

Significant Differences in States' Enacted Uniform Trust Code

UNIFORM TRUST CODE	MICHIGAN	VERMONT	NORTH DAKOTA	ARIZONA
§101				
§102	X Article “applies to trusts as defined in section 1107.” Section 1107 defines “Trust” as including, but not limited to, express trusts, and not including certain other types of trusts.	X Language added to clarify certain types of statutory trusts that are outside of the scope of the title.	X Lists sections that do not apply	
§103	X Adds definitions for “Discretionary trust provision”, “Support provision”, “Trust beneficiary”, “Trust protector”. Omits definitions for “Beneficiary”, “Conservator”, “Environmental law”, “Guardian”, “Jurisdiction”, “Person”, “Property”, “State”, “Trustee”. Modifies the following definitions: “‘Action’, with respect to a trustee or a trust protector, includes an act or a failure to act.” “Revocable” – adds “A	X Modifies the following definitions: “Conservator” – defined in reference to “guardian of the property” “Guardian” – differentiates between “guardian of the person”, having the same definition as UTC “Guardian”, and “guardian of the property”, defined as “a person appointed by the probate court to administer the estate of a minor or adult individual” and synonymous with “Conservator” “Qualified beneficiary” – uses UTC definitions, but designates the types of beneficiaries as “first tier”, “second tier”, and “final beneficiaries”; adds “(B) Notwithstanding subdivisions (i) and (ii) of subdivision (A) of this subdivision (13), a second tier beneficiary or a final beneficiary	X Adds definition for “Ascertainable standard” Adds definition for “Internal Revenue Code” Adds definition for “Permissible Distributee” Omits definition for “person” “Power of withdrawal” definition adds “exercisable by a trustee and limited by an ascertainable	X Adds definition of Internal Revenue Code (13) adds “not adverse” interest Adds definition of special needs trust

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	<p>trust's characterization as revocable is not affected by the settlor's lack of capacity to exercise the power of revocation, regardless of whether an agent of the settlor under a durable power of attorney, a conservator of the settlor, or a plenary guardian of the settlor is serving."</p> <p>"Settlor" means a person, including a testator, who creates a trust. If more than 1 person creates a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution. The lapse, release, or waiver of a power of appointment shall not cause the holder of a power of appointment to be treated as a settlor of the trust."</p> <p>"Trust instrument" – uses "governing instrument" in place of "instrument".</p>	<p>shall not be a "qualified beneficiary" if the beneficiary's interest in the trust:</p> <p>(i) is created by the exercise of a power of appointment and the exercise of the power of appointment is not irrevocable; or</p> <p>(ii) may be eliminated by an amendment to the trust."</p>	<p>standard."</p> <p>"Qualified beneficiary" definition adds "Does not include a contingent distributee or a contingent permissible distributee of</p> <p>trust income or principal whose interest in the trust in not reasonably expected to vest."</p> <p>Adds definition for "Signed"</p> <p>Adds definition for "Special needs trust"</p> <p>"Spendthrift provision" definition adds "and does not include or prevent a disclaimer of an interest of a beneficiary."</p> <p>"State" definition does not include Indian Tribe or band.</p>	

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			"Trustee" definition does not require appointment or confirmation by a court.	
§104				
§105	<p style="text-align: center;">X</p> <p>(b)(2) – replaces with reference to Section 7801, requiring trustees to act in good faith and in accordance with the terms and purposes of the trust, but adding “for the benefit of the trust beneficiaries” and a requirement to act expeditiously</p> <p>(b)(3) – omits “for the benefit of its beneficiaries”</p> <p>(b)(5) – adds “support provision, and a discretionary trust provision”</p> <p>(b)(13) – omits “as may be necessary in the interests of justice”</p> <p>Adds:</p> <p>(h) Except as permitted under section 7809(2), the obligations imposed on a trust protector in section 7809(1).</p> <p>(j) The power of the court to</p>		<p style="text-align: center;">X</p> <p>Omits (b)(8) and (b)(9)</p>	<p style="text-align: center;">X</p> <p>Removes “25 years of age” if (b)(8)</p> <p>Uses “<u>qualified beneficiary</u>” instead of “beneficiary” in (b)(9)</p>

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	<p>order the trustee to provide statements of account and other information pursuant to section 7814(4).</p> <p>Replaces (b)(8) with “(i) The duty under section 7814(2)(a) to (c) to provide beneficiaries with the terms of the trust and information about the trust’s property, and to notify qualified trust beneficiaries of an irrevocable trust of the existence of the trust and the identity of the trustee.”</p> <p>Omits (b)(9).</p>			
§106	<p style="text-align: center;">X</p> <p>Omits this section.</p>			
§107				<p style="text-align: center;">X</p> <p>Removes public policy exception</p>
§108	<p style="text-align: center;">X</p> <p>(a)(2) uses “qualified trust beneficiaries”</p> <p>Adds language requiring that notification be in writing. Notification time is 63 days instead of 60.</p>			

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	<p>(d)(5) adds "In a conspicuous manner"</p> <p>(e) refers to the trustee's authority to transfer "without approval of the court"</p> <p>Adds "(7) The view of an adult beneficiary shall be given weight in determining the suitability of the trustee and the place of administration."</p>			
§109	<p style="text-align: center;">X</p> <p>Adds faxes to the list of acceptable delivery methods.</p> <p>Waiver of notification must be in writing.</p>	<p style="text-align: center;">X</p> <p>Adds commercial delivery service to the list of acceptable delivery methods.</p>		
§110	<p style="text-align: center;">X</p> <p>Omits (a).</p> <p>Adds language to (d) that specify the rights of the AG.</p>	<p style="text-align: center;">X</p> <p>Adds: "(b)(2) Notwithstanding subdivision (1) of this subsection (b), a second tier beneficiary or a final beneficiary whose interest in the trust is created by the exercise of a power of appointment, and the exercise of the power of appointment is not irrevocable, shall not have the rights of a</p>	<p style="text-align: center;">X</p> <p>Omits (a)</p>	<p style="text-align: center;">X</p> <p>Omits (a)</p>

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		'qualified beneficiary.'"		
§111	<p style="text-align: center;">X</p> <p>(c) adds "A nonjudicial settlement agreement shall not be used to accomplish the termination or modification of the trust."</p> <p>(d)(3) rewritten to read: "Direction to a trustee to perform or to refrain from performing a particular act or to grant to or to withhold from a trustee any power."</p> <p>Adds language to (e) to allow a trustee to make the request and requiring that the court approve the agreement if the agreement meets certain criteria.</p>	<p style="text-align: center;">X</p> <p>(d)(3) – includes directing a trustee to perform a particular act</p>	<p style="text-align: center;">X</p> <p>Adds to (d) "the extent or waiver of a bond of a trustee, and the criteria for distribution to a beneficiary where the trustee is given discretion"</p>	
§112 (optional section)				
§201	<p style="text-align: center;">X</p> <p>Adds language to (b) to clarify that registration and other proceedings do not subject a trust to continuing judicial supervision, and that, subject to an order for judicial supervision, certain duties of and to the trust are</p>	<p style="text-align: center;">X</p> <p>Adds: "(d) Upon motion of any party in a probate action concerning the administration of a trust under the provisions of this title, the presiding probate judge shall permit an appeal to be taken to the superior court from</p>		

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	<p>to be carried out consistent with the terms of the trust and free of interference.</p> <p>Adds language to (c) in order to expand the list of subjects to which a judicial order may relate.</p>	<p>any interlocutory order or ruling if the judge finds that the order or ruling involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal may materially advance the termination of the litigation.”</p>		
§202	<p style="text-align: center;">X</p> <p>Adds language to (a) to include registering a trust or moving the principal place of administration to this state, and language requiring notice of a proceeding to be sent to both the registered address and the known address of the trustee.</p> <p>Adds language to (b) to include trusts properly registered in this state.</p> <p>Adds: “(2) For purposes of a proceeding commenced by a trust beneficiary before registration, a trustee of a trust that is not registered in a proper place is subject to the personal jurisdiction of a court in which the trust could have been registered. In addition, a trustee who,</p>			

