, Zip Code:

Telephone: _____ Cell Phone: _____

Birth date: _____

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

A. No Agent

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

_____ I do not want to choose an agent.

B. My Agent

Agent's Name:

Street Address:

City, State, Zip Code:

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

C. My Alternate Agent

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

Alternate Agent's Name:

Street Address:

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City, State, Zip Code:

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

D. Agent's Authority

If I cannot make decisions or speak for myself (in other words, after my physician or another authorized provider finds that I lack health care decision making capacity under Section ~~[75-2a-104]~~ [75A-3-201] of the Advance Health Care Directive Act), my agent has the power to make any health care decision I could have made such as, but not limited to:

- Consent to, refuse, or withdraw any health care. This may include care to prolong my life such as food and fluids by tube, use of antibiotics, CPR (cardiopulmonary resuscitation), and dialysis, and mental health care, such as convulsive therapy and psychoactive medications. This authority is subject to any limits in paragraph F of Part I or in Part II of this directive.
- Hire and fire health care providers.
- Ask questions and get answers from health care providers.
- Consent to admission or transfer to a health care provider or health care facility, including a mental health facility, subject to any limits in paragraphs E and F of Part I.
- Get copies of my medical records.
- Ask for consultations or second opinions.

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

E. Other Authority

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

I authorize my agent to:

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

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

F. Limits/Expansion of Authority

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

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G. Nomination of Guardian

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

YES _____ NO _____

I, being of sound mind and not acting under duress, fraud, or other undue influence, do hereby nominate my agent, or if my agent is unable or unwilling to serve, I hereby nominate my alternate agent, to serve as my guardian in the event that, after the date of this instrument, I become incapacitated.

H. Consent to Participate in Medical Research

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

I. Organ Donation

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

Part II: My Health Care Wishes (Living Will)

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

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

Option 1

_____ Initial

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

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would make under the circumstances.

Additional Comments:

Option 2

_____ Initial

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

Other:

Option 3

_____ Initial

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

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

_____ Initial

(a) I put no limit on the ability of my health care provider or agent to withhold or withdraw life-sustaining care.

If you selected (a), above, do not choose any options under (b).

_____ Initial

(b) My health care provider should withhold or withdraw life-sustaining care if at least one of the following initialed conditions is met:

_____ I have a progressive illness that will cause death.

_____ I am close to death and am unlikely to recover.

_____ I cannot communicate and it is unlikely that my condition will improve.

_____ I do not recognize my friends or family and it is unlikely that my condition will improve.

_____ I am in a persistent vegetative state.

Other:

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Option 4

_____ Initial

I do not wish to express preferences about health care wishes in this directive.

Other:

Additional instructions about your health care wishes:

If you do not want emergency medical service providers to provide CPR or other life sustaining measures, you must work with a physician or APRN to complete an order that reflects your wishes on a form approved by the Utah Department of Health.

Part III: Revoking or Changing a Directive

I may revoke or change this directive by:

1. Writing "void" across the form, or burning, tearing, or otherwise destroying or defacing this document or directing another person to do the same on my behalf;
2. Signing a written revocation of the directive, or directing another person to sign a revocation on my behalf;
3. Stating that I wish to revoke the directive in the presence of a witness who: is 18 years [of age] ~~(f)~~old or older; will not be appointed as my agent in a substitute directive; will not become a default surrogate if the directive is revoked; and signs and dates a written document confirming my statement; or
4. Signing a new directive. (If you sign more than one Advance Health Care Directive, the most recent one applies.)

Part IV: Making My Directive Legal

I sign this directive voluntarily. I understand the choices I have made and declare that I am emotionally and mentally competent to make this directive. My signature on this form revokes any living will or power of attorney form, naming a health care agent, that I have completed in the past.

Date

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Signature

City, County, and State of Residence

I have witnessed the signing of this directive, I am 18 years [~~of age~~]{ }old or older, and I am not:

1. related to the declarant by blood or marriage;
2. entitled to any portion of the declarant's estate according to the laws of intestate succession of any state or jurisdiction or under any will or codicil of the declarant;
3. a beneficiary of a life insurance policy, trust, qualified plan, pay on death account, or transfer on death deed that is held, owned, made, or established by, or on behalf of, the declarant;
4. entitled to benefit financially upon the death of the declarant;
5. entitled to a right to, or interest in, real or personal property upon the death of the declarant;
6. directly financially responsible for the declarant's medical care;
7. a health care provider who is providing care to the declarant or an administrator at a health care facility in which the declarant is receiving care; or
8. the appointed agent or alternate agent.

Signature of Witness

Printed Name of Witness

Street Address

City

State

Zip Code

If the witness is signing to confirm an oral directive, describe below the circumstances under which the directive was made.

{

{ Section ~~{86}~~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.**

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(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 ~~{87}~~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.

(b) Following health care instructions in [a] an advance health care directive does not constitute legal cause for failing to pay life or health insurance benefits.

(c) Death that occurs after following the instructions of an advance health care directive or a surrogate's instructions does not for any purpose constitute a suicide or homicide or legally impair or invalidate a policy of insurance or an annuity providing a death benefit.

(3) (a) The following may not require an adult to execute [~~a directive~~] an advance

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health care directive or to make any particular choices or entries in [~~a directive~~] an advance health care directive under this chapter as a condition for being insured for or receiving health care or life insurance contract services:

- (i) a health care provider;
- (ii) a health care facility;
- (iii) a health maintenance organization;
- (iv) an insurer issuing disability, health, or life insurance;
- (v) a self-insured employee welfare or benefit plan;
- (vi) a nonprofit medical service corporation or mutual nonprofit hospital service

corporation; or

- (vii) any other person, firm, or entity.

(b) Nothing in this chapter:

(i) may be construed to require an insurer to insure risks otherwise considered by the insurer as not a covered risk;

(ii) is intended to impair or supersede any other legal right or legal responsibility which an adult may have to effect the withholding or withdrawal of life sustaining procedures in any lawful manner; or

(iii) creates any presumption concerning the intention of an adult who has not executed [~~a~~] an advance health care directive.

Section ~~{88}~~89. Section **75A-3-306**, which is renumbered from Section 75-2a-123 is renumbered and amended to read:

~~[75-2a-123].~~ **75A-3-306. Advance health care directive effect during pregnancy.**

(1) [~~A~~] An advance health care directive that provides for the withholding or withdrawal of life sustaining procedures has no force during the course of a declarant's pregnancy.

(2) Subsection (1) does not negate the appointment of a health care agent during the course of a declarant's pregnancy.

Section ~~{89}~~90. Section **75A-3-307**, which is renumbered from Section 75-2a-114 is renumbered and amended to read:

~~[75-2a-114].~~ **75A-3-307. Revocation of advance health care directive.**

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- (1) An advance health care directive may be revoked at any time by the declarant by:
- (a) writing "void" across the document;
 - (b) obliterating, burning, tearing, or otherwise destroying or defacing the document in any manner indicating an intent to revoke;
 - (c) instructing another to do one of the acts described in Subsection (1)(a) or (b);
 - (d) a written revocation of the directive signed and dated by:
 - (i) the declarant; or
 - (ii) an adult:
 - (A) signing on behalf of the declarant; and
 - (B) acting at the direction of the declarant; or
 - (e) an oral expression of an intent to revoke the directive in the presence of a witness who is age 18 years old or older and who is not:
 - (i) related to the declarant by blood or marriage;
 - (ii) entitled to any portion of the declarant's estate according to the laws of intestate succession of this state or under any will or codicil of the declarant;
 - (iii) the beneficiary of any of the following that are held, owned, made, or established by, or on behalf of, the declarant:
 - (A) a life insurance policy;
 - (B) a trust;
 - (C) a qualified plan;
 - (D) a pay on death account; or
 - (E) a transfer on death deed;
 - (iv) entitled to benefit financially upon the death of the declarant;
 - (v) entitled to a right to, or interest in, real or personal property upon the death of the declarant;
 - (vi) directly financially responsible for the declarant's medical care;
 - (vii) a health care provider who is:
 - (A) providing care to the declarant; or
 - (B) an administrator at a health care facility in which the declarant is receiving care; or
 - (viii) the adult who will become agent or default surrogate after the revocation.
- (2) A decree of annulment, divorce, dissolution of marriage, or legal separation

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revokes the designation of a spouse as an agent, unless:

- (a) otherwise specified in the decree; or
- (b) the declarant has affirmed the intent to retain the agent subsequent to the

annulment, divorce, or legal separation.

(3) An advance health care directive that conflicts with an earlier advance health care directive revokes the earlier directive to the extent of the conflict.

Section ~~{90}~~91. Section **75A-3-308**, which is renumbered from Section 75-2a-118 is renumbered and amended to read:

~~[75-2a-118].~~ **75A-3-308. Illegal destruction or falsification of advance health care directive.**

(1) A person is guilty of a class B misdemeanor if the person:

(a) willfully conceals, cancels, defaces, obliterates, or damages [a] an advance health care directive of another without the declarant's consent; or

(b) falsifies, forges, or alters a health care directive or a revocation of the advance health care directive of another person.

(2) A person is guilty of criminal homicide if:

(a) the person:

(i) falsifies or forges the advance health care directive of an adult; or

(ii) willfully conceals or withholds personal knowledge of:

(A) the existence of [a] an advance health care directive;

(B) the revocation of [a] an advance health care directive; or

(C) the disqualification of a surrogate; and

(b) the actions described in Subsection (2)(a) cause a withholding or withdrawal of life sustaining procedures contrary to the wishes of a declarant resulting in the death of the declarant.

Section ~~{91}~~92. Section **75A-3-309**, which is renumbered from Section 75-2a-121 is renumbered and amended to read:

~~[75-2a-121].~~ **75A-3-309. Reciprocity of advance health care directive -- Application of former provisions of law.**

Unless otherwise provided in the advance health care directive:

(1) a health care provider or health care facility may, in good faith, rely on any advance

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health care directive, power of attorney, or similar instrument:

(a) executed in another state; or

(b) executed prior to January 1, 2008, in this state [~~under the provisions of Chapter 2, Part 11, Personal Choice and Living Will Act~~];

(2) [~~a~~] an advance health care directive executed under the provisions of this chapter shall be governed pursuant to the provisions of this chapter that were in effect at that time, unless it appears from the directive that the declarant intended the current provisions of this chapter to apply; and

(3) the advance health care directive described in Subsection (1) is presumed to comply with the requirements of this chapter.

Section ~~{92}~~93. Section **75A-4-101** ~~{, which}~~ is ~~{renumbered from Section 75-10-102 is renumbered and amended}~~enacted to read:

CHAPTER 4. UNIFORM POWERS OF APPOINTMENT ACT

~~{Part 1. General Provisions}~~

75A-4-101. Reserved.

Reserved.

Section 94. Section **75A-4-102**, which is renumbered from Section 75-10-102 is renumbered and amended to read:

~~[75-10-102].~~ ~~{75A-4-101}~~**75A-4-102. Definitions for chapter.**

As used in this chapter:

(1) "Appointee" means a person to which a powerholder makes an appointment of appointive property.

(2) "Appointive property" means the property or property interest subject to a power of appointment.

(3) (a) "Blanket-exercise clause" means a clause in an instrument that exercises a power of appointment and is not a specific-exercise clause. [~~The term~~]

(b) "Blanket-exercise clause" includes a clause that:

~~{(a)}~~ (i) expressly uses the words "any power" in exercising any power of appointment the powerholder has;

~~{(b)}~~ (ii) expressly uses the words "any property" in appointing any property over which the powerholder has a power of appointment; or

~~{(c)}~~ (iii) disposes of all property subject to disposition by the powerholder.

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(4) "~~{Court}~~Descendant" means the same as that term is defined in Section 75-1-201.

~~{~~ (5) "~~Descendant~~" means the same as that term is defined in Section 75-1-201.

~~}~~ [(4)] (~~{6}~~5) "Donor" means a person that creates a power of appointment.

(~~{7}~~6) "Estate" means the same as that term is defined in Section 75-1-201.

[(5)] (~~{8}~~7) "Exclusionary power of appointment" means a power of appointment exercisable in favor of any one or more of the permissible appointees to the exclusion of the other permissible appointees.

[(6)] (~~{9}~~8) "General power of appointment" means a power of appointment exercisable in favor of the powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.

[(7)] (~~{10}~~9) "Gift-in-default clause" means a clause identifying a taker in default of appointment.

[(8)] (~~{11}~~10) "Impermissible appointee" means a person that is not a permissible appointee.

[(9)] (~~{12}~~11) "Instrument" means a record.

[(10)] (~~{13}~~12) (a) "Nongeneral power of appointment" means a power of appointment that is not a general power of appointment. [~~The terms "special power of appointment," "limited power of appointment,"~~]

(b) "Nongeneral power of appointment" includes a special power of appointment, a limited power of appointment, or similar terminology that is used in an instrument creating a power that does not grant powers making it a general power of appointment [~~as defined in this chapter mean the same as and may be used interchangeably with the term nongeneral power of appointment~~].

[(11)] (~~{14}~~13) "Permissible appointee" means a person in whose favor a powerholder may exercise a power of appointment.

[(12)] (~~{15}~~14) "Person" means an individual, estate, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, instrumentality, or other legal entity.

[(13)] (~~{16}~~15) "Powerholder" means a person in whom a donor creates a power of appointment.

[(14)] (~~{17}~~16) (a) "Power of appointment" means a power that enables a powerholder

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acting in a nonfiduciary capacity to designate a recipient of an interest in, or another power of appointment over, the appointive property. [~~The term~~]

(b) "Power of appointment" does not include a power of attorney.

~~[(15)]~~ ~~(~~18~~17)~~ (a) "Presently exercisable power of appointment" means a power of appointment exercisable by the powerholder at a relevant time. [~~The term:~~]

~~[(a)]~~ (b) "Presently exercisable power of appointment" includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified time only after:

- (i) the occurrence of the specified event;
- (ii) the satisfaction of the ascertainable standard; or
- (iii) the passage of the specified time~~[-and]~~.

~~[(b)]~~ (c) "Presently exercisable power of appointment" does not include a power exercisable only at the powerholder's death.

~~(~~19~~18)~~ "Property" means the same as that term is defined in Section 75-1-201.

~~[(16)]~~ ~~(~~20~~19)~~ "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~[(17)]~~ ~~(~~21~~20)~~ "Specific-exercise clause" means a clause in an instrument that specifically refers to and exercises a particular power of appointment.

~~[(18)]~~ ~~(~~22~~21)~~ "Taker in default of appointment" means a person that takes all or part of the appointive property to the extent the powerholder does not effectively exercise the power of appointment.

~~[(19)]~~ ~~(~~23~~22)~~ "Terms of the instrument" means the manifestation of the intent of the maker of the instrument regarding the instrument's provisions as expressed in the instrument or as may be established by other evidence that would be admissible in a legal proceeding.

~~(~~24~~23)~~ "Trust" means the same as that term is defined in Section 75-1-201.

~~(~~25~~24)~~ "Will" means the same as that term is defined in Section 75-1-201.

Section ~~{93}95~~. Section ~~{75A-4-102}75A-4-103~~, which is renumbered from Section 75-10-103 is renumbered and amended to read:

~~[75-10-103]~~. ~~{75A-4-102}75A-4-103~~. **Governing law.**

(1) Unless the terms of the instrument creating a power of appointment manifest a contrary intent:

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(a) the creation, revocation, amendment, interpretation and definition of terms, or the determination of the rights of the appointee of the power is governed by the law of the donor's domicile at the relevant time; and

(b) the formalities for the exercise, release, or disclaimer of the power, or the revocation or amendment of the exercise, release, or disclaimer of the power is governed by the law of the powerholder's state of domicile at the relevant time.

(2) The law of the powerholder's state of domicile may not govern the interpretation and definition of terms, or the determination of the rights of the appointee of the power, which shall be governed by the law of the donor's domicile at the relevant time.

(3) Claims of creditors, including creditor claims regarding a power not created by a powerholder as set forth in Section ~~[75-10-502]~~ 75A-4-502, and other parties claiming an interest in property or rights subject to a power will be governed by the laws of the donor's domicile at the time of the creation of the power and not the powerholder's state of domicile either at the time of the creation of the power or at the time of exercise of the power.

Section ~~{94}~~96. Section ~~{75A-4-103}~~75A-4-104, which is renumbered from Section 75-10-104 is renumbered and amended to read:

~~[75-10-104]~~. 75A-4-10375A-4-104. **Common law and principles of equity.**

The common law and principles of equity supplement this chapter, except to the extent modified by this chapter or laws of this state other than this chapter.

Section ~~{95}~~97. Section **75A-4-201**, which is renumbered from Section 75-10-201 is renumbered and amended to read:

Part 2. Creation, Revocation, and Amendment of Power of Appointment

~~[75-10-201]~~. 75A-4-201. **Creation of power of appointment.**

(1) A power of appointment is created only if:

(a) the instrument creating the power is valid under applicable law; and

(b) the terms of the instrument creating the power manifest the donor's intent to create in a powerholder a power of appointment over the appointive property exercisable in favor of a permissible appointee.

(2) A power of appointment may be created by the exercise of a power of appointment.

(3) A power of appointment may not be created in a deceased individual.

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(4) Subject to an applicable rule against perpetuities, a power of appointment may be created in an unborn or unascertained powerholder.

Section ~~{96}~~98. Section **75A-4-202**, which is renumbered from Section 75-10-202 is renumbered and amended to read:

~~[75-10-202].~~ **75A-4-202. Nontransferability.**

(1) A powerholder may not transfer a power of appointment.

(2) If a powerholder dies without exercising or releasing a power, the power lapses.

Section ~~{97}~~99. Section **75A-4-203**, which is renumbered from Section 75-10-203 is renumbered and amended to read:

~~[75-10-203].~~ **75A-4-203. Presumption of unlimited authority.**

Subject to Section ~~[75-10-205]~~ 75A-4-205, and unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is:

(1) presently exercisable;

(2) exclusionary; and

(3) except as otherwise provided in Section ~~[75-10-204]~~ 75A-4-204, general.

Section ~~{98}~~100. Section **75A-4-204**, which is renumbered from Section 75-10-204 is renumbered and amended to read:

~~[75-10-204].~~ **75A-4-204. Exception to presumption of unlimited authority.**

Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is nongeneral if:

(1) the power is exercisable only at the powerholder's death; and

(2) the permissible appointees of the power are a defined and limited class that does not include the powerholder's estate, the powerholder's creditors, or the creditors of the powerholder's estate.

Section ~~{99}~~101. Section **75A-4-205**, which is renumbered from Section 75-10-205 is renumbered and amended to read:

~~[75-10-205].~~ **75A-4-205. Rules of classification.**

(1) ~~[In this section]~~ As used in this section, "adverse party" means a person with a substantial beneficial interest in property that would be affected adversely by a powerholder's exercise or nonexercise of a power of appointment in favor of the powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.

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(2) If a powerholder may exercise a power of appointment only with the consent or joinder of an adverse party, the power is nongeneral.

(3) If the permissible appointees of a power of appointment are not defined and limited, the power is exclusionary.

Section ~~{100}~~102. Section **75A-4-206**, which is renumbered from Section 75-10-206 is renumbered and amended to read:

~~[75-10-206]~~. **75A-4-206. Donor's power to revoke or amend.**

A donor may revoke or amend a power of appointment unless or to the extent the instrument creating the power is made irrevocable by the donor or the exercise of a presently exercisable power has been irrevocably made or effected.

Section ~~{101}~~103. Section **75A-4-301**, which is renumbered from Section 75-10-301 is renumbered and amended to read:

Part 3. Exercise of Power of Appointment

~~[75-10-301]~~. **75A-4-301. Requisites for exercise of power of appointment.**

A power of appointment is exercised only:

- (1) if the instrument exercising the power is valid under applicable law;
- (2) if the terms of the instrument exercising the power:
 - (a) manifest the powerholder's intent to exercise the power; and
 - (b) satisfy the requirements of exercise, if any, imposed by the donor; and
- (3) to the extent the appointment is a permissible exercise of the power.

Section ~~{102}~~104. Section **75A-4-302**, which is renumbered from Section 75-10-302 is renumbered and amended to read:

~~[75-10-302]~~. **75A-4-302. Intent to exercise -- Determining intent from residuary clause.**

(1) As used in this section:

(a) "Residuary clause" does not include a residuary clause containing a blanket-exercise clause or a specific-exercise clause.

(b) "Will" includes a codicil and a testamentary instrument that revises another will.

(2) A residuary clause in a powerholder's will, or a comparable clause in the powerholder's revocable trust, manifests the powerholder's intent to exercise a power of appointment only if:

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(a) the terms of the instrument containing the residuary clause do not manifest a contrary intent;

(b) the power is a general power exercisable in favor of the powerholder's estate;

(c) there is no gift-in-default clause or the clause is ineffective; and

(d) the powerholder did not release the power.

Section ~~{103}~~105. Section **75A-4-303**, which is renumbered from Section 75-10-303 is renumbered and amended to read:

~~[75-10-303].~~ **75A-4-303. Intent to exercise -- After-acquired power.**

Unless the terms of the instrument exercising a power of appointment manifest a contrary intent:

(1) except as otherwise provided in Subsection (2), a blanket-exercise clause extends to a power acquired by the powerholder after executing the instrument containing the clause; and

(2) if the powerholder is also the donor of the power, the clause does not extend to the power unless there is no gift-in-default clause or the gift-in-default clause is ineffective.

Section ~~{104}~~106. Section **75A-4-304**, which is renumbered from Section 75-10-304 is renumbered and amended to read:

~~[75-10-304].~~ **75A-4-304. Compliance with donor-imposed formal requirements.**

(1) (a) A powerholder's compliance with formal requirements of appointment imposed by the donor is sufficient only if the powerholder substantially complies with the conditions, requirements, and formalities set forth in the power of appointment, including complying with all the requirements for making specific reference to the power, that the power shall be exercised in a specific document such as a will, or that the document exercising the power shall be witnessed or notarized.

(b) If the donor limited the powerholder's exercise to a validly executed will, substantial compliance may not include the exercise of the power by a trust or another document not meeting the requirements of a properly executed will.

(2) Unless required by the instrument creating the power, the probate of a properly executed will is not required for the exercise of a power to be valid and complete.

Section ~~{105}~~107. Section **75A-4-305**, which is renumbered from Section 75-10-305 is renumbered and amended to read:

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~~[75-10-305]~~. 75A-4-305. **Permissible appointment.**

(1) A powerholder of a general power of appointment that permits appointment to the powerholder or the powerholder's estate may make any appointment, including an appointment in trust or creating a new power of appointment, that the powerholder could make in disposing of the powerholder's own property.

(2) A powerholder of a general power of appointment that permits appointment only to the creditors of the powerholder or of the powerholder's estate may appoint only to those creditors.

(3) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the powerholder of a nongeneral power may:

(a) make an appointment in any form, including an appointment in trust, in favor of a permissible appointee;

(b) create a general power in a permissible appointee;

(c) create a nongeneral power in any person to appoint one or more of the permissible appointees of the original nongeneral power; or

(d) create a nongeneral power in a permissible appointee to appoint one or more persons if the permissible appointees of the new nongeneral power include the permissible appointees of the original nongeneral power.

Section ~~{106}~~108. Section **75A-4-306**, which is renumbered from Section 75-10-306 is renumbered and amended to read:

~~[75-10-306]~~. 75A-4-306. **Appointment to deceased appointee or permissible appointee's descendant.**

(1) Subject to Sections 75-2-603 and 75-2-604, an appointment to a deceased appointee is ineffective.

(2) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, a powerholder of a nongeneral power may exercise the power in favor of, or create a new power of appointment in, a descendant of a deceased permissible appointee whether or not the descendant is described by the donor as a permissible appointee.

Section ~~{107}~~109. Section **75A-4-307**, which is renumbered from Section 75-10-307 is renumbered and amended to read:

~~[75-10-307]~~. 75A-4-307. **Impermissible appointment.**

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(1) Except as otherwise provided in Section ~~[75-10-306]~~ 75A-4-306, an exercise of a power of appointment in favor of an impermissible appointee is ineffective.

(2) An exercise of a power of appointment in favor of a permissible appointee is ineffective to the extent the appointment is a fraud on the power.

Section ~~{108}~~110. Section **75A-4-308**, which is renumbered from Section 75-10-308 is renumbered and amended to read:

~~[75-10-308]~~. **75A-4-308. Elective allocation doctrine.**

If a powerholder exercises a power of appointment in a disposition that also disposes of property the powerholder owns, the owned property and the appointive property shall be allocated in the permissible manner that best carries out the powerholder's intent.

