

Significant Differences in States' Enacted Uniform Trust Codes

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Statutes are subject to change; the date of the most recent update to each state comparison may be found on the last page of this chart.
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UNIFORM TRUST CODE	UTAH U.C.A. 75-7-101 to 75-7-1103 Effective: July 1, 2004	MAINE M.R.S.A. Title 18B §§ 101-1004 Effective: July 1, 2005	TENNESSEE T.C.A. Title 35 §§ 2-95 Effective: July 1, 2004	NEW HAMPSHIRE Chapter 564 B: 1-101 to 11-1104 Effective: October 1, 2004	MISSOURI 456.1-101 to 456.11-1106 Effective: January 1, 2005
§101					
§102					X Adds the to the scope: “...charitable or noncharitable, testamentary or inter vivos, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust. <u>Sections 456.1-101 to 456.11-1106 do not apply to any trust created by the inherent power of the court pursuant to chapter 460, RSMo.</u> ”
§103	X Omits “Ascertainable standard” (2004 amendment not adopted). Omits “Conservator.” Omits “Guardian.” Omits “Person.” Omits from (11), the definition of “power of withdrawal”: “(A) “exercisable by a trustee and limited by an ascertainable standard; or (B)” and omits “by another person” from UTC §103(11)(B). (2004 amendment not adopted).	X Adds (3)(A): <u>Code. "Code" means the Maine Uniform Trust Code.</u> Omits from (12)(B) [UTC 13(B)]: “...terminated on that date <i>without causing the trust to terminate.</i> ” Adds to (12), under the definition of “qualified beneficiary” : <u>"Qualified beneficiary" does not include a contingent distributee or a contingent permissible distributee of trust income or principal whose interest in the</u>	X Omits “Ascertainable standard” (2004 amendment not adopted). Defines “conservator” and “guardian” by reference to another statute. “(4) ‘Conservator’ has the same meaning as in T.C.A. §34-1-101(4).” “(6) ‘Guardian’ has the same meaning as in T.C.A. §34-1-101(11). The term does not include a guardian ad litem.” In subsection (10) [UTC (11)], the definition of “power of	X Moves UTC (2) defining “Ascertainable standard” to paragraph (22). Replaces definition of “guardian” with both “guardian of the estate”(6)(a) and “guardian of the person” (6)(b). In paragraph (10) defining “Power of withdrawal” omits internal division into subparagraphs (A) and (B). Adds definition of “Record” (13). Adds definition of “Sign” (16).	X Changes the definition of (5) “Conservator” to: <u>"Conservator" means a person described in subdivision (3) of section 475.010, RSMo. This term does not include a conservator ad litem.</u> Adds definition of : <u>(6) "Conservator ad litem".</u> <u>(8) "Financial institution".</u> Changes the definition of “Guardian” to: <u>(9) "Guardian" means a person described in subdivision (6) of section 475.010, RSMo. The term does</u>

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	<p>Omits "Property."</p> <p>Omits subpart (B) of the "Qualified Beneficiary" definition. <i>(2004 amendment not adopted).</i></p> <p>Adds subsection (i): "<u>Resident estate</u>" or "resident trust" means: <u>(i) an estate of a decedent who at death was domiciled in this state; (ii) a trust, or a portion of a trust, consisting of property transferred by will of a decedent who at his death was domiciled in this state; or (iii) a trust administered in this state.</u></p> <p>Omits "State." Omits "Trustee."</p> <p>Adds subsection (2): <u>Terms not specifically defined in this section have the meanings provided in Section 75-1-201.</u></p>	<p><u>trust is not reasonably expected to vest.</u></p> <p>Omits from (16), the definition of "State," "The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a State."</p> <p>Adds to (19): "Trustee" includes an original, additional and successor trustee, and a cotrustee, <u>whether or not appointed or confirmed by a court.</u></p>	<p>withdrawal," omits the following: "(A) exercisable by a trustee and limited by an ascertainable standard; or (B)" and omits "by another person" from UTC §103(11)(B). <i>(2004 amendment not adopted).</i></p> <p>Omits subpart (B) of the "Qualified Beneficiary" definition. <i>(2004 amendment not adopted).</i></p> <p>Adds: (17) "Successors in interest" means the beneficiaries under the settlor's will, if the settlor has a will, or in the absence of an effective will provision, the settlor's heirs at law.</p>	<p>Adds new subsection (23): "<u>Directed trust</u>" means a trust <u>where either through the terms of the trust, an agreement of the beneficiaries, or a court order, one or more persons is given the authority to direct or consent to a fiduciary's actual or proposed investment decision, distribution decision, or any other noninvestment decision of the fiduciary.</u></p> <p>Adds new subsection (24): "<u>Excluded fiduciary</u>" means any fiduciary excluded by the terms of the trust or by court order <u>from exercising a power, or relieved by the terms of the trust or by court order of a duty, because, by the terms of the trust or by court order, such power or duty is vested in another person.</u></p> <p>Adds new subsection (25): "<u>Include</u>" and "<u>including</u>" means <u>the same as "include, without limitation" and "including, without limitation" regardless of whether expressly specified.</u></p> <p>Adds new subsection (26): "<u>Investment company</u>" means an <u>investment company as defined under the federal Investment Company Act of 1940.</u></p> <p>Adds new subsection (27) "<u>Trust advisor</u>" means any party whose <u>appointment is provided for by the terms of the trust and whose</u></p>	<p><u>not include a guardian ad litem.</u></p> <p>Adds definition of: <u>(10) "Interested persons."</u> <u>(11) "Internal Revenue Code."</u> <u>(15) "Permissible distributee"</u> <u>(17) "Principal place of administration"</u> <u>(18) "Professional fiduciary"</u></p> <p>Changes subsection (16) defining "Power of withdrawal to read: "Power of withdrawal means a presently exercisable <u>power of a beneficiary to withdraw assets from the trust without the consent of the trustee or any other person.</u>"</p> <p>Changes the definition of "(20) Qualified Beneficiary" by limiting (a)(b) and (c) to "permissible distributes," and eliminating language from (b): "terminated on that date <i>without causing the trust to terminate</i>"</p> <p>Adds definition of: <u>(21) "Record"</u></p> <p>Changes subsection (22) defining "Revocable" to read: "...means <u>that the settler has the legal power to revoke the trust without the consent of the trustee or a person holding an adverse interest, regardless of whether the settler has the mental capacity to do so in fact.</u>"</p> <p>Adds the following to the end of the definition of "Settlor:":</p>

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				<p><u>powers are defined in RSA 564-B:12-1203 but excludes any person who does not have the authority to direct or consent to a fiduciary's actual or proposed investment decision, distribution decision, or any other noninvestment decision or who does not have any of the powers identified in RSA 564-B:7-711(c).</u></p> <p>Adds new subsection (28): <u>"Trust protector" means any disinterested party whose appointment is provided for by the terms of the trust and whose powers are defined in RSA 564-B:12-1203 but excludes any person who does not have the authority to direct or consent to a fiduciary's actual or proposed investment decision, distribution decision, or any other noninvestment decision or who does not have any of the powers identified in RSA 564-B:7-711(b).</u></p>	<p>"...pursuant to the terms of the trust."</p> <p>Adds the definition of: (24) "Sign"</p> <p>Adds to "(25) Spendthrift provision:" "...which restrains <u>either the voluntary or involuntary transfer</u> or both the..."</p>
§104					
§105	<p style="text-align: center;">X</p> <p>Adds to subsection (2) [UTC (b)]: <u>"Except as specifically provided in this chapter, the terms of a trust prevail..."</u></p> <p>Changes (2)(b) [UTC (b)(2)] to read "the duty of a trustee to act in good faith and in accordance with the purposes of the trust." (2005 amendment not adopted.)</p>	<p style="text-align: center;">X</p> <p>Changes (2)(b) [UTC (b)(2)] to read "the duty of a trustee to act in good faith and in accordance with the purposes of the trust." (2005 amendment not adopted.)</p> <p>Adds to the beginning of paragraphs (2)(H) and (2)(I): <u>Subject to subsection 3, the...</u></p>	<p style="text-align: center;">X</p> <p>In paragraph (b)(2), omits the "in good faith" requirement.</p> <p>Also in paragraph (b)(2), omits the requirement to act in accordance with the <i>terms</i> of the contract, and in "the interests of the beneficiaries." (2005 amendment not adopted.)</p>	<p style="text-align: center;">X</p> <p>Omits optional subsections (8) and (9).</p> <p>(b)(12) adds "statutory" - (statutory periods of limitation...)</p>	<p style="text-align: center;">X</p> <p>Changes (2)(b) [UTC (b)(2)] to read "the duty of a trustee to act in good faith and in accordance with the purposes of the trust." (2005 amendment not adopted.)</p> <p>Omits from 2.(3) [UTC (b)(3)] the following: "...and that the trust have a purpose that is lawful, not contrary to public</p>

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	<p>Omits from (2)(c) [UTC (b)(3)]: “...and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;”</p> <p>Omits [UTC] (b)(7), (13).</p> <p>Omits optional [UTC] sections (8), (9).</p>	<p>Adds subsection (3): <u>Waiver or modification. The settler, in the trust instrument or in another writing delivered to the trustee, may waive or modify the duties of a trustee under section 813, subsection 1 or 2 to give notice, information and reports to qualified beneficiaries by:</u> <u>(A) Waiving or modifying such duties as to all qualified beneficiaries except the settlor’s surviving spouse during the lifetime of the settler or the lifetime of the settlor’s surviving spouse; and</u> <u>(B) Designating a person or persons, any of whom may or may not be a beneficiary, to act in good faith to protect the interests of the qualified beneficiaries who are not receiving notice, information or reports and to receive any notice, information or reports required under section 813, subsection 1 or 2 in lieu of providing such notice, information or reports to the qualified beneficiaries. The person or persons designated under this paragraph are deemed to be representatives of the qualified beneficiaries not receiving notice, information or reports for the purposes of the time limitation for a beneficiary to commence an action against the trustee for breach of trust as provided in subsection 1005, subsection 1.</u></p>	<p>Omits optional (b)(8) and (9). <i>(these paragraphs were previously omitted, but are now “optional” under 2004 amendments)</i></p>		<p><i>policy, and possible to achieve.”</i></p> <p>Changes 2.(8) [UTC (b)(8)] to: (8) <u>subject to subsection 3 of this section, the duty of a trustee of an irrevocable trust to notify each permissible distributee who has attained the age of twenty-one years of the existence of the trust and of that permissible distributee’s rights to request trustee’s reports and other information reasonably related to the administration of the trust;</u></p> <p>Omits from 2.(9) [UTC (b)(9)]: “under Section 813(a).”</p> <p>Omits from 2.(14) [UTC (b)(14)] “subject matter jurisdiction” and its relevant provision of this code.</p> <p>Adds new subsection (3): <u>For purposes of subdivision (8) of subsection 2 of this section, the settler may designate by the terms of the trust one or more permissible distributees to receive notification of the existence of the trust and of the right to request trustee’s reports and other information reasonably related to the administration of the trust in lieu of providing the notice, information or reports to any other permissible distributee who is an ancestor or lineal descendant of the designated permissible distributee.</u></p>