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	within 28 days after receipt of a written demand by a trust settlor or beneficiary, fails to register a trust as required by the terms of the trust is subject to removal and denial of compensation or to surcharge as the court may direct.”			
§203			<p align="center">X</p> <p>Reserved</p>	
§204	<p align="center">X</p> <p>This section is modified to rely on the place of registration, or any place an unregistered trust could be registered, instead of the principal place of administration. It also subjects venue to other court rules.</p>			
§301			<p align="center">X</p> <p>(a) adds “Notice of a hearing on any petition for a judicial hearing must be given as provided in the North Dakota Rules of Civil</p>	<p align="center">X</p> <p>SECTIONS 14-1404, 14-1405, 14-1406, 14-1407 AND 14-1408 APPLY TO TRUSTS GOVERNED BY THIS</p>

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			<p>Procedure.</p> <p>Adds (d) A settlor may not represent and bind a beneficiary under this chapter with respect to the termination or modification of a trust under subsection 1 of section 59-12-11.</p>	CHAPTER..
§302	<p align="center">X</p> <p>Omits this section.</p>			<p align="center">X</p> <p>Omits language at the beginning that limits representation under §302 to the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented on a particular issue</p>
§303	<p align="center">X</p> <p>Language added to include plenary guardian or partial guardian wherever “conservator” appears.</p> <p>Language added to make clear that the section applies to representatives with authority to act “with respect to the trust.”</p>		<p align="center">X</p> <p>(6) Adds “If a disagreement arises between parents seeking to represent the same minor child:</p> <p>(a) The parent who is a beneficiary of the trust that is the subject of the representation is entitled to</p>	<p align="center">X</p> <p>Omits</p>

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	<p>Adds: “(b) An agent under a durable power of attorney having authority to act with respect to the trust may represent and bind the principal if a conservator, plenary guardian, or partial guardian has not been appointed.”</p> <p>Omits (3) [agent as to a particular question].</p>		<p>represent the minor child;</p> <p>(b) If both parents are beneficiaries of the trust that is the subject of the representation, the parent who is a lineal descendant of the settlor is entitled to represent the minor child;</p> <p>(c) If neither parent is a beneficiary of the trust that is the subject of the representation, the parent who is a lineal descendant of the settlor is entitled to represent the minor child; and</p> <p>(d) If neither parent is a beneficiary or a lineal descendant of the settlor of the trust that is the subject of the representation, a guardian ad litem must be appointed to represent the minor child.</p> <p>(7) A person may represent and bind that person's unborn issue.”</p>	
§304				<p>X</p> <p>Omits</p>
§305				<p>X</p>

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				Omits
§401	<p style="text-align: center;">X</p> <p>Adds: “(1)(d) A promise by 1 person to another person, whose rights under the promise are to be held in trust for a third person. . . . (2) The instrument establishing the terms of a trust is not rendered invalid because property or an interest in property is not transferred to the trustee or made subject to the terms of the trust concurrently with the signing of the instrument. Until property or an interest in property is transferred to the trustee or made subject to the terms of the trust, the person nominated as trustee has no fiduciary or other obligations under the instrument establishing the terms of the trust except as may have been specifically agreed by the settlor and the nominated trustee.”</p>	<p style="text-align: center;">X</p> <p>Adds: “(4) pursuant to a statute or judgment or decree that requires property to be administered in the manner of an express trust; (5)(A) by an agent or attorney-in-fact under a power of attorney that expressly grants authority to create the trust; or (B) by an agent or attorney-in-fact under a power of attorney that grants the agent or attorney-in-fact the authority to act in the management and disposition of the principal’s property that is as broad or comprehensive as the principal could exercise for himself or herself and that does not expressly exclude the authority to create a trust, provided that any trust so created does not include any authority or powers that are otherwise prohibited by section 3504 of title 14. An agent or attorney-in-fact may petition the probate court to determine whether a power of attorney described in this subdivision grants the agent or attorney-in-fact authority that is as broad or comprehensive as that which the principal could exercise</p>		

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		for himself or herself.” Language added to (1) to allow creation of a trust when property is transferred to the trust in the trust’s name.		
§402	<p style="text-align: center;">X</p> Modifies (c) such that the power to name beneficiaries from an indefinite class is only valid for charitable trusts; omits the “reasonable time” standard.	<p style="text-align: center;">X</p> Adds: “(b) A settlor is deemed to have the capacity to create a trust if: (1) the trust is created by an agent of the settlor under a power of attorney as described in subdivision 401(5) of this title; and (2) the settlor had capacity to create a trust at the time the power of attorney was executed.”		
§403		<p style="text-align: center;">X</p> (1) replaces “national” with “citizen”.		
§404	<p style="text-align: center;">X</p> Omits the requirement that the trust and its terms be for the benefit of the beneficiaries.			
§405	<p style="text-align: center;">X</p> Language added to (a) to expand the categories of permissible charitable purposes.	<p style="text-align: center;">X</p> Language added to (a) to expand the categories of permissible charitable purposes. Language added to (b) to expand	<p style="text-align: center;">X</p> Names Attorney General and State’s Attorney as interested persons with respect to the trust estate.	

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	<p>(3) rewritten to read: "The settlor, a named beneficiary, or the attorney general of this state, among others, may maintain a proceeding to enforce a charitable trust. The right of the settlor of a charitable trust to enforce the trust is personal to the settlor and may not be exercised by any of the following:</p> <p>(a) The settlor's heirs, assigns, or beneficiaries.</p> <p>(b) The settlor's fiduciary, other than the trustee of the charitable trust the enforcement of which is being sought.</p> <p>(c) An agent of the settlor acting pursuant to a durable power of attorney, unless the right to enforce the trust is expressly conferred on the agent by the power of attorney."</p>	<p>the scope of the provision to include trusts whose charitable purpose cannot be completed or no longer exists, and to allow a trust instrument to authorize a trustee to choose the new charitable purpose.</p>		
§406				
§407				<p style="text-align: center;">X</p> <p>Oral trust= clear and convincing</p> <p>Terms= preponderance of the evidence</p>

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§408	<p align="center">X</p> <p>Omits this section.</p>			
§409	<p align="center">X</p> <p>Omits this section.</p>		<p align="center">X</p> <p>(1) Omits the time restriction.</p>	<p align="center">X</p> <p>(1) changes 21 to 90 years</p>
§410	<p align="center">X</p> <p>Modifies (1) to clarify that a trust terminates when found by a court to be illegal or against public policy, rather than simply becoming illegal or against public policy.</p> <p>(2) rewritten to read: "A proceeding to confirm the termination of a trust under subsection (1) or to approve or disapprove a proposed modification or termination under sections 7411 to 7416 or trust combination or division under section 7417 may be commenced by a trustee or beneficiary. A proceeding to modify a charitable trust under section 7413 may be commenced by the persons with the power to enforce the terms of a charitable trust pursuant to section</p>			