Section ~~{109}~~111. Section **75A-4-309**, which is renumbered from Section 75-10-309 is renumbered and amended to read:

~~[75-10-309]~~. **75A-4-309. Capture doctrine -- Disposition of ineffectively appointed property under general power.**

To the extent a powerholder of a general power of appointment, other than a power to withdraw property from, revoke, or amend a trust, makes an ineffective appointment:

(1) the gift-in-default clause controls the disposition of the ineffectively appointed property; or

(2) if there is no gift-in-default clause or to the extent the clause is ineffective, the ineffectively appointed property:

(a) passes to:

(i) the powerholder if the powerholder is a permissible appointee and is living; or

(ii) if the powerholder is an impermissible appointee or is deceased, the powerholder's estate if the estate is a permissible appointee; or

(b) if there is no taker under Subsection (2)(a), passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

Section ~~{110}~~112. Section **75A-4-310**, which is renumbered from Section 75-10-310 is renumbered and amended to read:

~~[75-10-310]~~. **75A-4-310. Disposition of unappointed property under released or unexercised general power.**

To the extent a powerholder releases or fails to exercise a general power of appointment

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other than a power to withdraw property from, revoke, or amend a trust:

(1) the gift-in-default clause controls the disposition of the unappointed property; or

(2) if there is no gift-in-default clause or to the extent the clause is ineffective:

(a) except as otherwise provided in Subsection (2)(b), the unappointed property passes

to:

(i) the powerholder if the powerholder is a permissible appointee and is living; or

(ii) if the powerholder is an impermissible appointee or is deceased, the powerholder's estate if the estate is a permissible appointee; or

(b) to the extent the powerholder released the power, or if there is no taker under Subsection (2)(a), the unappointed property passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

Section ~~{111}~~113. Section **75A-4-311**, which is renumbered from Section 75-10-311 is renumbered and amended to read:

~~[75-10-311]~~. **75A-4-311**. **Disposition of unappointed property under released or unexercised nongeneral power.**

To the extent a powerholder releases, ineffectively exercises, or fails to exercise a nongeneral power of appointment:

(1) the gift-in-default clause controls the disposition of the unappointed property; or

(2) if there is no gift-in-default clause or to the extent the clause is ineffective, the unappointed property:

(a) passes to the permissible appointees if:

(i) the permissible appointees are defined and limited; and

(ii) the terms of the instrument creating the power do not manifest a contrary intent; or

(b) if there is no taker under Subsection (2)(a), passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

Section ~~{112}~~114. Section **75A-4-312**, which is renumbered from Section 75-10-312 is renumbered and amended to read:

~~[75-10-312]~~. **75A-4-312**. **Disposition of unappointed property if partial appointment to taker in default.**

Unless the terms of the instrument creating or exercising a power of appointment manifest a contrary intent, if the powerholder makes a valid partial appointment to a taker in

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default of appointment, the taker in default of appointment may share fully in unappointed property.

Section ~~{113}~~115. Section **75A-4-313**, which is renumbered from Section 75-10-313 is renumbered and amended to read:

~~[75-10-313]~~. **75A-4-313. Appointment to taker in default.**

If a powerholder makes an appointment to a taker in default of appointment and the appointee would have taken the property under a gift-in-default clause had the property not been appointed, the power of appointment is considered not to have been exercised and the appointee takes under the clause.

Section ~~{114}~~116. Section **75A-4-314**, which is renumbered from Section 75-10-314 is renumbered and amended to read:

~~[75-10-314]~~. **75A-4-314. Powerholder's authority to revoke or amend exercise.**

Unless the terms of the instrument creating the power of appointment or the instrument exercising the power of appointment provide that the exercise is irrevocable or unamendable, a powerholder may revoke or amend an exercise of a power of appointment made by an instrument effective during the life of the powerholder where the exercise is to become effective at some future time or contingency and where that future time and contingency has not yet occurred, as long as the revocation or amendment is done with the same formality as the original exercise of the power of appointment.

Section ~~{115}~~117. Section **75A-4-401**, which is renumbered from Section 75-10-401 is renumbered and amended to read:

Part 4. Disclaimer or Release - Contract to Appoint or Not to Appoint

~~[75-10-401]~~. **75A-4-401. Disclaimer.**

As provided by Section 75-2-801:

- (1) A powerholder may disclaim all or part of a power of appointment.
- (2) A permissible appointee, an appointee, or a taker in default of appointment may disclaim all or part of an interest in appointive property.

Section ~~{116}~~118. Section **75A-4-402**, which is renumbered from Section 75-10-402 is renumbered and amended to read:

~~[75-10-402]~~. **75A-4-402. Authority to release.**

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A powerholder may release a power of appointment, in whole or in part, except to the extent the terms of the instrument creating the power prevent the release.

Section ~~{117}~~119. Section **75A-4-403**, which is renumbered from Section 75-10-403 is renumbered and amended to read:

~~[75-10-403].~~ **75A-4-403. Method of release.**

A powerholder of a releasable power of appointment may release the power in whole or in part:

(1) by substantial compliance with a method provided in the terms of the instrument creating the power; or

(2) if the terms of the instrument creating the power do not provide a method or the method provided in the terms of the instrument is not expressly made exclusive, by a record manifesting the powerholder's intent by clear and convincing evidence.

Section ~~{118}~~120. Section **75A-4-404**, which is renumbered from Section 75-10-404 is renumbered and amended to read:

~~[75-10-404].~~ **75A-4-404. Revocation or amendment of release.**

A powerholder may revoke or amend a release of a power of appointment only to the extent that:

(1) the instrument of release is revocable by the powerholder; or

(2) the powerholder reserves a power of revocation or amendment in the instrument of release.

Section ~~{119}~~121. Section **75A-4-405**, which is renumbered from Section 75-10-405 is renumbered and amended to read:

~~[75-10-405].~~ **75A-4-405. Power to contract -- Presently exercisable power of appointment.**

A powerholder of a presently exercisable power of appointment may contract:

(1) not to exercise the power; or

(2) to exercise the power if the contract when made does not confer a benefit on an impermissible appointee.

Section ~~{120}~~122. Section **75A-4-406**, which is renumbered from Section 75-10-406 is renumbered and amended to read:

~~[75-10-406].~~ **75A-4-406. Power to contract -- Power of appointment not**

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presently exercisable.

A powerholder of a power of appointment that is not presently exercisable may contract to exercise or not to exercise the power only if the powerholder:

- (1) is also the donor of the power; and
- (2) has reserved the power in a revocable trust.

Section ~~{121}~~123. Section **75A-4-407**, which is renumbered from Section 75-10-407 is renumbered and amended to read:

~~[75-10-407].~~ **75A-4-407. Remedy for breach of contract to appoint or not to appoint.**

The remedy for a powerholder's breach of a contract to appoint or not to appoint appointive property is limited to damages payable out of the appointive property or, if appropriate, specific performance of the contract.

Section ~~{122}~~124. Section **75A-4-501**, which is renumbered from Section 75-10-501 is renumbered and amended to read:

Part 5. Rights of Powerholder's Creditors in Appointive Property

~~[75-10-501].~~ **75A-4-501. Creditor claim -- General power created by powerholder.**

(1) ~~[In this section]~~ As used in this section, "power of appointment created by the powerholder" includes a power of appointment created in a transfer by another person to the extent the powerholder contributed value to the transfer.

(2) Appointive property subject to a general power of appointment created by the powerholder is subject to a claim of a creditor of the powerholder or of the powerholder's estate to the extent provided in Title 25, Chapter 6, Uniform Voidable Transactions Act.

(3) Subject to Subsection (2), appointive property subject to a general power of appointment created by the powerholder is not subject to a claim of a creditor of the powerholder or the powerholder's estate to the extent the powerholder irrevocably appointed the property in favor of a person other than the powerholder or the powerholder's estate.

(4) Subject to Subsections (2) and (3), and notwithstanding the presence of a spendthrift provision or whether the claim arose before or after the creation of the power of appointment, appointive property subject to a general power of appointment created by the powerholder is subject to a claim of a creditor of:

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(a) the powerholder, to the same extent as if the powerholder owned the appointive property, if the power is presently exercisable; and

(b) the powerholder's estate, to the extent the estate is insufficient to satisfy the claim and subject to the right of a decedent to direct the source from which liabilities are paid, if the power is exercisable at the powerholder's death.

Section ~~{123}~~125. Section **75A-4-502**, which is renumbered from Section 75-10-502 is renumbered and amended to read:

~~[75-10-502]~~. **75A-4-502**. **Creditor claim -- Power not created by powerholder.**

(1) (a) The property subject to a general or a nongeneral power of appointment not created by the powerholder, including a presently exercisable general or nongeneral power of appointment, is exempt from a claim of a creditor of the powerholder or the powerholder's estate.

(b) The powerholder of such a power may not be compelled to exercise the power and the powerholder's creditors may not acquire the power, any rights thereto, or reach the trust property or beneficial interests by any other means.

(c) A court may not exercise or require the powerholder to exercise the power of appointment.

(2) As set forth in Section ~~[75-10-103]~~ ~~{75A-4-102}~~75A-4-103, the law of the donor's domicile at the time of creation shall govern claims of creditors and other parties claiming an interest in property or rights subject to a power of appointment.

Section ~~{124}~~126. Section **75A-4-503**, which is renumbered from Section 75-10-503 is renumbered and amended to read:

~~[75-10-503]~~. **75A-4-503**. **Power to withdraw.**

(1) For purposes of this part, and except as otherwise provided in Subsection (2), a power to withdraw property from a trust is treated, during the time the power may be exercised, as a presently exercisable general power of appointment to the extent of the property subject to the power to withdraw.

(2) On the lapse, release, or waiver of a power to withdraw property from a trust, the power is treated as a presently exercisable general power of appointment only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount

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specified in 26 U.S.C. Sec. 2041(b)(2) and 26 U.S.C. Sec. 2514(e) or the amount specified in 26 U.S.C. Sec. 2503(b).

Section ~~{125}~~127. Section **75A-4-601**, which is renumbered from Section 75-10-601 is renumbered and amended to read:

Part 6. Applicability Provisions

~~[75-10-601]~~. **75A-4-601. Uniformity of application and construction.**

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

Section ~~{126}~~128. Section **75A-4-602**, which is renumbered from Section 75-10-602 is renumbered and amended to read:

~~[75-10-602]~~. **75A-4-602. Relation to Electronic Signatures in Global and National Commerce Act.**

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

Section ~~{127}~~129. Section **75A-4-603**, which is renumbered from Section 75-10-603 is renumbered and amended to read:

~~[75-10-603]~~. **75A-4-603. Application to existing relationships.**

(1) Except as otherwise provided in this chapter, on and after May 9, 2017:

(a) this chapter applies to a power of appointment created before, on, or after May 9, 2017;

(b) this chapter applies to a judicial proceeding concerning a power of appointment commenced on or after May 9, 2017;

(c) this chapter applies to a judicial proceeding concerning a power of appointment commenced before May 9, 2017, unless the court finds that application of a particular provision of this chapter would interfere substantially with the effective conduct of the judicial proceeding or prejudice a right of a party, in which case the particular provision of this chapter does not apply and the superseded law applies; and

(d) a rule of construction or presumption provided in this chapter applies to an

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instrument executed before May 9, 2017, unless there is a clear indication of a contrary intent in the terms of the instrument.

(2) Except as otherwise provided in Subsections (1)(a) through (d), an action done before May 9, 2017, is not affected by this chapter.

(3) If a right is acquired, extinguished, or barred on the expiration of a prescribed period that commenced under law of this state other than this chapter before May 9, 2017, the law continues to apply to the right.

Section ~~{128}~~ 130. Section **75A-5-101** ~~{, which}~~ is ~~{renumbered from Section 22-3-102 is renumbered and amended}~~ enacted to read:

CHAPTER 5. UNIFORM FIDUCIARY INCOME AND PRINCIPAL ACT

Part 1. General Provisions

75A-5-101. Reserved.

Reserved.

Section 131. Section 75A-5-102, which is renumbered from Section 22-3-102 is renumbered and amended to read:

~~[22-3-102].~~ ~~{75A-5-101}~~ 75A-5-102. Definitions **for chapter.**

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

(1) (a) "Accounting period" means a calendar year, unless a fiduciary selects another period of 12 calendar months or approximately 12 calendar months.

(b) "Accounting period" includes a part of a calendar year or another period of 12 calendar months or approximately 12 calendar months that begins when an income interest begins or ends when an income interest ends.

(2) (a) "Asset-backed security" means a security that is serviced primarily by the cash flows of a discrete pool of fixed or revolving receivables or other financial assets that by the financial assets' terms convert into cash within a finite time.

(b) "Asset-backed security" includes rights or other assets that ensure the servicing or timely distribution of proceeds to the holder of the asset-backed security.

(c) "Asset-backed security" does not include an asset to which Section ~~[22-3-401, 22-3-409, or 22-3-414]~~ 75A-5-401, 75A-5-409, or 75A-5-414 applies.

(3) "Beneficiary" includes:

(a) for a trust:

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(i) a current beneficiary, including a current income beneficiary and a beneficiary that may receive only principal;

(ii) a remainder beneficiary; and

(iii) any other successor beneficiary;

(b) for an estate, an heir and devisee; and

(c) for a life estate or term interest, a person that holds a life estate, term interest, or remainder, or other interest following a life estate or term interest.

(4) "Court" means a court in this state with jurisdiction over a trust or estate, or a life estate or other term interest described in Subsection [22-3-103(2)] ~~{75A-5-102}~~ 75A-5-103(2).

(5) "Current income beneficiary" means a beneficiary to which a fiduciary may distribute net income, even if the fiduciary also may distribute principal to the beneficiary.

(6) (a) "Distribution" means a payment or transfer by a fiduciary to a beneficiary in the beneficiary's capacity as a beneficiary, made under the terms of the trust, without consideration other than the beneficiary's right to receive the payment or transfer under the terms of the trust.

(b) "Distribute," "distributed," and "distributee" have corresponding meanings.

(7) (a) "Estate" means a decedent's estate.

(b) "Estate" includes the property of the decedent as the estate is originally constituted and the property of the estate as it exists at any time during administration.

(8) "Fiduciary" includes:

(a) a trustee, trust director as defined in Section 75-12-102, personal representative, life tenant, holder of a term interest, and person acting under a delegation from a fiduciary;

(b) a person that holds property for a successor beneficiary whose interest may be affected by an allocation of receipts and expenditures between income and principal; and

(c) if there are two or more co-fiduciaries, all co-fiduciaries acting under the terms of the trust and applicable law.

(9) (a) "Income" means money or other property a fiduciary receives as current return from principal.

(b) "Income" includes a part of receipts from a sale, exchange, or liquidation of a principal asset to the extent provided in Part 4, Allocation of Receipts.

(10) (a) "Income interest" means the right of a current income beneficiary to receive all or part of net income, whether the terms of the trust require the net income to be distributed or

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authorize the net income to be distributed in the fiduciary's discretion.

(b) "Income interest" includes the right of a current beneficiary to use property held by a fiduciary.

(11) "Independent person" means a person that is not:

(a) for a trust:

(i) a qualified beneficiary as determined under Section 75-7-103;

(ii) a settlor of the trust; or

(iii) an individual whose legal obligation to support a beneficiary may be satisfied by a distribution from the trust;

(b) for an estate, a beneficiary;

(c) a spouse, parent, brother, sister, or issue of an individual described in Subsection (11)(a) or (b);

(d) a corporation, partnership, limited liability company, or other entity in which persons described in Subsections (11)(a) through (c), in the aggregate, have voting control; or

(e) an employee of a person described in Subsection (11)(a), (b), (c), or (d).

(12) "Mandatory income interest" means the right of a current income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

(13) (a) "Net income" means:

(i) the total allocations during an accounting period to income under the terms of a trust and this chapter minus the disbursements during the accounting period, other than distributions, allocated to income under the terms of the trust and this chapter; and

(ii) to the extent the trust is a unitrust under Part 3, Unitrust, the unitrust amount determined under Part 3, Unitrust.

(b) "Net income" includes an adjustment from principal to income under Section ~~[22-3-203]~~ 75A-5-203.

(c) "Net income" does not include an adjustment from income to principal under Section ~~[22-3-203]~~ 75A-5-203.

(14) "Person" means:

(a) an individual;

(b) an estate;

(c) a trust;

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(d) a business or nonprofit entity;

(e) a public corporation, government or governmental subdivision, agency, or instrumentality; or

(f) any other legal entity.

(15) "Personal representative" means an executor, administrator, successor personal representative, special administrator, or person that performs substantially the same function with respect to an estate under the law governing the person's status.

(16) "Principal" means property held in trust for distribution to, production of income for, or use by a current or successor beneficiary.

(17) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(18) "Settlor" means the same as that term is defined in Section 75-7-103.

(19) "Special tax benefit" means:

(a) exclusion of a transfer to a trust from gifts described in Section 2503(b) of the Internal Revenue Code because of the qualification of an income interest in the trust as a present interest in property;

(b) status as a qualified subchapter S trust described in Section 1361(d)(3) of the Internal Revenue Code at a time the trust holds stock of an S corporation described in Section 1361(a)(1) of the Internal Revenue Code;

(c) an estate or gift tax marital deduction for a transfer to a trust under Section 2056 or 2523 of the Internal Revenue Code that depends or depended in whole or in part on the right of the settlor's spouse to receive the net income of the trust;

(d) exemption in whole or in part of a trust from the federal generation-skipping transfer tax imposed by Section 2601 of the Internal Revenue Code because the trust was irrevocable on September 25, 1985, if there is any possibility that:

(i) a taxable distribution, as defined in Section 2612(b) of the Internal Revenue Code, could be made from the trust; or

(ii) a taxable termination, as defined in Section 2612(a) of the Internal Revenue Code, could occur with respect to the trust; or

(e) an inclusion ratio, as defined in Section 2642(a) of the Internal Revenue Code, of the trust which is less than one, if there is any possibility that:

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(i) a taxable distribution, as defined in Section 2612(b) of the Internal Revenue Code, could be made from the trust; or

(ii) a taxable termination, as defined in Section 2612(a) of the Internal Revenue Code, could occur with respect to the trust.

(20) "Successive interest" means the interest of a successor beneficiary.

(21) "Successor beneficiary" means a person entitled to receive income or principal or to use property when an income interest or other current interest ends.

(22) "Terms of a trust" means:

(a) except as otherwise provided in Subsection (22)(b), the manifestation of the settlor's intent regarding a trust's provisions as:

(i) expressed in the trust instrument; or

(ii) established by other evidence that would be admissible in a judicial proceeding;

(b) the trust's provisions as established, determined, or amended by:

(i) a trustee or trust director in accordance with applicable law;

(ii) a court order; or

(iii) a nonjudicial settlement agreement under Section 75-7-110;

(c) for an estate, a will; or

(d) for a life estate or term interest, the corresponding manifestation of the rights of the beneficiaries.

(23) (a) "Trust" includes:

(i) an express trust, private or charitable, with additions to the trust, wherever and however created; and

(ii) a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust.

(b) "Trust" does not include:

(i) a constructive trust;

(ii) a resulting trust, conservatorship, guardianship, multi-party account, custodial arrangement for a minor, business trust, voting trust, security arrangement, liquidation trust, or trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, retirement benefits, or employee benefits of any kind; or

(iii) an arrangement under which a person is a nominee, escrowee, or agent for another.

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(24) (a) "Trustee" means a person, other than a personal representative, that owns or holds property for the benefit of a beneficiary.

(b) "Trustee" includes an original, additional, or successor trustee, whether appointed or confirmed by a court.

(25) (a) "Will" means any testamentary instrument recognized by applicable law that makes a legally effective disposition of an individual's property effective at the individual's death.

(b) "Will" includes a codicil or other amendment to a testamentary instrument.

Section ~~{129}~~132. Section ~~{75A-5-102}~~75A-5-103, which is renumbered from Section 22-3-103 is renumbered and amended to read:

~~[22-3-103]~~. ~~{75A-5-102}~~75A-5-103. **Scope.**

Except as otherwise provided in the terms of a trust or this chapter, this chapter applies to:

- (1) a trust or estate; and
- (2) a life estate or other term interest in which the interest of one or more persons will be succeeded by the interest of one or more other persons.

Section ~~{130}~~133. Section ~~{75A-5-103}~~75A-5-104, which is renumbered from Section 22-3-104 is renumbered and amended to read:

~~[22-3-104]~~. ~~{75A-5-103}~~75A-5-104. **Governing law.**

(1) Except as otherwise provided in the terms of a trust or this chapter, this chapter applies when this state is:

- (a) the principal place of administration of a trust or estate; or
- (b) the situs of property that is not held in a trust or estate and is subject to a life estate or other term interest described in Subsection [22-3-103(2)] ~~{75A-5-102}~~75A-5-103(2).

(2) By accepting the trusteeship of a trust having the trust's principal place of administration in this state or by moving the principal place of administration of a trust to this state, the trustee submits to the application of this chapter to any matter within the scope of this chapter involving the trust.

Section ~~{131}~~134. Section 75A-5-201, which is renumbered from Section 22-3-201 is renumbered and amended to read:

Part 2. Fiduciary Duties and Judicial Review

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~~[22-3-201]~~. 75A-5-201. Fiduciary duties -- General principles.

(1) In making an allocation or determination or exercising discretion under this chapter, a fiduciary shall:

- (a) act in good faith, based on what is fair and reasonable to all beneficiaries;
- (b) administer a trust or estate impartially, except to the extent the terms of the trust

manifest an intent that the fiduciary shall or may favor one or more beneficiaries;

(c) administer the trust or estate in accordance with the terms of the trust, even if there is a different provision in this chapter; and

(d) administer the trust or estate in accordance with this chapter, except to the extent the terms of the trust provide otherwise or authorize the fiduciary to determine otherwise.

(2) (a) A fiduciary's allocation, determination, or exercise of discretion under this chapter is presumed to be fair and reasonable to all beneficiaries.

(b) A fiduciary may exercise a discretionary power of administration given to the fiduciary by the terms of the trust, and an exercise of the power that produces a result different from a result required or permitted by this chapter does not create an inference that the fiduciary abused the fiduciary's discretion.

(3) A fiduciary shall:

(a) add a receipt to principal, to the extent neither the terms of the trust nor this chapter allocates the receipt between income and principal; and

(b) charge a disbursement to principal, to the extent neither the terms of the trust nor this chapter allocates the disbursement between income and principal.

(4) If a fiduciary determines an exercise of discretionary power will assist the fiduciary to administer the trust or estate impartially, the fiduciary may:

(a) exercise the power to adjust under Section ~~[22-3-203]~~ 75A-5-203;

(b) convert an income trust to a unitrust under Subsection ~~[22-3-303(1)(a)]~~
75A-5-303(1)(a);

(c) change the percentage or method used to calculate a unitrust amount under Subsection ~~[22-3-303(1)(b)]~~ 75A-5-303(1)(b); or

(d) convert a unitrust to an income trust under Subsection ~~[22-3-303(1)(c)]~~
75A-5-303(1)(c).

(5) In making the determination under Subsection (4), the fiduciary shall consider the

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following factors:

- (a) the terms of the trust;
- (b) the nature, distribution standards, and expected duration of the trust;
- (c) the effect of the allocation rules, including specific adjustments between income and principal, under Part 4, Allocation of Receipts, Part 5, Allocation of Disbursements, Part 6, Death of Individual or Termination of Income Interest, and Part 7, Apportionment at Beginning and End of Income Interest;
- (d) the desirability of liquidity and regularity of income;
- (e) the desirability of the preservation and appreciation of principal;
- (f) the extent to which an asset is used or may be used by a beneficiary;
- (g) the increase or decrease in the value of principal assets, reasonably determined by the fiduciary;
- (h) whether and to what extent the terms of the trust:
- (i) give the fiduciary power to accumulate income or invade principal; or
- (ii) prohibit the fiduciary from accumulating income or invading principal;
- (i) the extent to which the fiduciary has accumulated income or invaded principal in preceding accounting periods;
- (j) the effect of current and reasonably expected economic conditions; and
- (k) the reasonably expected tax consequences of the exercise of the power.

Section ~~{132}~~135. Section **75A-5-202**, which is renumbered from Section 22-3-202 is renumbered and amended to read:

~~[22-3-202].~~ 75A-5-202. Judicial review of exercise of discretionary power --

Request for instruction.

- (1) In this section, "fiduciary decision" means:
 - (a) a fiduciary's allocation between income and principal or other determination regarding income and principal required or authorized by the terms of the trust or this chapter;
 - (b) the fiduciary's exercise or nonexercise of a discretionary power regarding income and principal granted by the terms of the trust or this chapter, including the power to:
 - (i) adjust under Section ~~[22-3-203]~~ 75A-5-203;
 - (ii) convert an income trust to a unitrust under Subsection ~~[22-3-303(1)(a)]~~ 75A-5-303(1)(a);

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(iii) change the percentage or method used to calculate a unitrust amount under Subsection [~~22-3-303(1)(b)~~] 75A-5-303(1)(b); or

(iv) convert a unitrust to an income trust under Subsection [~~22-3-303(1)(c)~~] 75A-5-303(1)(c); or

(c) the fiduciary's implementation of a decision described in Subsection (1)(a) or (b).