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§106					
§107	X This entire section on “Governing Law” has been rewritten. The Utah version provides definitions of a “foreign trust” and “state law provision.” If a trust has a state law provision, then Utah law governs, if a trust does not have a state law provision, but is administered in the state, then Utah law governs. The statute also addresses foreign trusts that move their administration to the state of Utah.				
§108			X Replaces “qualified beneficiary” in subsection (e) with: “...terminates if a <u>majority of those qualified beneficiaries described in Section 4(12)</u> notify the trustee...”	X Adds language to (e): The authority of a trustee under this section to transfer a trust’s principal place of administration terminates if the qualified beneficiary <u>or, if more than one, a majority of qualified beneficiaries</u> , notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice. Omits (f).	X Omits subsection (b). Changes part 2. [UTC (c)] by omitting “...in furtherance of the duty prescribed by subsection (b),” and adding to the end “...that is <u>appropriate to the trust’s purposes, its administration, and the interests of the beneficiaries.</u> ”
§109	X Omits [UTC] subsection (b).			X Adds to (a) “ <u>commercial delivery service</u> ” and “ <u>courier service</u> ” for proper methods of notice or document delivery.	
§110	X	X	X	X	X

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	<p>Omits § 110 “Others Treated as Qualified Beneficiaries” in its entirety.</p>	<p>Omits [UTC] subsection (a).</p> <p>Adds the following to the end of subsection (b): <u>A charitable organization whose interest in the trust as a contingent distributee of the trust income or principal is not reasonably expected to vest does not have the rights of a qualified beneficiary.</u></p> <p>Changes subsection (2) [UTC (d)] to read: “The Attorney General has the rights provided in Title 5, section 194 with respect to a charitable trust having its principal place of administration in this State, <u>but may not be treated as and does not have the rights of a qualified beneficiary.</u>”</p>	<p>Omits [UTC] subsection (a).</p> <p>UTC subsections (b) and (c) are combined, and the following language from UTC subsection (b) is omitted: “...under the terms of a charitable trust <i>has the rights of a qualified beneficiary under this [Code] if the charitable organization, on the date the charitable organization’s qualification is being determined:</i>” ,UTC paragraphs (b)(A) and (b)(B) are also omitted. <i>(2004 amendment not adopted.)</i></p>	<p>Omits [UTC] subsection (a).</p> <p>Subsection (c) gives authority to the “director of charitable trusts” to enforce charitable trusts as a qualified beneficiary. Adds the following language: “...in this state <u>if the charitable trust describes a charitable purpose but does not designate a specific charitable organization as a beneficiary for that charitable trust and if trust income or principal, on the date the qualification is being determined:</u></p> <p><u>(A) is distributable to carry out the charitable purpose;</u></p> <p><u>(B) would be distributable to carry out the charitable purpose upon the termination of the interests of the distributees or permissible distributees then receiving or eligible to receive distributions; or</u></p> <p><u>(C) would be distributable to carry out th charitable purpose if the trust terminated on that date.</u></p> <p>Adds new subsection (d): <u>No provision of this chapter shall limit the authority of the director of charitable trusts to supervise and control charitable organizations.</u></p>	<p>Changes this section to read:</p> <p><u>1. A specified charitable organization or a person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in sections 456.4-408 or 456.4-409 has the rights of a qualified beneficiary under sections 456.1-101 to 456.11-1106.</u></p> <p><u>2. Except with respect to sections 456.1-108 and 456.4-411B, the attorney general of this state has the rights of a qualified beneficiary with respect to an interest in a charitable trust having its principal place of administration in this state if: (1) a specified charitable organization is not entitled to a distribution from such interest; and (2) distributions from the interest are payable in a manner that, if payable to an identifiable charitable entity, would qualify that entity as a specified charitable organization.</u></p> <p><u>3. In this section a "specified charitable organization" means an identifiable charitable entity, the interest of which is not otherwise subject to any power of appointment or other power of termination, that, on the date that entity's qualification is determined:</u></p> <p><u>(a) is a permissible distributee;</u></p> <p><u>(b) would be a permissible distributee if the interests of the</u></p>

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					<u>permissible distributees terminated on that date; or (c) would be a permissible distributee if the trust terminated on that date.</u> 4. <u>No provision of this section shall limit the authority of the attorney general of this state to supervise and control charitable organizations.</u>
§111			X Adds to subsection (d): “...include, but are not limited to:” Adds the following subparts: (7) <u>the extent or waiver of bond of a trustee;</u> (8) <u>the governing law of the trust; and</u> (9) <u>the criteria for distribution to a beneficiary where the trustee is given discretion.</u>	X In subsection (d) adds: “...include <u>without limitation:</u> ” Adds new paragraph (d)(7): <u>the termination or modification of a trust.</u>	X Adds the following new subsection: 6. <u>A nonjudicial settlement agreement may not be used to terminate or modify a trust for the reasons that a court could terminate or modify a trust as set forth in subsection 1 of section 456.4-411B.</u> And refers to it in subsection 2. [UTC (b)].
§112 (optional section)	X Adds “The rules of construction that apply to the interpretation of and disposition of property by will or <u>other governing instrument, as defined in Section 75-1-201</u> , also apply”				X Omits this section. Replaces it with rules regarding the automatic termination of spousal rights upon the dissolution of marriage.
§201	X Omits UTC § 201 “Role of Court in Administration of Trust” in its entirety.			X Changes subsection (b) to apply only to trusts created other than by a will.	
§202	X				X

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	<p>Condenses the language of [UTC] subsection (a) and changes the language of [UTC] subsection (b), but retains the same meaning.</p> <p>Omits [UTC] subsection (c).</p> <p>Adds: <u>(3) By accepting the delegation of a trust function from the trustee of a trust administered in this state, the agent submits to the jurisdiction of the courts of this state regarding any matter involving the trust.</u></p> <p><u>(4) Unless otherwise designated in the trust instrument, a trust is administered in this state if it meets the requirements of Subsection 75-7-107(4).</u></p>				<p>Changes the end of subsection 1. [UTC (a)] to read: “...submits personally to the jurisdiction of the courts of this State regarding <u>the administration of the trust during any period that the principal place of administration is located in this state.</u>”</p> <p>In subsection 2. [UTC (b)], replaces both instances of “any matter involving the trust” with “<u>any proceeding involving the administration of the trust.</u>”</p> <p>Inserts subsection (3), regarding matters considered a judicial proceeding involving the administration of the trust.</p>
§203	<p style="text-align: center;">X</p> <p>Gives the district court exclusive subject matter jurisdiction. Adds subsection (3): <u>This section does not preclude judicial or nonjudicial alternative dispute resolution.</u></p>	<p style="text-align: center;">X</p> <p>Gives the Probate Court and the Superior Court concurrent jurisdiction.</p> <p>Omits subsection (b) and replaces it with: 2. <u>Alternative dispute resolution not precluded.</u> <u>This section does not preclude judicial or nonjudicial alternative dispute resolution.</u></p>	<p style="text-align: center;">X</p> <p>The designated court includes both the chancery courts and other courts having probate jurisdiction.</p>	<p style="text-align: center;">X</p> <p>Establishes Subject-Matter Jurisdiction as follows: <u>(a) Except as provided in subsection (b) of this section, the probate court shall have exclusive jurisdiction of the interpretation, construction, modification, termination, and administration of those trusts described in RSA 564-A:1, I, and over the appointment, removal, and surcharge of trustees of such trusts.</u></p> <p><u>(b) The probate court has concurrent jurisdiction with the superior court of proceedings involving charitable uses and trusts other than those trusts described in RSA 564-A:1, I.</u></p>	<p style="text-align: center;">X</p> <p>Omits this optional section.</p>

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				<u>(c) Nothing in this section is intended to be inconsistent with RSA 547. To the extent that inconsistencies exist, RSA 547 controls.</u>	
§204					X Replaces the entire venue section of the UTC with different venue rules.
§301	X Omits optional [UTC] subsection (d). <i>(2004 amendment not adopted.)</i>		X Omits optional [UTC] subsection (d). <i>(2004 amendment not adopted.)</i>	X Omits from (c): Section 411.	X Omits optional [UTC] subsection (d). <i>(2004 amendment not adopted.)</i>
§302					X Omits the first few lines of the UTC version and begins with: <u>“The holder of a testamentary power of appointment may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.”</u> The section then defines “testamentary power of appointment” as used herein.
§303			X Adds the following subsections: <u>(7) a person designated by the settlor to represent the beneficiaries of the trust may represent and bind such beneficiaries; and (8) a person designated by the</u>	X Replaces UTC 303(2) with (2) and (3): <u>(2) a guardian of the estate may represent and bind the estate that the guardian of the estate controls;</u>	X Adds subpart (2): <u>a conservator ad litem may represent and bind the ward with respect to a particular question or dispute over which a conservator does not have authority;</u>

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			<p><u>beneficiaries of the trust to represent them may represent and bind such beneficiaries.</u></p>	<p><u>(3) a guardian of the person may represent and bind the ward if a guardian of the ward’s estate has not been appointed;</u></p> <p>Limits the trustees representation: “(5) a trustee may represent and bind the beneficiaries of the trust <u>except as to matters relating to the administration or distribution of the trust;</u>”</p> <p>In subsection (6) [UTC (5)] provides that personal representatives of decedent’s estate cannot represent and bind parties in matters relating to the administration or distribution of the estate.</p>	<p>Adds to and changes subpart (3) [UTC (2)]: “a guardian may represent and bind the ward <u>with respect to a particular question or dispute if a conservator or conservator ad litem is not authorized to act with respect to that particular question or dispute;</u>”</p> <p>Subpart (4) = UTC 303(6), with the addition of <u>conservator ad litem.</u></p>
§304				<p style="text-align: center;">X</p> <p>Adds: “<u>Nothing in this section shall expand or limit the virtual representation of sui juris beneficiaries for purposes of RSA 564-A:3-c.</u>”</p>	<p style="text-align: center;">X</p> <p>Moves the UTC language to subsection (1) and adds: “...person represented <u>with respect to a particular question or dispute.</u>”</p> <p>Adds new subsection (2): <u>Unless otherwise represented, a beneficiary who is not a qualified beneficiary may be represented by and bound by a qualified beneficiary having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest with respect to the particular question or dispute between the representative and</u></p>