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	7405.”			
§411	<p style="text-align: center;">X</p> <p>This section is completely rewritten: “Sec. 7411. (1) Subject to subsection (2), a noncharitable irrevocable trust may be modified or terminated in any of the following ways: (a) By the court upon the consent of the trustee and the qualified trust beneficiaries, if the court concludes that the modification or termination of the trust is consistent with the material purposes of the trust or that continuance of the trust is not necessary to achieve any material purpose of the trust. (b) Upon the consent of the qualified trust beneficiaries and a trust protector who is given the power under the terms of the trust to grant, veto, or withhold approval of termination or modification of the trust. (c) By a trustee or trust protector to whom a power to direct the termination or modification of the trust has</p>		<p style="text-align: center;">X</p> <p>Omits everything in (a) except the first sentence.</p> <p>Omits second sentence of (b).</p> <p>Omits (c).</p>	<p style="text-align: center;">X</p> <p>Slightly changes language in (c) so that an agent, to the extent expressly authorized by a power of attorney, or a conservator may exercise powers on the settlor’s behalf <i>if the trust terms do not prohibit</i> doing so</p> <p>Omits subsection (c)</p>

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	<p>been given by the terms of a trust.</p> <p>(2) Subsection (1) does not apply to irrevocable trusts created before or to revocable trusts that become irrevocable before the effective date of the amendatory act that added this section.</p> <p>(3) Notice of any proceeding to terminate or modify a trust shall be given to the settlor, or the settlor's representative if the petitioner has a reasonable basis to believe the settlor is an incapacitated individual, the trust protector, if any, the trustee, and any other person named in the terms of the trust to receive notice of such a proceeding.</p> <p>(4) Upon termination of a trust under subsection (1), the trustee shall distribute the trust property as agreed by the qualified trust beneficiaries.</p> <p>(5) If the trustee fails or refuses to consent, or fewer than all of the qualified trust beneficiaries consent, to a proposed modification or termination of the trust</p>			

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	<p>under subsection (1), the modification or termination may be approved by the court if the court is satisfied that both of the following apply:</p> <p>(a) If the trustee and all of the qualified trust beneficiaries had consented, the trust could have been modified or terminated under this section.</p> <p>(b) The interests of a qualified trust beneficiary who does not consent will be adequately protected.</p> <p>(6) As used in this section, "settlor's representative" means the settlor's agent under a durable power of attorney, if the attorney in fact is known to the petitioner, or, if an agent has not been appointed, the settlor's conservator, plenary guardian, or partial guardian."</p>			
§412	<p style="text-align: center;">X</p> <p>Adds: "(1) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or</p>			

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	<p>wasteful or impair the trust's administration.”</p> <p>“(3) If a trust is terminated under this section, the trustee shall distribute the trust property as ordered by the court.”</p> <p>“(4) Notice of any proceeding to terminate or modify a trust shall be given in the manner described in section 7411(3).”</p> <p>(a) – probable intent language rewritten so that it is triggered when there is no stated purpose, rather than “to the extent practicable”</p> <p>Omits (b) and (c).</p>			
§413	<p style="text-align: center;">X</p> <p>(a) – adds requirements that no alternative taker is provided for and that the settlor had a general charitable purpose</p> <p>Adds (2) – terms of the trust granting power to modify to a trustee or another person prevail over cy pres</p> <p>Modifies (b)(2) to 21 years.</p>	<p style="text-align: center;">X</p> <p>Language added to (a)(3) applying cy pres upon a motion “of any trustee, or any interested person, or the attorney general.”</p>	<p style="text-align: center;">X</p> <p>Omits (b)(1) and (b)(2) and replaces with “to apply cy pres to modify or terminate the trust.”</p>	

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§414	<p style="text-align: center;">X</p> <p>(1) – imposes 63 day notice; notice to AG when the trust is a charitable trust; provides for annual adjustment of the total value requirement</p> <p>(3) rewritten to read: “Upon termination of a trust under this section, the trustee shall distribute the trust property in the manner provided for in the terms of the trust, if any, and otherwise to the current income beneficiaries or, if there are no current income beneficiaries, in the manner directed by the court.”</p>	<p style="text-align: center;">X</p> <p>(a) – \$100,000</p> <p>(c) – language added to allow the option of the court directing a trustee’s property distribution</p>		
§415				
§416				
§417	<p style="text-align: center;">X</p> <p>Adds option to divide or consolidate trusts if they have substantially the same terms and conditions. Requires property of consolidated trusts to be kept in separate accounts “if necessary to recognize and give effect to” what</p>		<p style="text-align: center;">X</p> <p>Adds, “The terms of each new trust created by a division under this section do not have to be identical if the interest of each beneficiary is substantially the same under the terms of the trust prior to its division and the combined terms of all trusts after the division. Two or more trusts may be combined into</p>	

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	differences there are.		<p>a single trust if the interests of each beneficiary in the trust resulting from the combination are substantially the same as the combined interests of the beneficiary in the trusts prior to the combination. The trustee shall determine the terms controlling any trust after its</p> <p>combination as authorized by this section.</p>	
§501	<p style="text-align: center;">X</p> <p>This section is rewritten to read: "This part applies to a creditor's or transferee's claims with respect to spendthrift, support, and discretionary trusts."</p>			
§502	<p style="text-align: center;">X</p> <p>Adds (4), limiting trustee liability for making certain distributions notwithstanding a spendthrift provision.</p> <p>(a) omits "only if it restrains both voluntary and involuntary transfer of a beneficiary's interest."</p> <p>Language added to (c) to</p>			

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	explicitly make this provision subject to exceptions.			
§503	<p style="text-align: center;">X</p> <p>Adds: “(3) Notwithstanding that the terms of the trust include a spendthrift provision, this section does not apply to the interest of a trust beneficiary that is subject to a discretionary trust provision.”</p> <p>Language added to include support provisions.</p> <p>(b)(2) adds “enhance, preserve”.</p> <p>(c) – attachment language rewritten such that the court may order the trustee to satisfy a judgment out of distributions as they become due</p>		<p style="text-align: center;">X</p> <p>Adds two additional exceptions when a spendthrift provision is unenforceable: “against: A beneficiary's child, spouse, or former spouse who has a judgment or court order</p> <p>against the beneficiary for support or maintenance; A judgment creditor who has provided services for the protection of a beneficiary's</p> <p>interest in the trust”</p> <p>Adds, “A claimant against which a spendthrift provision cannot be enforced may obtain from a court an order attaching present or future distributions to or for the benefit of the</p> <p>beneficiary. The court may limit the award to such relief as is appropriate under the</p> <p>circumstances. If there is more than one permissible distributee, the court may grant such relief as</p>	<p style="text-align: center;">X</p> <p>Does not include spouse or former spouse</p> <p>Is not enforceable against a special needs trust</p>

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			is equitable.”	
§504	<p style="text-align: center;">X</p> <p>This section is completely rewritten to stress that the transferee or creditor of a beneficiary does not have a right to amounts subject to a discretionary provision, and that judgments cannot attach to trust property until after distribution.</p> <p>Omits language about a standard of distribution, abuse of discretion, the right to maintain judicial proceedings, and distributions for the trustee's own benefit.</p>	<p style="text-align: center;">X</p> <p>Omits (e).</p>	<p style="text-align: center;">X</p> <p>Adds, “If the trustee's or cotrustee's discretion to make distributions for the trustee's or cotrustee's own benefit is limited by an ascertainable standard, a creditor may not reach or compel distribution of the beneficial interest except to the extent the interest would be subject to the creditor's claim if the beneficiary was not acting as trustee or cotrustee.”</p>	<p style="text-align: center;">X</p> <p>Adds section dealing with Spendthrift Provisions</p>
§505	<p style="text-align: center;">X</p> <p>Adds: “(3) A trust beneficiary is not considered a settlor merely because of a lapse, waiver, or release of a power of withdrawal over the trust property.” “(4) An individual who creates a trust shall not be considered a settlor with regard to the individual's retained beneficial interest</p>	<p style="text-align: center;">X</p> <p>(a)(2) adds: “This subdivision shall not apply to an irrevocable ‘special needs trust’ established for a disabled person as described in 42 U.S.C. Section 1396p(d)(4) or similar federal law governing the transfer to such a trust.”</p>		<p style="text-align: center;">X</p> <p>(1) adds: IF A TRUST HAS MORE THAN ONE SETTLOR OR CONTRIBUTOR, 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. THIS PARAGRAPH DOES NOT</p>