(2) The court may not order a fiduciary to change a fiduciary decision, unless the court determines that the fiduciary decision was an abuse of the fiduciary's discretion.

(3) (a) If the court determines that a fiduciary decision was an abuse of the fiduciary's discretion, the court may order a remedy authorized by law, including a remedy authorized in Section 75-7-1001.

(b) To place the beneficiaries in the positions that the beneficiaries would have occupied if there had not been an abuse of the fiduciary's discretion, the court may order:

(i) the fiduciary to exercise or refrain from exercising the power to adjust under Section [~~22-3-203~~] 75A-5-203;

(ii) the fiduciary to exercise or refrain from exercising the power to:

(A) convert an income trust to a unitrust under Subsection [~~22-3-303(1)(a)~~] 75A-5-303(1)(a);

(B) change the percentage or method used to calculate a unitrust amount under Subsection [~~22-3-303(1)(b)~~] 75A-5-303(1)(b); or

(C) convert a unitrust to an income trust under Subsection [~~22-3-303(1)(c)~~] 75A-5-303(1)(c);

(iii) the fiduciary to distribute an amount to a beneficiary;

(iv) a beneficiary to return some or all of a distribution; or

(v) the fiduciary to withhold an amount from one or more future distributions to a beneficiary.

(4) (a) On petition by a fiduciary for instruction, the court may determine whether a proposed fiduciary decision will result in an abuse of the fiduciary's discretion.

(b) A beneficiary that opposes the proposed decision has the burden to establish that the proposed decision will result in an abuse of the fiduciary's discretion if the petition:

(i) describes the proposed decision;

(ii) contains sufficient information to inform the beneficiary of the reasons for making

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the proposed decision and the facts on which the fiduciary relies; and

(iii) explains how the beneficiary will be affected by the proposed decision.

Section ~~{133}~~136. Section **75A-5-203**, which is renumbered from Section 22-3-203 is renumbered and amended to read:

~~[22-3-203]~~. **75A-5-203. Fiduciary's power to adjust.**

(1) Except as otherwise provided in the terms of a trust or this section, a fiduciary, in a record, without court approval, may adjust between income and principal if the fiduciary determines the exercise of the power to adjust will assist the fiduciary to administer the trust or estate impartially.

(2) This section does not create a duty to exercise or consider the power to adjust under Subsection (1) or to inform a beneficiary about the applicability of this section.

(3) A fiduciary that in good faith exercises or fails to exercise the power to adjust under Subsection (1) is not liable to a person affected by the exercise or failure to exercise.

(4) In deciding whether and to what extent to exercise the power to adjust under Subsection (1), a fiduciary shall consider all factors the fiduciary considers relevant, including the relevant factors in Subsection ~~[22-3-201(5)]~~ 75A-5-201(5) and the application of Subsection ~~[22-3-401(9)]~~ 75A-5-401(9), Section ~~[22-3-408]~~ 75A-5-408, and Section ~~[22-3-413]~~ 75A-5-413.

(5) A fiduciary may not exercise the power to make an adjustment under Subsection (1) or the power to make a determination that an allocation is insubstantial under Section ~~[22-3-408]~~ 75A-5-408 if:

(a) the adjustment or determination would reduce the amount payable to a current income beneficiary from a trust that qualifies for a special tax benefit, except to the extent the adjustment is made to provide for a reasonable apportionment of the total return of the trust between the current income beneficiary and successor beneficiaries;

(b) the adjustment or determination would change the amount payable to a beneficiary, as a fixed annuity or a fixed fraction of the value of the trust assets, under the terms of the trust;

(c) the adjustment or determination would reduce an amount that is permanently set aside for a charitable purpose under the terms of the trust, unless both income and principal are set aside for the charitable purpose;

(d) possessing or exercising the power would cause a person to be treated as the owner

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of all or part of the trust for federal income tax purposes;

(e) possessing or exercising the power would cause all or part of the value of the trust assets to be included in the gross estate of an individual for federal estate tax purposes;

(f) possessing or exercising the power would cause an individual to be treated as making a gift for federal gift tax purposes;

(g) the fiduciary is not an independent person;

(h) the trust is irrevocable and provides for income to be paid to the settlor and possessing or exercising the power would cause the adjusted principal or income to be considered an available resource or available income under a public-benefit program; or

(i) the trust is a unitrust under Part 3, Unitrust.

(6) If Subsection (5)(d), (e), (f), or (g) applies to a fiduciary:

(a) a co-fiduciary to which Subsections (5)(d) through (g) do not apply may exercise the power to adjust, unless the exercise of the power to adjust by the remaining co-fiduciary or co-fiduciaries is not permitted by the terms of the trust or law other than this chapter; or

(b) (i) if there is no co-fiduciary to which Subsections (5)(d) through (g) do not apply:

(A) except as otherwise provided in Subsection (6)(b)(ii)(A), the fiduciary may appoint a co-fiduciary to which Subsections (5)(d) through (g) do not apply;

(B) except as otherwise provided in Subsection (6)(b)(ii)(B), the appointed co-fiduciary may exercise the power to adjust under Subsection (1); and

(C) the appointed co-fiduciary may be a special fiduciary with limited powers.

(ii) (A) If the appointment of a co-fiduciary is not permitted by the terms of the trust or by a provision of law outside this chapter, a fiduciary may not appoint a co-fiduciary.

(B) If the exercise of the power to adjust by a co-fiduciary is not permitted by the terms of the trust or by a provision of law outside this chapter, the co-fiduciary may not exercise the power to adjust under Subsection (1).

(7) A fiduciary may release or delegate to a co-fiduciary the power to adjust under Subsection (1) if the fiduciary determines that the fiduciary's possession or exercise of the power to adjust will or may:

(a) cause a result described in Subsections (5)(a) through (f) or (h); or

(b) deprive the trust of a tax benefit or impose a tax burden not described in Subsections (5)(a) through (f).

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(8) A fiduciary's release or delegation to a co-fiduciary under Subsection (7) of the power to adjust under Subsection (1):

(a) must be in a record;

(b) applies to the entire power to adjust, unless the release or delegation provides a limitation, which may be a limitation to the power to adjust:

(i) from income to principal;

(ii) from principal to income;

(iii) for specified property; or

(iv) in specified circumstances;

(c) for a delegation, may be modified by a redelegation under this subsection by the co-fiduciary to which the delegation is made; and

(d) subject to Subsection (8)(c), is permanent, unless the release or delegation provides a specified period, including a period measured by the life of an individual or the lives of more than one individual.

(9) Terms of a trust that deny or limit the power to adjust between income and principal do not affect the application of this section, unless the terms of the trust expressly deny or limit the power to adjust under Subsection (1).

(10) The exercise of the power to adjust under Subsection (1) in any accounting period may apply to the current accounting period, the immediately preceding accounting period, and one or more subsequent accounting periods.

(11) A description of the exercise of the power to adjust under Subsection (1) shall be:

(a) included in a report, if any, sent to beneficiaries under Subsection 75-7-811(3); or

(b) communicated at least annually to the qualified beneficiaries determined under Subsection 75-7-103(1)(h).

Section ~~{134}~~137. Section **75A-5-301**, which is renumbered from Section 22-3-301 is renumbered and amended to read:

Part 3. Unitrust

~~[22-3-301]~~. **75A-5-301. Definitions** **for part.**

~~[It]~~ As used in this part:

(1) "Applicable value" means the amount of the net fair market value of a trust taken into account under Section ~~[22-3-307]~~ 75A-5-307.

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(2) "Express unitrust" means a trust for which, under the terms of the trust without regard to this part, income or net income is permitted or required to be calculated as a unitrust amount.

(3) "Income trust" means a trust that is not a unitrust.

(4) "Net fair market value of a trust" means the fair market value of the assets of the trust minus the noncontingent liabilities of the trust.

(5) (a) "Unitrust" means a trust for which net income is a unitrust amount.

(b) "Unitrust" includes an express unitrust.

(6) "Unitrust amount" means:

(a) an amount computed by multiplying a determined value of a trust by a determined percentage; and

(b) for a unitrust administered under a unitrust policy, the applicable value multiplied by the unitrust rate.

(7) "Unitrust policy" means a policy described in Sections [~~22-3-305~~] 75A-5-305 through [~~22-3-309~~] 75A-5-309 and adopted under Section [~~22-3-303~~] 75A-5-303.

(8) "Unitrust rate" means the rate used to compute the unitrust amount under Subsection (6) for a unitrust administered under a unitrust policy.

Section ~~{135}~~138. Section **75A-5-302**, which is renumbered from Section 22-3-302 is renumbered and amended to read:

~~[22-3-302].~~ **75A-5-302. Application -- Duties and remedies.**

(1) Except as otherwise provided in Subsection (2), this part applies to:

(a) an income trust, unless the terms of the trust expressly prohibit use of this part by:

(i) a specific reference to this part; or

(ii) an explicit expression of intent that net income not be calculated as a unitrust amount; and

(b) an express unitrust, except to the extent the terms of the trust explicitly:

(i) prohibit use of this part by a specific reference to this part;

(ii) prohibit conversion to an income trust; or

(iii) limit changes to the method of calculating the unitrust amount.

(2) This part does not apply to a trust described in Section 170(f)(2)(B), 642(c)(5), 664(d), 2702(a)(3)(A)(ii) or (iii), or 2702(b) of the Internal Revenue Code.

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(3) (a) An income trust to which this part applies under Subsection (1)(a) may be converted to a unitrust under this part regardless of the terms of the trust concerning distributions.

(b) Conversion to a unitrust under this part does not affect other terms of the trust concerning distributions of income or principal.

(4) (a) This part applies to an estate only to the extent a trust is a beneficiary of the estate.

(b) To the extent of the trust's interest in the estate, and in the same manner as for a trust under this part:

(i) the estate may be administered as a unitrust;

(ii) the administration of the estate as a unitrust may be discontinued; or

(iii) the percentage or method used to calculate the unitrust amount may be changed.

(5) This part does not create a duty to take or consider action under this part or to inform a beneficiary about the applicability of this part.

(6) A fiduciary that in good faith takes or fails to take an action under this part is not liable to a person affected by the action or inaction of the fiduciary.

Section ~~†136~~139. Section **75A-5-303**, which is renumbered from Section 22-3-303 is renumbered and amended to read:

~~[22-3-303]~~. **75A-5-303**. **Authority of fiduciary.**

(1) A fiduciary, without court approval, by complying with Subsections (2) and (6), may:

(a) convert an income trust to a unitrust if the fiduciary adopts, in a record, a unitrust policy for the trust providing:

(i) that, in administering the trust, the net income of the trust will be a unitrust amount rather than net income determined without regard to this part; and

(ii) the percentage and method used to calculate the unitrust amount;

(b) change the percentage or method used to calculate a unitrust amount for a unitrust if the fiduciary adopts in a record a unitrust policy or an amendment or replacement of a unitrust policy providing changes in the percentage or method used to calculate the unitrust amount; or

(c) convert a unitrust to an income trust if the fiduciary adopts, in a record, a

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determination that, in administering the trust, the net income of the trust will be net income determined without regard to this part rather than a unitrust amount.

(2) A fiduciary may take an action under Subsection (1) if:

(a) the fiduciary determines that the action will assist the fiduciary to administer a trust impartially;

(b) the fiduciary sends a notice in a record, in the manner required by Section ~~[22-3-304]~~ 75A-5-304, describing and proposing to take the action;

(c) the fiduciary sends a copy of the notice under Subsection (2)(b) to each settlor of the trust which is:

(i) if an individual, living; or

(ii) if not an individual, in existence;

(d) at least one member of each class of the qualified beneficiaries determined under Subsection 75-7-103(1)(h) receiving the notice under Subsection (2)(b) is:

(i) if an individual, legally competent;

(ii) if not an individual, in existence; or

(iii) represented in the manner provided in Subsection ~~[22-3-304(2)]~~ 75A-5-304(2);

and

(e) the fiduciary does not receive, by the date specified in the notice under Subsection ~~[22-3-304(4)(e)]~~ 75A-5-304(4)(e), an objection in a record to the action proposed under Subsection (2)(b) from a person to which the notice under Subsection (2)(b) is sent.

(3) (a) If a fiduciary receives, not later than the date stated in the notice under Subsection ~~[22-3-304(4)(e)]~~ 75A-5-304(4)(e), an objection in a record described in Subsection ~~[22-3-304(4)(d)]~~ 75A-5-304(4)(d) to a proposed action, the fiduciary or a beneficiary may request that the court:

(i) require the fiduciary to take the proposed action;

(ii) require the fiduciary to take the proposed action with modifications; or

(iii) prevent the proposed action.

(b) A person described in Subsection ~~[22-3-304(1)]~~ 75A-5-304(1) may oppose the proposed action in the proceeding under Subsection (3)(a), regardless of whether the person:

(i) consented under Subsection ~~[22-3-304(3)]~~ 75A-5-304(3); or

(ii) objected under Subsection ~~[22-3-304(4)(d)]~~ 75A-5-304(4)(d).

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(4) If, after sending a notice under Subsection (2)(b), a fiduciary decides not to take the action proposed in the notice, the fiduciary shall notify each person described in Subsection ~~[22-3-304(1)]~~ 75A-5-304(1) in a record of the decision not to take the action and the reasons for the decision.

(5) If a beneficiary requests in a record that a fiduciary take an action described in Subsection (1) and the fiduciary declines to act or does not act within 90 days after receiving the request, the beneficiary may request the court to direct the fiduciary to take the action requested.

(6) In deciding whether and how to take an action authorized by Subsection (1), or whether and how to respond to a request by a beneficiary under Subsection (5), a fiduciary shall consider all factors relevant to the trust and the beneficiaries, including the relevant factors in Subsection ~~[22-3-201(5)]~~ 75A-5-201(5).

(7) For a reason described in Subsection ~~[22-3-203(7)]~~ 75A-5-203(7), and in the manner described in Subsection ~~[22-3-203(8)]~~ 75A-5-203(8), a fiduciary may:

(a) release or delegate the power to convert an income trust to a unitrust under Subsection (1)(a);

(b) change the percentage or method used to calculate a unitrust amount under Subsection (1)(b); or

(c) convert a unitrust to an income trust under Subsection (1)(c).

Section ~~{137}~~140. Section **75A-5-304**, which is renumbered from Section 22-3-304 is renumbered and amended to read:

~~[22-3-304].~~ **75A-5-304. Notice.**

(1) A fiduciary shall send a notice required by Subsection ~~[22-3-303(2)(b)]~~ 75A-5-303(2)(b) in a manner authorized under Section 75-7-109 to:

(a) the qualified beneficiaries determined under Subsection 75-7-103(1)(h);

(b) each person acting, in accordance with Title 75, Chapter 12, Uniform Directed Trust Act, as trust director of the trust; and

(c) each person that is granted a power by the terms of the trust to appoint or remove a trustee or person described in Subsection (1)(b), to the extent the power is exercisable when the person that exercises the power is not then serving as trustee or is a person described in Subsection (1)(b).

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(2) The representation provisions of Sections 75-7-301 through 75-7-305 apply to notice under this section.

(3) (a) A person may consent in a record at any time to action proposed under Subsection [~~22-3-303(2)(b)~~] 75A-5-303(2)(b).

(b) If a person required to receive a notice under Subsection (1) consents under Subsection (3)(a) to not receive the notice, the fiduciary is not required to send the person the notice.

(4) A notice required by Subsection [~~22-3-303(2)(b)~~] 75A-5-303(2)(b) shall include:

(a) the action proposed under Subsection [~~22-3-303(2)(b)~~] 75A-5-303(2)(b);

(b) for a conversion of an income trust to a unitrust, a copy of the unitrust policy adopted under Subsection [~~22-3-303(1)(a)~~] 75A-5-303(1)(a);

(c) for a change in the percentage or method used to calculate the unitrust amount, a copy of the unitrust policy or amendment or replacement of the unitrust policy adopted under Subsection [~~22-3-303(1)(b)~~] 75A-5-303(1)(b);

(d) a statement that the person to which the notice is sent may object to the proposed action by stating in a record the basis for the objection and sending or delivering the record to the fiduciary;

(e) the date by which the fiduciary shall receive an objection under Subsection (4)(d), which shall be at least 30 days after the date the notice is sent;

(f) the date on which the action is proposed to be taken and the date on which the action is proposed to take effect;

(g) the name and contact information of the fiduciary; and

(h) the name and contact information of a person that may be contacted for additional information.

Section ~~{138}~~141. Section **75A-5-305**, which is renumbered from Section 22-3-305 is renumbered and amended to read:

~~[22-3-305]~~. **75A-5-305. Unitrust policy.**

(1) In administering a unitrust under this part, a fiduciary shall follow a unitrust policy:

(a) adopted under Subsection [~~22-3-303(1)(a)~~] 75A-5-303(1)(a) or (b); or

(b) amended or replaced under Subsection [~~22-3-303(1)(b)~~] 75A-5-303(1)(b).

(2) A unitrust policy shall provide:

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(a) the unitrust rate or the method for determining the unitrust rate under Section ~~[22-3-306]~~ 75A-5-306;

(b) the method for determining the applicable value under Section ~~[22-3-307]~~ 75A-5-307; and

(c) the rules described in Sections ~~[22-3-306]~~ 75A-5-306 through ~~[22-3-309]~~ 75A-5-309 that apply in the administration of the unitrust, regardless of whether the rules are:

(i) mandatory, as provided in Subsections ~~[22-3-307(1)]~~ 75A-5-307(1) and ~~[22-3-308(1)]~~ 75A-5-308(1); or

(ii) optional, as provided in Section ~~[22-3-306]~~ 75A-5-306 and Subsections ~~[22-3-307(2), 22-3-308(2), and 22-3-309(1)]~~ 75A-5-307(2), 75A-5-308(2), and 75A-5-309(1), to the extent the fiduciary elects to adopt those rules.

Section ~~{139}~~ 142. Section **75A-5-306**, which is renumbered from Section 22-3-306 is renumbered and amended to read:

~~[22-3-306]~~. **75A-5-306. Unitrust rate.**

(1) Except as otherwise provided in Subsection ~~[22-3-309(2)(a)]~~ 75A-5-309(2)(a), a unitrust rate may be:

(a) a fixed unitrust rate; or

(b) a unitrust rate that is determined for each period using:

(i) a market index or other published data; or

(ii) a mathematical blend of market indices or other published data over a stated number of preceding periods.

(2) Except as otherwise provided in Subsection ~~[22-3-309(2)(a)]~~ 75A-5-309(2)(a), a unitrust policy may provide:

(a) a limit on how high the unitrust rate determined under Subsection (1)(b) may rise;

(b) a limit on how low the unitrust rate determined under Subsection (1)(b) may fall;

(c) a limit on how much the unitrust rate determined under Subsection (1)(b) may increase over the unitrust rate for the preceding period or a mathematical blend of unitrust rates over a stated number of preceding periods;

(d) a limit on how much the unitrust rate determined under Subsection (1)(b) may decrease below the unitrust rate for the preceding period or a mathematical blend of unitrust rates over a stated number of preceding periods; or

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(e) a mathematical blend of any of the unitrust rates determined under Subsection (1)(b) and Subsections (2)(a) through (d).

Section ~~{140}~~143. Section **75A-5-307**, which is renumbered from Section 22-3-307 is renumbered and amended to read:

~~[22-3-307]~~. **75A-5-307**. **Applicable value.**

(1) A unitrust policy shall provide the method for determining the fair market value of an asset for the purpose of determining the unitrust amount, including:

(a) the frequency of valuing the asset, which need not require a valuation in every period; and

(b) the date for valuing the asset in each period that the asset is valued.

(2) Except as otherwise provided in Subsection ~~[22-3-309(2)(b)]~~ 75A-5-309(2)(b), a unitrust policy may provide methods for determining the amount of the net fair market value of the trust to take into account in determining the applicable value, including:

(a) obtaining an appraisal of an asset for which fair market value is not readily available;

(b) exclusion of specific assets or groups or types of assets;

(c) other exceptions or modifications of the treatment of specific assets or groups or types of assets;

(d) identification and treatment of cash or property held for distribution;

(e) use of:

(i) an average of fair market values over a stated number of preceding periods; or

(ii) another mathematical blend of fair market values over a stated number of preceding periods;

(f) a limit on how much the applicable value of all assets, groups of assets, or individual assets may increase over:

(i) the corresponding applicable value for the preceding period; or

(ii) a mathematical blend of applicable values over a stated number of preceding time periods;

(g) a limit on how much the applicable value of all assets, groups of assets, or individual assets may decrease below:

(i) the corresponding applicable value for the preceding period; or

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(ii) a mathematical blend of applicable values over a stated number of preceding periods;

(h) the treatment of accrued income and other features of an asset that affect value; and

(i) determining the liabilities of the trust, including treatment of liabilities to conform with the treatment of assets under Subsections (2)(a) through (h).

Section ~~{141}~~144. Section **75A-5-308**, which is renumbered from Section 22-3-308 is renumbered and amended to read:

~~[22-3-308]~~. **75A-5-308. Period.**

(1) (a) A unitrust policy shall provide the period used under Sections [~~22-3-306 and 22-3-307~~] 75A-5-306 and 75A-5-307.

(b) Except as otherwise provided in Subsection [~~22-3-309(2)(c)~~] 75A-5-309(2)(c), the period may be:

(i) a calendar year;

(ii) a 12-month period other than a calendar year;

(iii) a calendar quarter;

(iv) a three-month period other than a calendar quarter; or

(v) another period.

(2) Except as otherwise provided in Subsection [~~22-3-309(2)~~] 75A-5-309(2), a unitrust policy may provide standards for:

(a) using fewer preceding periods under Subsection [~~22-3-306(1)(b)(ii)~~] 75A-5-306(1)(b)(ii), (2)(c), or (2)(d) if:

(i) the trust was not in existence in a preceding period; or

(ii) market indices or other published data are not available for a preceding period;

(b) using fewer preceding periods under Subsection [~~22-3-307(2)(e)(i) or (ii)~~] 75A-5-307(2)(e)(i), (e)(ii), (f)(ii), or (g)(ii) if:

(i) the trust was not in existence in a preceding period; or

(ii) fair market values are not available for a preceding period; and

(c) prorating the unitrust amount on a daily basis for a part of a period in which the trust or the administration of the trust as a unitrust or the interest of any beneficiary commences or terminates.

Section ~~{142}~~145. Section **75A-5-309**, which is renumbered from Section 22-3-309 is

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renumbered and amended to read:

~~[22-3-309]~~. **75A-5-309**. **Special tax benefits -- Other rules.**

(1) A unitrust policy may:

(a) provide methods and standards for:

(i) determining the timing of distributions;

(ii) making distributions in cash or in kind or partly in cash and partly in kind; or

(iii) correcting an underpayment or overpayment to a beneficiary based on the unitrust amount if there is an error in calculating the unitrust amount;

(b) specify sources and the order of sources, including categories of income for federal income tax purposes, from which distributions of a unitrust amount are paid; or

(c) provide other standards and rules the fiduciary determines serve the interests of the beneficiaries.

(2) If a trust qualifies for a special tax benefit or a fiduciary is not an independent person:

(a) the unitrust rate established under Section ~~[22-3-306]~~ 75A-5-306 may not be less than 3% or more than 5%;

(b) the only provisions of Section ~~[22-3-307]~~ 75A-5-307 that apply are Subsections ~~[22-3-307(1)]~~ 75A-5-307(1) and (2)(a), (d), (e)(i), and (i);

(c) the only period that may be used under Section ~~[22-3-308]~~ 75A-5-308 is a calendar year under Subsection ~~[22-3-308(1)]~~ 75A-5-308(1); and

(d) the only other provisions of Section ~~[22-3-308]~~ 75A-5-308 that apply are ~~[Subsection 22-3-308(2)(b)(i)]~~ Subsections 75A-5-308(2)(b)(i) and (c).

Section ~~{143}~~ 146. Section **75A-5-401**, which is renumbered from Section 22-3-401 is renumbered and amended to read:

Part 4. Allocation of Receipts

~~[22-3-401]~~. **75A-5-401**. **Receipts from entity -- Character of receipts from entity.**

(1) ~~[In]~~ As used in this section:

(a) "Capital distribution" means an entity distribution of money that is a:

(i) return of capital; or

(ii) distribution in total or partial liquidation of the entity.

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(b) (i) "Entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization or arrangement in which a fiduciary owns or holds an interest, regardless of whether the entity is a taxpayer for federal income tax purposes.

(ii) "Entity" does not include:

(A) a trust or estate to which Section [~~22-3-402~~] 75A-5-402 applies;

(B) a business or other activity to which Section [~~22-3-403~~] 75A-5-403 applies that is not conducted by an entity described in Subsection (1)(b)(i);

(C) an asset-backed security; or

(D) an instrument or arrangement to which Section [~~22-3-416~~] 75A-5-416 applies.