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					<u>the person represented, in any court proceeding under subsection 2 of section 456.4-412, or in a nonjudicial settlement agreement entered into under section 456.1-111 in lieu of such a court proceeding.</u>
§305	X Uses <u>guardian ad litem or other representative</u> in place of [representative]. Adds “protected person” to subsection (1) regarding those who’s interests may be represented.				
§401			X Adds subsection (4): <u>a court pursuant to its statutory or equitable powers.</u>		X Adds subsection (4), allowing a trust to be created by “ <u>a court under section 475.092, 475.093, or 511.030, RSMo, or 42 U.S.C. Section 1396p(d)(4).</u> ”
§402	X Adds to subpart (1)(a) [UTC (a)(1)]: the settlor has capacity to create a trust, <u>which standard of capacity shall be the same as for a person to create a will</u> ; Adds to subpart (1)(b) [UTC(a)(2)]: the settlor indicates an intention to create the trust <u>or a statute, judgment, or decree authorizes the creation of a trust</u> ;			X In paragraph (a)(5), changes to read: “the same person is not the sole trustee, <u>the sole current beneficiary and the sole remainder beneficiary.</u> ”	X Adds to the beginning of subsection 1. [UTC (a)]: “ <u>Other than for a trust created by section 475.092, 475.093, or 511.030, RSMo, or 42 U.S.C. Section 1396p(d)(4), a trust is created only if:</u> ”
§403					
§404					
§405	X			X	

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	Adds to subsection (2) [UTC (b)] a provision allowing the trustee, if authorized by the trust, to select a charitable purpose or beneficiary.			Adds to (c): The settler of a charitable trust <u>or the director of charitable trusts</u> , among others, may maintain a proceeding to enforce the trust. <u>In any such proceeding where the director of charitable trusts is not a party, the director of charitable trusts shall be joined as a necessary party.</u>	
§406					
§407					<p style="text-align: center;">X</p> <p>Adds subsection 2.: <u>Other than for a conveyance by which a trust may arise or result by the implication or construction of law, all declarations or creations of trust of any lands, tenements or hereditaments shall be manifested and proved by some writing signed by the party who is, or shall be, by law, enabled to declare such trusts, or by the party's last will, in writing, or else they shall be void.</u></p>
§408	<p style="text-align: center;">X</p> <p>Replaces the specific provisions of this section with a referral to another statute: "A trust may be created to provide for the care of a pet or animal as provided in Section 75-2-1001."</p>				
§409	<p style="text-align: center;">X</p> <p>Omits "Except as otherwise provided in Section 408 or by</p>	<p style="text-align: center;">X</p> <p>Omits from subsection (1): "The trust may not be enforced for</p>		<p style="text-align: center;">X</p> <p>In subsection (1) omits "<i>The trust may not be enforced for</i></p>	

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	<p>another statute, the following rules apply:"</p> <p>Omits from (1): "The trust may not be enforced for more than [21] years," and all of (2) and (3)</p>	<p>more than [21] years."</p>		<p><i>more than 21 years."</i></p> <p>In subsection (2) adds: "...enforced by a <u>trust advisor, a trust protector, a person...</u>"</p>	
§410			<p style="text-align: center;">X</p> <p>Omits optional language from subsection (b): "<i>and a proceeding to approve or disapprove a proposed modification or termination under Section 411 may be commenced by the settlor.</i>" (<i>this language is now optional under 2004 amendments.</i>)</p> <p>Adds the following provisions: <u>(c) Nothing in this section or the Tennessee Uniform Trust Code is intended to create or imply a duty for a trustee to make or seek approval of a modification, termination, combination or division, and a trustee is not liable for not making or seeking approval of a modification, termination, combination or division.</u> <u>(d) No modification, termination, combination or division may be made pursuant to Sections 33 through 39 that:</u> <u>(1) Results in the trust not qualifying for the federal or state marital or charitable income, gift, estate or inheritance tax deduction if the trust would qualify but for the modification, termination, combination or</u></p>	<p style="text-align: center;">X</p> <p>In subsection (b), omits optional language. Also adds to (b): The settlor of a charitable trust may maintain a proceeding to modify the trust under RSA 564-B:4-413, <u>and in such proceeding, the director of charitable trusts shall be joined as a necessary party.</u></p>	

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			<u>division;</u> <u>(2) Results in the trust being subject to the federal or state generation skipping transfer tax if the trust would not be subject to the generation skipping transfer tax but for the modification, termination, combination or division; or</u> <u>(3) Results in an overall increase in federal or state estate, inheritance, gift or generation-skipping transfer taxes.</u>		
§411	<p style="text-align: center;">X</p> <p>Omits from [UTC §411(a)] optional language “If, upon petition, the court finds that the settlor and all beneficiaries consent to the modification or termination of a noncharitable irrevocable trust, the court shall approve the modification or termination even if the modification or termination is inconsistent with the material purpose of the trust.” <i>(2004 amendment not adopted.)</i></p> <p>Also omits from [UTC §411(a)] optional language: “This subsection does not apply to irrevocable trusts created before or to revocable trusts that become irrevocable before [the effective date of this [Code] [amendment].].” <i>(2004 amendment not adopted.)</i></p>	<p style="text-align: center;">X</p> <p>Omits first optional passage beginning “A noncharitable irrevocable trust...”</p> <p>Changes the second optional passage to read: “<u>If the settlor and all beneficiaries consent to the modification or termination of an irrevocable trust, the court shall enter an order approving the modification or termination even if the modification or termination is inconsistent with a material purpose of the trust, if the court finds that the modification or termination is in the best interests of the beneficiaries.</u>”</p> <p>Also omits from subsection (1) [UTC §411(a)] optional language: “This subsection does not apply to irrevocable trusts created before or to revocable trusts that become irrevocable before [the effective date of this</p>	<p style="text-align: center;">X</p> <p>Changes and adds to subsection (a): (a) <u>During the settlor's lifetime, a noncharitable irrevocable trust may be modified or terminated by the trustee upon consent of all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust if the settlor does not object to the proposed modification or termination. Nothing herein shall be construed to preclude the trustee from obtaining court approval of the modification or termination. The trustee shall notify the settlor of the proposed modification or termination not less than sixty (60) days before initiating the modification or termination. The notice of modification or termination must include:</u> <u>(1) an explanation of the reasons for the proposed modification or</u></p>	<p style="text-align: center;">X</p> <p>Omits (a) and optional subsection (c).</p>	<p style="text-align: center;">X</p> <p>Numbered as § 4-411A</p> <p>In subsection (1) [UTC (a)] adds: “<u>Except for a trust established by a court under section 475.092, 475.093, 511.030, RSMo, or 42 U.S.C. Section 1396p(d)(4), a noncharitable...</u>” and omits optional language “If, upon petition, the court finds that the settlor and all beneficiaries consent to the modification or termination of a noncharitable irrevocable trust, the court shall approve the modification or termination even if the modification or termination is inconsistent with the material purpose of the trust.” <i>(2004 amendment not adopted.)</i></p> <p>Also omits from [UTC §411(a)] optional language: “This subsection does not apply to irrevocable trusts created before</p>

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		[Code] [amendment].]" (2004 amendment not adopted.)	<p><u>termination:</u> <u>(2) the date on which the proposed modification or termination is anticipated to occur; and</u> (3) the date, not less than sixty (60) days after the giving of the notice, by which the settlor must notify the trustee of an objection to the proposed modification or termination. <u>(b) Following the settlor's death,</u> a noncharitable irrevocable trust... (2004 amendments not adopted.)</p> <p>Adds to the beginning of subsection (b): <u>Following the settlor's death,</u> a noncharitable...</p> <p>Omits optional subsection (c). (made optional by 2004 amendments)</p> <p>Adds the following provisions: <u>(e) Solely for purposes of this section, the term "noncharitable irrevocable trust" refers to a trust that is not revocable by the settlor with respect to which:</u> <u>(1) No federal or state income, gift, estate or inheritance tax charitable deduction was allowed upon transfers to the trust; and</u> <u>(2) the value of all interests in the trust owned by charitable organizations does not exceed five percent (5%) of the value of the trust.</u></p>		<p>or to revocable trusts that become irrevocable before [the effective date of this [Code] [amendment].]" (2004 amendment not adopted.)</p> <p>In subsection 1. [UTC (a)] adds: "...and all beneficiaries, <u>without court approval</u>, even if..." And replaces [guardian] with <u>conservator ad litem</u>.</p> <p>Omits subsections (b) and (c).</p>
§412				X	X

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				Adds to (a): <u>“Upon petition by the trustee or trustees, the director of charitable trusts (in the case of a charitable trust) or an interested party other than the settlor,</u> the court may modify the administrative or dispositive terms of a trust or terminate the trust if,…”	In subsection (1) [UTC (a)], omits “administrative” in the phrase “The court may modify the <i>administrative</i> or dispositive terms…” Replaces UTC subsection (b) with: <u>2. The court may modify the management or administrative terms of a trust if modification will further the purposes of the trust.</u>
§413		X Adds to subsection (1) [UTC (a)]: “...charitable purpose of a <u>trust</u> becomes unlawful,…” In paragraph (2)(B) [UTC (b)(2)], changes “fewer than 21 years” to “fewer than <u>50</u> years.”		X Changes the language in (a) to read: “...if a particular charitable purpose becomes <u>impossible, impracticable, illegal, obsolete ineffective or prejudicial to the public interest to achieve:</u> ” Adds language and changes language in (a)(3): <u>“upon petition by the trustee or trustees, the director of charitable trusts or an interested party other than the settlor,</u> the court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, <u>to a charitable purpose which is useful to the community and which fulfills as nearly as possible the general charitable intent of the settlor.</u>	
§414	X Sets the minimum trust amount at	X Sets the minimum trust amount	X Sets the minimum trust amount	X Sets the minimum trust amount	X Sets the minimum trust amount

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	\$100,000 in subsection (1) [UTC (a)].	at \$100,000 in subsection (1) [UTC (a)].	<p>at \$100,000 in subsection (a).</p> <p>Changes subsection (c) to read: Upon the termination of a trust under this section, the trustee shall distribute the trust property to or for the benefit of the beneficiaries, in such shares as the trustee (or the court if a court proceeding) determines, after taking into account the interests of income and remainder beneficiaries so as to conform as nearly as possible to the intention of the settlor, but a trust that qualified for the marital deduction for tax purposes shall only be distributed to the spouse of the settlor for whom the trust was created.</p> <p>Adds subsection (e): This section shall not limit the right of a trustee, acting alone, to terminate a trust in accordance with applicable provisions of the governing instrument.</p>	<p>at \$100,000 in subsection (a).</p> <p>In subsection (d), adds: "...or preservation or to a fund held or created by a town or other municipality under RSA 31:19 or RSA 31:19-a.</p>	at \$100,000 in subsection 1.
§415					
§416	<p style="text-align: center;">X</p> <p>Changes the language to read: To achieve the settlor's tax objectives, the court may modify the terms of a trust <u>in order to achieve the settlor's tax objectives....</u></p>				
§417					<p style="text-align: center;">X</p> <p>Adds to the end of this section: <u>The terms of each new trust created by a division under this</u></p>