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	<p>in the trust that follows the termination of the individual's spouse's prior beneficial interest in the trust if all of the following apply:</p> <p>(a) The individual creates, or has created, the trust for the benefit of the individual's spouse.</p> <p>(b) The trust is treated as qualified terminable interest property under section 2523(f) of the internal revenue code, 26 USC 2523.</p> <p>(c) The individual retains a beneficial interest in the trust income, trust principal, or both, which beneficial interest follows the termination of the individual's spouse's prior beneficial interest in the trust."</p> <p>(a)(2) adds language to exclude funds to pay the settlor's taxes during the settlor's lifetime.</p> <p>(a)(3) lists expenses with reference to Section 7605</p> <p>Omits (b).</p>			<p>ABROGATE OTHERWISE APPLICABLE LAWS RELATING TO COMMUNITY PROPERTY.</p> <p>(2) adds what a creditor of a settler cannot do.</p> <p>Adds definitions for the purposes of the section</p>

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§506			X Defines "Mandatory distribution"	X Defines "mandatory distribution"
§507				
§601				X Omits this section
§602	X (c)(2) rewritten to read: “(i) If the trust is created pursuant to a writing, by another writing manifesting clear and convincing evidence of the settlor’s intent to revoke or amend the trust. (ii) If the trust is an oral trust, by any method manifesting clear and convincing evidence of the settlor’s intent.” Language added to (f) to	X (b)(1) adds tenants by the entirety. (c)(2)(A) rewritten to read: “executing a later will or codicil that expressly refers to and revokes or amends the trust or specifically devises or bequeaths specific property that would otherwise have passed according to the terms of the trust” (d) adds: “but with respect to community property or property held by tenants by the entirety when added to the trust under		X Adds to (e) that an agent, to the extent expressly authorized by a power of attorney, or a conservator may exercise powers on the settlor’s behalf <i>If trust terms do not prohibit</i> doing so Omits (f)

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	require that the powers be used "only to the extent expressly authorized by the terms of the trust," as well as with court approval.	subdivision (b)(1) of this section, the trustee shall deliver one-half of the property to each spouse unless the governing instrument specifically states otherwise." (g) replaces "knowledge" with "actual knowledge"		
§603	X Adds: (2) – requiring that the trustee inform the settlor's agent or certain beneficiaries of the trust when the trustee has reason to believe the settlor is incapacitated. (4) – limits the liability of one who succeeds the settlor as trustee. (5) – limits the duties of one who succeeds the settlor as trustee in regards to certain investigations and actions directed at the settlor-trustee Modifies: (a) to be subject to (2). (b) – only when the trust is not revocable, only applies to the duties of the trustee.			
§604	X Language added to (a)(2) to	X (c) adds: "to the extent that the	X Adds, "This section does not	

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	expand notification requirements. (a) modified: 2 years after settlor's death, 120 days after notification. (b)(2) modified: 63 day notification.	invalidity applies to the distribution."	impose a duty upon the trustee to give notice under this section unless the notice is expressly required in the trust agreement."	
§701	X (c) – adds a subsection: “Exercise all powers set forth under section 7818(1)(a).”	X Language added to (c)(1) requiring that the rejection be sent to a cotrustee or successor trustee, if any, before a qualified beneficiary.		
§702		X Language added to (a) to allow the trust instrument to require a bond and imposing a standard of clear and convincing evidence to a court's determination that a bond is needed.		
§703	X Adds: “(9) A trustee who is not aware of an action by a cotrustee is not liable for that action unless the trustee should have known that the action would be taken and, if the trustee had known, would have had an affirmative duty to take	X (h) – notice must be in writing		

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	<p>action to prevent the action.”</p> <p>(a) modified permissive language to mandatory language.</p> <p>Language added to (d) to allow remaining cotrustees to act when a cotrustee “fails or refuses to participate in the administration of the trust following notice”</p> <p>(e) is rewritten as two sections reading: “(5) By agreement of the trustees, a trustee may delegate to a cotrustee 1 or both of the following: (a) Any power that is permitted to be delegated pursuant to section 7817(v) to an agent who is not a trustee. (b) Any power that can only be performed by a trustee, if notice of the delegation is provided to the qualified trust beneficiaries within 28 days. (6) Unless a delegation under subsection (5) was irrevocable, a trustee may</p>			

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	<p>revoke the delegation previously made. A revocation under this subsection shall be in writing and shall be given to all of the remaining cotrustees. If notice of the delegation was required to be provided to the qualified trust beneficiaries, notice of the revocation shall be given to the qualified trust beneficiaries within 28 days after the revocation.”</p> <p>(f) rewritten to read: “(8) A trustee is not liable for the action or omission of a cotrustee if all of the following apply: (a) The trustee is not unavailable to perform a trustee’s function because of absence, illness, disqualification under other law, or other incapacity or has not properly delegated the performance of the function to a cotrustee. (b) The trustee is aware of but does not join in the action or omission of the cotrustee. (c) The trustee dissents in writing to each cotrustee at</p>			

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	<p>or before the time of the action or omission.”</p> <p>Omits (g).</p>			
§704	<p style="text-align: center;">X</p> <p>Omits (c)(2).</p> <p>Replaces “by a person designated in the terms of the trust” with “in a manner designated by the terms of the trust.”</p> <p>Modifies (e) such that the standard is “upon a showing of good cause” rather than “whenever the court considers the appointment necessary.”</p>	<p style="text-align: center;">X</p> <p>Omits (d)(2).</p>		
§705	<p style="text-align: center;">X</p> <p>(a)(1) – 28 days notice, “the holders of powers of appointment” in place of settlor</p>	<p style="text-align: center;">X</p> <p>(a)(1) is rewritten to read: “upon at least 30 days’ notice in writing to all cotrustees and to the qualified beneficiaries except those qualified beneficiaries under a revocable trust which the settlor has the capacity to revoke”</p>		<p style="text-align: center;">X</p> <p>(1) adds “unless the trust provides otherwise”</p>
§706	<p style="text-align: center;">X</p> <p>(b)(3) – “best serves the purposes of the trust” in place of “best serves the interests of the</p>	<p style="text-align: center;">X</p> <p>Adds: “(c) The probate court may remove an existing trustee, and appoint a replacement trustee subject to the</p>		

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	<p>beneficiaries”</p> <p>(b)(4) – omits “or removal is requested by all of the qualified beneficiaries”</p> <p>Language added to (c) to limit relief to that “not inconsistent with a material purpose of the trust.”</p>	<p>provisions of section 704 of this title, if the probate court finds that a change in trustee would be in keeping with the intent of the settlor. In deciding whether to replace a trustee under this subsection, the probate court may consider the following factors:</p> <ol style="list-style-type: none"> (1) Whether removal would substantially improve or benefit the administration of the trust; (2) The relationship between the grantor and the trustee as it existed at the time the trust was created; (3) Changes in the nature of the trustee since the creation of the trust; (4) The relationship between the trustee and the beneficiaries; (5) The responsiveness of the trustee to the beneficiaries; (6) The experience and skill level of the trustee; (7) The investment performance of the trustee; (8) The charges for services performed by the trustee; and (9) Any other relevant factors pertaining to the administration of the trust.” <p>“(d) A probate court may order trustees who are replaced pursuant to an action brought under subsection (c) of this section to reimburse the trust for attorney’s</p> 		