(c) "Entity distribution" means a payment or transfer by an entity made to a person in the person's capacity as an owner or holder of an interest in the entity.

(2) In this section, an attribute or action of an entity includes an attribute or action of any other entity in which the entity owns or holds an interest, including an interest owned or held indirectly through another entity.

(3) Except as otherwise provided in Subsections (4)(b) through (d), a fiduciary shall allocate to income:

(a) money received in an entity distribution; and

(b) tangible personal property of nominal value received from the entity.

(4) A fiduciary shall allocate to principal:

(a) property received in an entity distribution that is not:

(i) money; or

(ii) tangible personal property of nominal value;

(b) money received in an entity distribution in an exchange for part or all of the fiduciary's interest in the entity, to the extent the entity distribution reduces the fiduciary's interest in the entity relative to the interests of other persons that own or hold interests in the entity;

(c) money received in an entity distribution that the fiduciary determines or estimates is a capital distribution; and

(d) money received in an entity distribution from an entity that is:

(i) a regulated investment company or real estate investment trust if the money

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received is a capital gain dividend for federal income tax purposes; or

(ii) treated for federal income tax purposes in a comparable manner to the treatment described in Subsection (4)(d)(i).

(5) A fiduciary may determine or estimate that money received in an entity distribution is a capital distribution:

(a) by relying without inquiry or investigation on a characterization of the entity distribution provided by or on behalf of the entity, unless the fiduciary:

(i) determines, on the basis of information known to the fiduciary, that the characterization is or may be incorrect; or

(ii) owns or holds more than 50% of the voting interest in the entity;

(b) by determining or estimating, on the basis of information known to the fiduciary or provided to the fiduciary by or on behalf of the entity, that the total amount of money and property received by the fiduciary in the entity distribution or a series of related entity distributions is or will be greater than 20% of the fair market value of the fiduciary's interest in the entity; or

(c) if neither Subsection (5)(a) nor (b) applies, by considering the factors in Subsection (6) and the information known to the fiduciary or provided to the fiduciary by or on behalf of the entity.

(6) In making a determination or estimate under Subsection (5)(c), a fiduciary may consider:

(a) a characterization of an entity distribution provided by or on behalf of the entity;

(b) the amount of money or property received in:

(i) the entity distribution; or

(ii) what the fiduciary determines is or will be a series of related entity distributions;

(c) the amount described in Subsection (6)(b) compared to the amount that the fiduciary determines or estimates is, during the current or preceding accounting periods:

(i) the entity's operating income;

(ii) the proceeds of the entity's sale or other disposition of:

(A) all or part of the business or other activity conducted by the entity;

(B) one or more business assets that are not sold to customers in the ordinary course of the business or other activity conducted by the entity; or

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(C) one or more assets other than business assets, unless the entity's primary activity is to invest in assets to realize gain on the disposition of all or some of the assets;

(iii) if the entity's primary activity is to invest in assets to realize gain on the disposition of all or some of the assets, the gain realized on the disposition;

(iv) the entity's regular, periodic entity distributions;

(v) the amount of money that the entity has accumulated;

(vi) the amount of money that the entity has borrowed;

(vii) the amount of money that the entity has received from the sources described in Sections [~~22-3-407, 22-3-410, 22-3-411, and 22-3-412~~] 75A-5-407, 75A-5-410, 75A-5-411, and 75A-5-412; and

(viii) the amount of money that the entity has received from a source not otherwise described in this subsection; and

(d) any other factor the fiduciary determines is relevant.

(7) If, after applying Subsections (3) through (6), a fiduciary determines that a part of an entity distribution is a capital distribution but the fiduciary is in doubt about the amount of the entity distribution that is a capital distribution, the fiduciary shall allocate to principal the amount of the entity distribution that is in doubt.

(8) If a fiduciary receives additional information about the application of this section to an entity distribution before the fiduciary has paid part of the entity distribution to a beneficiary, the fiduciary may consider the additional information before making the payment to the beneficiary and may change a decision to make the payment to the beneficiary.

(9) If a fiduciary receives additional information about the application of this section to an entity distribution after the fiduciary has paid part of the entity distribution to a beneficiary, the fiduciary is not required to change or recover the payment to the beneficiary but may consider that information in determining whether to exercise the power to adjust under Section [~~22-3-203~~] 75A-5-203.

Section ~~{144}~~147. Section **75A-5-402**, which is renumbered from Section 22-3-402 is renumbered and amended to read:

~~[22-3-402]~~. **75A-5-402**. **Receipts from entity -- Distribution from trust or estate.**

(1) A fiduciary shall allocate:

(a) to income an amount received as a distribution of income, including a unitrust

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distribution under Part 3, Unitrust, from a trust or estate in which the fiduciary has an interest, other than an interest the fiduciary purchased in a trust that is an investment entity; and

(b) to principal an amount received as a distribution of principal from the trust or estate.

(2) If a fiduciary purchases, or receives from a settlor, an interest in a trust that is an investment entity, Section [~~22-3-401, 22-3-415, or 22-3-416~~] 75A-5-401, 75A-5-415, ~~and~~or 75A-5-416 applies to a receipt from the trust.

Section ~~{145}~~148. Section **75A-5-403**, which is renumbered from Section 22-3-403 is renumbered and amended to read:

~~[22-3-403].~~ **75A-5-403. Receipts from entity -- Business or other activity conducted by fiduciary.**

(1) This section applies to a business or other activity conducted by a fiduciary if the fiduciary determines that it is in the interests of the beneficiaries to account separately for the business or other activity instead of:

(a) accounting for the business or other activity as part of the fiduciary's general accounting records; or

(b) conducting the business or other activity through an entity described in Subsection [~~22-3-401(1)(b)(i)~~] 75A-5-401(1)(b)(i).

(2) A fiduciary may account separately under this section for the transactions of a business or other activity, whether or not assets of the business or other activity are segregated from other assets held by the fiduciary.

(3) A fiduciary that accounts separately under this section for a business or other activity:

(a) may determine:

(i) the extent to which the net cash receipts of the business or other activity shall be retained for:

(A) working capital;

(B) the acquisition or replacement of fixed assets; and

(C) other reasonably foreseeable needs of the business or other activity; and

(ii) the extent that the remaining net cash receipts are accounted for as principal or income in the fiduciary's general accounting records for the trust;

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(b) may make a determination under Subsection (3)(a) separately and differently from the fiduciary's decisions concerning distributions of income or principal; and

(c) shall account for the net amount received from the sale of an asset of the business or other activity, other than a sale in the ordinary course of the business or other activity, as principal in the fiduciary's general accounting records for the trust, to the extent the fiduciary determines that the net amount received is no longer required in the conduct of the business or other activity.

(4) A fiduciary may account separately under this section for activities that include:

(a) retail, manufacturing, service, and other traditional business activities;

(b) farming;

(c) raising and selling livestock and other animals;

(d) managing rental properties;

(e) extracting minerals, water, and other natural resources;

(f) growing and cutting timber;

(g) an activity to which [~~Section 22-3-414, 22-3-415, or 22-3-416~~] ~~{Sections}~~ Section 75A-5-414, 75A-5-415, or 75A-5-416 applies; and

(h) any other business conducted by the fiduciary.

Section ~~{146}~~ 149. Section **75A-5-404**, which is renumbered from Section 22-3-404 is renumbered and amended to read:

~~[22-3-404].~~ **75A-5-404. Receipts not normally apportioned -- Principal receipts.**

A fiduciary shall allocate to principal:

(1) to the extent not allocated to income under this chapter, an asset received from:

(a) an individual during the individual's lifetime;

(b) an estate;

(c) a trust on termination of an income interest; or

(d) a payor under a contract naming the fiduciary as beneficiary;

(2) except as otherwise provided in this part, money or other property received from the sale, exchange, liquidation, or change in form of a principal asset;

(3) an amount recovered from a third party to reimburse the fiduciary because of a disbursement described in Subsection [~~22-3-502(1)~~] 75A-5-502(1) or for another reason to the extent not based on loss of income;

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(4) proceeds of property taken by eminent domain, except that proceeds awarded for loss of income in an accounting period are income if a current income beneficiary had a mandatory income interest during the accounting period;

(5) net income received in an accounting period during which there is no beneficiary to which a fiduciary is permitted or required to distribute income; and

(6) other receipts as provided in Part 3, Unitrust.

Section ~~{147}~~150. Section **75A-5-405**, which is renumbered from Section 22-3-405 is renumbered and amended to read:

~~[22-3-405]. 75A-5-405. Receipts not normally apportioned -- Rental property.~~

(1) To the extent a fiduciary does not account for the management of rental property as a business under Section ~~[22-3-403]~~ 75A-5-403, the fiduciary shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease.

(2) An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods:

(a) shall be added to principal and held subject to the terms of the lease, except as otherwise provided by law other than this chapter; and

(b) is not allocated to income or available for distribution to a beneficiary until the fiduciary's contractual obligations have been satisfied with respect to that amount.

Section ~~{148}~~151. Section **75A-5-406**, which is renumbered from Section 22-3-406 is renumbered and amended to read:

~~[22-3-406]. 75A-5-406. Receipts not normally apportioned -- Receipt on obligation to be paid in money.~~

(1) This section does not apply to an obligation to which Section ~~[22-3-409, 22-3-410, 22-3-411, 22-3-412, 22-3-414, 22-3-415, or 22-3-416]~~ 75A-5-409, 75A-5-410, 75A-5-411, 75A-5-412, 75A-5-414, 75A-5-415, or 75A-5-416 applies.

(2) A fiduciary shall allocate to income, without provision for amortization of premium, an amount received as interest on an obligation to pay money to the fiduciary, including an amount received as consideration for prepaying principal.

(3) (a) A fiduciary shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the fiduciary.

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(b) A fiduciary shall allocate to income the increment in value of a bond or other obligation for the payment of money bearing no stated interest but payable or redeemable, at maturity or another future time, in an amount that exceeds the amount in consideration of which it was issued.

Section ~~{149}~~152. Section **75A-5-407**, which is renumbered from Section 22-3-407 is renumbered and amended to read:

~~[22-3-407]~~. **75A-5-407**. **Receipts not normally apportioned -- Insurance policy or contract.**

(1) This section does not apply to a contract to which Section ~~[22-3-409]~~ 75A-5-409 applies.

(2) (a) Except as otherwise provided in Subsection (3), a fiduciary shall allocate to principal the proceeds of a life insurance policy or other contract received by the fiduciary as beneficiary, including a contract that insures against damage to, destruction of, or loss of title to an asset.

(b) The fiduciary shall allocate dividends on an insurance policy:

(i) to income, to the extent premiums on the policy are paid from income; and

(ii) to principal, to the extent premiums on the policy are paid from principal.

(3) A fiduciary shall allocate to income proceeds of a contract that insures the fiduciary against loss of:

(a) occupancy or other use by a current income beneficiary;

(b) income; or

(c) subject to Section ~~[22-3-403]~~ 75A-5-403, profits from a business.

Section ~~{150}~~153. Section **75A-5-408**, which is renumbered from Section 22-3-408 is renumbered and amended to read:

~~[22-3-408]~~. **75A-5-408**. **Receipts normally apportioned -- Insubstantial allocation not required.**

(1) If a fiduciary determines that an allocation between income and principal required by Section ~~[22-3-409, 22-3-410, 22-3-411, 22-3-412, or 22-3-415]~~ 75A-5-409, 75A-5-410, 75A-5-411, 75A-5-412, or 75A-5-415 is insubstantial, the fiduciary may allocate the entire amount to principal, unless Subsection ~~[22-3-203(5)]~~ 75A-5-203(5) applies to the allocation.

(2) A fiduciary may presume an allocation is insubstantial under Subsection (1) if:

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(a) the amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10%; and

(b) the asset producing the receipt to be allocated has a fair market value less than 10% of the total fair market value of the assets owned or held by the fiduciary at the beginning of the accounting period.

(3) The power to make a determination under Subsection (1) may be:

(a) exercised by a co-fiduciary in the manner described in Subsection [~~22-3-203(6)~~] 75A-5-203(6); or

(b) released or delegated for a reason described in Subsection [~~22-3-203(7)~~] 75A-5-203(7) and in the manner described in Subsection [~~22-3-203(8)~~] 75A-5-203(8).

Section ~~{151}~~154. Section **75A-5-409**, which is renumbered from Section 22-3-409 is renumbered and amended to read:

~~[22-3-409]~~. **75A-5-409. Receipts normally apportioned -- Deferred compensation, annuity, or similar payment.**

(1) ~~[In]~~ As used in this section:

(a) "Internal income of a separate fund" means the amount determined under Subsection (2).

(b) "Marital trust" means a trust:

(i) of which the settlor's surviving spouse is the only current income beneficiary and is entitled to a distribution of all the current net income of the trust; and

(ii) that qualifies for a marital deduction with respect to the settlor's estate under Section 2056 of the Internal Revenue Code because:

(A) an election to qualify for a marital deduction under Section 2056(b)(7) of the Internal Revenue Code has been made; or

(B) the trust qualifies for a marital deduction under Section 2056(b)(5) of the Internal Revenue Code.

(c) (i) "Payment" means an amount a fiduciary may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payor in exchange for future amounts the fiduciary may receive.

(ii) "Payment" includes an amount received in money or property from the payor's general assets or from a separate fund created by the payor.

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(d) "Separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(2) For each accounting period, and for each separate fund:

(a) the fiduciary shall determine the internal income of the separate fund as if the separate fund were a trust subject to this chapter;

(b) if the fiduciary cannot determine the internal income of the separate fund under Subsection (2)(a), the internal income of the separate fund is deemed to equal 3% of the value of the separate fund, according to the most recent statement of value preceding the beginning of the accounting period; and

(c) if the fiduciary cannot determine the value of the separate fund under Subsection (2)(b), the value of the separate fund is deemed to equal the present value of the expected future payments, as determined under Section 7520 of the Internal Revenue Code, for the month preceding the beginning of the accounting period for which the computation is made.

(3) A fiduciary shall allocate a payment received from a separate fund during an accounting period to income, to the extent of the internal income of the separate fund during the accounting period, and the balance to principal.

(4) The fiduciary of a marital trust shall:

(a) withdraw from a separate fund the amount the current income beneficiary of the trust requests the fiduciary to withdraw, not greater than the amount by which the internal income of the separate fund during the accounting period exceeds the amount the fiduciary otherwise receives from the separate fund during the accounting period;

(b) transfer from principal to income the amount the current income beneficiary requests the fiduciary to transfer, not greater than the amount by which the internal income of the separate fund during the accounting period exceeds the amount the fiduciary receives from the separate fund during the accounting period after the application of Subsection (4)(a); and

(c) distribute to the current income beneficiary as income:

(i) the amount of the internal income of the separate fund received or withdrawn during the accounting period; and

(ii) the amount transferred from principal to income under Subsection (4)(b).

(5) For a trust, other than a marital trust, of which one or more current income beneficiaries are entitled to a distribution of all the current net income, the fiduciary shall

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transfer from principal to income the amount by which the internal income of a separate fund during the accounting period exceeds the amount the fiduciary receives from the separate fund during the accounting period.

Section ~~{152}~~155. Section **75A-5-410**, which is renumbered from Section 22-3-410 is renumbered and amended to read:

~~[22-3-410]~~. **75A-5-410**. **Receipts normally apportioned -- Liquidating asset.**

(1) ~~[In]~~ As used in this section:

(a) "Liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a limited time.

(b) "Liquidating asset" includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance.

(2) This section does not apply to a receipt subject to Section ~~[22-3-401, 22-3-409, 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, 75A-5-411, 75A-5-412, 75A-5-414, 75A-5-415, 75A-5-416, or 75A-5-503.

(3) A fiduciary shall allocate:

(a) to income:

(i) a receipt produced by a liquidating asset, to the extent the receipt does not exceed 3% of the value of the asset; or

(ii) if the fiduciary cannot determine the value of the asset, 10% of the receipt; and

(b) to principal, the balance of the receipt.

Section ~~{153}~~156. Section **75A-5-411**, which is renumbered from Section 22-3-411 is renumbered and amended to read:

~~[22-3-411]~~. **75A-5-411**. **Receipts normally apportioned -- Minerals, water, and other natural resources.**

(1) To the extent that a fiduciary does not account for a receipt from an interest in minerals, water, or other natural resources as a business under Section ~~[22-3-403]~~ 75A-5-403, the fiduciary shall allocate the receipt:

(a) to income, to the extent received:

(i) as delay rental or annual rent on a lease;

(ii) as a factor for interest or the equivalent of interest under an agreement creating a

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production payment; or

(iii) on account of an interest in renewable water;

(b) to principal, if received from a production payment, to the extent that Subsection (1)(a)(ii) does not apply; or

(c) between income and principal equitably, to the extent received:

(i) on account of an interest in nonrenewable water;

(ii) as a royalty, shut-in-well payment, take-or-pay payment, or bonus; or

(iii) from a working interest or any other interest not provided for in Subsection (1)(a) or (b) or Subsection (1)(c)(i) or (ii).

(2) This section applies to an interest owned or held by a fiduciary regardless of whether a settlor was extracting minerals, water, or other natural resources before the fiduciary owned or held the interest.

(3) An allocation of a receipt under Subsection (1)(c) is presumed to be equitable if the amount allocated to principal is equal to the amount allowed by the Internal Revenue Code as a deduction for depletion of the interest.

(4) (a) If a fiduciary owns or holds an interest in minerals, water, or other natural resources before July 1, 2020, the fiduciary may allocate receipts from the interest as provided in this section or in the manner used by the fiduciary before July 1, 2020.

(b) If the fiduciary acquires an interest in minerals, water, or other natural resources on or after July 1, 2020, the fiduciary shall allocate receipts from the interest as provided in this section.

Section ~~{154}~~157. Section **75A-5-412**, which is renumbered from Section 22-3-412 is renumbered and amended to read:

~~[22-3-412]~~. **75A-5-412. Receipts normally apportioned -- Timber.**

(1) To the extent that a fiduciary does not account for receipts from the sale of timber and related products as a business under Section ~~[22-3-403]~~ 75A-5-403, the fiduciary shall allocate the net receipts:

(a) to income, to the extent that the amount of timber cut from the land does not exceed the rate of growth of the timber;

(b) to principal, to the extent that the amount of timber cut from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

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(c) between income and principal if the net receipts are from the lease of land used for growing and cutting timber or from a contract to cut timber from land, by determining the amount of timber cut from the land under the lease or contract and applying the rules in Subsections (1)(a) and (b); or

(d) to principal, to the extent that advance payments, bonuses, and other payments are not allocated under Subsection (1)(a), (b), or (c).

(2) In determining net receipts to be allocated under Subsection (1), a fiduciary shall deduct and transfer to principal a reasonable amount for depletion.

(3) This section applies to land owned or held by a fiduciary regardless of whether a settlor was cutting timber from the land before the fiduciary owned or held the property.

(4) (a) If a fiduciary owns or holds an interest in land used for growing and cutting timber before July 1, 2020, the fiduciary may allocate net receipts from the sale of timber and related products as provided in this section or in the manner used by the fiduciary before July 1, 2020.

(b) If the fiduciary acquires an interest in land used for growing and cutting timber on or after July 1, 2020, the fiduciary shall allocate net receipts from the sale of timber and related products as provided in this section.

Section ~~{155}~~158. Section **75A-5-413**, which is renumbered from Section 22-3-413 is renumbered and amended to read:

~~[22-3-413]~~. 75A-5-413. Receipts normally apportioned -- Marital deduction property not productive of income.

(1) If a trust received property for which a gift or estate tax marital deduction was allowed and the settlor's spouse holds a mandatory income interest in the trust, the spouse may require the trustee, to the extent the trust assets otherwise do not provide the spouse with sufficient income from or use of the trust assets to qualify for the deduction, to:

- (a) make property productive of income;
- (b) convert property to property productive of income within a reasonable time; or
- (c) exercise the power to adjust under Section ~~[22-3-203]~~ 75A-5-203.

(2) The trustee may decide which action or combination of actions in Subsection (1) to take.

Section ~~{156}~~159. Section **75A-5-414**, which is renumbered from Section 22-3-414 is

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renumbered and amended to read:

~~[22-3-414]~~. **75A-5-414. Receipts normally apportioned -- Derivative or option.**

(1) ~~[In]~~ As used in this section:

(a) "Derivative" means a contract, instrument, other arrangement, or combination of contracts, instruments, or other arrangements, for which the value, rights, and obligations are, in whole or in part, dependent on or derived from an underlying tangible or intangible asset, group of tangible or intangible assets, index, or occurrence of an event.

(b) "Derivative" includes stocks, fixed income securities, and financial instruments and arrangements based on indices, commodities, interest rates, weather-related events, and credit-default events.

(2) To the extent that a fiduciary does not account for a transaction in derivatives as a business under Section ~~[22-3-403]~~ 75A-5-403, the fiduciary shall allocate:

(a) 10% of receipts from the transaction and 10% of disbursements made in connection with the transaction to income; and

(b) the balance to principal.

(3) Subsection (4) applies if:

(a) a fiduciary:

(i) grants an option to buy property from a trust, regardless of whether the trust owns the property when the option is granted;

(ii) grants an option that permits another person to sell property to the trust; or

(iii) acquires an option to buy property for the trust or an option to sell an asset owned by the trust; and

(b) the fiduciary or other owner of the asset is required to deliver the asset if the option is exercised.

(4) If this subsection applies, the fiduciary shall allocate 10% to income and the balance to principal of the following amounts:

(a) an amount received for granting the option;

(b) an amount paid to acquire the option; and

(c) gain or loss realized on the exercise, exchange, settlement, offset, closing, or expiration of the option.

Section ~~{157}~~160. Section **75A-5-415**, which is renumbered from Section 22-3-415 is

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renumbered and amended to read:

~~[22-3-415]~~. **75A-5-415**. Receipts normally apportioned -- Asset-backed security.

(1) Except as otherwise provided in Subsection (2), a fiduciary shall allocate:

(a) to income, a receipt from or related to an asset-backed security, to the extent that the payor identifies the payment as being from interest or other current return; and

(b) to principal, the balance of the receipt.

(2) If a fiduciary receives one or more payments in exchange for part or all of the fiduciary's interest in an asset-backed security, including a liquidation or redemption of the fiduciary's interest in the security, the fiduciary shall allocate:

(a) to income, 10% of receipts from the transaction and 10% of disbursements made in connection with the transaction; and

(b) to principal, the balance of the receipts and disbursements.

Section ~~{158}~~161. Section **75A-5-416**, which is renumbered from Section 22-3-416 is renumbered and amended to read:

~~[22-3-416]~~. **75A-5-416**. Receipts normally apportioned -- Other financial instrument or arrangement.

(1) A fiduciary shall allocate receipts from or related to a financial instrument or arrangement not otherwise addressed by this chapter.

(2) The allocation must be consistent with Sections ~~[22-3-414 and 22-3-415]~~ 75A-5-414 and 75A-5-415.

Section ~~{159}~~162. Section **75A-5-501**, which is renumbered from Section 22-3-501 is renumbered and amended to read:

Part 5. Allocation of Disbursements

~~[22-3-501]~~. **75A-5-501**. Disbursement from income.

Subject to Section ~~[22-3-504]~~ 75A-5-504, and except as otherwise provided in Subsection ~~[22-3-601(3)(b)]~~ 75A-5-601(3)(b) or (c), a fiduciary shall disburse from income:

(1) one-half of:

(a) the regular compensation of the fiduciary and any person providing investment advisory, custodial, or other services to the fiduciary, to the extent income is sufficient; and

(b) an expense for an accounting, judicial or nonjudicial proceeding, or other matter that involves both income and successive interests, to the extent income is sufficient;

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(2) the balance of the disbursements described in Subsection (1), to the extent a fiduciary that is an independent person determines that making those disbursements from income would be in the interests of the beneficiaries;

(3) another ordinary expense incurred in connection with administration, management, or preservation of property and distribution of income, including interest, an ordinary repair, regularly recurring tax assessed against principal, and an expense of an accounting, judicial or nonjudicial proceeding, or other matter that involves primarily an income interest, to the extent income is sufficient; and

(4) a premium on insurance covering loss of a principal asset or income from or use of the asset.