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					<p><u>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 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 combination as authorized by this section.</u></p>
§501	<p style="text-align: center;">X</p> <p>Replaces “to the extent a beneficiary’s interest is not <i>subject to...</i>” with “to the extent a beneficiary’s interest is not <u>protected by...</u>” (2005 amendment not adopted.)</p>	<p style="text-align: center;">X</p> <p>Replaces “to the extent a beneficiary’s interest is not <i>subject to...</i>” with “to the extent a beneficiary’s interest is not <u>protected by...</u>” (2005 amendment not adopted.)</p> <p>Omits the following italicized language: “...by attachment or present or future distributions to <i>or for the benefit of</i> the beneficiary <i>or other means.</i>”</p>	<p style="text-align: center;">X</p> <p>Replaces “to the extent a beneficiary’s interest is not <i>subject to...</i>” with “to the extent a beneficiary’s interest is not <u>protected by...</u>” (2005 amendment not adopted.)</p>		<p style="text-align: center;">X</p> <p>Adds: “<u>Except as otherwise provided in sections 456.5-506 to 456.5-507, to the extent...</u>”</p> <p>Changes the following: “To the extent a beneficiary’s interest is not protected by a spendthrift provision, <u>an assignee or a judgment creditor of the beneficiary may, without court order,</u> reach the beneficiary’s interest...”</p>
§502	<p style="text-align: center;">X</p> <p>Adds to subsection (1) [UTC (a)]: A spendthrift provision for a beneficiary other than the settlor is valid only if it restrains both</p>		<p style="text-align: center;">X</p> <p>Omits from subsection (c): “except as otherwise provided in this article”</p>		<p style="text-align: center;">X</p> <p>Omits “only” from subsection 1. [UTC (a)] and adds: “...restrains <u>either the voluntary or involuntary transfer or both...</u>”</p>

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	<p>voluntary and involuntary transfer of a beneficiary's interest, <u>even if the beneficiary is the trustee or cotrustee of the trust.</u></p> <p>Adds to subsection (2) [UTC (b)]: A term of a trust providing that the interest of a beneficiary <u>other than the settlor</u> is held subject to a "spendthrift trust,"...</p>				
§503	<p style="text-align: center;">X</p> <p>Omits [UTC] subsections (b) and (c). <i>(2005 amendment not adopted.)</i></p> <p>Adds: <u>"(2) Even if a trust contains a spendthrift provision, a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance, or a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust, may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary.</u></p> <p><u>(3) A spendthrift provision is unenforceable against a claim of this state or the United States to the extent a statute of this state or federal law so provides."</u> <i>(2005 amendment not adopted.)</i></p>	<p style="text-align: center;">X</p> <p>Replaces the entire section with the following: <u>There are no exceptions to spendthrift provisions except as provided in sections 504, 505 and 506.</u></p>	<p style="text-align: center;">X</p> <p>Replaces the entire section with the following: <u>A spendthrift provision is unenforceable against a claim of this state to the extent a statute of this state so provides. (this language was originally found in the pre-2005 amendment UTC §503(c).)</u></p>	<p style="text-align: center;">X</p> <p>Replaces subsection (b) with the following: <u>(b) A spendthrift provision is unenforceable against:</u> <u>(1) a beneficiary's child for whom there is a judgment or court order against the beneficiary for support;</u> <u>(2) a beneficiary's spouse or former spouse who has a judgment or court order against the beneficiary for alimony but only for and to the extent that such judgment or court order expressly specifies the alimony amount attributable to the most basic food, shelter, and medical needs of the spouse or former spouse;</u> <u>(3) a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust;</u> <u>(4) a claim of this state or the United States to the extent a statute of this state or federal law so provides.</u> <u>(c) A claimant against whom a spendthrift provision cannot be</u></p>	<p style="text-align: center;">X</p> <p>Adds subpart (2), following the definition of "child", to define "judgment."</p> <p>Omits [UTC] subsections (b) and (c). <i>(2005 amendment not adopted.)</i></p> <p>Adds: <u>2. Even if a trust contains a spendthrift provision, a beneficiary's child, spouse, or former spouse who has a judgment against the beneficiary for support or maintenance, or a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust, may obtain from a court an order attaching present or future trust income. If there is more than one permissible distributee, the court may grant relief as is equitable under the circumstances.</u></p> <p><u>3. A spendthrift provision is unenforceable against a claim of this state or the United States to the extent a statute of this state or federal law so provides.</u></p>

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				<u>enforced may obtain from court an order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to such relief as is appropriate under the circumstances.</u>	<i>(2005 amendment not adopted).</i>
§504	<p style="text-align: center;">X</p> <p>Omits [UTC] subsection (e). <i>(2004 amendment not adopted.)</i></p>	<p style="text-align: center;">X</p> <p>Omits subsection (a).</p> <p>Omits from the beginning of subsection (1) [UTC (b)]: “Except as otherwise provided in subsection (c),...”</p> <p>Omits subsection (c).</p> <p>Rewords subsection (3) [UTC (e)] as follows: <u>A creditor may not reach the interest of a beneficiary who is also a trustee, or otherwise compel a distribution, if the trustee’s discretion is limited by an ascertainable standard.</u></p>	<p style="text-align: center;">X</p> <p>Omits subsections (a), (c), and (e). <i>(2004 amendment not adopted.)</i></p>	<p style="text-align: center;">X</p> <p>In subsection (b) omits” ...<i>and (d)...</i>”</p> <p>Changes (c)(1) by <i>omitting</i> “or maintenance” of the child and by <i>adding</i> “<u>or for alimony for the beneficiary’s spouse, or former spouse...</u>”</p> <p>In paragraph (c)(2) adds: <u>...and with respect to alimony, only for and to the extent that the judgment or court order expressly specifies the alimony amount attributable to the most basic food, shelter and medical needs of the spouse or former spouse.</u></p> <p>Changes subsection (d) to begin: “<u>Subsection (b) does not limit...</u>”</p> <p>Replaces the language of subsection (e) with the following: <u>A creditor or assignee of a beneficiary may not compel a distribution to the beneficiary solely because the beneficiary is a trustee if the beneficiary trustee does not have the discretion to make or participate in making distributions to</u></p>	<p style="text-align: center;">X</p> <p>Omits subsections (a) through (c).</p> <p>Adds new subsection (1): <u>A beneficiary’s interest in a trust that is subject to the trustee’s discretion does not constitute an interest in property or an enforceable right even if the discretion is expressed in the form of a standard of distribution or the beneficiary is then serving as a trustee or co-trustee. A creditor or other claimant may not attach present or future distributions from such an interest or right, obtain an order from a court forcing the judicial sale of the interest or compelling the trustee to make distributions, or reach the interest or right by any other means even if the trustee has abused the trustee’s discretion.</u></p> <p>Adds new subsection (3): <u>This section applies whether or not an interest is subject to a spendthrift provision.</u></p> <p>Adds new subsection (4): <u>For purposes of this section, a</u></p>

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				<p><u>himself or herself, if the beneficiary-trustee’s discretion to make or participate in making distributions to himself or herself is limited by an ascertainable standard, or if the beneficiary-trustee’s discretion to make or participate in making distributions to himself or herself is exercisable only with the consent of a cotrustee or another person holding an adverse interest. Under such circumstances, the creditor or assignee may compel a distribution only to the extent the creditor or assignee otherwise may compel a distribution where the beneficiary not acting as trustee or cotrustee.</u></p>	<p><u>beneficiary’s interest in a trust is subject to the trustee’s discretion if that interest does not constitute a mandatory distribution as defined in subsection 1 of section 456.5-506.</u></p> <p>Omits [UTC] subsection (e). (2004 amendment not adopted.)</p>
§505	<p style="text-align: center;">X</p> <p>Adds to (1)(a) [UTC (a)(1)]: During the lifetime of the settlor, the property of a revocable trust is subject to the claims of the settlor’s creditors. <u>If a 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.</u></p> <p>Adds to (1)(b) [UTC (a)(2)]: With respect to an irrevocable trust <u>other than an irrevocable trust that meets the requirements of Section 25-6-14</u>, a creditor or assignee of the settlor may reach the maximum...</p>		<p style="text-align: center;">X</p> <p>In (a)(3), replaces “at the settlor’s death” with “immediately preceding the settlor’s death” and omits “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.</p> <p>Condenses subparts (1) and (2) of (b) into subsection (b) and omits from (1) the following: “the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of</p>	<p style="text-align: center;">X</p> <p>Adds to (a)(2): <u>This subparagraph shall not apply to an irrevocable “special needs trust” established for a disabled person as described in 42 U.S.C. 1396p(d)(4) or similar federal law governing the transfer to such a trust.</u></p> <p>Omits in (a)(3): “statutory allowances to a surviving spouse and children” and adds: <u>This section does not apply to the proceeds and any other benefits of a policy of life or endowment insurance effected by the settlor on the settlor’s own life or on another life as provided in RSA 408:2.</u></p>	<p style="text-align: center;">X</p> <p>Omits from subsection 1. [UTC (a)], “the following rules apply” and merges UTC subpart (a)(1) into subsection 1.</p> <p>UTC subpart (a)(2) is subsection 2 and limits this subsection to irrevocable trusts <u>without a spendthrift provision.</u></p> <p>Omits UTC subpart (a)(3).</p> <p>Inserts subsection 3 addressing irrevocable trusts with a spendthrift provision.</p> <p>Inserts subsection 4 regarding notice and provides a standard form for newspaper publication.</p>

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	Adds to (1)© [UTC (a)(3)]: ... the property of a trust that was revocable at the settlor's death, <u>but not property received by the trust as a result of the death of the settler which is otherwise exempt from the claims of the settlor's creditors</u> , is subject to...		the property to the power; and"		Subsection 5 = UTC subsection (b).
§506	X Omits [UTC] subsection (a). (2005 amendment not adopted.)	X Omits [UTC] subsection (a). (2005 amendment not adopted.)	X Omits [UTC] subsection (a). (2005 amendment not adopted.)		
§507					
§601			X Adds the following sentence to the end of the section: <u>To be effective as a post death disposition of property transferred during the transferor's life or by the transferor's will to a trust of which the transferor is the settler or deemed to be the settler, neither a revocable nor irrevocable trust existing on or executed after the effective date of the Tennessee Uniform Trust Code has to be executed with the formalities of a will.</u>		
§602		X Adds paragraph (2)©: <u>Upon the revocation or amendment of the trust by fewer than all the settler , the trustee shall notify the other settler of the revocation or amendment.</u>	X Adds paragraph (b)(3): <u>at the death of one settler, each surviving settler shall have the right to revoke the trust as to that surviving settlor's portion of the trust as determined by the type of property in accordance with</u>	X Adds paragraph (b)(3): <u>upon the revocation or amendment of the trust by fewer than all of the settler , the trustee shall promptly notify the other settlers of the revocation or amendment.</u>	X Changes subparts (1) and (2) of subsection 3. [UTC ©] to read: <u>(1) if the terms of the trust provide a method of amendment or revocation, by substantially complying with any method provided in the terms of the</u>