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		<p>fees and court costs paid by the trust relating to the action.”</p> <p>(a) rewritten to read: “The settlor, a cotrustee, or a beneficiary may request the probate court to remove a trustee under subsection (b) of this section or to replace a trustee under subsection (c) of this section. A trustee may be removed by the probate court on its own initiative.”</p> <p>(b) adds: “(1) the trustee is obviously unsuitable; ... (6) for any cause, if the interests of the trust estate require it.”</p>		
§707			<p>X</p> <p>Adds, “Title to all trust property must be owned by and vested in any successor trustee without any conveyance, transfer, or assignment by the prior trustee.”</p>	
§708		<p>X</p> <p>Adds subsection (c), listing factors to be used to set a trustee’s compensation.</p>		
§709	<p>X</p> <p>Adds:</p>			

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	“(3) Advances and reimbursement under this section are not considered self-dealing by the trustee and are not a breach of the trustee’s fiduciary duty.”			
§801	X Adds requirement that the trust be administered expeditiously.			
§802	X Adds: (b) – “(f) The transaction is otherwise permitted by statute.” Language added to (b)(2) to require notice to interested parties. Omits (d) and (i).	X (b) adds: “(6) the transaction was consented to in writing by a settlor of the trust while the trust was revocable.” Language added to (f) requiring that investments be fairly priced, as well as complying with the prudent investor rule, in order to avoid a presumption of conflict.		X Adds the following underlined language to end of (f): Trustee is to give notice <u>that the bank or trust company provides services for and receives fees from the investment company or investment trust.</u> (UTC requires that notice is to be of the rate or method of compensation.) --Also adds to (f) that the notification may be <u>made in the trustee’s statement of the fiduciary account.</u>
§803	X Omits this section.	X This section is rewritten to read: “If a trust has two or more beneficiaries, the trustee shall act impartially in administering the		

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		trust, giving due regard to the beneficiaries' respective interests."		
§804	<p style="text-align: center;">X</p> <p>This section is rewritten to read: "Sec. 7803. The trustee shall act as would a prudent person in dealing with the property of another, including following the standards of the Michigan prudent investor rule. If the trustee has special skills or is named trustee on the basis of representation of special skills or expertise, the trustee is under a duty to use those skills."</p>			
§805	<p style="text-align: center;">X</p> <p>Omits this section.</p>			
§806	<p style="text-align: center;">X</p> <p>This section is integrated with Section 804, see above.</p>			
§807	<p style="text-align: center;">X</p> <p>Omits this section.</p>			
§808	<p style="text-align: center;">X</p> <p>Omits (b), (c), and (d). The subject of these subsections is addressed in MI Section 7809.</p>			

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§809				
§810	<p style="text-align: center;">X</p> <p>Adds a subsection (4) incorporating UTC (d) as well as other allowable trustee actions.</p> <p>(c) rewritten to read: “Except as otherwise provided in subsection (4), to the extent that property is held by someone other than the trustee, the trustee shall cause the trust’s interest in the trust’s property to appear in records maintained by the party holding the trust property.”</p>			
§811				
§812	<p style="text-align: center;">X</p> <p>Adds: “(2) A resigning trustee or a trustee being replaced by a successor may retain a reasonable reserve for the payment of debts, taxes, and expenses, including attorney fees and other expenses incidental to the allowance of the trustee’s accounts. (3) Unless the distribution or</p>			

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	<p>payment can no longer be questioned because of adjudication, estoppel, or other limitation, a distributee or claimant that receives property that is improperly distributed or paid from a trust shall return the property and any income and gain from the property since distribution, if the recipient has the property. If the recipient does not have the property, the recipient shall pay the value of the property as of the date of distribution or payment and any income and gain from the property since distribution.</p> <p>(4) If a person embezzles or wrongfully converts trust property, or refuses, without colorable claim of right, to transfer possession of trust property to the current trustee upon demand, the person is liable in an action brought by the current trustee, or the beneficiary of the trust for the benefit of the trust, for double the value of any property embezzled, converted, or wrongfully withheld from</p>			

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	the current trustee.”			
§813	<p style="text-align: center;">X</p> <p>Adds: “(4) If the terms of a trust direct that accounts and information be provided to less than all qualified trust beneficiaries, at the court’s direction, the trustee shall provide statements of account and other information to persons excluded under the terms of the trust to the extent and in the manner the court directs.”</p> <p>(b)(1) – adds language that limits the provision to those terms “that describe or affect the trust beneficiary’s interest and relevant information about the trust property”</p> <p>(b)(2) – 63 days; adds requirement to notify of the court of registration</p> <p>(b)(3) – 63 days; adds requirement to notify of the court of registration; adds language that limits the right to request a copy of the</p>	<p style="text-align: center;">X</p> <p>Adds: “(f)(1) A person seeking relief regarding a charitable trust under this subsection shall notify the attorney general upon filing a petition to: (A) select a charitable purpose or charitable beneficiary as provided in subsection 405(b) of this title; (B) enforce a charitable trust as provided in subsection 405(c) of this title; (C) remove or replace a trustee of a charitable trust as provided in section 706 of this title; or (D) remedy a breach of trust as provided in section 1001 of this title. (2) Notice does not have to be given under this subsection if the trustee reasonably believes that the assets of the trust are less than \$10,000.00.”</p> <p>(a) adds: “Notice does not need to be provided to the attorney general by the trustee of a charitable trust under this section except upon request by the attorney general or as provided in subsection (f) of this section.”</p>		<p style="text-align: center;">X</p> <p>(a) Adds, “Unless the Trust instrument provides otherwise”</p> <p>Adds the following underlined language to (b)(3): trustee also to notify qualified beneficiaries <u>of the trustee’s name, address and telephone number</u></p> <p>Adds the following underlined language to (b)(4): trustee must notify qualified beneficiaries <u>not less than 30 days</u> in advance of change in method or rate of trustee’s compensation</p>

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	<p>terms to those that “describe or affect the trust beneficiary’s interests”; omits the right to a trustee’s report</p> <p>(c) – adds “any disclosure required under section 7802(5)” to the annual report; allows a report to any beneficiary at the trustee’s discretion</p>	<p>(c) – the last sentence is rewritten to read: “A personal representative may send the qualified beneficiaries a report on behalf of a deceased trustee, and a guardian or a duly authorized agent under a power of attorney may send the qualified beneficiaries a report on behalf of an incapacitated trustee.”</p>		
§814	<p style="text-align: center;">X</p> <p>(a) is rewritten to read: “(1) A beneficiary of a discretionary trust provision as described in section 7505 has no property right in a trust interest that is subject to a discretionary trust provision, and has no right to any amount of trust income or principal that may be distributed only in the exercise of the trustee’s discretion. However, and notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as “absolute”, “sole”, or “uncontrolled”, a trustee abuses the trustee’s discretion in exercising or</p>	<p style="text-align: center;">X</p> <p>(21)(B) – omits references to custodial trusts</p> <p>Omits (21)(C)</p>	<p style="text-align: center;">X</p> <p>Omits, in (1) the qualifying language after ascertainable standard.</p>	

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	<p>failing to exercise a discretionary power if the trustee does any of the following: (a) Acts dishonestly. (b) Acts with an improper motive, even though not a dishonest motive. (c) Fails to exercise the trustee's judgment in accordance with the terms and purposes of the trust."</p>			
§815				
§816	<p style="text-align: center;">X</p> <p>The language of this section is completely rewritten, but the powers granted to a trustee are similar. Among the differences: Trustees are explicitly allowed to allocate funds to principal or interest if done in compliance with other law and employ employees and attorneys. Trustees are allowed to enter into agreements to modify certain obligations and to eliminate personal liability when entering into contracts on behalf of the trust.</p>			
§817	<p style="text-align: center;">X</p>			