Section ~~{160}~~163. Section **75A-5-502**, which is renumbered from Section 22-3-502 is renumbered and amended to read:

~~[22-3-502]~~. **75A-5-502. Disbursement from principal.**

(1) Subject to Section ~~[22-3-505]~~ 75A-5-505, and except as otherwise provided in Subsection ~~[22-3-601(3)(b)]~~ 75A-5-601(3)(b) or (c), a fiduciary shall disburse from principal:

(a) the balance of the disbursements described in Subsections ~~[22-3-501(1)]~~ 75A-5-501(1) and (3), after application of Subsection ~~[22-3-501(2)]~~ 75A-5-501(2);

(b) the fiduciary's compensation calculated on principal as a fee for acceptance, distribution, or termination;

(c) a payment of an expense to prepare for or execute a sale or other disposition of property;

(d) a payment on the principal of a trust debt;

(e) a payment of an expense of an accounting, judicial or nonjudicial proceeding, or other matter that involves primarily principal, including a proceeding to construe the terms of the trust or protect property;

(f) a payment of a premium for insurance, including title insurance, not described in Subsection ~~[22-3-501(4)]~~ 75A-5-501(4), of which the fiduciary is the owner and beneficiary;

(g) a payment of an estate or inheritance tax or other tax imposed because of the death of a decedent, including penalties, apportioned to the trust; and

(h) a payment:

(i) related to environmental matters, including:

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- (A) reclamation;
 - (B) assessing environmental conditions;
 - (C) remedying and removing environmental contamination;
 - (D) monitoring remedial activities and the release of substances;
 - (E) preventing future releases of substances;
 - (F) collecting amounts from persons liable or potentially liable for the costs of activities described in Subsections (1)(h)(i)(A) through (E);
 - (G) penalties imposed under environmental laws or regulations;
 - (H) other actions to comply with environmental laws or regulations;
 - (I) statutory or common law claims by third parties; and
 - (J) defending claims based on environmental matters; and
 - (ii) for a premium for insurance for matters described in Subsection (1)(h)(i).
- (2) If a principal asset is encumbered with an obligation that requires income from the asset to be paid directly to a creditor, the fiduciary shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

Section ~~{161}~~164. Section **75A-5-503**, which is renumbered from Section 22-3-503 is renumbered and amended to read:

~~[22-3-503].~~ 75A-5-503. Transfer from income to principal for depreciation.

(1) ~~[In]~~ As used in this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a tangible asset having a useful life of more than one year.

(2) A fiduciary may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

- (a) of the part of real property used or available for use by a beneficiary as a residence;
- (b) of tangible personal property held or made available for the personal use or enjoyment of a beneficiary; or
- (c) under this section, to the extent the fiduciary accounts:
 - (i) under Section ~~[22-3-410]~~ 75A-5-410 for the asset; or
 - (ii) under Section ~~[22-3-403]~~ 75A-5-403 for the business or other activity in which the

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asset is used.

(3) An amount transferred to principal under this section need not be separately held.

Section ~~{162}~~165. Section **75A-5-504**, which is renumbered from Section 22-3-504 is renumbered and amended to read:

~~[22-3-504]~~. **75A-5-504**. **Reimbursement of income from principal.**

(1) If a fiduciary makes or expects to make an income disbursement described in Subsection (2), the fiduciary may transfer an appropriate amount from principal to income in one or more accounting periods to reimburse income.

(2) To the extent the fiduciary has not been and does not expect to be reimbursed by a third party, income disbursements to which Subsection (1) applies include:

(a) an amount chargeable to principal but paid from income because principal is illiquid;

(b) a disbursement made to prepare property for sale, including improvements and commissions; and

(c) a disbursement described in Subsection ~~[22-3-502(1)]~~ 75A-5-502(1).

(3) If an asset whose ownership gives rise to an income disbursement becomes subject to a successive interest after an income interest ends, the fiduciary may continue to make transfers under Subsection (1).

Section ~~{163}~~166. Section **75A-5-505**, which is renumbered from Section 22-3-505 is renumbered and amended to read:

~~[22-3-505]~~. **75A-5-505**. **Reimbursement of principal from income.**

(1) If a fiduciary makes or expects to make a principal disbursement described in Subsection (2), the fiduciary may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or provide a reserve for future principal disbursements.

(2) To the extent that a fiduciary has not been and does not expect to be reimbursed by a third party, principal disbursements to which Subsection (1) applies include:

(a) an amount chargeable to income but paid from principal because income is not sufficient;

(b) the cost of an improvement to principal, regardless of whether the improvement is a change to an existing asset or the construction of a new asset, including a special assessment;

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(c) a disbursement made to prepare property for rental, including tenant allowances, leasehold improvements, and commissions;

(d) a periodic payment on an obligation secured by a principal asset, to the extent that the amount transferred from income to principal for depreciation is less than the periodic payment; and

(e) a disbursement described in Subsection [~~22-3-502(1)~~] 75A-5-502(1).

(3) If an asset whose ownership gives rise to a principal disbursement becomes subject to a successive interest after an income interest ends, the fiduciary may continue to make transfers under Subsection (1).

Section ~~{164}~~167. Section **75A-5-506**, which is renumbered from Section 22-3-506 is renumbered and amended to read:

~~[22-3-506]~~. **75A-5-506. Income taxes.**

(1) A tax required to be paid by a fiduciary that is based on receipts allocated to income shall be paid from income.

(2) A tax required to be paid by a fiduciary that is based on receipts allocated to principal shall be paid from principal, even if the tax is called an income tax by the taxing authority.

(3) Subject to Subsection (4) and Sections [~~22-3-504, 22-3-505, and 22-3-507~~] 75A-5-504, 75A-5-505, and 75A-5-507, a tax required to be paid by a fiduciary on a share of an entity's taxable income in an accounting period shall be paid from:

(a) income and principal proportionately to the allocation between income and principal of receipts from the entity in the period; and

(b) principal, to the extent that the tax exceeds the receipts from the entity in the accounting period.

(4) After applying Subsections (1) through (3), a fiduciary shall adjust income or principal receipts, to the extent that the taxes the fiduciary pays are reduced because of a deduction for a payment made to a beneficiary.

Section ~~{165}~~168. Section **75A-5-507**, which is renumbered from Section 22-3-507 is renumbered and amended to read:

~~[22-3-507]~~. **75A-5-507. Adjustment between income and principal because of taxes.**

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(1) A fiduciary may make an adjustment between income and principal to offset the shifting of economic interests or tax benefits between current income beneficiaries and successor beneficiaries that arises from:

(a) an election or decision the fiduciary makes regarding a tax matter, other than a decision to claim an income tax deduction to which Subsection (2) applies;

(b) an income tax or other tax imposed on the fiduciary or a beneficiary as a result of a transaction involving the fiduciary or a distribution by the fiduciary; or

(c) ownership by the fiduciary of an interest in an entity, a part of whose taxable income, regardless of whether the taxable income is distributed, is includable in the taxable income of the fiduciary or a beneficiary.

(2) (a) If the amount of an estate tax marital or charitable deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting the amount for estate tax purposes and, as a result, estate taxes paid from principal are increased and income taxes paid by the fiduciary or a beneficiary are decreased, the fiduciary shall charge each beneficiary that benefits from the decrease in income tax to reimburse the principal from which the increase in estate tax is paid.

(b) The total reimbursement must equal the increase in the estate tax, to the extent that the principal used to pay the increase would have qualified for a marital or charitable deduction but for the payment.

(c) The share of the reimbursement for each fiduciary or beneficiary whose income taxes are reduced shall be the same as the fiduciary's or beneficiary's share of the total decrease in income tax.

(3) A fiduciary that charges a beneficiary under Subsection (2) may offset the charge by obtaining payment from the beneficiary, withholding an amount from future distributions to the beneficiary, or adopting another method or combination of methods.

Section ~~{166}~~169. Section **75A-5-601**, which is renumbered from Section 22-3-601 is renumbered and amended to read:

Part 6. Death of Individual or Termination of Income Interest

~~[22-3-601].~~ 75A-5-601. Determination and distribution of net income.

(1) This section applies when:

(a) the death of an individual results in the creation of an estate or trust; or

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(b) an income interest in a trust terminates, regardless of whether the trust continues or is distributed.

(2) A fiduciary of an estate or trust with an income interest that terminates shall:

(a) determine, in accordance with Subsection (8) and Part 4, Allocation of Receipts, Part 5, Allocation of Disbursements, and Part 7, Apportionment at Beginning and End of Income Interest, the amount of net income and net principal receipts received from property specifically given to a beneficiary; and

(b) distribute the net income and net principal receipts to the beneficiary that is to receive the specific property.

(3) Subject to Subsection (4), a fiduciary shall determine the income and net income of an estate or income interest in a trust that terminates, other than the amount of net income determined in accordance with Subsection (2), and in accordance with Part 4, Allocation of Receipts, Part 5, Allocation of Disbursements, and Part 7, Apportionment at Beginning and End of Income Interest, and by:

(a) including in net income all income from property used or sold to discharge liabilities;

(b) paying from income or principal, in the fiduciary's discretion:

(i) fees of attorneys, accountants, and fiduciaries;

(ii) court costs and other expenses of administration;

(iii) interest on estate taxes, inheritance taxes, and other taxes imposed because of the decedent's death; and

(c) paying from principal other disbursements made or incurred in connection with the settlement of the estate or the winding up of an income interest that terminates, including:

(i) to the extent authorized by the decedent's will, the terms of the trust, or applicable law, debts, funeral expenses, disposition of remains, family allowances, estate and inheritance taxes, and other taxes imposed because of the decedent's death; and

(ii) related penalties that are apportioned, by the decedent's will, the terms of the trust, or applicable law, to the estate or income interest that terminates.

(4) A fiduciary may pay the expenses from income of property passing to a trust for which the fiduciary claims a federal estate tax marital or charitable deduction only to the extent:

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(a) the payment of the expenses from income will not cause the reduction or loss of the deduction; or

(b) the fiduciary makes an adjustment under Subsection [~~22-3-507(2)~~] 75A-5-507(2).

(5) If a decedent's will, the terms of a trust, or applicable law provides for the payment of interest or the equivalent of interest to a beneficiary that receives a pecuniary amount outright, the fiduciary shall make the payment from net income determined under Subsection (3) or from principal to the extent that net income is insufficient.

(6) If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends because of an income beneficiary's death, and no payment of interest or the equivalent of interest is provided for by the terms of the trust or applicable law, the fiduciary shall pay the interest or the equivalent of interest to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

(7) A fiduciary shall distribute net income remaining after payments required by Subsections (5) and (6) in the manner described in Section [~~22-3-602~~] 75A-5-602 to all other beneficiaries, including a beneficiary that receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(8) (a) A fiduciary may not reduce principal or income receipts from property described in Subsection (2) because of a payment described in Section [~~22-3-501 or 22-3-502~~] 75A-5-501 or 75A-5-502, to the extent the decedent's will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent the fiduciary recovers or expects to recover the payment from a third party.

(b) The net income and principal receipts from the property shall be determined by including the amount the fiduciary receives or pays regarding the property, whether the amount accrued or became due before, on, or after the date of the decedent's death or an income interest's terminating event, and making a reasonable provision for an amount the estate or income interest may become obligated to pay after the property is distributed.

Section ~~{167}~~170. Section **75A-5-602**, which is renumbered from Section 22-3-602 is renumbered and amended to read:

~~[22-3-602]~~. **75A-5-602**. **Distribution to successor beneficiary.**

(1) (a) Except to the extent Part 3, Unitrust, applies for a beneficiary that is a trust, each

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beneficiary described in Subsection [~~22-3-601(6)~~] 75A-5-601(6) is entitled to receive a share of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values of the undistributed principal assets as of the distribution date.

(b) If a fiduciary makes more than one distribution of assets to beneficiaries to which this section applies, each beneficiary, including a beneficiary that does not receive part of the distribution, is entitled, as of each distribution date, to a share of the net income the fiduciary received after the decedent's death, an income interest's other terminating event, or the preceding distribution by the fiduciary.

(2) In determining a beneficiary's share of net income under Subsection (1):

(a) the beneficiary is entitled to receive a share of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date;

(b) the beneficiary's fractional interest under Subsection (2)(a) shall be calculated:

(i) on the aggregate value of the assets as of the distribution date without reducing the value by any unpaid principal obligation; and

(ii) without regard to:

(A) property specifically given to a beneficiary under the decedent's will or the terms of the trust; and

(B) property required to pay pecuniary amounts not in trust; and

(c) the distribution date under Subsection (2)(a) may be the date on which the fiduciary calculates the value of the assets if that date is reasonably near the date on which the assets are distributed.

(3) To the extent that a fiduciary does not distribute under this section all the collected but undistributed net income to each beneficiary on or before a distribution date, the fiduciary shall maintain records showing the interest of each beneficiary in the net income.

(4) If this section applies to income from an asset, a fiduciary may apply Subsection (2) to net gain or loss realized from the disposition of the asset after the decedent's death, an income interest's terminating event, or the preceding distribution by the fiduciary.

Section ~~168~~ 171. Section **75A-5-701**, which is renumbered from Section 22-3-701 is renumbered and amended to read:

Part 7. Apportionment at Beginning and End of Income Interest

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~~[22-3-701].~~ 75A-5-701. When right to income begins and ends.

(1) (a) An income beneficiary is entitled to net income in accordance with the terms of the trust from the date on which an income interest begins.

(b) The income interest begins on the date that is specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to:

- (i) the trust for the current income beneficiary; or
- (ii) a successive interest for a successor beneficiary.

(2) An asset becomes subject to a trust under Subsection (1)(b)(i):

(a) for an asset that is transferred to the trust during the settlor's life, on the date the asset is transferred;

(b) for an asset that becomes subject to the trust because of a decedent's death, on the date of the decedent's death, even if there is an intervening period of administration of the decedent's estate; or

(c) for an asset that is transferred to a fiduciary by a third party because of a decedent's death, on the date of the decedent's death.

(3) An asset becomes subject to a successive interest under Subsection (1)(b)(ii) on the day after the preceding income interest ends, as determined under Subsection (4), even if there is an intervening period of administration to wind up the preceding income interest.

(4) An income interest ends on the day before an income beneficiary dies or another terminating event occurs or on the last day of a period during which there is no beneficiary to which a fiduciary is permitted or required to distribute income.

Section ~~{169}~~172. Section **75A-5-702**, which is renumbered from Section 22-3-702 is renumbered and amended to read:

~~[22-3-702].~~ 75A-5-702. Apportionment of receipts and disbursements when decedent dies or income interest begins.

(1) A fiduciary shall allocate an income receipt or disbursement, other than a receipt to which Subsection ~~[22-3-601(2)]~~ 75A-5-601(2) applies, to principal if the due date of the income receipt or disbursement occurs before the date on which:

- (a) for an estate, the decedent died; or
- (b) for a trust or successive interest, an income interest begins.

(2) If the due date of a periodic income receipt or disbursement occurs on or after the

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date on which a decedent died or an income interest begins, a fiduciary shall allocate the receipt or disbursement to income.

(3) If an income receipt or disbursement is not periodic or has no due date, a fiduciary shall:

(a) treat the receipt or disbursement under this section as accruing from day to day; and

(b) allocate:

(i) to principal, the portion of the receipt or disbursement accruing before the date on which a decedent died or an income interest begins; and

(ii) to income, the balance.

(4) A receipt or disbursement is periodic under Subsections (2) and (3) if:

(a) the receipt or disbursement shall be paid at regular intervals under an obligation to make payments; or

(b) the payor customarily makes payments at regular intervals.

(5) (a) An item of income or obligation is due under this section on the date on which the payor is required to make a payment.

(b) If a payment date is not stated, there is no due date.

(6) Distributions to shareholders or other owners from an entity to which Section ~~[22-3-401]~~ 75A-5-401 applies are due:

(a) on the date fixed by or on behalf of the entity for determining the persons entitled to receive the distribution;

(b) if no date is fixed, on the date of the decision by or on behalf of the entity to make the distribution; or

(c) if no date is fixed and the fiduciary does not know the date of the decision by or on behalf of the entity to make the distribution, on the date the fiduciary learns of the decision.

Section ~~{170}~~ 173. Section **75A-5-703**, which is renumbered from Section 22-3-703 is renumbered and amended to read:

~~[22-3-703]~~. **75A-5-703**. **Apportionment when income interest ends.**

(1) ~~[In]~~ As used in this section:

(a) "Undistributed income" means net income received on or before the date on which an income interest ends.

(b) "Undistributed income" does not include an item of income or expense that is due

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or accrued or net income that has been added or is required to be added, to principal under the terms of the trust.

(2) Except as otherwise provided in Subsection (3), when a mandatory income interest of a beneficiary ends, the fiduciary shall pay the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust to the beneficiary or, if the beneficiary does not survive the date that the interest ends, to the beneficiary's estate.

(3) If a beneficiary has an unqualified power to withdraw more than 5% of the value of a trust immediately before an income interest ends:

(a) the fiduciary shall allocate to principal the undistributed income from the portion of the trust that may be withdrawn; and

(b) Subsection (2) applies only to the balance of the undistributed income.

(4) When a fiduciary's obligation to pay a fixed annuity or a fixed fraction of the value of assets ends, the fiduciary shall prorate the final payment as required to preserve an income tax, gift tax, estate tax, or other tax benefit.

Section ~~{171}~~174. Section **75A-5-801**, which is renumbered from Section 22-3-801 is renumbered and amended to read:

Part 8. Applicability Provisions

~~[22-3-801]~~. **75A-5-801**. **Uniformity of application and construction.**

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to the uniform act's subject matter among states that enact [it] this uniform law.

Section ~~{172}~~175. Section **75A-5-802**, which is renumbered from Section 22-3-802 is renumbered and amended to read:

~~[22-3-802]~~. **75A-5-802**. **Relation to Electronic Signatures in Global and National Commerce Act.**

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

Section ~~{173}~~176. Section **75A-5-803**, which is renumbered from Section 22-3-803 is renumbered and amended to read:

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~~[22-3-803].~~ 75A-5-803. Application to trust or estate.

This chapter applies to a trust or estate existing or created on or after July 1, 2020, except as otherwise expressly provided in the terms of the trust or this chapter.

Section ~~{174}~~177. Section 75A-5-804, which is renumbered from Section 22-3-804 is renumbered and amended to read:

~~[22-3-804].~~ 75A-5-804. Severability.

If any provision of this chapter or the application of this chapter to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Section ~~{175}~~178. Section 75A-6-101~~{, which}~~ is ~~{renumbered from Section 75-11-102 is renumbered and amended}~~enacted to read:

CHAPTER 6. UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

75A-6-101. Reserved.

Reserved.

Section 179. Section 75A-6-102, which is renumbered from Section 75-11-102 is renumbered and amended to read:

~~[75-11-102].~~ ~~{75A-6-101}~~75A-6-102. Definitions for chapter.

As used in this chapter:

(1) "Account" means an arrangement under a terms of service agreement in which a custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user.

(2) "Agent" means an attorney in fact granted authority under a durable or nondurable power of attorney.

(3) "Carries" means engages in the transmission of an electronic communication.

(4) "Catalogue of electronic communications" means information that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person.

(5) (a) "Conservator" means a person appointed by a court to manage the estate of a living individual.

(b) "Conservator" includes a limited conservator.

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(6) "Content of an electronic communication" means information concerning the substance or meaning of the communication that:

(a) has been sent or received by a user;

(b) is in electronic storage by a custodian providing an electronic communication service to the public or is carried or maintained by a custodian providing a remote computing service to the public; and

(c) is not readily accessible to the public.

(7) "Court" means the district court.

(8) "Custodian" means a person that carries, maintains, processes, receives, or stores a digital asset of a user.

(9) "Designated recipient" means a person chosen by a user using an online tool to administer digital assets of the user.

(10) (a) "Digital asset" means an electronic record in which an individual has a right or interest.

(b) "Digital asset" does not include an underlying asset or liability unless the asset or liability is itself an electronic record.

(11) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(12) "Electronic communication" has the same meaning as the definition in 18 U.S.C. Sec. 2510(12).

(13) "Electronic communication service" means a custodian that provides to a user the ability to send or receive an electronic communication.

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

~~(14)~~ (15) "Fiduciary" means an original, additional, or successor personal representative, conservator, guardian, agent, or trustee.

~~(15)~~ (16) (a) "Guardian" means a person appointed by a court to manage the affairs of a living individual.

(b) "Guardian" includes a limited guardian.

~~(16)~~ (17) "Information" means data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.

~~(17)~~ (18) "Online tool" means an electronic service provided by a custodian that

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allows the user, in an agreement distinct from the terms of service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

~~[(18)]~~ (19) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, instrumentality, or other legal entity.

~~[(19)]~~ (20) "Personal representative" means an executor, administrator, special administrator as defined in Section 75-1-201, or person that performs substantially the same function under the law of this state other than this chapter.

~~[(20)]~~ (21) "Power of attorney" means a record that grants an agent authority to act in the place of a principal.

~~[(21)]~~ (22) "Principal" means an individual who grants authority to an agent in a power of attorney.

~~[(22)]~~ (23) (a) "Protected person" means an individual for whom a conservator or guardian has been appointed.

(b) "Protected person" includes an individual for whom an application for the appointment of a conservator or guardian is pending.

~~[(23)]~~ (24) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~[(24)]~~ (25) "Remote computing service" means a custodian that provides to a user computer processing services or the storage of digital assets by means of an electronic communications system, as defined in 18 U.S.C. Sec. 2510(14).

(26) "Successor personal representative" means the same as that term is defined in Section 75-1-201.

~~[(25)]~~ (27) "Terms of service agreement" means an agreement that controls the relationship between a user and a custodian.

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

~~[(26)]~~ (29) (a) "Trustee" means a fiduciary with legal title to property pursuant to an agreement or declaration that creates a beneficial interest in another.

(b) "Trustee" includes a successor trustee.

~~[(27)]~~ (30) "User" means a person that has an account with a custodian.

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~~[(28)]~~ (31) "Will" includes a codicil, a testamentary instrument that only appoints an executor, and an instrument that revokes or revises a testamentary instrument.

Section ~~{176}~~180. Section ~~{75A-6-102}~~75A-6-103, which is renumbered from Section 75-11-103 is renumbered and amended to read:

~~[75-11-103].~~ ~~{75A-6-102}~~75A-6-103. **Applicability.**

(1) This chapter applies to:

(a) a fiduciary or agent acting under a will or power of attorney executed before, on, or after May 9, 2017;

(b) a personal representative acting for a decedent who died before, on, or after May 9, 2017;

(c) a conservatorship or guardianship proceeding commenced before, on, or after May 9, 2017; and

(d) a trustee acting under a trust created before, on, or after May 9, 2017.

(2) This chapter applies to a custodian if the user resides in this state or resided in this state at the time of the user's death.

(3) This chapter does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer's business.

Section ~~{177}~~181. Section ~~{75A-6-103}~~75A-6-104, which is renumbered from Section 75-11-104 is renumbered and amended to read:

~~[75-11-104].~~ ~~{75A-6-103}~~75A-6-104. **User direction for disclosure of digital assets.**

(1) A user may use an online tool to direct the custodian to disclose or not to disclose to a designated recipient some or all of the user's digital assets, including the content of electronic communications. If the online tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of attorney, or other record.

(2) If a user has not used an online tool to give direction under Subsection (1) or if the custodian has not provided an online tool, the user may allow or prohibit in a will, trust, power of attorney, or other record disclosure to a fiduciary of some or all of the user's digital assets, including the content of electronic communications sent or received by the user.

(3) A user's direction under Subsection (1) or (2) overrides a contrary provision in a

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terms of service agreement that does not require the user to act affirmatively and distinctly from the user's assent to the terms of service.

Section ~~{178}~~182. Section ~~{75A-6-104}~~75A-6-105, which is renumbered from Section 75-11-105 is renumbered and amended to read:

~~[75-11-105]~~. ~~{75A-6-104}~~75A-6-105. **Terms of service agreement.**

(1) This chapter does not change or impair a right of a custodian or a user under a terms of service agreement to access and use digital assets of the user.

(2) This chapter does not give a fiduciary or designated recipient any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary or designated recipient acts or represents.

(3) A fiduciary's or designated recipient's access to digital assets may be modified or eliminated by a user, by federal law, or by a terms of service agreement if the user has not provided direction under Section ~~[75-11-104]~~ ~~{75A-6-103}~~75A-6-104.

Section ~~{179}~~183. Section ~~{75A-6-105}~~75A-6-106, which is renumbered from Section 75-11-106 is renumbered and amended to read:

~~[75-11-106]~~. ~~{75A-6-105}~~75A-6-106. **Procedure for disclosing digital assets.**

(1) When disclosing digital assets of a user under this chapter, the custodian may at the custodian's sole discretion:

(a) grant a fiduciary or designated recipient full access to the user's account;

(b) grant a fiduciary or designated recipient partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or

(c) provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

(2) A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under this chapter.

(3) A custodian need not disclose under this chapter a digital asset deleted by a user.

(4) If a user directs or a fiduciary requests a custodian to disclose under this chapter some, but not all, of the user's digital assets, the custodian need not disclose the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian

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believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the court to disclose:

- (a) a subset limited by date of the user's digital assets;
- (b) all of the user's digital assets to the fiduciary or designated recipient;
- (c) none of the user's digital assets; or
- (d) all of the user's digital assets to the court for review in camera.