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			<p><u>(b)(1) and (b)(2).</u></p> <p>Adds to the end of subsection (d): <u>However, with respect to community property under (b)(1) of this section, the trustee shall deliver the property one-half to each spouse unless the governing instrument specifically states otherwise.</u></p> <p>Replaces in subsection (f): “only with the approval of the court supervising the conservatorship or guardianship” with <u>“only if the trust instrument specifically grants to the conservator or guardian the power to revoke or amend the trust or distribute trust property.”</u></p>	<p>Condenses ©(2) into one paragraph omitting the language of ©(2)(A). “(2) by any other method manifesting clear and convincing evidence of the settlor’s intent if the terms of the trust do not provide a method or do not expressly prohibit methods other than methods provided in the terms of the trust.”</p> <p>Changes the language of (e) to read: “(e) A settlor’s powers with respect to revocation, amendment, or distribution of trust property may not be exercised by an agent under a power of attorney <u>only to the extent expressly authorized by the terms of the trust or the power. Any such revocation or amendment by an agent under a power of attorney shall be effective only if made in a signed record and shall be effective only when sent to the trustee.</u>”</p> <p>Changes the language of (f) to read: “A conservator of the settlor or a <u>guardian of the estate of the settlor, or, if no guardian of the estate has been appointed, a guardian of the person of the settlor</u> may exercise a settlor’s powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising</p>	<p><u>trust; or (2) if the terms of the trust do not provide a method, by any other method manifesting clear and convincing evidence of the settlor’s intent, including the terms of a later duly probated will or codicil that identify the trust being revoked or the trust terms being amended.</u></p> <p>In subsection 6. [UTC (f)], replaces “guardian” and “guardianship” with <u>“conservator ad litem.”</u></p>

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				the conservatorship or guardianship.	
§603	<p style="text-align: center;">X</p> <p>Adds subsection (2): <u>If a revocable trust has more than one settler, the duties of the trustee are owed to all of the settler having capacity to revoke the trust.</u></p>	<p style="text-align: center;">X</p> <p>Omits the optional phrase “and the settler has capacity to revoke the trust” from subsection 1 [UTC (a)].</p>	<p style="text-align: center;">X</p> <p>Adds subsection (b): If a revocable trust has more than one settler, the duties of the trustee are owed to all of the settler having capacity to revoke the trust.</p>		<p style="text-align: center;">X</p> <p>Inserts subsections 2. And 3.: <u>2. A settler is presumed to have capacity for the purposes of subsection 1 of this section until either the settler is adjudicated totally incapacitated or disabled or the trustee has received an affidavit of incapacity.</u> <u>3. If a revocable trust has more than one settler, the duties of the trustee are owed to all of the settler having capacity to revoke the trust.</u></p> <p>Inserts subsection 5: <u>5. In this section, an “affidavit of incapacity” means a written certificate furnished by at least one licensed medical doctor that states that the settler lacks capacity to revoke the trust.</u></p>
§604	<p style="text-align: center;">X</p> <p>[75-7-607] <u>Adds subsection (3): With respect to a potential contest, the trustee is only liable for actions taken two or more business days after the trustee has actual receipt of written notice from a potential contestant. The written notice shall include the name of the settler or of the trust, the name of the potential contestant, and a description of the basis for the potential contest. The written notice shall be mailed to the trustee</u></p>		<p style="text-align: center;">X</p> <p>In subsection (a) and (b) replaces “at the settler’s death” with “immediately preceding the settler’s death”</p> <p>Uses two years in (a)(1).</p> <p>Changes subsection (b) to create liability by changing the last sentence to read: “The trustee is subject to liability for doing so if:”</p>	<p style="text-align: center;">X</p> <p>Uses 180 days in (a)(2) rather than 120.</p>	<p style="text-align: center;">X</p> <p>Changes subsection 1. [UTC (a)] to say “within the <u>earliest of:</u>”</p> <p>Subpart 1.(1) is <u>two</u> years. Subpart 1.(2) is <u>six</u> months. Adds subpart 1.(3): <u>in the case of a trust that was revocable at the settlor’s death that is entitled to a distribution under the settlor’s will, on the date that any contest of that will is barred under the provisions of section 473.083, RSMo, provided that a copy of</u></p>

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	<p><u>at the principal place of administration of the trust by registered or certified mail, return receipt requested, or served upon the trustee in the same manner as a summons in a civil action. Any other form or service of notice is not sufficient to impose liability on the trustee for actions taken pursuant to the terms of the trust.</u></p>		<p>Changes the language of and adds to subsection ©: “...is liable to return to the court any distribution received for proper distribution. If the beneficiary refuses to return the distribution after being ordered by the court, the beneficiary shall be liable for all costs incurred for recovery of the distribution.”</p>		<p><u>the trust instrument was filed with the probate division within ninety days of the first publication of notice of granting of letters on the estate of the decedent under section 473.033, RSMo.</u></p> <p>Adds subsection 2.: <u>For purposes of subdivision (2) of subsection 1 of this section, the trustee may provide the documentation and information set forth in that subsection to: (1) all persons who would be entitled to notice of granting of letters on the estate of the decedent under section 473.033, RSMo; and (2) all persons whose interests are, in the opinion of the trustee, adversely affected by the terms of the trust.</u></p>
§701					<p style="text-align: center;">X</p> <p>In subsection 2. [UTC (b)], replaces “reject” with “<u>decline.</u>” In subpart 3.(1) [UTC ©(1)], replaces “rejection” with “<u>declination.</u>”</p>
§702	<p style="text-align: center;">X</p> <p>Adds to optional subsection (3) and creates subsection (4): (3) A regulated financial service institution qualified to do trust business in this state need not give bond, unless required by the terms of the trust. <u>The cost of any bond shall be borne by the trust.</u></p>	<p style="text-align: center;">X</p> <p>In subsection (3) [UTC ©], replaces “regulated financial-service institution” with “<u>financial institution.</u>”</p> <p>Adds subsection (4): 4. Cost charged to trust. <u>Unless otherwise directed by the court, the cost of a bond is charged to</u></p>	<p style="text-align: center;">X</p> <p>Replaces the optional subsection © with: © <u>A state or national bank, savings institution, or trust company authorized to exercise fiduciary powers and regulated by the office of the comptroller of the currency, office of thrift supervision, the Department of Financial Institutions or</u></p>	<p style="text-align: center;">X</p> <p>Changes © to read: <u>The following entities need not give bond, even if required by the terms of the trust:</u> <u>(1) Any trust company, bank, or savings association incorporated under the laws of this state, or any national bank or federally chartered savings association</u></p>	<p style="text-align: center;">X</p> <p>Omits the optional subsection ©.</p>

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	(4) Unless otherwise directed by the court, the cost of the bond is charged to the trust.	the trust.	equivalent state banking supervisors need not give bond, even if required by the terms of the trust.	duly authorized and located within this state; and (2) Any trust company, bank, or savings association incorporated under the laws of any other state, or any national bank or federally chartered savings association having its principal place of business in any other state, if such entity is permitted to exercise fiduciary powers in this state pursuant to RSA 390:13, II. Omits optional subsection (d).	
§703	X Changes in subsection (5) [UTC (e)]: to read: "...performance of a function the settlor <u>intended</u> the trustees to perform jointly <u>as determined from the terms of the trust. If one of the cotrustees is a regulated financial service institution qualified to do trust business in this state and the remaining cotrustees are individuals, a delegation by the individual cotrustees to the regulated financial service institution of the performance of trust investment functions shall be presumed to be in accordance with the settlor's intent unless the terms of the trust specifically provide otherwise...."</u>	X Omits from subsection (4) [UTC (d)]: "under other law" and "and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the property,"		X Adds new subsection (i): <u>A trustee shall keep each cotrustee and any other fiduciary designated by the terms of the trust reasonably informed about the administration of the trust, to the extent the trustee has knowledge that the other cotrustee or other fiduciary designated by the terms of the trust does not have of the trustee's action, or regarding other material information (or the availability of such information) related to the administration of the trust that would be reasonably necessary for the cotrustee or other fiduciary designated by the terms of the trust to perform his or her duties as a trustee or other fiduciary of the trust.</u>	X Changes subsection 1. [UTC (a)] to read: <u>Cotrustees shall act by majority decision.</u> Changes subsection 5 [UTC (e)] to read: "A trustee may delegate to a cotrustee the performance of a function <u>in accordance with subsection 1 of section 456.8-807.</u> Unless..."
§704	X	X	X		X

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	<p>Adds to (1)(f) [UTC (a)(6)]: “a guardian or conservator is appointed for an individual serving as trustee, <u>unless otherwise provided in the trust.</u>”</p> <p>Omits “of a noncharitable trust” from subsection (3) [UTC (c)].</p>	<p>Changes the language in subpart (4)(b) [UTC (d)(2)]: “By a person <u>appointed by unanimous agreement of the charitable organizations</u> expressly designated to receive distributions under the terms of the trust; or”</p>	<p>Omits “guardian” from paragraph (a) (6).</p>		<p>Replaces, in subsection 1.(1) [UTC (a)(1)], “rejects” with “<u>declines.</u>”</p> <p>Omits from subsection 3. [UTC (c)]: “of a noncharitable trust”</p> <p>Adds to subsection 3.(1) “...in the terms of <u>or pursuant to...</u>”</p> <p>Changes subsection 3.(2): “...appointed by <u>a majority in number</u> of the qualified beneficiaries; or”</p> <p>Omits subsection (d).</p>
§705					
§706				<p style="text-align: center;">X</p> <p>Adds to (b): “<u>In addition to the power to remove a trustee pursuant to RSA 564:9, the court may remove a trustee if:...</u>”</p>	<p style="text-align: center;">X</p> <p>Changes subpart 2.(4) to read: <u>the trustee has substantially and materially reduced the level of services provided to that trust and has failed to reinstate a substantially equivalent level of services within ninety days after receipt of notice by the settlor, a cotrustee, or a qualified beneficiary or removal is requested by all of the qualified beneficiaries and in either such case the party seeking removal establishes to the court that:</u> Subparts 2.(4)(a), (b), and (c), mirror the language of UTC (b)(4).</p> <p>Adds subsection 3. addressing an action instituted pursuant to 2.(4).</p>