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	(a) – 28 days (b) – includes “attorney fees and other expenses incidental to the allowance of the trustee’s accounts.”			
Article 9 – UPIA		With this bill, Vermont adopts the Uniform Prudent Investor Act, as well as provisions dealing with “unitrusts”.	X The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.	
§1001				
§1002	X Omits (b).			
§1003	X Adds: “(3) This section does not do either of the following: (a) Limit a trustee’s right to compensation under section 7708 or payments allowed under section 7802(5). (b) Make a trustee accountable to an affected beneficiary in connection with a matter to which	X Language added to (a) to clarify that the provision does not reach the trustee’s right to reasonable compensation.	X Omits (a)	

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	<p>section 4405 of the banking code of 1999, 1999 PA 276, MCL 487.14405, applies and the requirements of that section have been satisfied.”</p> <p>(b) – includes failure to generate income</p>			
§1004	<p style="text-align: center;">X</p> <p>Adds: “(2) Subject to subsection (3), if a trustee participates in a civil action or proceeding in good faith, whether successful or not, the trustee is entitled to receive from trust property all expenses and disbursements including reasonable attorney fees that the trustee incurs in connection with its participation.” “(3) A court may reduce or deny a trustee’s claim for compensation, expenses, or disbursements with respect to a breach of trust.”</p> <p>This section (MI (1)) is rewritten to refer only to parties “who enhance[], preserve[], or protect[] trust property,” with fees “to be</p>		<p style="text-align: center;">X</p> <p>Reserved</p>	

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	paid from the trust that is the subject of the proceeding.”			
§1005	<p style="text-align: center;">X</p> <p>Language added to (a) to clarify that the 1 year statute of limitations applies to beneficiaries who have waived the right of notification.</p>	<p style="text-align: center;">X</p> <p>Adds: “(d) Subsections (a) through (c) of this section shall not apply to the filing of a petition in probate court by the attorney general for breach of trust against the trustee of a charitable trust with a principal place of administration in this state. The attorney general may file a petition within three years after the potential claim arises.”</p> <p>(a) – omits requirement to notify the beneficiary of the time allowed for commencing a proceeding</p> <p>(b) is rewritten to read: “(b) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows or has reason to know of the potential claim or that the beneficiary had a duty to inquire further and the response to such an inquiry would have disclosed the potential claim. If written notice is given to the trustee by a beneficiary or representative within the time for commencing an</p>		

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		<p>action under subsection (a) of this section stating that the beneficiary or representative has received insufficient information from the trustee's report to determine whether to commence an action for breach of trust, the time for commencing an action shall be extended by six months. If no proceeding is commenced within the extended time, it shall be conclusively presumed that the report adequately disclosed the existence of any potential claim.”</p> <p>(c) – 3 years</p>		
§1006				
§1007	<p style="text-align: center;">X</p> <p>Language added to emphasize that the list of events is not exclusive, and to add the attainment of a certain age to the representational list.</p>	<p style="text-align: center;">X</p> <p>Language added to expand the list of representative events and to clarify that the list is not exclusive.</p>		
§1008	<p style="text-align: center;">X</p> <p>Adds: “(2) The terms of a trust relieving a trustee of liability for breach of trust for the acquisition or retention of a particular asset or asset class or failure</p>			

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	to diversify investments are enforceable.” Omits (b).			
§1009	X (2) – omits “of the beneficiary’s rights or”			
§1010	X Adds: “(4) The question of liability as between the trust estate and the trustee individually may be determined in a proceeding for accounting, surcharge, or indemnification or in another appropriate proceeding.”	X (a) – adds: “The addition of the phrase ‘trustee’ or ‘as trustee’ or a similar designation to the signature of a trustee on a written contract is considered prima facie evidence of a disclosure of fiduciary capacity.”	X Adds a provision stating that if any trustees are excluded from deciding on an investment, they are not responsible for losses on that investment. Adds a provision that states that without knowledge that would cause a reasonable trustee to make a further inquiry, a trustee may not be held liable for failure to do so.	
§1011 (optional section)	X (a) – omits “or unless personal liability is imposed in the contract”; adds language eliminating liability for a general partner if the fiduciary relationship of the trustee “was known by the other party to	X (a) – omits references to statements filed under various business entities acts; adds: “The requirement of disclosure in the contract will be satisfied if the trustee signs the contract or signs another writing which is contemporaneously delivered to		X Omits (c) and (d)

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	the contract.” (c) – omits language referring to a trustee’s family	the other parties to the contract in a manner that clearly evidences that the trustee executed the contract in a fiduciary capacity.”		
§1012				
§1013	<p style="text-align: center;">X</p> (a) – the information requirements are rewritten to read, inclusive: “(a) The name of the trust and the date of the trust instrument and any amendments. (b) The name and address of the currently acting trustee. (c) The powers of the trustee relating to the purposes for which the certificate is being offered. (d) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust. (e) The authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee.”	<p style="text-align: center;">X</p> This Section has been substantially rewritten: “§ 1013. CERTIFICATION OF TRUST (a) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee of a trust at any time after execution or creation of a trust may execute a certificate of trust that sets forth less than all of the provisions of a trust instrument and any amendments to the instrument. The certificate of trust may be used as evidence of authority to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real or personal property. The certificate of trust shall be upon the representation of the trustee that the statements contained in the certificate of trust are true and correct. The signature of the trustee must be under oath before a notary public or other official	<p style="text-align: center;">X</p> Omits (a)(7) and (a)(8)	<p style="text-align: center;">X</p> Omits (7)

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	<p>Language added to (b) to allow a settlor or an attorney to sign and requiring that the certificate “be in the form of an affidavit.”</p> <p>(f) – omits language disallowing a inference of knowledge of the terms of the trust</p> <p>(h) – language added to clarify that damages include costs, expenses, and legal fees; replaces “good faith” with “acting pursuant to a legal requirement”.</p>	<p>authorized to administer oaths. The certificate of trust must include:</p> <ol style="list-style-type: none"> (1) the name of the trust, if one is given; (2) the date of the trust instrument; (3) the name of each grantor or settlor; (4) the name of each original trustee; (5) the name and address of each trustee empowered to act under the trust instrument at the time of execution of the certificate; (6) an abstract of the provisions of the trust instrument authorizing the trustee to act in the manner contemplated by the instrument; (7) a statement that the trust instrument has not been revoked or amended as to the authorizing provisions, and a statement that the trust exists; (8) a statement that no provisions of the trust instrument limit the authority so granted; and (9) a statement as to whether the trust is supervised by any court and, if so, a statement that all necessary approval has been obtained for the trustees to act. <p>(b) A certificate of trust executed under subsection (a) of this section may be recorded in the municipal land records where the land identified in</p>		

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		<p>the certificate of trust or any attachment to it is located. When it is so recorded or filed for recording, or in the case of personal property, when it is presented to a third party, the certificate of trust serves to document the existence of the trust, the identity of the trustee, the powers of the trustee and any limitations on those powers, and other matters set forth in the certificate of trust, as though the full trust instrument had been recorded, filed, or presented.</p> <p>(c) A certificate of trust is conclusive proof as to the matters contained in the certificate, and any party may rely upon the continued effectiveness of the certificate unless:</p> <p>(1) a party dealing with the trustee or trustees has actual knowledge of facts to the contrary;</p> <p>(2) the certificate is amended or revoked under subsection (d) of this section; or</p> <p>(3) the full trust instrument including all amendments is recorded or filed.</p> <p>(d) Amendment or revocation of a certificate of trust may be made only by a written instrument executed by the trustee of a trust.</p> <p>Amendment or revocation of a</p>		

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		<p>certificate of trust is not effective as to a party unless that party has actual notice of the amendment or revocation. For purposes of this subsection, "actual notice" means that a written instrument of amendment or revocation has been received by the party or, in the case of real property, that either a written instrument of amendment or revocation has been received by the party or that a written instrument of amendment or revocation identifying the real property involved has been recorded in the municipal land records where the real property is located.</p> <p>(e) A certification of trust may be signed or otherwise authenticated by any trustee.</p> <p>(f) A certification of trust need not contain the dispositive terms of a trust.</p> <p>(g) A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments which designate the trustee and confer upon the trustee the power to act in the pending transaction. Nothing in this subsection shall be construed to require a trustee to furnish the entire trust instrument to the</p>		