Section ~~{180}~~184. Section ~~{75A-6-106}~~75A-6-107, which is renumbered from Section 75-11-107 is renumbered and amended to read:

~~[75-11-107]~~. ~~{75A-6-106}~~75A-6-107. Disclosure of content of electronic communications of deceased user.

If a deceased user consented to or a court directs disclosure of the contents of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the representative gives the custodian:

- (1) a written request for disclosure in physical or electronic form;
- (2) a certified copy of the death certificate of the user;
- (3) a certified copy of the letter of appointment of the representative or a small estate affidavit or court order;
- (4) unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney, or other record evidencing the user's consent to disclosure of the content of electronic communications; and
- (5) if requested by the custodian:
 - (a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;
 - (b) evidence linking the account to the user; or
 - (c) a finding by the court that:
 - (i) the user had a specific account with the custodian, identifiable by the information specified in Subsection (5)(a);
 - (ii) disclosure of the content of electronic communications of the user would not violate 18 U.S.C. Sec. 2701 et seq., 47 U.S.C. Sec. 222, or other applicable law;
 - (iii) unless the user provided direction using an online tool, the user consented to

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disclosure of the content of electronic communications; or

(iv) disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

Section ~~{181}~~185. Section ~~{75A-6-107}~~75A-6-108, which is renumbered from Section 75-11-108 is renumbered and amended to read:

~~[75-11-108]~~. ~~{75A-6-107}~~75A-6-108. **Disclosure of other digital assets of deceased user.**

Unless the user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalogue of electronic communications sent or received by the user and digital assets, other than the content of electronic communications, of the user, if the representative gives the custodian:

- (1) a written request for disclosure in physical or electronic form;
- (2) a certified copy of the death certificate of the user;
- (3) a certified copy of the letter of appointment of the representative, a small estate affidavit, or court order; and
- (4) if requested by the custodian:
 - (a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;
 - (b) evidence linking the account to the user;
 - (c) an affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate; or
 - (d) a finding by the court that:
 - (i) the user had a specific account with the custodian, identifiable by the information specified in Subsection (4)(a); or
 - (ii) disclosure of the user's digital assets is reasonably necessary for administration of the estate.

Section ~~{182}~~186. Section ~~{75A-6-108}~~75A-6-109, which is renumbered from Section 75-11-109 is renumbered and amended to read:

~~[75-11-109]~~. ~~{75A-6-108}~~75A-6-109. **Disclosure of content of electronic communications of principal.**

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To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content if the agent gives the custodian:

- (1) a written request for disclosure in physical or electronic form;
- (2) an original or copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal;
- (3) a certification by the agent, under penalty of perjury, that the power of attorney is in effect; and
- (4) if requested by the custodian:
 - (a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or
 - (b) evidence linking the account to the principal.

Section ~~{183}~~187. Section ~~{75A-6-109}~~75A-6-110, which is renumbered from Section 75-11-110 is renumbered and amended to read:

~~[75-11-110]~~. ~~{75A-6-109}~~75A-6-110. **Disclosure of other digital assets of principal.**

Unless otherwise ordered by the court, directed by the principal, or provided by a power of attorney, a custodian shall disclose to an agent with specific authority over digital assets, or general authority to act on behalf of a principal, a catalogue of electronic communications sent or received by the principal and digital assets, other than the content of electronic communications, of the principal if the agent gives the custodian:

- (1) a written request for disclosure in physical or electronic form;
- (2) an original or a copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal;
- (3) a certification by the agent, under penalty of perjury, that the power of attorney is in effect; and
- (4) if requested by the custodian:
 - (a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or
 - (b) evidence linking the account to the principal.

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Section ~~{184}~~188. Section ~~{75A-6-110}~~75A-6-111, which is renumbered from Section 75-11-111 is renumbered and amended to read:

~~[75-11-111]~~. ~~{75A-6-110}~~75A-6-111. **Disclosure of digital assets held in trust when trustee is original user.**

Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to a trustee that is an original user of an account any digital asset of the account held in trust, including a catalogue of electronic communications of the trustee and the content of electronic communications.

Section ~~{185}~~189. Section ~~{75A-6-111}~~75A-6-112, which is renumbered from Section 75-11-112 is renumbered and amended to read:

~~[75-11-112]~~. ~~{75A-6-111}~~75A-6-112. **Disclosure of contents of electronic communications held in trust when trustee not original user.**

Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received, or stored by the custodian in the account of the trust if the trustee gives the custodian:

- (1) a written request for disclosure in physical or electronic form;
- (2) a certified copy of the trust instrument or a certification of the trust under Section 75-7-1013 that includes consent to disclosure of the content of electronic communications to the trustee;
- (3) a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and
- (4) if requested by the custodian:
 - (a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or
 - (b) evidence linking the account to the trust.

Section ~~{186}~~190. Section ~~{75A-6-112}~~75A-6-113, which is renumbered from Section 75-11-113 is renumbered and amended to read:

~~[75-11-113]~~. ~~{75A-6-112}~~75A-6-113. **Disclosure of other digital assets held in trust when trustee not original user.**

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Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of electronic communications sent or received by an original or successor user and stored, carried, or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian:

- (1) a written request for disclosure in physical or electronic form;
- (2) a certified copy of the trust instrument or a certification of the trust under Section 75-7-1013;
- (3) a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and
- (4) if requested by the custodian:
 - (a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or
 - (b) evidence linking the account to the trust.

Section ~~{187}~~191. Section ~~{75A-6-113}~~75A-6-114, which is renumbered from Section 75-11-114 is renumbered and amended to read:

~~[75-11-114]~~. ~~{75A-6-113}~~75A-6-114. **Disclosure of digital assets to conservator or guardian of protected person.**

(1) After an opportunity for a hearing under Chapter 5, Protection of Persons Under Disability and Their Property, the court may grant a conservator or guardian access to the digital assets of a protected person.

(2) Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a conservator or guardian the catalogue of electronic communications sent or received by a protected person and any digital assets, other than the content of electronic communications, in which the protected person has a right or interest if the conservator or guardian gives the custodian:

- (a) a written request for disclosure in physical or electronic form;
- (b) a certified copy of the court order that gives the conservator or guardian authority over the digital assets of the protected person; and
- (c) if requested by the custodian:

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(i) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the account of the protected person; or

(ii) evidence linking the account to the protected person.

(3) A conservator or guardian with general authority to manage the assets of a protected person may request a custodian of the digital assets of the protected person to suspend or terminate an account of the protected person for good cause. A request made under this section must be accompanied by a certified copy of the court order giving the conservator or guardian authority over the protected person's property.

Section ~~{188}~~192. Section ~~{75A-6-114}~~75A-6-115, which is renumbered from Section 75-11-115 is renumbered and amended to read:

~~[75-11-115]~~. ~~{75A-6-114}~~75A-6-115. **Fiduciary duty and authority.**

(1) The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including:

- (a) the duty of care;
- (b) the duty of loyalty; and
- (c) the duty of confidentiality.

(2) A fiduciary's or designated recipient's authority with respect to a digital asset of a user:

(a) except as otherwise provided in Section ~~[75-11-104]~~ ~~{75A-6-103}~~75A-6-104, is subject to the applicable terms of service;

- (b) is subject to other applicable law, including copyright law;
- (c) in the case of a fiduciary, is limited by the scope of the fiduciary's duties; and
- (d) may not be used to impersonate the user.

(3) A fiduciary with authority over the property of a decedent, protected person, principal, or settlor has the right to access any digital asset in which the decedent, protected person, principal, or settlor had a right or interest and that is not held by a custodian or subject to a terms of service agreement.

(4) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, protected person, principal, or settlor for the purpose of applicable computer fraud and unauthorized computer access laws.

(5) A fiduciary with authority over the tangible, personal property of a decedent,

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protected person, principal, or settlor:

(a) has the right to access the property and any digital asset stored in it; and

(b) is an authorized user for the purpose of computer fraud and unauthorized computer access laws.

(6) A custodian may disclose information in an account to a fiduciary of the user when the information is required to terminate an account used to access digital assets licensed to the user.

(7) A fiduciary of a user may request a custodian to terminate the user's account. A request for termination shall be in writing, in either physical or electronic form, and accompanied by:

(a) if the user is deceased, a certified copy of the death certificate of the user;

(b) a certified copy of the letter of appointment of the representative, a small estate affidavit, or court order, power of attorney, or trust giving the fiduciary authority over the account; and

(c) if requested by the custodian:

(i) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(ii) evidence linking the account to the user; or

(iii) a finding by the court that the user had a specific account with the custodian, identifiable by the information specified in Subsection (7)(c)(i).

Section ~~{189}~~193. Section ~~{75A-6-115}~~75A-6-116, which is renumbered from Section 75-11-116 is renumbered and amended to read:

~~[75-11-116]~~. ~~{75A-6-115}~~75A-6-116. **Custodian compliance and immunity.**

(1) Not later than 60 days after receipt of the information required under Sections ~~[75-11-107 through 75-11-115]~~ ~~{75A-6-106}~~75A-6-107 through ~~{75A-6-114}~~75A-6-115, a custodian shall comply with a request under this chapter from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance.

(2) An order under Subsection (1) directing compliance shall contain a finding that compliance is not in violation of 18 U.S.C. Sec. 2702.

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(3) A custodian may notify the user that a request for disclosure or to terminate an account was made under this chapter.

(4) A custodian may deny a request under this chapter from a fiduciary or designated recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the receipt of the fiduciary's request.

(5) This chapter does not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under this chapter to obtain a court order that:

(a) specifies that an account belongs to the protected person or principal;

(b) specifies that there is sufficient consent from the protected person or principal to support the requested disclosure; and

(c) contains a finding required by law other than this chapter.

(6) A custodian and its officers, employees, and agents are immune from liability for an act or omission done in good faith in compliance with this chapter.

Section ~~{190}~~194. Section ~~{75A-6-116}~~75A-6-117, which is renumbered from Section 75-11-117 is renumbered and amended to read:

~~[75-11-117]~~. ~~{75A-6-116}~~75A-6-117. **Uniformity of application and construction.**

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

Section ~~{191}~~195. Section ~~{75A-6-117}~~75A-6-118, which is renumbered from Section 75-11-118 is renumbered and amended to read:

~~[75-11-118]~~. ~~{75A-6-117}~~75A-6-118. **Relation to Electronic Signatures in Global and National Commerce Act.**

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

Section ~~{192}~~196. Section ~~75A-7-101~~75A-7-101 ~~{, which}~~ is ~~{renumbered from Section 22-5-2 is renumbered and amended}~~enacted to read:

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CHAPTER 7. UNIFORM ACT FOR SIMPLIFICATION OF FIDUCIARY SECURITY TRANSFERS

75A-7-101. Reserved.

Reserved.

Section 197. Section 75A-7-102, which is renumbered from Section 22-5-2 is renumbered and amended to read:

~~[22-5-2].~~ ~~{75A-7-101}~~75A-7-102. Definitions for chapter.

~~[In]~~ As used in this chapter~~[, unless the context otherwise requires]~~:

(1) "Assignment" includes any written stock power, bond power, bill of sale, deed, declaration of trust or other instrument of transfer.

(2) "Claim of beneficial interest" includes:

(a) a claim of any interest by a decedent's legatee, distributee, heir or creditor, a beneficiary under a trust, a ward, a beneficial owner of a security registered in the name of a nominee, or a minor owner of a security registered in the name of a custodian, or a claim of any similar interest, whether the claim is asserted by the claimant or by a fiduciary or by any other authorized person in his behalf~~[, and includes]~~;and

(b) a claim that the transfer would be in breach of fiduciary duties.

(3) "Corporation" means a private or public corporation, association or trust issuing a security.

(4) "Fiduciary" means an executor, administrator, trustee, guardian, committee, conservator, curator, tutor, custodian or nominee.

(5) "Person" includes an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(6) "Security" includes any share of stock, bond, debenture, note or other security issued by a corporation which is registered as to ownership on the books of the corporation.

(7) "Transfer" means a change on the books of a corporation in the registered ownership of a security.

(8) "Transfer agent" means a person employed or authorized by a corporation to transfer securities issued by the corporation.

Section ~~{193}~~198. Section ~~{75A-7-102}~~75A-7-103, which is renumbered from

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Section 22-5-3 is renumbered and amended to read:

[~~22-5-3~~]. ~~75A-7-102~~75A-7-103. Registration of security in the name of a fiduciary.

A corporation or transfer agent registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship, and thereafter the corporation and its transfer agent may assume without inquiry that the newly registered owner continues to be the fiduciary until the corporation or transfer agent receives written notice that the fiduciary is no longer acting as such with respect to the particular security.

Section ~~{194}~~199. Section ~~{75A-7-103}~~75A-7-104, which is renumbered from Section 22-5-4 is renumbered and amended to read:

[~~22-5-4~~]. ~~75A-7-103~~75A-7-104. Assignment of security by a fiduciary.

Except as otherwise provided in this chapter, a corporation or transfer agent making a transfer of a security pursuant to an assignment by a fiduciary:

(1) may assume without inquiry that the assignment, even though to the fiduciary himself or to his nominee, is within his authority and capacity and is not in breach of his fiduciary duties;

(2) may assume without inquiry that the fiduciary has complied with any controlling instrument and with the law of the jurisdiction governing the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(3) is not charged with notice of and is not bound to obtain or examine any court record or any recorded or unrecorded document relating to the fiduciary relationship or the assignment, even though the record or document is in its possession.

Section ~~{195}~~200. Section ~~{75A-7-104}~~75A-7-105, which is renumbered from Section 22-5-5 is renumbered and amended to read:

[~~22-5-5~~]. ~~75A-7-104~~75A-7-105. Assignment of security by a fiduciary -- Evidence of appointment or incumbency.

(1) A corporation or transfer agent making a transfer pursuant to an assignment by a fiduciary who is not the registered owner shall obtain the following evidence of appointment or incumbency:

~~{(+)}~~ (a) in the case of a fiduciary appointed or qualified by a court, a certificate issued

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by or under the direction or supervision of that court or an officer thereof and dated within 60 days before the transfer; or

~~(2)~~ (b) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the corporation or transfer agent to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the corporation or transfer agent to be appropriate.

(2) Corporations and transfer agents may adopt standards with respect to evidence of appointment or incumbency under this subsection provided such standards are not manifestly unreasonable.

(3) Neither the corporation nor transfer agent is charged with notice of the contents of any document obtained pursuant to this subsection except to the extent that the contents relate directly to the appointment or incumbency.

Section ~~{196}~~201. Section ~~{75A-7-105}~~75A-7-106, which is renumbered from Section 22-5-6 is renumbered and amended to read:

~~[22-5-6]~~. ~~{75A-7-105}~~75A-7-106. **Adverse claims to transfer of security by a fiduciary -- Notice.**

(1) (a) A person asserting a claim of beneficial interest adverse to the transfer of a security pursuant to an assignment by a fiduciary may give the corporation or transfer agent written notice of the claim.

(b) The corporation or transfer agent is not put on notice unless the written notice identifies the claimant, the registered owner and the issue of which the security is a part, provides an address for communications directed to the claimant and is received before the transfer.

(c) Nothing in this [act] chapter relieves the corporation or transfer agent of any liability for making or refusing to make the transfer after it is so put on notice, unless it proceeds in the manner authorized in Subsection (2).

(2) (a) As soon as practicable after the presentation of a security for transfer pursuant to an assignment by a fiduciary, a corporation or transfer agent which has received notice of a claim of beneficial interest adverse to the transfer may send notice of the presentation by registered or certified mail to the claimant at the address given by him.

(b) If the corporation or transfer agent so mails such a notice it shall withhold the

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transfer for 30 days after the mailing and shall then make the transfer unless restrained by a court order.

Section ~~{197}~~202. Section ~~{75A-7-106}~~75A-7-107, which is renumbered from Section 22-5-7 is renumbered and amended to read:

~~{22-5-7}~~. ~~{75A-7-106}~~75A-7-107. Nonliability of corporation or transfer agent.

A corporation or transfer agent incurs no liability to any person by making a transfer or otherwise acting in a manner authorized by this ~~[act]~~ chapter.

Section ~~{198}~~203. Section ~~{75A-7-107}~~75A-7-108, which is renumbered from Section 22-5-8 is renumbered and amended to read:

~~{22-5-8}~~. ~~{75A-7-107}~~75A-7-108. Nonliability of third persons.

(1) ~~[No]~~ A person who participates in the acquisition, disposition, assignment or transfer of a security by or to a fiduciary, including a person who guarantees the signature of the fiduciary, is not liable for participation in any breach of fiduciary duty by reason of failure to inquire whether the transaction involves such a breach unless it is shown that ~~[he]~~ the person acted with actual knowledge that the proceeds of the transaction were being or were to be used wrongfully for the individual benefit of the fiduciary or that the transaction was otherwise in breach of duty.

(2) If a corporation or transfer agent makes a transfer pursuant to an assignment by a fiduciary, a person who guaranteed the signature of the fiduciary is not liable on the guarantee to any person to whom the corporation or transfer agent by reason of this ~~[act]~~ chapter incurs no liability.

(3) This section does not impose any liability upon the corporation or ~~[its]~~ the corporation's transfer agent.

Section ~~{199}~~204. Section ~~{75A-7-108}~~75A-7-109, which is renumbered from Section 22-5-9 is renumbered and amended to read:

~~{22-5-9}~~. ~~{75A-7-108}~~75A-7-109. Territorial application of law to rights and duties of corporation or third persons.

(1) The rights and duties of a corporation and ~~[its]~~ the corporation's transfer agents in registering a security in the name of a fiduciary or in making a transfer of a security pursuant to an assignment by a fiduciary are governed by the law of the jurisdiction under whose laws the

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corporation is organized.

(2) This chapter applies to the rights and duties of a person other than the corporation and its transfer agents with regard to acts and omissions in this state in connection with the acquisition, disposition, assignment, or transfer of a security by or to a fiduciary and of a person who guarantees in this state the signature of a fiduciary in connection with such a transaction.

Section ~~{200}~~205. Section ~~{75A-7-109}~~75A-7-110, which is renumbered from Section 22-5-10 is renumbered and amended to read:

~~[22-5-10]~~. ~~{75A-7-109}~~75A-7-110. **Tax obligations not affected .**

This [act] chapter does not affect any obligation of a corporation or transfer agent with respect to estate, inheritance, succession or other taxes imposed by the laws of this state.

Section ~~{201}~~206. Section ~~{75A-7-110}~~75A-7-111, which is renumbered from Section 22-5-11 is renumbered and amended to read:

~~[22-5-11]~~. ~~{75A-7-110}~~75A-7-111. **Construction.**

This [act] uniform act shall be so construed as to effectuate [its] the act's general purpose to make uniform the law of those states which enact [it] this uniform act.

Section ~~{202}~~207. Section **75A-8-101**~~{, which}~~ is ~~{renumbered from Section 75-5a-102 is renumbered and amended}~~enacted to read:

CHAPTER 8. UNIFORM TRANSFERS TO MINOR ACT

75A-8-101. Reserved.

Reserved.

Section 208. Section 75A-8-102, which is renumbered from Section 75-5a-102 is renumbered and amended to read:

~~[75-5a-102]~~. ~~{75A-8-101}~~75A-8-102. **Definitions for chapter.**

As used in this [part] chapter:

(1) "Adult" means an individual who is 21 years [of age] old or older.

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

~~{(2)}~~ (3) "Benefit plan" means an employer's plan for the benefit of an employee or partner.

~~{(3)}~~ (4) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the accounts of

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others.

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

† [(4)] ~~{(6)}~~ {5} "Conservator" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.

~~{(5)}~~ ~~{(7)}~~ {6} "Court" means the ~~[probate division of the district court for the]~~ court in the county in which the custodian resides.

~~{(6)}~~ ~~{(8)}~~ {7} "Custodial property" means:

- (a) any interest in property transferred to a custodian under this ~~[part]~~ chapter; and
- (b) the income from and proceeds of that interest in property.

~~{(7)}~~ ~~{(9)}~~ {8} "Custodian" means a person so designated under Section ~~[75-5a-110]~~ 75A-8-109; 75A-8-110 or a successor or substitute custodian designated under Section ~~[75-5a-119]~~ 75A-8-118; 75A-8-119.

~~{(10)}~~ {9} "Estate" means the same as that term is defined in Section 75-1-201.

~~{(11)}~~ {10} "Fiduciary" means the same as that term is defined in Section 75-1-201.

~~{(8)}~~ ~~{(12)}~~ {11} "Financial institution" means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.

~~{(13)}~~ {12} "~~{Governing instrument}~~ Guardian" means the same as that term is defined in Section 75-1-201.

~~{(14)}~~ {13} "~~{Guardian}~~ Incapacitated" means the same as that term is defined in Section 75-1-201.

~~{(15)}~~ {14} "~~{Incapacitated}~~ Incapacity" means the same as that term is defined in Section 75-1-201.

~~{(16)}~~ {15} "~~{Incapacity}~~ Interested person" means the same as that term is defined in Section 75-1-201.

~~{ (17) "Interested person" means the same as that term is defined in Section 75-1-201.~~

† [(9)] ~~{(18)}~~ {16} "Legal representative" means an individual's personal representative or conservator.

~~{(10)}~~ ~~{(19)}~~ {17} "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

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[(11)] (~~(20)~~18) "Minor" means an individual who is [~~not yet 21 years of age~~] under 21 years old.

(~~(21)~~19) "Parent" means the same as that term is defined in Section 75-1-201.

(~~(22)~~20) "Payor" means the same as that term is defined in Section 75-1-201.

[(12)] (~~(23)~~21) "Person" means an individual, corporation, organization as defined in Section 75-1-201, or other legal entity.

[(13)] (~~(24)~~22) "Personal representative" means an executor, administrator, successor personal representative as defined in Section 75-1-201, or special administrator as defined in Section 75-1-201, of a decedent's estate or a person legally authorized to perform substantially the same functions.

(~~(25)~~23) "Petition" means the same as that term is defined in Section 75-1-201.

(~~(26)~~24) "Property" means the same as that term is defined in Section 75-1-201.

(~~(27)~~25) "Record" means the same as that term is defined in Section 75-1-201.

(~~(28)~~26) "Security" means the same as that term is defined in Section 75-1-201.

[(14)] (~~(29)~~27) "State" includes any state of the United States, the district of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(~~(30)~~28) "Testator" means the same as that term is defined in Section 75-1-201.

[(15)] (~~(31)~~29) "Transfer" means a transaction that creates custodial property under Section [~~75-5a-110~~] 75A-8-109.

[(16)] (~~(32)~~30) "Transferor" means a person who makes a transfer under this [~~part~~] chapter.

(~~(33)~~31) "Trust" means the same as that term is defined in Section 75-1-201.

[(17)] (~~(34)~~32) "Trust company" means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

(~~(35)~~33) "Trustee" means the same as that term is defined in Section 75-1-201.

(~~(36)~~34) "Will" means the same as that term is defined in Section 75-1-201.

Section ~~(203)~~209. Section ~~(75A-8-102)~~75A-8-103, which is renumbered from Section 75-5a-103 is renumbered and amended to read:

~~[75-5a-103]~~. ~~(75A-8-102)~~75A-8-103. **Scope and jurisdiction.**

(1) (a) This [~~part~~] chapter applies to a transfer that refers to this [~~part~~] chapter in the

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designation under Subsection [~~75-5a-110(1)~~] ~~{75A-8-109}~~75A-8-110(1) by which the transfer is made if at the time of the transfer, the transferor, the minor, or the custodian is a resident of this state, or the custodial property is located in this state.

(b) The custodianship created remains subject to this [~~part~~] chapter despite a subsequent change in residence of a transferor, the minor, or the custodian, or the removal of custodial property from this state.

(2) A person designated as custodian under this [~~part~~] chapter is subject to personal jurisdiction in this state regarding any matter relating to the custodianship.

(3) A transfer that purports to be made and is valid under the Uniform Transfers to Minors Act, the Uniform Gifts to Minors Act, or a substantially similar act of another state is governed by the laws of the designated state and may be executed and is enforceable in this state if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state, or the custodial property is located in the designated state.

Section ~~{204}~~210. Section ~~{75A-8-103}~~75A-8-104, which is renumbered from Section 75-5a-104 is renumbered and amended to read:

~~[75-5a-104]~~. ~~{75A-8-103}~~75A-8-104. **Nomination of custodian.**

(1) (a) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: "as custodian for (name of minor) under the Uniform Transfers to Minors Act."

(b) The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve.

(c) The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

(2) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under Subsection [~~75-5a-110(1)~~] ~~{75A-8-109}~~75A-8-110(1).

(3) (a) The nomination of a custodian under this section does not create custodial

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property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under Section [75-5a-110] ~~{75A-8-109}~~75A-8-110.

(b) Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property under Section [75-5a-110] ~~{75A-8-109}~~75A-8-110.