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					UTC (c) becomes subsection (4).
§707		<p style="text-align: center;">X</p> <p>Adds to subsection (1): Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to <u>the cotrustee</u>, successor trustee or other person entitled to it, a trustee who has resigned or been removed or <u>disqualified</u> has the duties of a trustee and the powers necessary to protect the trust property.</p> <p>Adds “or disqualified” to subsection (2).</p>			
§708	<p style="text-align: center;">X</p> <p>Omits subsection (b) in its entirety.</p>	<p style="text-align: center;">X</p> <p>Adds to subsection (1):...under the circumstances. <u>A percentage fee is allowable under this section only if the fee is reasonable. Among the factors a court may consider as guides in determining the reasonableness of fees under this section are the following:</u></p> <p><u>A. The time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the service properly;</u></p> <p><u>B. The likelihood, if apparent to the trustee, that the acceptance of the particular employment will preclude the person employed from other employment;</u></p>	<p style="text-align: center;">X</p> <p>Adds to subsection (a): “If the terms of a trust do not specify the trustee’s compensation, <u>and if the settlor, if living, otherwise a majority of the qualified beneficiaries as defined in Section 4(12)(A), have not otherwise agreed</u>, a trustee is entitled to compensation that is reasonable under the circumstances.</p> <p>Adds subsections (c) and (d): <u>(c) Factors for the court to consider in deciding upon a trustee’s compensation shall include the size of the trust, the nature and number of the assets, the income produced, the time and responsibility required, the expertise required, any</u></p>	<p style="text-align: center;">X</p> <p>In subsection (a) and (b) changes language to read: “...the trustee’s, <u>trust advisor’s, or trust protector’s</u> compensation, <u>each such fiduciary</u> is entitled...”</p> <p>In paragraph (b)(1) adds: “...trustee, <u>trust advisor, or trust protector</u> are ...”</p>	<p style="text-align: center;">X</p> <p>Adds subsection 3. : <u>For purposes of this section, reasonable compensation may include fees that take into account the administration of both income and principal whether or not the will or trust instrument contains provisions relating to compensation of the trustee.</u></p>

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		<p><u>C. The fee customarily charged in the locality for similar services;</u> <u>D. The amounts involved and the results obtained;</u> <u>E. The time limitations imposed by the trustee or by the circumstances; and</u> <u>F. The experience, reputation and ability of the person performing the services.</u></p> <p><u>The order of the factors in this subsection does not imply their relative importance.</u></p> <p>Adds subsection (3): <u>3. Review; refunds if excessive.</u> <u>On petition of a qualified beneficiary, after notice to all qualified beneficiaries, the court may review the reasonableness of the compensation determined by the trustee for the trustee's services. A trustee who has received excessive compensation from a trust may be ordered to make appropriate refunds.</u></p>	<p><u>management or sale of real property or closely held business interests, any involvement in litigation to protect trust property, and other relevant factors.</u> <u>(d) Subject to the court's authority as provided in subsection (b), the fees set forth in the published fee schedule of a corporate trustee shall be presumed to be reasonable, unless otherwise provided by the terms of the trust.</u></p>		
§709			<p style="text-align: center;">X</p> <p>Adds to subsection (b): “An advance, either by the trustee <u>or by a person named in Section 51(c)(1), of money...</u>”</p>	<p style="text-align: center;">X</p> <p>In paragraph (a) and (b) adds “<u>trust advisor, or trust protector</u>” after “trustee,”</p>	
§801	<p style="text-align: center;">X</p> <p>Requires the trustee to administer the trust <u>expeditiously</u> as well as in good faith.</p>		<p style="text-align: center;">X</p> <p>Adds to subsection (a): “Upon acceptance of a trusteeship, the trustee shall administer the trust</p>	<p style="text-align: center;">X</p> <p>Adds the following language: “...the trustee shall administer, <u>invest and manage the trust and</u></p>	

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			<p><u>until such time as the trust terminates or a successor trustee is appointed and all assets are delivered in good faith...</u></p> <p>Adds subsection (b): <u>A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.</u></p>	<p><u>distribute the trust property in good faith...</u></p>	
§802	<p style="text-align: center;">X</p> <p>Adds to subsection (3)(c) [UTC (c)(3)]: <u>“an agent of the trustee, including but not limited to an attorney, accountant, or financial advisor; or</u></p> <p>Omits from subsection (6) [UTC (f)]: the word “otherwise” in the phrase “if the investment <i>otherwise</i> complies with the prudent investor rule,” and “In addition to its compensation for acting as trustee,...” and “If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee must at least annually notify the persons entitled under section 813 to receive a copy of the trustee’s annual report of the rate and method by which that compensation was determined.” (2004 amendment not adopted.)</p> <p>Changes subsection (8) [UTC (h)] to read: “This section does not preclude the following <u>actions by the trustee:</u>”</p> <p>Adds subparts to subsection (8) [UTC (h)]:</p>	<p style="text-align: center;">X</p> <p>In subsection (4) [UTC (d)] qualifies “obtains an advantage” with the language <u>“beyond the normal commercial advantage for such a transaction.”</u></p> <p>Adds the following language to subsection (4) [UTC (d)]: <u>A transfer or obligation is not voidable under this section against a person who took property from the trustee in good faith for a reasonably equivalent value or against any subsequent transferee or obligee.</u></p> <p>Adds to subpart (8)(c) [UTC (h)(3)]: “...decendent's estate, a conservatorship <u>or a guardianship</u> of which the trustee is a fiduciary...”</p>	<p style="text-align: center;">X</p> <p>Adds to subsection (b): “Subject to the rights of persons dealing with or assisting the trustee as provided in Section 88 <u>or as may otherwise be allowed under Tennessee law, a sale,...</u>”</p> <p>Adds to subsection (f): “...a conflict between personal and fiduciary interests <u>of the trustee...</u>”</p> <p>Omits from subsection (f): the word “otherwise” in the phrase “if the investment <i>otherwise</i> complies with the prudent investor rule” (2004 amendment not adopted.)</p> <p>Omits from subsection (f): “In addition to its compensation for acting as trustee,”</p> <p>Condenses the rest of subsection (f) to read: “The trustee may be</p>	<p style="text-align: center;">X</p> <p>Adds the following language to (a): “A trustee shall administer, <u>invest and manage the trust and distribute the trust property solely...</u>”</p> <p>Replaces subsection (f) as follows: <u>The following transactions, if fairly priced and in accordance with the interest of the beneficiaries and the purposes of the trust, are not presumed to be affected by a conflict between the trustee’s personal and fiduciary interest provided that any investment made pursuant to the transaction otherwise complies with the prudent investor rule of article 9:</u></p> <p><u>(1) an investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity</u></p>	<p style="text-align: center;">X</p> <p><i>Replaces</i> UTC subsection (f) with subsection 6.: <u>6. The following transactions are not presumed to be affected by a conflict between the trustee's personal and fiduciary interest provided that any investment made pursuant to the transaction complies with the Missouri Prudent Investor Act. (1) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee. (2) the placing of securities transactions by a trustee through a securities broker that is a part of the same company as the trustee, is owned by the trustee, or is affiliated with the trustee. (3) In addition to the trustee's fees charged to the trust, the trustee, its affiliate, or associated entity may be compensated for any transaction or provision of services described in this subsection 6 or in subdivisions (4), (5), or (6) of subsection 8 of this section; provided, however, that with respect</u></p>

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	<p>(f) collecting, holding, and retaining trust assets received from a trustor until, in the judgment of the trustee, disposition of the assets should be made, even though the assets include an asset in which the trustee is personally interested;</p> <p>(g) acquiring an undivided interest in a trust asset in which the trustee, in any trust capacity, holds an undivided interest;</p> <p>(h) borrowing money to be repaid from the trust assets or otherwise;</p> <p>(i) advancing money to be repaid from the assets or otherwise;</p> <p>(j) employing persons, including attorneys, auditors, investment advisers, or agents, even if they are associated with the trustee: (i) to advise or assist the trustee in the performance of the trustee's administrative duties or perform any act of administration, whether or not discretionary; or (ii) to act without independent investigation upon their recommendations;</p> <p>(k) if a governing instrument or order requires or authorizes investment in United States government obligations, investing in those obligations, either directly or in the form of securities or other interests, in any open-end or closed-end management type investment company or investment trust registered under the provisions of the Investment Company Act of 1940, 15 U.S.C. Sections 80a-1 through 80a-64 if:</p> <p>(i) the portfolio of the investment company or investment trust is limited to United States government obligations, and repurchase agreements are fully collateralized by United States government obligations; and</p> <p>- 66 -</p>		<p>compensated by the investment company or investment trust for providing those services out of fees charged to the trust if the trustee at least annually notifies the persons entitled under Section 71 to receive a copy of the trustee's annual report of the rate and method by which the compensation was determined.”</p>	<p><u>other than as trustee provided that any investment made pursuant to the transaction otherwise complies with the prudent investor rule of Article 9 of RSA 564-B.</u></p> <p><u>(2) the placing of securities transactions by a trustee through a securities broker that is a part of the same company as the trustee, is owned by the trustee, or is affiliated with the trustee;</u></p> <p><u>(3) any loan from the trustee or its affiliate;</u></p> <p><u>(4) an investment in an insurance contract purchased from an insurance agency owned by, or affiliated with, the trustee, or any of its affiliates;</u></p> <p><u>(5) an agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee, or any of its affiliates;</u></p> <p><u>(6) payment of reasonable compensation to the trustee, or any of its affiliates;</u></p> <p><u>(7) a transaction between a trust and another trust, decedent's estate, guardianship or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;</u></p> <p><u>(8) a deposit of trust money in a financial institution operated by the trustee or an affiliate;</u></p>	<p><u>to any investment in securities of an investment company or investment trust to which the trustee or its affiliate provides investment advisory or investment management services or any services described in subdivision (5) of subsection 8 of this section.</u> the trustee shall at least annually notify the persons entitled under section 456.8-813 to receive a copy of the trustee's annual report of the rate or method by which the compensation was determined. <i>(2004 amendment not adopted.)</i></p> <p><i>Adds to subsection 8. [UTC (h)] that the transactions listed “are not presumed to be affected by a conflict between personal and fiduciary interests.”</i></p> <p><i>Adds “or an affiliate” to subpart 8.(4).</i></p> <p><i>Omits subpart (h)(5) and inserts: (5) a delegation and any transaction made pursuant to the delegation from a trustee to an agent that is affiliated or associated with the trustee, provided that notice of any compensation paid pursuant to the delegation is given as provided in subdivision (3) of subsection 6 of this section; or (6) any loan from the trustee or its affiliate.</i></p>

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	(ii) the investment company or investment trust takes delivery of the collateral for any repurchase agreement either directly or through an authorized custodian.			<p><u>(9) a delegation and any transaction made pursuant to the delegation from a trustee to an agent that is affiliated or associated with the trustee; or</u></p> <p><u>(10) an advance by the trustee of money for the protection of the trust.</u></p> <p>Replaces subsection (g) as follows: <u>If compensation, in addition to the trustee's fees charged to the trust is paid, to the trustee, its affiliate, or associated entity for any transaction or for the provision of services described in subsection (f) the trustee shall at least annually notify the persons that would be entitled under RSA 564-B:8-813 to receive a copy of the trustee's annual report of the rate or method by which the compensation was determined.</u></p> <p>Replaces subsection (h) as follows: <u>In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.</u></p>	

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				Replaces subsection (i) as follows: <u>The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.</u>	
§803				X Adds “ <u>administering</u> ” to the list of acts which must be impartial.	
§804			X Omits this section.	X Changes the language to read “In administering, investing, and managing <u>the trust and distributing the trust property</u> , the trustee...”	
§805				X Adds “... <u>and in investing and managing trust assets</u> ...”	
§806	X Omits: “... has special skills or expertise, or...”				
§807	X Omits this section in its entirety.	X Adds subsection (5): <u>Review of agent.</u> <u>Upon petition of a qualified beneficiary, after notice to all qualified beneficiaries, the trustee and the agent of the trustee, the court may review the employment of any agent by the trustee and the</u>	X Adds to (c): “...is not liable to the beneficiaries <u>for any act performed or omitted pursuant to written directions</u> or to the trust...”	X Adds to (a): “... <u>and investment and management functions to any person, even if such person is associated or affiliated with the trustee</u> ...”	