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		<p>recipient of a certification of trust.</p> <p>(h) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.</p> <p>(i) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.”</p>		
§1101	<p style="text-align: center;">X</p> <p>This section is rewritten to read: “(1) Article VII shall be construed and applied to promote its underlying purposes and policies. (2) The following are the underlying purposes and policies of article VII: (a) To make more comprehensive and to clarify the law governing trusts in this state. (b) To permit the continued expansion and development of trust practices through custom, usage, and agreement of the parties. (c) To foster certainty in the law so that settlors of trusts will have confidence that</p>		<p style="text-align: center;">X</p> <p>Omits this section.</p>	<p style="text-align: center;">X</p> <p>Omits and in its place is Electronic Records and Signatures</p>

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	their instructions will be carried out as expressed in the terms of the trust.”			
§1102				X In its place is Severability clause
§1103	X Omits this section.			X Omits this section
§1104			X Omits this section.	
§1105			X Omits this section.	
§1106		X Adds: “(a)(3) this title applies to judicial proceedings concerning testamentary trusts commenced before its effective date except that accountings shall continue to be due from the trustees of such trusts in the same manner and in the same frequency as required by the probate court prior to this title unless otherwise ordered by the probate court;”		X Adds a new subsection (c): For all irrevocable trusts in existence before 1/1/04, if notice required by AZ UTC §813(b)(3), has not been given, it shall be given within 60 days of 1/1/04.

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<p>Sections unique to state</p>	<p>Adds: Section 7113 – “Sec. 7113. A provision in a trust that purports to penalize an interested person for contesting the trust or instituting another proceeding relating to the trust shall not be given effect if probable cause exists for instituting a proceeding contesting the trust or another proceeding relating to the trust.”</p> <p>Section 7205, allowing parties to object in certain situations to proceedings involving foreign trusts.</p> <p>Section 7206, dealing with concurrent jurisdiction of the registration venue in certain disputes.</p> <p>Section 7207, allowing interested persons to petition the court to review the employment of others by the trust and authorizing the court to require refunds of unreasonable compensation.</p> <p>Section 7208, dealing with procedures to initiate certain</p>	<p>Adds: “§ 205. MATTERS IN EQUITY The probate court may hear and determine in equity all matters relating to trusts in this title.”</p> <p>“CHAPTER 11. TRUST PROTECTORS AND TRUSTADVISORS § 1101. TRUSTADVISORS AND TRUST PROTECTORS (a) A trust protector or trust advisor is any person, other than a trustee, who under the terms of the trust, an agreement of the qualified beneficiaries authorized by the terms of the trust, or a court order has a power or duty with respect to a trust, including, without limitation, one or more of the following powers: (1) the power to modify or amend the trust instrument to achieve favorable tax status or respond to changes in any applicable federal, state, or other tax law affecting the trust, including any rulings, regulations, or other guidance implementing or interpreting such laws; (2) the power to amend or modify the trust instrument to take advantage of changes in the rule against perpetuities, laws governing restraints on alienation,</p>	<p>Adds sec. 59-12-18 “Requisites of trust relating to real property”</p> <p>Adds sec 59-17-02. “Standard of care - Portfolio strategy - Risk and return objectives.”</p> <p>Adds sec. 59-17-03. “Diversification”</p> <p>Adds Sec. 59-17-04. “Duties at inception of trusteeship”</p> <p>Adds Sec. 59-17-05. “Reviewing Compliance”</p> <p>Adds Sec. 59-17-06. “Language Invoking Standard.”</p> <p>Adds Sec. 59-20-01. “ Private foundations- Charitable trusts- Split interest trusts.”</p>	<p>Adds Sec. 818 “Trust protector”</p> <p>Adds Sec. 1014 “Total return trusts; definitions”</p>

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	<p>proceedings.</p> <p>Section 7209, outlining rules to determine where to register a trust and how to determine the principal place of administration.</p> <p>Section 7210 – registration rules.</p>	<p>or other state laws restricting the terms of the trust, the distribution of trust property, or the administration of the trust;</p> <p>(3) the power to appoint a successor trust protector or trust advisor;</p> <p>(4) the power to review and approve a trustee's trust reports or accountings;</p> <p>(5) the power to change the governing law or principal place of administration of the trust;</p> <p>(6) the power to remove and replace any trust advisor or trust protector for the reasons stated in the trust instrument;</p> <p>(7) the power to remove a trustee, cotrustee, or successor trustee for the reasons stated in the trust instrument, and to appoint a successor;</p> <p>(8) the power to consent to a trustee's or cotrustee's action or inaction in making distributions to beneficiaries;</p> <p>(9) the power to increase or decrease any interest of the beneficiaries in the trust, to grant a power of appointment to one or more trust beneficiaries, or to terminate or amend any power of appointment granted in the trust; however, a modification, amendment, or grant of a power of</p>		

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		<p>appointment may not grant a beneficial interest in a charitable trust with only charitable beneficiaries to any noncharitable interest or purpose and may not grant a beneficial interest in any trust to the trust protector or trust advisor or to the estate or for the benefit of the creditors of such trust protector or such trust advisor;</p> <p>(10) the power to perform a specific duty or function that would normally be required of a trustee or cotrustee;</p> <p>(11) the power to advise the trustee or cotrustee concerning any beneficiary;</p> <p>(12) the power to consent to a trustee's or cotrustee's action or inaction relating to investments of trust assets; and</p> <p>(13) the power to direct the acquisition, disposition, or retention of any trust investment.</p> <p>(b) The exercise of a power by a trust advisor or a trust protector shall be exercised in the sole and absolute discretion of the trust advisor or trust protector and shall be binding on all other persons.</p> <p>§ 1102. TRUSTADVISORS AND TRUST PROTECTORS AS FIDUCIARIES</p> <p>(a) A trust advisor or trust</p>		

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		<p>protector is a fiduciary with respect to each power granted to such trust advisor or trust protector. In exercising any power or refraining from exercising any power, a trust advisor or trust protector shall act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.</p> <p>(b) A trust advisor or trust protector is an excluded fiduciary with respect to each power granted or reserved exclusively to any one or more other trustees, trust advisors, or trust protectors.</p> <p>§ 1103. TRUST ADVISOR AND TRUST PROTECTOR SUBJECT TO COURT JURISDICTION</p> <p>By accepting appointment to serve as a trust advisor or trust protector, the trust advisor or the trust protector submits personally to the jurisdiction of the courts of this state even if investment advisory agreements or other related agreements provide otherwise, and the trust advisor or trust protector may be made a party to any action or proceeding relating to a decision, action, or inaction of the trust advisor or trust protector.</p> <p>§ 1104. NO DUTY TO REVIEW ACTIONS OF TRUSTEE, TRUST ADVISOR,</p>		

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		<p>OR TRUST PROTECTOR</p> <p>(a) Whenever, pursuant to the terms of a trust, an agreement of the qualified beneficiaries authorized by the terms of the trust, or a court order, an excluded fiduciary is to follow the direction of a trustee, trust advisor, or trust protector with respect to investment decisions, distribution decisions, or other decisions of the non-excluded fiduciary, then, except to the extent that the terms of the trust, the agreement of the qualified beneficiaries, or the court order provide otherwise, the excluded fiduciary shall have no duty to:</p> <p>(1) monitor the conduct of the trustee, trust advisor, or trust protector;</p> <p>(2) provide advice to the trustee, trust advisor, or trust protector or consult with the trustee, trust advisor, or trust protector; or</p> <p>(3) communicate with or warn or apprise any beneficiary or third party concerning instances in which the excluded fiduciary would or might have exercised the excluded fiduciary's own discretion in a manner different from the manner directed by the trustee, trust advisor, or trust protector.</p>		