Section ~~{205}~~211. Section ~~{75A-8-104}~~75A-8-105, which is renumbered from Section 75-5a-105 is renumbered and amended to read:

[75-5a-105]. ~~{75A-8-104}~~75A-8-105. Transfer by gift or exercise of power of appointment.

A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor under Section [75-5a-110] ~~{75A-8-109}~~75A-8-110.

Section ~~{206}~~212. Section ~~{75A-8-105}~~75A-8-106, which is renumbered from Section 75-5a-106 is renumbered and amended to read:

[75-5a-106]. ~~{75A-8-105}~~75A-8-106. Transfer authorized by will or trust.

(1) A personal representative or trustee may make an irrevocable transfer under Section [75-5a-110] ~~{75A-8-109}~~75A-8-110 to a custodian for the benefit of a minor as authorized in the governing will or trust.

(2) If the testator or settlor has nominated a custodian under Section [75-5a-104] ~~{75A-8-103}~~75A-8-104 to receive the custodial property, the transfer must be made to that person.

(3) If the testator or settlor has not nominated a custodian under Section [75-5a-104] ~~{75A-8-103}~~75A-8-104, or all persons nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under Subsection [75-5a-110(1)] ~~{75A-8-109}~~75A-8-110(1).

Section ~~{207}~~213. Section ~~{75A-8-106}~~75A-8-107, which is renumbered from Section 75-5a-107 is renumbered and amended to read:

[75-5a-107]. ~~{75A-8-106}~~75A-8-107. Other transfer by fiduciary.

(1) Subject to Subsection (3), a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor

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under Section ~~[75-5a-110]~~ ~~{75A-8-109}~~ 75A-8-110, in the absence of a will or under a will or trust that does not contain an authorization to do so.

(2) Subject to Subsection (3), a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to Section ~~[75-5a-110]~~ ~~{75A-8-109}~~ 75A-8-110.

(3) A transfer under Subsection ~~[75-5a-110(1)]~~ ~~{75A-8-109}~~ 75A-8-110(1) or (2) may be made only if:

(a) the personal representative, trustee, or conservator considers the transfer to be in the best interest of the minor;

(b) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument, as defined in Section 75-1-201; and

(c) the transfer is authorized by the court, if it exceeds \$10,000 in value.

Section ~~{208}~~ 214. Section ~~{75A-8-107}~~ 75A-8-108, which is renumbered from Section 75-5a-108 is renumbered and amended to read:

~~[75-5a-108]~~. ~~{75A-8-107}~~ 75A-8-108. **Transfer by obligor.**

(1) Subject to Subsections (2) and (3), a person not subject to Section ~~[75-5a-106 or 75-5a-107]~~ ~~{75A-8-105}~~ 75A-8-106 or ~~{75A-8-106}~~ 75A-8-107 who holds property of or owes a liquidated debt to a minor not having a conservator, may make an irrevocable transfer to a custodian for the benefit of the minor under Section ~~[75-5a-110]~~ ~~{75A-8-109}~~ 75A-8-110.

(2) If a person having the right under Section ~~[75-5a-104]~~ ~~{75A-8-103}~~ 75A-8-104 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(3) If no custodian has been nominated under Section ~~[75-5a-104]~~ ~~{75A-8-103}~~ 75A-8-104, or all persons nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds \$10,000 in value.

Section ~~{209}~~ 215. Section ~~{75A-8-108}~~ 75A-8-109, which is renumbered from Section 75-5a-109 is renumbered and amended to read:

~~[75-5a-109]~~. ~~{75A-8-108}~~ 75A-8-109. **Receipt for custodial property.**

A written acknowledgment of delivery by a custodian is sufficient receipt and discharge

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for custodial property transferred to the custodian under this ~~[part]~~ chapter.

Section ~~{210}~~216. Section ~~{75A-8-109}~~75A-8-110, which is renumbered from Section 75-5a-110 is renumbered and amended to read:

~~[75-5a-110]~~. ~~{75A-8-109}~~75A-8-110. **Manner of creating custodial property and effecting transfer -- Designation of initial custodian -- Control.**

(1) Custodial property is created and a transfer is made when:

(a) an uncertificated security or a certificated security in registered form is either:

(i) registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for (name of minor) under the Uniform Transfers to Minors Act"; or

(ii) delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement, to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form in Subsection (2);

(b) money is paid or delivered, or a security held in the name of a broker, financial institution, or its nominee is transferred to a broker, or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for (name of minor) under the Uniform Transfers to Minors Act";

(c) the ownership of a life or endowment insurance policy or annuity contract is either:

(i) registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for (name of minor) under the Uniform Transfers to Minors Act"; or

(ii) assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: "as custodian for (name of minor) under the Uniform Transfers to Minors Act";

(d) an irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words: "as custodian for (name of minor) under the Uniform Transfers to Minors

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Act";

(e) an interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for (name of minor) under the Uniform Transfers to Minors Act";

(f) a certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

(i) issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for (name of minor) under the Uniform Transfers to Minors Act"; or

(ii) delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words: "as custodian for (name of minor) under the Uniform Transfers to Minors Act";

(g) an interest in any property not described in Subsections (1)(a) through (f) is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in Subsection (2); or

(h) contributions are made into a custodial account at the Utah Educational Savings Plan in accordance with Title 53B, Chapter 8a, Utah Educational Savings Plan.

(2) An instrument in the following form satisfies the requirements of Subsections (1)(a)(ii) and (1)(g): "Transfer Under the Uniform Transfers to Minors Act

I, (name of transferor or name and representative capacity if a fiduciary) hereby transfer to (name of custodian), as custodian for (name of minor) under the Uniform Transfers to Minors Act, the following: (insert a description of the custodial property sufficient to identify it).

Dated:

.....

(Signature)

..... (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the Uniform Transfers to Minors Act.

Dated:

.....

(Signature of Custodian)"

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(3) A transferor shall place the custodian in control of the custodial property as soon as practicable.†

† Section ~~{211}~~217. Section ~~{75A-8-110}~~75A-8-111, which is renumbered from Section 75-5a-111 is renumbered and amended to read:

~~[75-5a-111]~~. ~~{75A-8-110}~~75A-8-111. **Single custodianship.**

(1) A transfer may be made only for one minor, and only one person may be the custodian.

(2) All custodial property held under this [part] chapter by the same custodian for the benefit of the same minor constitutes a single custodianship.

Section ~~{212}~~218. Section ~~{75A-8-111}~~75A-8-112, which is renumbered from Section 75-5a-112 is renumbered and amended to read:

~~[75-5a-112]~~. ~~{75A-8-111}~~75A-8-112. **Validity and effect of transfer.**

(1) The validity of a transfer made in a manner prescribed in this [part] chapter is not affected by:

(a) failure of the transferor to comply with Subsection ~~[75-5a-110(3)]~~
~~{75A-8-109}~~75A-8-110(3) concerning possession and control;

(b) designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under Subsection ~~[75-5a-110(1)]~~ ~~{75A-8-109}~~75A-8-110(1); or

(c) death or incapacity of a person nominated under Section ~~[75-5a-104]~~
~~{75A-8-103}~~75A-8-104 or designated under Section ~~[75-5a-110]~~ ~~{75A-8-109}~~75A-8-110 as custodian or the disclaimer of the office by that person.

(2) (a) A transfer made under Section ~~[75-5a-110]~~ ~~{75A-8-109}~~75A-8-110 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties, and authority provided in this [part] chapter.

(b) ~~[Neither the minor nor the minor's legal representative has]~~ A minor, or a minor's representative, does not have any right, power, duty, or authority regarding the custodial property except as provided in this [part] chapter.

(3) By making a transfer, the transferor incorporates in the disposition all the provisions of this [part] chapter and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided

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in this ~~[part]~~ chapter.

Section ~~{213}~~219. Section ~~{75A-8-112}~~75A-8-113, which is renumbered from Section 75-5a-113 is renumbered and amended to read:

~~[75-5a-113]~~. ~~{75A-8-112}~~75A-8-113. **Care of custodial property.**

(1) A custodian shall:

- (a) take control of custodial property;
- (b) register or record title to custodial property if appropriate; and
- (c) collect, hold, manage, invest, and reinvest custodial property.

(2) (a) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries.

(b) If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use the skill or expertise.

(c) However, a custodian may, in ~~[his]~~ the custodian's discretion and without liability to the minor or the minor's estate, retain any custodial property received from a transferor.

(3) A custodian may invest in or pay premiums on life insurance or endowment policies on:

- (a) the life of the minor only if the minor or the minor's estate is the sole beneficiary; or
- (b) the life of another person in whom the minor has an insurable interest only to the extent the minor, the minor's estate, or the custodian in the capacity of custodian, is the irrevocable beneficiary.

(4) (a) A custodian shall at all times keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor.

(b) (i) Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed.

(ii) Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered, or held in an account designated, in the name of the custodian, followed in substance by the words: "as a custodian for (name of minor) under the Uniform Transfers to Minors Act."

(5) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make

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them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor is 14 years ~~[of age]~~ old or older.

Section ~~{214}~~220. Section ~~{75A-8-113}~~75A-8-114, which is renumbered from Section 75-5a-114 is renumbered and amended to read:

~~[75-5a-114]~~. ~~{75A-8-113}~~75A-8-114. **Powers of custodian.**

(1) A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers, and authority in that capacity only.

(2) This section does not relieve a custodian from liability for breach of Section ~~[75-5a-113]~~ ~~{75A-8-112}~~75A-8-113.

Section ~~{215}~~221. Section ~~{75A-8-114}~~75A-8-115, which is renumbered from Section 75-5a-115 is renumbered and amended to read:

~~[75-5a-115]~~. ~~{75A-8-114}~~75A-8-115. **Use of custodial property.**

(1) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to:

(a) the duty or ability of the custodian personally or of any other person to support the minor; or

(b) any other income or property of the minor which may be applicable or available for that purpose.

(2) On petition of an interested person, or the minor if the minor is 14 years ~~[of age]~~ old or older, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(3) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

Section ~~{216}~~222. Section ~~{75A-8-115}~~75A-8-116, which is renumbered from Section 75-5a-116 is renumbered and amended to read:

~~[75-5a-116]~~. ~~{75A-8-115}~~75A-8-116. **Custodian's expenses, compensation, and bond.**

(1) A custodian is entitled to reimbursement from custodial property for reasonable

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expenses incurred in the performance of the custodian's duties.

(2) Except for one who is a transferor under Section [75-5a-105] ~~{75A-8-104}~~75A-8-105, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(3) Except as provided in Subsection [75-5a-119(6)] ~~{75A-8-118}~~75A-8-119(6), a custodian need not give a bond.

Section ~~{217}~~223. Section ~~{75A-8-116}~~75A-8-117, which is renumbered from Section 75-5a-117 is renumbered and amended to read:

~~[75-5a-117]~~. ~~{75A-8-116}~~75A-8-117. **Exemption of third person from liability.**

A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining:

- (1) the validity of the purported custodian's designation;
- (2) the propriety of, or the authority under this [part] chapter for, any act of the purported custodian;
- (3) the validity or propriety under this [part] chapter of any instrument or instructions executed or given either by the person purporting to make transfer or by the purported custodian; or
- (4) the propriety of the application of any property of the minor delivered to the purported custodian.

Section ~~{218}~~224. Section ~~{75A-8-117}~~75A-8-118, which is renumbered from Section 75-5a-118 is renumbered and amended to read:

~~[75-5a-118]~~. ~~{75A-8-117}~~75A-8-118. **Liability to third persons.**

(1) A claim may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable, if the claim is based on:

- (a) a contract entered into by a custodian acting in a custodial capacity;
 - (b) an obligation arising from the ownership or control of custodial property; or
 - (c) a tort committed during the custodianship.
- (2) A custodian is not personally liable:

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(a) on a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or

(b) for an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

(3) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

Section ~~{219}~~225. Section ~~{75A-8-118}~~75A-8-119, which is renumbered from Section 75-5a-119 is renumbered and amended to read:

~~[75-5a-119]~~. ~~{75A-8-118}~~75A-8-119. **Renunciation, resignation, death, or removal of custodian -- Designation of successor custodian.**

(1) (a) A person nominated under Section ~~[75-5a-104]~~ ~~{75A-8-103}~~75A-8-104 or designated under Section ~~[75-5a-110]~~ ~~{75A-8-109}~~75A-8-110 as custodian may decline to serve by delivering a valid disclaimer to the person who made the nomination or to the transferor or the transferor's legal representative.

(b) If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under Section ~~[75-5a-104]~~ ~~{75A-8-103}~~75A-8-104, the person who made the nomination may nominate a substitute custodian under Section ~~[75-5a-104]~~ ~~{75A-8-103}~~75A-8-104; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under Subsection ~~[75-5a-110(1)]~~ ~~{75A-8-109}~~75A-8-110(1).

(c) The custodian designated has the rights of a successor custodian.

(2) (a) A custodian at any time may designate a trust company or an adult other than a transferor under Section ~~[75-5a-105]~~ ~~{75A-8-104}~~75A-8-105 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor.

(b) If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.

(3) A custodian may resign at any time by delivering written notice to the minor if the

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minor is 14 years [~~of age~~] old or older and to the successor custodian and by delivering the custodial property to the successor custodian.

(4) (a) (i) If a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor is 14 years [~~of age~~] old or older, the minor may designate as successor custodian, in the manner prescribed in Subsection (2), an adult member of the minor's family, a conservator of the minor, or a trust company.

(ii) If the minor is not yet 14 years [~~of age~~] old or fails to act within 60 days after the ineligibility, death, or incapacity, the conservator of the minor becomes successor custodian.

(b) If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(5) (a) A custodian who declines to serve under Subsection (1) or resigns under Subsection (3), or the legal representative of a deceased or incapacitated custodian shall as soon as practicable place the custodial property and records in the possession and control of the successor custodian.

(b) The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(6) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor, or the minor if [~~he is 14 years of age~~] the minor is 14 years old or older, may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under Section [~~75-5a-105~~] ~~{75A-8-104}~~ 75A-8-105 or to require the custodian to give appropriate bond.

Section ~~{220}~~ 226. Section ~~{75A-8-119}~~ 75A-8-120, which is renumbered from Section 75-5a-120 is renumbered and amended to read:

~~[75-5a-120]~~. ~~{75A-8-119}~~ 75A-8-120. **Accounting by and determination of liability of custodian.**

(1) A minor who is 14 years [~~of age~~] old or older, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court:

- (a) for an accounting by the custodian or the custodian's legal representative; or
- (b) for a determination of responsibility, as between the custodial property and the

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custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under Section ~~[75-5a-118]~~ ~~{75A-8-117}~~ 75A-8-118 to which the minor or the minor's legal representative was a party.

(2) A successor custodian may petition the court for an accounting by the predecessor custodian.

(3) The court, in a proceeding under this ~~[part]~~ chapter or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(4) If a custodian is removed under Subsection ~~[75-5a-119(6)]~~ ~~{75A-8-118}~~ 75A-8-119(6), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

Section ~~{221}~~ 227. Section ~~{75A-8-120}~~ 75A-8-121, which is renumbered from Section 75-5a-121 is renumbered and amended to read:

~~[75-5a-121]~~. ~~{75A-8-120}~~ 75A-8-121. **Termination of custodianship.**

The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

(1) the minor's becoming 21 years ~~[of age]~~ old with respect to custodial property transferred under Section ~~[75-5a-105 or 75-5a-106]~~ ~~{75A-8-104}~~ 75A-8-105 or ~~{75A-8-105}~~ 75A-8-106;

(2) the minor's attainment of majority under the laws of this state with respect to the custodial property transferred under Section ~~[75-5a-107 or 75-5a-108]~~ ~~{75A-8-106}~~ 75A-8-107 or ~~{75A-8-107}~~ 75A-8-108; or

(3) the minor's death.

Section ~~{222}~~ 228. Section ~~{75A-8-121}~~ 75A-8-122, which is renumbered from Section 75-5a-122 is renumbered and amended to read:

~~[75-5a-122]~~. ~~{75A-8-121}~~ 75A-8-122. **Applicability.**

This ~~[part]~~ chapter applies to a transfer within the scope of Section ~~[75-5a-103]~~ ~~{75A-8-102}~~ 75A-8-103 made after its effective date if:

(1) the transfer purports to have been made under the Uniform Gifts to Minors Act; or
(2) the instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under

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the Uniform Transfers to Minors Act" of any other state, and the application of this part is necessary to validate the transfer.

Section ~~{223}~~229. Section ~~{75A-8-122}~~75A-8-123, which is renumbered from Section 75-5a-123 is renumbered and amended to read:

~~[75-5a-123]~~. ~~{75A-8-122}~~75A-8-123. **Effect on existing custodianships.**

(1) Any transfer of custodial property as now defined in this [part] chapter made before July 1, 1990, is validated notwithstanding that there was no specific authority in the Uniform Gifts to Minors Act for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(2) This [part] chapter applies to all transfers made before July 1, 1990, in a manner and form prescribed in the Uniform Gifts to Minors Act, except as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on July 1, 1990.

(3) Sections ~~[75-5a-102 and 75-5a-121]~~ ~~{75A-8-101}~~75A-8-102 and ~~{75A-8-120}~~75A-8-121 regarding the age of a minor for whom custodial property is held under this [part] chapter do not apply to custodial property held in a custodianship that terminated because of the minor's attainment of the age of majority and before July 1, 1990.

Section ~~{224}~~230. Section **75B-1-101** is enacted to read:

TITLE 75B. TRUSTS

CHAPTER 1. GENERAL PROVISIONS

Part 1. General Provisions

75B-1-101. Reserved for title definitions.

Reserved.

Section ~~{225}~~231. Section **75B-1-102** is enacted to read:

75B-1-102. Transition clause.

If, at the time a trust or another legal document was executed, the document contained a correct citation to a provision in Title 22, Fiduciaries and Trusts, and Title 75, Utah Uniform Probate Code, that, after the execution of the document, was renumbered and amended for inclusion in this title, that citation is a valid citation to the same provision in this title.

Section ~~{226}~~232. Section **75B-1-103**, which is renumbered from Section 22-2-1 is renumbered and amended to read:

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~~[22-2-1].~~ **75B-1-103. Death of trustee -- Trust estate vests in successor.**

Upon the death of a sole or surviving trustee of an express trust:

(1) the trust estate does not descend to [his] the trustee's heirs or pass to [his] the trustee's personal representatives~~[, but shall by virtue hereof, upon the appointment and qualification of a successor to such trustee, become immediately vested in such successor in trust.]; and~~

(2) the trust estate immediately vests in the successor trustee upon the appointment and qualification of a successor trustee.

Section ~~{227}~~233. Section **75B-1-201** is enacted to read:

Part 2. Retirement Trust

75B-1-201. Definitions for part.

As used in this part:

(1) "Income" means the same as that term is defined in Section 75A-5-101.

(2) "Principal" means the same as that term is defined in Section 75A-5-101.

(3) "Retirement trust" means a trust:

(a) created by an employer as part of a pension, stock bonus, disability, death benefit, profit sharing, retirement, or similar plan primarily for the benefit of an employee or the employee's family, appointee, or beneficiary;

(b) to which contributions are made by the employer or employee; and

(c) that is created for the purpose of distributing principal or income to the employee or the employee's family, appointee, or beneficiary.

Section ~~{228}~~234. Section **75B-1-202**, which is renumbered from Section 22-6-1 is renumbered and amended to read:

~~[22-6-1].~~ **75B-1-202. Retirement trusts exempted from rules against perpetuities, accumulations, or suspension of power of alienation.**

~~[No trust heretofore or hereafter created by an employer as part of a pension, stock bonus, disability, death benefit, profit sharing, retirement or similar plan, primarily for the benefit of some or all of such employers' employees, their families, appointees or beneficiaries, to which contributions are made by such employer or employees, or by both employer and employees, which trust is for the purpose of distributing to such employees or their families, beneficiaries, or appointees, the earnings or principal, or both, shall be deemed to be invalid by~~

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~~reason of any rule against perpetuities, or against accumulations, or concerning the suspension of the power of alienation of title to property, or any other law restricting or limiting the duration of trusts; and such a trust may continue in perpetuity or for such time as may be necessary to accomplish the purposes for which it was created.]~~

(1) A retirement trust is not invalid as violating a rule against perpetuities, a rule against accumulations, a rule concerning the suspension of the power of alienation of title to property, or any other law restricting or limiting the duration of trusts.

(2) A retirement trust may continue in perpetuity or for the time that is necessary to accomplish the purposes for which the retirement trust was created.

Section ~~{229}~~235. Section **75B-1-203**, which is renumbered from Section 22-6-2 is renumbered and amended to read:

~~[22-6-2].~~ **75B-1-203. Income permitted to accumulate.**

The income arising from or earned by the property held in [~~such trust within the classifications mentioned, may be~~] a retirement trust is permitted to accumulate, in accordance with the terms of [~~such trust, for so long a time as may be~~] the trust:

(1) for the time period permitted by the instrument creating the trust[~~, or if no time is so specified, for such time as the trustee or trustees may deem necessary~~]; or

(2) if the instrument creating the trust does not specify a time period, for the time period that is necessary for a trustee of the trust to accomplish the purposes for which the trust was created.

Section ~~{230}~~236. Section **75B-1-301** is enacted to read:

Part 3. Asset Protection Trust

75B-1-301. Definitions for part.

As used in this part:

(1) "Creditor" means:

(a) a creditor or other claimant of the settlor existing when the trust is created; or

(b) a person who subsequently becomes a creditor, including whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured;

(i) holding or seeking to enforce a judgment entered by a court or other body having adjudicative authority; or

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(ii) with a right to payment.

(2) "Domestic support obligation" means:

(a) a child support judgment or order;

(b) a spousal support judgment or order; or

(c) an unsatisfied claim arising from a property division in a divorce proceeding.

(3) "Insolvent" means:

(a) having generally ceased to pay debts in the ordinary course of business other than as a result of a bona fide dispute;

(b) being unable to pay debts as they become due; or

(c) being insolvent within the meaning of federal bankruptcy law.

(4) "Paid and delivered" does not include the settlor's use or occupancy of real property or personal property owned by the trust if the use or occupancy is in accordance with the trustee's discretionary authority under the trust instrument.

(5) "Personal property" includes intangible and tangible personal property.

(6) "Property" means real property, personal property, and interests in real or personal property.

(7) "Settlor" means a person who transfers property in trust.

(8) "Transfer" means any form of transfer of property, including gratuitous transfers, whether by deed, conveyance, or assignment.

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

Section ~~{231}~~237. Section **75B-1-302**, which is renumbered from Section 25-6-502 is renumbered and amended to read:

~~[25-6-502].~~ 75B-1-302. Asset protection trust.

~~[(1) As used in this section:]~~

~~[(a) "Creditor" means:]~~

~~[(i) a creditor or other claimant of the settlor existing when the trust is created; or]~~

~~[(ii) a person who subsequently becomes a creditor, including, whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured:]~~

~~[(A) one holding or seeking to enforce a judgment entered by a court or other body having adjudicative authority; or]~~

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~~[(B) one with a right to payment.]~~

~~[(b) "Domestic support obligation" means:]~~

~~[(i) a child support judgment or order;]~~

~~[(ii) a spousal support judgment or order; or]~~

~~[(iii) an unsatisfied claim arising from a property division in a divorce proceeding.]~~

~~[(c) "Insolvent" means:]~~

~~[(i) having generally ceased to pay debts in the ordinary course of business other than as a result of a bona fide dispute;]~~

~~[(ii) being unable to pay debts as they become due; or]~~

~~[(iii) being insolvent within the meaning of federal bankruptcy law.]~~

~~[(d) (i) "Property" means real property, personal property, and interests in real or personal property.]~~

~~[(ii) "Personal property" includes intangible and tangible personal property.]~~

~~[(e) "Settlor" means a person who transfers property in trust.]~~

~~[(f) "Transfer" means any form of transfer of property, including gratuitous transfers, whether by deed, conveyance, or assignment.]~~

~~[(g) "Trust" has the same meaning as in Section 75-1-201.]~~

~~[(2) "Paid and delivered" to the settlor, as beneficiary, does not include the settlor's use or occupancy of real property or personal property owned by the trust if the use or occupancy is in accordance with the trustee's discretionary authority under the trust instrument.]~~

~~[(3)] (1) If the settlor of an irrevocable trust is also a beneficiary of the trust, and if the requirements of Subsection ~~[(5)]~~ (3) are satisfied, a creditor of the settlor may not:~~

~~(a) satisfy a claim or liability of the settlor in either law or equity out of the settlor's transfer to the trust or the settlor's beneficial interest in the trust;~~

~~(b) force or require the trustee to make a distribution to the settlor, as beneficiary; or~~

~~(c) require the trustee to pay any distribution directly to the creditor, or otherwise attach the distribution before it has been paid or delivered by the trustee to the settlor, as beneficiary.~~

~~[(4)] (2) Notwithstanding Subsection ~~[(3)]~~ (1), nothing in this section:~~

~~(a) prohibits a creditor from satisfying a claim or liability from the distribution once it has been paid or delivered by the trustee to the settlor, as beneficiary; or~~

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(b) nullifies or impairs a security interest that was granted by a settlor or a trustee with respect to property that is transferred to the trust.