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		<u>reasonableness of the agent's compensation. Any agent who is found to have received excess compensation from a trust may be ordered to make appropriate refunds.</u>			
§808	<p style="text-align: center;">X</p> <p>Omits this section in its entirety.</p>		<p style="text-align: center;">X</p> <p>Adds to the end of subsection (a): “or contrary to the normal practice of the trustee in regard to the action requested.”</p> <p>Omits the following language from the end of subsection (b): <i>“unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.”</i></p> <p>Adds subsection (e): <u>In so following the directions under this section, the trustee is protected from liability as provided in T.C.A. §§35-3-122 and 123.</u></p>		<p style="text-align: center;">X</p> <p>Omits “manifestly” from subsection 2. [UTC (b)]: “...unless the attempted exercise is <i>manifestly</i> contrary to the terms...”</p>
§809					<p style="text-align: center;">X</p> <p>Adds to the end of this section: “...<u>except that this duty does not apply to, and the trustee is not responsible for, items of tangible personal property that are property of a trust revocable by the settlor and that are not in the possession or control of the</u></p>

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					trustee.”
§810		<p style="text-align: center;">X</p> <p>Adds to subsection (3): “Interest of trust, records. Except as otherwise provided in subsection 4, a trustee <u>not subject to federal or state banking regulation</u> shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary <u>to whom the trustee has delivered the property.</u>”</p>		<p style="text-align: center;">X</p> <p>In subsection (c), adds: “Except as otherwise provided in subsection (d) <u>and in RSA 564-B:8-816(a)(7)(B)</u>, a trustee...”</p>	
§811			<p style="text-align: center;">X</p> <p>Adds subsection (b): <u>A trustee may abandon or assign any claim that it believes is unreasonable to enforce to one or more of the beneficiaries of the trust holding the claim.</u></p>		
§812	<p style="text-align: center;">X</p> <p>[75-7-810.] Adds to the end of this section: “... committed by a former trustee, <u>unless the terms of the trust provide otherwise.</u>”</p>	<p style="text-align: center;">X</p> <p>The language remains the same, but the section is formatted to create two subsections.</p>	<p style="text-align: center;">X</p> <p>Adds the following to the end of the section: <u>No successor trustee appointed after the examination of the accounts of a trustee or the waiver of the examination by the beneficiaries shall be responsible for the acts and omissions of the prior trustee.</u></p>		

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§813	<p style="text-align: center;">X</p> <p>[75-7-811] Adds to subsection (1) [UTC (a)]: <u>“Except to the extent the terms of the trust provide otherwise, a trustee shall keep...Unless unreasonable under the circumstances, and unless otherwise provided by the terms of the trust a trustee shall...”</u></p> <p>Adds to subsection (2) [UTC (b)]: (2) <u>Except to the extent the terms of the trust provide otherwise, a trustee: (a) upon request of a qualified beneficiary, shall promptly furnish to the beneficiary a copy of the portions of the trust instrument which describe or affect the beneficiary's interest;</u></p> <p>Changes subsection (3) [UTC (c)] to read: (3) A trustee shall send <u>to the qualified beneficiaries who request it</u>, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including <u>the amount of the trustee's compensation or a fee schedule or other writing showing how the trustee's compensation was determined</u>, a listing of the trust assets and, if feasible, their respective market values. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee, <u>unless the terms of the trust provide otherwise</u>. A personal representative, conservator, or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.</p> <p>In subsection (4) [UTC (d)], uses “qualified beneficiary.”</p> <p>Omits [UTC] section (e). (2004 amendment not adopted.)</p>	<p style="text-align: center;">X</p> <p>Adds to subsection (1): “...a trustee shall promptly respond to a <u>qualified beneficiary's</u> request for <u>trustee's reports and other information reasonably related to the administration of the trust.</u>”</p> <p>Adds to subsection (3): “...their respective market values <u>and tax bases</u>. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee. A personal representative <u>of a deceased trustee or a conservator of the estate or, if no conservator has been appointed, a guardian of an incapacitated trustee</u> may send qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.”</p>	<p style="text-align: center;">X</p> <p>Replaces subsection (b) and (c) with different language.</p> <p>Omits subsection (e). (2004 amendment not adopted.)</p>	<p style="text-align: center;">X</p> <p>Replaces the entire section with language unique to New Hampshire. The language appears to be generally similar to the UTC version.</p> <p>2006 NH SB394 added two new paragraphs regarding written confidentiality restrictions and the duty of trust advisors, trust protectors, and other fiduciaries to keep excluded fiduciaries reasonably informed.</p>	<p style="text-align: center;">X</p> <p>Divides subsection 1. into paragraphs (1) and (2), with (2) beginning “Unless unreasonable...”</p> <p>Adds to paragraph 1.(1): <u>A trustee shall be presumed to have fulfilled this duty if the trustee complies with the notice and information requirements prescribed in subsections 2 to 7 of this section.</u></p> <p>Changes the beginning of subsection 3. [UTC (c)] to: “A trustee shall send <u>to the permissible distributees of trust income or principal, and to other beneficiaries who request it,...</u>”</p> <p>Adds three new subsections: <u>5. A trustee may charge a reasonable fee to a beneficiary for providing information under this section.</u> <u>6. The request of any beneficiary for information under any provision of this section shall be with respect to a single trust that is sufficiently identified to enable the trustee to locate the records of the trust.</u> <u>7. If the trustee is bound by any confidentiality restrictions with respect to an asset of a trust, any beneficiary who is eligible to receive information pursuant to this section about such asset shall agree to be bound by the confidentiality restrictions that bind the trustee before receiving such information from the trustee.</u> <u>8. This section does not apply to a trust created under a trust instrument that became irrevocable before January 1, 2005, and the law in effect prior to January 1, 2005, regarding the subject matter of this section shall continue to apply to those trusts.</u></p> <p>Omits [UTC] section (e). (2004 amendment not adopted.)</p>

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§814	<p style="text-align: center;">X</p> <p>[75-7-812] Adds to subsection 2(a) [UTC (b)(1)]: "...in accordance with an ascertainable standard <u>relating to the trustee's individual health, education, support, or maintenance within the meaning of Subsection 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on May 1, 2004;</u>" (2004 amendment not adopted.)</p>	<p style="text-align: center;">X</p> <p>In subsection (1) [UTC (a)], omits the phrase "...and the interests of the beneficiaries." Adds to subsection (1): "...A trustee's power to make distributions is discretionary notwithstanding terms of the trust providing that the trustee "shall" make distributions exercising a discretionary power, with or without standards."</p>	<p style="text-align: center;">X</p> <p>Adds to paragraph (b)(1): "...in accordance with an ascertainable standard <u>relating to the trustee's individual health, education, support, or maintenance within the meaning of Subsection 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on May 1, 2004;</u>" (2004 amendment not adopted.)</p>		<p style="text-align: center;">X</p> <p>Changes subsection 1. to read: "Notwithstanding the use of such terms as "absolute," "sole," or "uncontrolled," <u>in the exercise of discretion under an ascertainable standard, the trustee shall exercise such discretionary...</u>"</p> <p>Adds paragraph 2.(3): (3) for purposes of this subsection 2 of this section, the term "trustee" shall include a person who is deemed to have any power of a trustee, whether because such person has the right to remove or replace any trustee, because a reciprocal trust or power doctrine applies, or for any other reason.</p>
§815				<p style="text-align: center;">X</p> <p>(a)(2)(b) adds the term "administration."</p> <p>In subparagraph (a)(2)(C), adds: "...by this chapter <u>or other laws of this state.</u>"</p> <p>Adds new subsection (c): <u>The powers of a trustee are subject to the provisions of RSA 564-A:3, IV.</u></p>	
§816	<p style="text-align: center;">X</p> <p>[75-7-814] Adds to Subpart (1)(e) [UTC (a)(5)]: "borrow money, with or</p>	<p style="text-align: center;">X</p> <p>In subsection (17), replaces "rights thereunder" with "<u>rights under those instruments,</u>"</p>	<p style="text-align: center;">X</p> <p>Adds the following language and subsection to the beginning of this section: "<u>(a) Any references</u></p>	<p style="text-align: center;">X</p> <p>Adds to (1): "collect trust property and accept or reject additions to the trust property</p>	<p style="text-align: center;">X</p> <p>Adds to subpart (2): "acquire or sell property <u>in divided or undivided interests,</u> for cash or</p>

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	<p>without security <u>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 ...</u>”</p> <p>Omits from subpart (1)(u)(ii) [UTC (a)(21)(B)]: “...or custodial trustee under the Uniform Custodial Trust Act, and for that purpose, creating a custodianship or custodial trust.”</p> <p>Changes in (1)(z) [UTC (a)(26)] the language used from “wind up” to “finalize.”</p> <p>Creates subsection (2): <u>A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances.</u> <u>(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.</u> <u>(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.</u> <u>(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</u></p>	<p>Changes (21)(b) to read: “Paying it to the beneficiary's custodian under <u>Title 33, chapter 32, which is the Maine Uniform Transfers to Minors Act, or to a custodial trustee under the laws of another state, and, for that purpose, creating a custodianship or custodial trust;</u>”</p>	<p><u>contained in a will or trust incorporating by reference the powers enumerated in T.C.A. §35-50-110 as they relate to a trustee will incorporate by reference the powers contained in this section.</u> <u>(b) Unless the terms of the instrument expressly provide otherwise and without limiting the authority conferred by Section 73, a trustee may:</u>”</p> <p>Adds to the end of paragraph (19): “...made by others to the beneficiary <u>provided however, this power shall not apply to any beneficiary’s interest that is subject to a spendthrift provision;</u>”</p> <p>Adds to the end of paragraph (22): “<u>and basis for income tax purposes;</u>”</p> <p>Adds subpart (27) giving a power to invade the principal of a trust, the exercise of the power must be in writing, it does not extend the rule against perpetuities, and “[t]he provisions of this section shall not be construed to abridge the right of any trustee who has a power of invasion to appoint property in further trust that arises under any other statute or under common law.”</p>	<p>from a settlor or any other person <u>and trust property may be accepted from a settlor and retained even though it includes an asset in which the trustee is personally interested.</u>”</p> <p>Adds to (2): “acquire or sell property, for cash or on credit, at public or private sale, <u>including acquiring an undivided interest in a trust asset in which the trustee, in any trust capacity, holds an undivided interest;</u>”</p> <p>Adds (13)(F): “comply with the environmental provisions of RSA 564-A:3-a;”</p> <p>Changes the language of (21)(A): “paying it to the beneficiary’s conservator or <u>to the guardian of the beneficiary’s estate;</u>”</p> <p>Changes “guardian” to “guardian of the estate of the beneficiary” in (21)(C).</p> <p>Adds the following paragraph: <u>(27) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the trustee, to advise or assist the trustee in the performance of the trustees administrative duties and to act without independent investigation upon their recommendations.</u></p> <p>Adds paragraph (a)(28): <u>allocate</u></p>	<p>on credit, at public or private sale;”</p> <p>Adds subpart (27): <u>To invest and reinvest trust assets in accordance with sections 469.900 to 469.913, RSMo; including investing and reinvesting in securities or obligations of any state or its political subdivisions, including securities or obligations that are underwritten by the trustee or an affiliate of the trustee or a syndicate in which the trustee or an affiliate of the trustee is a member which meet the standards established by the division of finance pursuant to subsection 5 of section 362.550, RSMo.</u></p>