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		<p>(b) Absent clear and convincing evidence to the contrary, the actions of the excluded fiduciary pertaining to matters within the scope of the trustee's, trust advisor's, or trust protector's authority including confirming that the trustee's, trust advisor's, or trust protector's directions have been carried out, recording and reporting actions taken at the trustee's, trust advisor's, or trust protector's direction, or taking action pursuant to section 813 of this title, shall be presumed to be administrative actions taken by the excluded fiduciary solely to allow the excluded fiduciary to perform those duties assigned to the excluded fiduciary under the terms of the trust, the agreement of the qualified beneficiaries, or the court order, and such administrative actions shall not be deemed to constitute an undertaking by the excluded fiduciary to monitor the trustee, trust advisor, or trust protector or otherwise participate in actions within the scope of the trustee's, trust advisor's, or trust protector's authority.</p> <p>§ 1105. FIDUCIARY'S LIABILITY FOR ACTION OR</p>		

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		<p>INACTION OF TRUSTEE, TRUSTADVISOR, AND TRUST PROTECTOR</p> <p>An excluded fiduciary is not liable for:</p> <p>(1) any loss resulting from any action or inaction of a trustee, trust advisor, or trust protector; or</p> <p>(2) any loss that results from the failure of a trustee, trust advisor, or trust protector to take any action proposed by the excluded fiduciary where such action requires the authorization of the trustee, trust advisor, or trust protector, provided that an excluded fiduciary who had a duty to propose such action timely sought but failed to obtain the authorization.”</p>		
<p>Sections unique to state (continued)</p>	<p>Section 7211, dealing with foreign corporate trustees.</p> <p>Section 7302 – “The holder of a power of revocation or amendment or a presently exercisable or testamentary general or special power of appointment may represent and bind a person whose interest, as a permissible appointee, taker in default, or otherwise, is subject to the power. For the purpose, however, of granting</p>			

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	<p>consent or approval to modification or termination of a trust or to deviation from its terms, including consent or approval to a settlement agreement described in section 7111, only the holder of a presently exercisable or testamentary general power of appointment may represent and bind such a person.”</p> <p>Section 7503, limiting transfer and assignment of beneficiary interests subject to support provisions.</p> <p>Section 7605, making certain trust property which is revocable at the settlor’s death subject to certain expenses.</p> <p>Section 7606, requiring the trustee to pay to the personal representative of the settlor’s estate, or directly to creditors, certain certified expenses, and outlining default rules naming the specific sources of such payments.</p>			

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	<p>Section 7607, setting out further rules for the payment of expenses.</p> <p>Section 7608, requiring a trustee in certain situations to act as personal representative for the purpose of giving notice to creditors when a personal representative has not been appointed.</p> <p>Section 7609, defining procedure for bringing claims against certain trusts.</p> <p>Section 7610, setting statutes of limitations for certain claims against certain trusts.</p> <p>Section 7611, setting rules controlling a trustee's allowance or disallowance of certain claims against the trust.</p> <p>Section 7612, requiring a trustee to pay certain allowed claims after satisfying certain expenses and imputing liability on the trustee if certain payments to one claimant cause harm</p>			

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	<p>to another claimant.</p> <p>Section 7613, dealing with payment of secured claims.</p> <p>Section 7614, dealing with future, contingent, and unliquidated claims.</p> <p>Section 7615, allowing for a trustee to set-off any claim by the amount of a counterclaim against the claimant.</p>			
<p>Sections unique to state (continued)</p>	<p>Section 7809 – “(1) A trust protector, other than a trust protector who is a beneficiary of the trust, is subject to all of the following:</p> <p>(a) Except as provided in subsection (2), the trust protector is a fiduciary to the extent of the powers, duties, and discretions granted to him or her under the terms of the trust.</p> <p>(b) In exercising or refraining from exercising any power, duty, or discretion, the trust protector shall act in good faith and in accordance with the terms and purposes of the trust and the interests of the</p>			

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	<p>beneficiaries.</p> <p>(c) The trust protector is liable for any loss that results from the breach of his or her fiduciary duties.</p> <p>(2) The terms of a trust may provide that a trust protector to whom powers of administration described in section 675(4) of the internal revenue code, 26 USC 675, have been granted may exercise those powers in a nonfiduciary capacity. However, the terms of the trust shall not relieve the trust protector from the requirement under subsection (1)(b) that he or she exercise or refrain from exercising any power, duty, or discretion in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.</p> <p>(3) Except as otherwise provided in subsection (4), the trustee shall act in accordance with a trust protector's exercise of the trust protector's specified powers and is not liable for so acting.</p> <p>(4) If either of the following</p>			

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	<p>applies to a trust protector's attempted exercise of a specified power, the trustee shall not act in accordance with the attempted exercise of the power unless the trustee receives prior direction from the court:</p> <p>(a) The exercise is contrary to the terms of the trust.</p> <p>(b) The exercise would constitute a breach of any fiduciary duty that the trust protector owes to the beneficiaries of the trust.</p> <p>(5) A trustee is not liable for any loss that results from any of the following:</p> <p>(a) The trustee's compliance with a direction of a trust protector, unless the attempted exercise was described in subsection (4).</p> <p>(b) The trustee's failure to take any action that requires a prior authorization of the trust protector if the trustee timely sought but failed to receive the authorization.</p> <p>(c) Seeking a determination from the court regarding the trust protector's actions or directions.</p> <p>(d) The trustee's refraining</p>			

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	<p>from action pursuant to subsection (4).</p> <p>(6) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.</p> <p>(7) By accepting an appointment to serve as a trust protector of a trust registered in this state or having its principal place of administration in this state, the trust protector submits to the jurisdiction of the courts of this state even if investment advisory agreements or other related agreements provide otherwise, and the trust protector may be made a party to any action or proceeding relating to a decision, action, or inaction of the trust protector.</p> <p>(8) A term of a trust that relieves a trust protector from liability for breach of his or her fiduciary duties is unenforceable to the extent that either of the following applies:</p> <p>(a) The term relieves the trust protector of liability for acts committed in bad faith</p>			

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	<p>or with reckless indifference to the purposes of the trust or the interests of the trust beneficiaries.</p> <p>(b) The term was inserted as the result of an abuse by the trust protector of a fiduciary or confidential relationship to the settlor.”</p>			
<p>Sections unique to state (continued)</p>	<p>Section 7818 – dealing with environmental concerns or hazards</p> <p>Section 7819 – dealing with tax matters</p> <p>Section 7820 – “(1) A trustee may act under section 7817(ff) by paying money or other property to 1 or more of the following:</p> <p>(a) The minor or incapacitated individual directly.</p> <p>(b) A person or institution providing support, maintenance, education, or medical, surgical, hospital, or other institutional care for the minor or incapacitated individual in direct payment for those services.</p> <p>(c) The legal or natural guardian of the minor or</p>			

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	<p>incapacitated individual.</p> <p>(d) A person, whether or not appointed guardian by a court, who shall in fact have the care and custody of the minor or incapacitated individual.</p> <p>(e) A custodian for the minor or incapacitated individual under a uniform gifts or transfers to minors act.</p> <p>(2) A trustee also may manage an amount distributable to a trust beneficiary who is a minor or incapacitated individual as a separate fund on the trust beneficiary's behalf, subject to the trust beneficiary's continuing right to withdraw the distribution.</p> <p>(3) If the trustee exercises due care in the selection of the person to whom a payment is made under this section, including a minor or incapacitated individual, the trustee does not have a duty to see to the payment's application. The person's receipt for the payment completely discharges the trustee."</p>			