~~[(5)]~~ (3) (a) In order for Subsection ~~[(3)]~~ (1) to apply, the conditions in this Subsection ~~[(5)]~~ (3) shall be satisfied.

(b) Where this Subsection ~~[(5)]~~ (3) requires that a provision be included in the trust instrument, no particular language need be used in the trust instrument if the meaning of the trust provision otherwise complies with this Subsection ~~[(5)]~~ (3).

~~[(a)]~~ (c) An agreement or understanding, express or implied, between the settlor and the trustee that attempts to grant or permit the retention by the settlor of greater rights or authority than is stated in the trust instrument is void.

~~[(b)]~~ (d) The trust instrument shall provide that the trust is governed by Utah law and is established pursuant to this section.

~~[(c)]~~ (e) The trust instrument shall require that at all times at least one trustee shall be a Utah resident or Utah trust company, as the term "trust company" is defined in Section 7-5-1.

~~[(d)]~~ (f) (i) The trust instrument shall provide that neither the interest of the settlor, as beneficiary, nor the income or principal of the trust may be voluntarily or involuntarily transferred by the settlor, as beneficiary.

(ii) The provision shall be considered to be a restriction on the transfer of the settlor's beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within the meaning of 11 U.S.C. Sec. 541(c)(2).

~~[(e)]~~ (g) The settlor may not have the ability under the trust instrument, without the consent of a person who has a substantial beneficial interest in the trust, which interest would be adversely affected by the exercise of the power held by the settlor:

(i) to revoke, amend, or terminate all or any part of the trust; or

(ii) to withdraw any property from the trust, except that the settlor, without the approval or consent of any person, may be given the power, under the trust agreement, to substitute assets of substantially equivalent value.

~~[(f)]~~ (h) The trust instrument may not provide for any mandatory distributions of either income or principal to the settlor, as beneficiary, except as provided in Subsection ~~[(7)]~~ (g) ~~(5)~~ (g).

~~[(g)]~~ (i) (i) The trust instrument shall require that, at least 30 days before paying and

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delivering any distribution to the settlor, as beneficiary, the trustee notify in writing every person who has a domestic support obligation against the settlor.

(ii) The trust instrument shall require that the notice state the date the distribution will be paid and delivered and the amount of the distribution.

~~[(h)]~~ (j) At the time that the settlor transfers any assets to the trust, the settlor may not be in default of making a payment due under a domestic support obligation.

~~[(i)]~~ (k) A transfer of assets to the trust may not render the settlor insolvent.

~~[(j)]~~ (l) At the time the settlor transfers any assets to the trust, the settlor may not intend to hinder, delay, or defraud a known creditor by transferring the assets to the trust. A settlor's expressed intention to protect trust assets from the settlor's potential future creditors is not evidence of an intent to hinder, delay, or defraud a known creditor.

~~[(k)]~~ (m) Assets transferred to the trust may not be derived from unlawful activities.

~~[(l)]~~ (n) With respect to each transfer of assets to the trust, the settlor shall sign a sworn affidavit stating that at the time of the transfer of the assets to the trust:

(i) the settlor has full right, title, and authority to transfer the assets to the trust;

(ii) the transfer of the assets to the trust will not render the settlor insolvent;

(iii) the settlor does not intend to hinder, delay, or defraud a known creditor by transferring the assets to the trust;

(iv) there is no pending or threatened court action against the settlor, except for a court action identified by the settlor on an attachment to the affidavit;

(v) the settlor is not involved in an administrative proceeding that is reasonably expected to have a material adverse effect on the financial condition of the settlor, except an administrative proceeding identified on an attachment to the affidavit;

(vi) at the time of the transfer of the assets to the trust, the settlor is not in default of a domestic support obligation;

(vii) the settlor does not contemplate filing for relief under the provisions of United States Code, Title 11, Bankruptcy; and

(viii) the assets being transferred to the trust were not derived from unlawful activities.

~~[(6)]~~ (4) Failure to satisfy the requirements of Subsection ~~[(5)]~~ (3) shall result in the consequences described in this Subsection ~~[(6)]~~ (4).

(a) If any requirement of Subsections ~~[(5)(b)]~~ (3)(b) through (g) is not satisfied, none of

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the property held in the trust will at any time have the benefit of the protections described in Subsection ~~[(3)]~~ (1).

(b) If the trustee does not send the notice required under Subsection ~~[(5)(g)]~~ (3)(g), the court may authorize any person with a domestic support obligation against the settlor to whom notice was not sent to attach the distribution or future distributions, but the person may not:

(i) satisfy a claim or liability in either law or equity out of the settlor's transfer to the trust or the settlor's beneficial interest in the trust; or

(ii) force or require the trustee to make a distribution to the settlor, as beneficiary.

(c) If any requirement described in Subsections ~~[(5)(i)]~~ (3)(i) through (l) is not satisfied, the property transferred to the trust that does not satisfy the requirement may not have the benefit of the protections described in Subsection ~~[(3)]~~ (1).

(d) If the requirement described in Subsection ~~[(5)(h)]~~ (3)(h) is not satisfied, the property transferred to the trust that does not satisfy the requirement does not have the benefit of the protections described in Subsection ~~[(3)]~~ (1) with respect to any person with a domestic support obligation.

(e) A creditor of the settlor has the burden of proving that the requirement in Subsection ~~[(5)(i)]~~ (3)(i) or (j) is not satisfied by clear and convincing evidence.

~~[(7)]~~ (5) The provisions of Subsection ~~[(3)]~~ (1) may apply to a trust even if:

(a) the settlor serves as a cotrustee or as an advisor to the trustee, except that the settlor may not determine whether a discretionary distribution will be made;

(b) the settlor participates in a determination regarding whether a discretionary distribution is made to the settlor by:

(i) requesting a distribution from the trust;

(ii) consulting with the trustees regarding whether a discretionary distribution will be made;

(iii) exercising a right to consent to or veto the distribution under a power described in Subsection ~~[(7)(e)]~~ (5)(e);

(iv) signing documentation in the settlor's capacity as a cotrustee that implements a distribution when the other trustees use discretionary power to independently authorize a distribution; or

(v) participating in an action authorizing a distribution if the other trustees can

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authorize the distribution without the settlor's participation.

(c) the settlor has the authority under the terms of the trust instrument to appoint a nonsubordinate advisor or a trust protector who can remove and appoint trustees and who can direct, consent to, or disapprove distributions;

(d) the settlor has the power under the terms of the trust instrument to serve as an investment director or to appoint an investment director under Section 75-7-906;

(e) the trust instrument gives the settlor the power to consent to or veto a distribution from the trust;

(f) the trust instrument gives the settlor an inter vivos or a testamentary nongeneral power of appointment or similar power;

(g) the trust instrument gives the settlor the right to receive the following types of distributions:

(i) income, principal, or both in the discretion of a person, including a trustee, other than the settlor;

(ii) principal, subject to an ascertainable standard set forth in the trust;

(iii) income or principal from a charitable remainder annuity trust or charitable remainder unitrust, as defined in 26 U.S.C. Sec. 664;

(iv) a percentage of the value of the trust each year as determined under the trust instrument, but not exceeding the amount that may be defined as income under 26 U.S.C. Sec. 643(b);

(v) the transferor's potential or actual use of real property held under a qualified personal residence trust, or potential or actual possession of a qualified annuity interest, within the meaning of 26 U.S.C. Sec. 2702 and the accompanying regulations;

(vi) income or principal from a grantor retained annuity trust or grantor retained unitrust that is allowed under 26 U.S.C. Sec. 2702; and

(vii) income from a trust intended to qualify for the federal estate tax or gift tax marital deduction under 26 U.S.C. Sec. 2056(b)(7) or 2523(f);

(h) the trust instrument authorizes the settlor to use real or personal property owned by the trust; or

(i) with respect to the property held in the trust, the settlor may:

(i) give a personal guarantee on a debt or obligation secured by the property;

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(ii) make payments, directly or indirectly, on a debt or obligation secured by the property;

(iii) pay property taxes, casualty and liability insurance premiums, homeowner association dues, maintenance expenses, or other similar expenses on the property; or

(iv) pay income tax on income attributable to the portion of property held in the trust, of which the settlor is considered to be the owner under 26 U.S.C. Secs. 671 through 678, which payments will not be considered additional transfers to the trust for purposes of this section.

~~[(8)]~~ (6) (a) If a trust instrument contains the provisions described in Subsections ~~[(5)(b)]~~ (3)(b) through (g), the transfer restrictions prevent a creditor or other person from asserting any cause of action or claim for relief against a trustee of the trust or against others involved in the counseling, drafting, preparation, execution, or funding of the trust for conspiracy to commit fraudulent conveyance or another voidable transfer, aiding and abetting a fraudulent conveyance or another voidable transfer, participation in the trust transaction, or similar cause of action or claim for relief.

(b) For purposes of this ~~[subsection]~~ Subsection (6), counseling, drafting, preparation, execution, or funding of the trust includes the preparation and funding of a limited partnership, a limited liability company, or other entity if interests in the entity are subsequently transferred to the trust.

(c) The creditor and other person prevented from asserting a cause of action or claim for relief may assert a cause of action against, and are limited to recourse against, only:

~~[(a)]~~ (i) the trust and the trust assets; and

~~[(b)]~~ (ii) the settlor, to the extent otherwise allowed in this section.

~~[(9)]~~ (7) (a) A cause of action or claim for relief under Subsection ~~[(5)(i)]~~ (3)(i) or (j) is a cause of action or claim for relief under Section 25-6-202 or 25-6-203.

(b) Except as provided in Subsection ~~[(9)(a)]~~ (7)(a), a cause of action or claim for relief under this section is not a cause of action or claim for relief under Sections 25-6-101 through 25-6-407.

(c) Notwithstanding Section 25-6-305, a cause of action or claim for relief regarding a fraudulent conveyance or other voidable transfer of a settlor's assets under this section is extinguished unless the action is brought by a creditor of the settlor who was a creditor of the

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settlor before the assets in question were transferred to the trust and the action is brought within the earlier of:

(i) the later of two years after the transfer is made, or one year after the transfer is or reasonably could have been discovered by the creditor if the creditor:

(A) can demonstrate, by clear and convincing evidence, that the creditor asserted a specific claim against the settlor before the transfer; or

(B) files another action, other than an action alleging a fraudulent conveyance or other voidable transfer against the settlor that asserts a claim based on an act or omission of the settlor that occurred before the transfer, and the action described in Subsection ~~[(9)(c)]~~ (7)(c) is filed within two years after the transfer; or

(ii) (A) with respect to a creditor known to the settlor, 120 days after the date on which notice of the transfer is mailed to the creditor, which notice shall state the name and address of the settlor or the settlor's representative, the name and address of the trustee or the trustee's representative, and also describe the assets that were transferred, but does not need to state the value of those assets if the assets are other than cash, and which shall inform the creditor that the creditor is required to bring the creditor's cause of action or claim for relief against the settlor and the trustee within 120 days from the mailing of the notice or be forever barred; or

(B) with respect to a creditor not known to the settlor, 120 days after the date on which notice of the transfer is first published in a newspaper of general circulation in the county in which the settlor then resides, or is published on a public legal notice website as defined in Section 45-1-101, which notice shall state the name of the settlor or the settlor's representative, the address of the settlor or the settlor's representative, the name of the trustee or the trustee's representative, the address of the trustee or the trustee's representative, and also describe the assets that were transferred, but does not need to state the value of those assets.

~~[(10)]~~ (8) (a) The notice required in Subsection ~~[(9)(c)(ii)(B)]~~ (7)(c)(ii)(B) shall be published in accordance with the provisions of Section 45-1-101 for three consecutive weeks and inform creditors that they are required to bring a cause of action or claim for relief within 120 days from the first publication of the notice or be forever barred.

(b) Failure to give the notice required in Subsection ~~[(9)(c)(ii)]~~ (7)(c)(ii) to a creditor does not prevent the shortening of the limitations period under Subsection ~~[(9)(c)(ii)]~~ (7)(c)(ii) with respect to another creditor who properly received notice by mail or publication.

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~~[(11)]~~ (9) (a) A trust is subject to this section if it is governed by Utah law, as provided in Section 75-7-107, and if it otherwise meets the requirements of this section.

(b) A court of this state has exclusive jurisdiction over an action or claim for relief that is based on a transfer of property to a trust that is the subject of this section.

~~[(12)]~~ (10) (a) With respect to a trust that is subject to this section, a claim brought by a creditor of a beneficiary who is not the settlor is subject to Section 75-7-501 et. seq.

(b) With respect to an irrevocable trust that is not subject to this section, a claim brought by a creditor of a beneficiary who is the settlor is subject to the provisions of Subsection 75-7-505(2).

~~[(13)]~~ (11) If a provision in this section conflicts with a provision in Sections 25-6-101 through 25-6-407, the provision of this section shall supersede the conflicting provision in Sections 25-6-101 through 25-6-407.

~~[(14)]~~ (12) Nothing in this section alters rights vested or created under this section before May 14, 2019.

Section ~~{232}~~238. Section **76-5-111** is amended to read:

76-5-111. Abuse of a vulnerable adult -- Penalties.

(1) (a) As used in this section:

(i) "Abandonment" means a knowing or intentional action or inaction, including desertion, by a person acting as a caretaker for a vulnerable adult that leaves the vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or medical or other health care.

(ii) "Abuse" means:

(A) attempting to cause harm, intentionally or knowingly causing harm, or intentionally or knowingly placing another in fear of imminent harm;

(B) causing physical injury by knowing or intentional acts or omissions;

(C) unreasonable or inappropriate use of physical restraint, medication, or isolation that causes or is likely to cause harm to a vulnerable adult that is in conflict with a physician's orders or used as an unauthorized substitute for treatment, unless that conduct furthers the health and safety of the vulnerable adult; or

(D) deprivation of life-sustaining treatment, except:

(I) as provided in [~~Title 75, Chapter 2a, Advance Health Care Directive Act~~] Title 75A,

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Chapter 3, Health Care Decisions; or

(II) when informed consent, as defined in this section, has been obtained.

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

(iv) (A) "Dependent adult" means an individual 18 years old or older, who has a physical or mental impairment that restricts the individual's ability to carry out normal activities or to protect the individual's rights.

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

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

(vi) "Exploitation" means an offense described in Section 76-5-111.3, 76-5-111.4, or 76-5b-202.

(vii) "Harm" means pain, mental anguish, emotional distress, hurt, physical or psychological damage, physical injury, suffering, or distress inflicted knowingly or intentionally.

(viii) "Informed consent" means:

(A) a written expression by the individual or authorized by the individual, stating that the individual fully understands the potential risks and benefits of the withdrawal of food, water, medication, medical services, shelter, cooling, heating, or other services necessary to maintain minimum physical or mental health, and that the individual desires that the services be withdrawn, except that a written expression is valid only if the individual is of sound mind when the consent is given, and the consent is witnessed by at least two individuals who do not benefit from the withdrawal of services; or

(B) consent to withdraw food, water, medication, medical services, shelter, cooling, heating, or other services necessary to maintain minimum physical or mental health, as permitted by court order.

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(ix) (A) "Isolation" means knowingly or intentionally preventing a vulnerable adult from having contact with another person, unless the restriction of personal rights is authorized by court order, by:

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

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

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

(B) "Isolation" does not include an act:

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

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

(x) "Neglect" means:

(A) failure of a caretaker to provide nutrition, clothing, shelter, supervision, personal care, or dental or other health care, or failure to provide protection from health and safety hazards or maltreatment;

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

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

(D) intentional failure by a caretaker to carry out a prescribed treatment plan that results or could result in physical injury or physical harm; or

(E) abandonment by a caretaker.

(xi) (A) "Physical injury" includes damage to any bodily tissue caused by nontherapeutic conduct, to the extent that the tissue must undergo a healing process in order to

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be restored to a sound and healthy condition, or damage to any bodily tissue to the extent that the tissue cannot be restored to a sound and healthy condition.

(B) "Physical injury" includes skin bruising, a dislocation, physical pain, illness, impairment of physical function, a pressure sore, bleeding, malnutrition, dehydration, a burn, a bone fracture, a subdural hematoma, soft tissue swelling, injury to any internal organ, or any other physical condition that imperils the health or welfare of the vulnerable adult and is not a serious physical injury as defined in this section.

(xii) "Position of trust and confidence" means the position of a person who:

(A) is a parent, spouse, adult child, or other relative of a vulnerable adult;

(B) is a joint tenant or tenant in common with a vulnerable adult;

(C) has a legal or fiduciary relationship with a vulnerable adult, including a court-appointed or voluntary guardian, trustee, attorney, attorney-in-fact, or conservator; or

(D) is a caretaker of a vulnerable adult.

(xiii) "Serious physical injury" means any physical injury or set of physical injuries that:

(A) seriously impairs a vulnerable adult's health;

(B) was caused by use of a dangerous weapon;

(C) involves physical torture or causes serious emotional harm to a vulnerable adult; or

(D) creates a reasonable risk of death.

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

(A) provide personal protection;

(B) provide necessities such as food, shelter, clothing, or medical or other health care;

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

(D) carry out the activities of daily living;

(E) manage the adult's own resources; or

(F) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor, including a caretaker, commits abuse of a vulnerable adult if the actor, under circumstances other than those likely to produce death or serious physical injury:

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- (a) causes a vulnerable adult to suffer harm, abuse, or neglect;
- (b) having the care or custody of a vulnerable adult, causes or permits that vulnerable adult's person or health to be injured, abused, or neglected; or
- (c) causes or permits a vulnerable adult to be placed in a situation in which the vulnerable adult's person or health is endangered.

(3) (a) A violation of Subsection (2):

- (i) is a class A misdemeanor if done intentionally or knowingly;
- (ii) is a class B misdemeanor if done recklessly; or
- (iii) is a class C misdemeanor if done with criminal negligence.

(b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) that is based on isolation of a vulnerable adult is a third degree felony.

(4) (a) It does not constitute a defense to a prosecution for a violation of this section that the actor did not know the age of the vulnerable adult.

(b) An adult is not considered abused, neglected, or a vulnerable adult for the reason that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of medical care.

(5) If an actor, including a caretaker, violates this section by willfully isolating a vulnerable adult, in addition to the penalties under Subsection (3), the court may require that the actor:

- (a) undergo appropriate counseling as a condition of the sentence; and
- (b) pay for the costs of the ordered counseling.

Section ~~{233}~~239. Section **76-5-205** is amended to read:

76-5-205. Manslaughter -- Penalties.

(1) (a) As used in this section:

(i) (A) "Aid" means the act of providing the physical means.

(B) "Aid" does not include the withholding or withdrawal of life sustaining treatment procedures to the extent allowed under [~~Title 75, Chapter 2a, Advance Health Care Directive Act~~] Title 75A, Chapter 3, Health Care Decisions, or any other laws of this state.

(ii) "Practitioner" means an individual currently licensed, registered, or otherwise authorized by law to administer, dispense, distribute, or prescribe medications or procedures in the course of professional practice.

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(iii) "Provides" means to administer, prescribe, distribute, or dispense.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) Except as provided in Subsection (5), an actor commits manslaughter if the actor:

(a) recklessly causes the death of another individual;

(b) intentionally, and with knowledge that another individual intends to commit suicide or attempt to commit suicide, aids the individual to commit suicide; or

(c) commits a homicide which would be murder, but the offense is reduced in accordance with Subsection 76-5-203(4).

(3) A violation of Subsection (2) is a felony of the second degree.

(4) (a) In addition to the penalty described under this section or any other section, a defendant who is convicted of violating this section shall have the defendant's driver license revoked under Section 53-3-220 if the death of another individual results from driving a motor vehicle.

(b) The court shall forward the report of the conviction resulting from driving a motor vehicle to the Driver License Division in accordance with Section 53-3-218.

(5) (a) A practitioner does not violate Subsection (2)(b) if the practitioner provides medication or a procedure to treat an individual's illness or relieve an individual's pain or discomfort, regardless of whether the medication or procedure may hasten or increase the risk of death to the individual to whom the practitioner provides the medication or procedure.

(b) Notwithstanding Subsection (5)(a), a practitioner violates Subsection (2)(b) if the practitioner intentionally and knowingly provides the medication or procedure to aid the individual to commit suicide or attempt to commit suicide.

Section ~~{234}~~240. Section **76-6-513** is amended to read:

76-6-513. Unlawful dealing of property by a fiduciary.

(1) (a) As used in this section:

(i) "Fiduciary" means the same as that term is defined in Section ~~[22-1-1]~~ 75A-1-201.

(ii) "Financial institution" means "depository institution" and "trust company" as defined in Section 7-1-103.

(iii) "Governmental entity" is as defined in Section 63G-7-102.

(iv) "Person" does not include a financial institution whose fiduciary functions are supervised by the Department of Financial Institutions or a federal regulatory agency.

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- (v) "Property" means the same as that term is defined in Section 76-6-401.
- (b) Terms defined in Section 76-1-101.5 apply to this section.
- (2) An actor commits unlawfully dealing with property by a fiduciary if the actor:
 - (a) deals with property:
 - (i) that has been entrusted to the actor as a fiduciary, or property of a governmental entity, public money, or of a financial institution; and
 - (ii) in a manner which:
 - (A) the actor knows is a violation of the actor's duty; and
 - (B) involves substantial risk of loss or detriment to the property owner or to a person for whose benefit the property was entrusted; or
 - (b) acting as a fiduciary pledges:
 - (i) as collateral for a personal loan, or as collateral for the benefit of some party, other than the owner or the person for whose benefit the property was entrusted, the property that has been entrusted to the fiduciary; and
 - (ii) without permission of the owner of the property or some other authorized person.
- (3) (a) A violation of Subsection (2)(a) is:
 - (i) a second degree felony if the:
 - (A) value of the property is or exceeds \$5,000; or
 - (B) property is stolen from the person of another;
 - (ii) a third degree felony if:
 - (A) the value of the property is or exceeds \$1,500 but is less than \$5,000;
 - (B) the value of the property is or exceeds \$500 and the actor has been twice before convicted of any of the following offenses, if each prior offense was committed within 10 years before the date of the current conviction or the date of the offense upon which the current conviction is based and at least one of those convictions is for a class A misdemeanor:
 - (I) any theft, any robbery, or any burglary with intent to commit theft;
 - (II) any offense under Part 5, Fraud; or
 - (III) any attempt to commit any offense under Subsection (3)(a)(ii)(B)(I) or (II);
 - (C) the value of property is or exceeds \$500 but is less than \$1,500; or
 - (D) the actor has been previously convicted of a felony violation of any of the offenses listed in Subsections (3)(a)(ii)(B)(I) through (3)(a)(ii)(B)(III), if the prior offense was

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committed within 10 years before the date of the current conviction or the date of the offense upon which the current conviction is based;

(iii) a class A misdemeanor if:

(A) the value of the property stolen is or exceeds \$500 but is less than \$1,500; or

(B) the actor has been twice before convicted of any of the offenses listed in

Subsections (3)(a)(ii)(B)(I) through (3)(a)(ii)(B)(III), if each prior offense was committed within 10 years before the date of the current conviction or the date of the offense upon which the current conviction is based; or

(iv) a class B misdemeanor if the value of the property stolen is less than \$500 and the theft is not an offense under Subsection (3)(a)(iii)(B).

(b) A violation of Subsection (2)(b) is:

(i) a second degree felony if the value of the property wrongfully pledged is or exceeds \$5,000;

(ii) a third degree felony if the value of the property wrongfully pledged is or exceeds \$1,500 but is less than \$5,000;

(iii) a class A misdemeanor if the value of the property is or exceeds \$500, but is less than \$1,500 or the actor has been twice before convicted of theft, robbery, burglary with intent to commit theft, or unlawful dealing with property by a fiduciary; or

(iv) a class B misdemeanor if the value of the property is less than \$500.

(4) This section may not be construed to impose criminal or civil liability on any law enforcement officer acting within the scope of a criminal investigation.

(5) The forfeiture of property under this section, including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be conducted in accordance with Title 77, Chapter 11a, Seizure of Property and Contraband, through Chapter 11c, Retention of Evidence.

Section ~~235~~241. **Repealer.**

This bill repeals:

Section **22-3-101, Title.**

Section **22-5-1, Title.**

Section **25-6-501, Title.**

Section **75-2a-101, Title.**

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Section 75-5a-101, Short title.

Section 75-9-101, Title.

Section 75-10-101, Title.

Section 75-11-101, Title.

Section ~~{236}~~242. Effective date.

This bill takes effect on ~~{May}~~September 1, 2024.