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	<u>actions of the agent to whom the function was delegated.</u>			<u>items of income or expense to either trust income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, amortization, or for depletion in mineral or timber properties; and;</u> Adds paragraph (a)(29): <u>convert a trust into a unitrust as provided in RSA 564-A:3-c.</u> Adds subsection (b): <u>An executor or other fiduciary administering a will has all powers conferred by this section unless limited in the will, subject to the fiduciary duties prescribed by the will or by other laws of this state.</u>	
§817	X [75-7-815] Adds to subpart (3)(b) [UTC (c)(2)]: “the beneficiary, at the time of the release, did not know <u>or had no reason to know</u> of the beneficiary’s rights or of the material facts relating to the breach.”		X Adds to the end of subsection (a): <u>For the purpose of determining the date a proposed distribution was sent, where exact confirmation is unavailable, it can be assumed it was received five (5) days after the date of mailing.</u>		
Article 9 – UPIA					
§1001			X Adds to (b)(10): “ <u>order any other appropriate relief whether provided elsewhere in this Tennessee Uniform Trust Code, available at common law or under equity principles.</u> ”	X Adds to (b)(10): “ <u>including relief under RSA 547:3-b.</u> ”	

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§1002			X Adds to subsection (a): “ <u>Except as otherwise provided in T.C.A. §35-3-117(h), (i), (j) and (k) with regard to Investment of Trust Funds or elsewhere in this Tennessee Uniform Trust Code, a trustee who commits a breach ...</u> ”	X Adds to (b): “...a trustee is entitled to contribution from the other trustee or trustees, <u>to the extent permitted by RSA 507:7-f. However, a trustee is not entitled to contribution if the trustee was substantially more at fault...</u> ”	X Adds to subsection 2. [UTC (b)]: “...a trustee is entitled to contribution from the other trustee or trustees <u>that are also liable...</u> ”
§1003		X Adds to subsection (1): “... <u>Nothing in this section limits a trustee's right to reasonable compensation under section 708.</u> ”	X Omits subsection (a).	X Adds to (a): <u>This section does not preclude the payment of reasonable trustee compensation.</u>	
§1004	X Adds subsection (2): <u>If a trustee defends or prosecutes any proceeding in good faith, whether successful or not, the trustee is entitled to receive from the trust the necessary expenses and disbursements, including reasonable attorney's fees, incurred.</u>		X Adds subsections (b) and (c): <u>(b) In a non-judicial proceeding involving the administration of a trust, the trustee may pay fees, other reasonable costs and expenses from the trust assets where all of the parties to the proceeding agree in writing.</u> <u>(c) In a mediation or arbitration proceeding involving the administration of a trust, the mediator or arbitrator may award fees, other reasonable costs and expenses against the assets of the trust.</u>		
§1005	X Changes subsection (1) [UTC (a)]	X Changes the time for	X Changes the end of subsection	X Changes the statute of	X Adds to subsection 1. [UTC (a)]:

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	<p>to read: “A beneficiary may not commence a proceeding against a trustee for breach of trust more than <u>six months</u> after the date that the beneficiary or a <u>person who may represent and bind the beneficiary</u> was sent a report...”</p> <p>Adds subsection (4): <u>This section does not preclude an action to recover for fraud or misrepresentation related to the report.</u></p>	<p>commencing a judicial proceeding against a trustee in subsection (3) to <u>six</u> years rather than five years.</p>	<p>(a) to read: “...report that adequately disclosed <u>facts indicating</u> the existence of a potential claim for breach of trust.” (Omits “and informed the beneficiary of the time allowed for commencing a proceeding.”)</p> <p>Changes subsection (b) to read: “A report adequately discloses <u>facts indicating</u> the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or <u>the beneficiary's representative knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.</u>”</p>	<p>limitations in subsection (c) to three years.</p>	<p>“...the time allowed for commencing a proceeding <u>with respect to any potential claim adequately disclosed on the report.</u>”</p>
§1006					
§1007	<p style="text-align: center;">X</p> <p>Omits: “...who has exercised reasonable care to ascertain the happening of the event...”</p> <p>Adds to the end of this section: “...<u>or lack of notice.</u>”</p>				
§1008	<p style="text-align: center;">X</p> <p>Omits [UTC] subpart (a)(2) and replaces it with subsection (2): <u>was inserted by the trustee or fiduciary without disclosure of its existence and contents.</u></p> <p>Omits [UTC] subsection (b).</p>				<p style="text-align: center;">X</p> <p>Adds to subsection 2. [UTC (b)]: “<u>Unless the settlor was represented by an attorney not employed by the trustee with respect to the trust containing the exculpatory term, an exculpatory term...</u>”</p>
§1009	<p style="text-align: center;">X</p>			<p style="text-align: center;">X</p>	

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	Omits [UTC] subsection (1) and merges subsection (2) with the main section.			Omits the phrase “while having capacity” in the first sentence of the section.	
§1010	<p style="text-align: center;">X</p> <p>Adds Subsections (4), (5), and (6): <u>(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 other appropriate proceeding.</u> <u>(5) Whenever an instrument creating a trust reserves to the settlor, or vests in an advisory or investment committee, or in any other person or persons, including one or more cotrustees to the exclusion of the trustee or to the exclusion of one or more of several trustees, authority to direct the making or retention of any investment, the excluded trustee or trustees shall not be liable, either individually or as a fiduciary, for any loss resulting from the making or retention of any investment pursuant to such direction.</u> <u>(6) In the absence of actual knowledge or information which would cause a reasonable trustee to inquire further, no trustee shall be liable for failure to take necessary steps to compel the redress of any breach of trust or fiduciary duty by any predecessor personal representative, trustee, or other fiduciary. The provisions of this section shall not be construed to limit the fiduciary liability of any trustee for his own acts or</u></p>				

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	<u>omissions with respect to the trust estate.</u>				
§1011 (optional section)		<p style="text-align: center;">X</p> <p>Replaces, in subsection (3), “any of them” with “<u>any of the trustee’s descendants, siblings or parents.</u>”</p>		<p style="text-align: center;">X</p> <p>Replaces in (a) “...or in a statement previously filed pursuant to the UPA or the ULPA” with “<u>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 the other parties to the contract, in a manner that clearly evidences that the trustee executed the contract in a fiduciary capacity.</u>”</p> <p>Changes the language in (c) to read: “(c) The immunity provided by this section <u>for a trustee who holds an interest as a general partner does not apply if a general partnership interest in the partnership is held personally by the person serving as trustee.</u>”</p>	
§1012		<p style="text-align: center;">X</p> <p>In subsection (1), changes “the power” to “<u>those powers.</u>”</p> <p>Changes the language in subsection (5) to read: “Provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries that are more protective prevail over the</p>			

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		protection provided by this section.”			
§1013	<p style="text-align: center;">X</p> <p>Adds to subpart (1)(d) [UTC (a)(4)]: “(d) the powers of the trustee <u>in the pending transaction;</u>”</p> <p>Omits subparts [UTC (a)(7) and (8)].(a) Adds subpart (1)(g): <u>the name in which title to trust property may be taken.</u></p> <p>Adds to subsection (8) [UTC (h)] : “...is liable for <u>costs, expenses, attorney fees, and damages...</u>”</p>		<p style="text-align: center;">X</p> <p>Changes in subsection (a) the following: “(a) Instead of furnishing a copy of the trust instrument to <u>any person to evidence the existence and validity of the trust,</u> the trustee may furnish to <u>such</u> person a certification of trust <u>in the form of a sworn declaration, signed by the trustee or trustees having signatory authority as identified in subdivision (5) and shall contain the following:</u> (1) <u>An affirmation of the current existence of the trust and the date on which the trust came into existence;</u></p> <p>Adds to (a)(2) additional persons that may be identified.</p> <p>Omits subpart (a)(3).</p> <p>Specifies “administrative or managerial powers” in subpart (a)(3) [UTC (a)(4)].</p> <p>Changes the language in subpart (5) [UTC (a)(6)].</p> <p>Adds subpart (6) regarding successor trustees.</p> <p>Changes subpart (7) to include other numbers identifying the</p>	<p style="text-align: center;">X</p> <p>Adds new subsection (j): <u>Instead of the certification of trust described in subsection (a), a certificate described in RSA 564-A:7 shall protect persons dealing with a trustee in connection with the conveyance of real or personal property as provided in RSA 564-A:7. Nothing in this section is intended to expand, limit, or otherwise affect the provisions of RSA 564-A:7.</u></p>	<p style="text-align: center;">X</p> <p>Replaces UTC (b) with subsection 2.: <u>2. A certification of trust must be signed by all the trustees. A third party may require that the certification of trust be acknowledged or guaranteed.</u></p>

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			<p>trust, but conditioning their disclosure on their relevance to the document.</p> <p>Moves UTC subsection (c) into (a)(9).</p> <p>Subsection (b) is essentially UTC (d).</p> <p>UTC subsection (b) is omitted.</p> <p>UTC subsection (e) is replaced by (c) stating that the trustee may provide copies of all or any part of the trust documents or amendments, but does not create an obligation to provide a copy of the entire trust document.</p> <p>Subsection (d) replaces UTC (f).</p> <p>Adds subsection (e) regarding failure to request certification.</p> <p>Adds subsection (f) regarding third parties' rights and obligations.</p> <p>Omits UTC subsection (g) and (h).</p> <p>Subsection (g) is equivalent to UTC (i).</p>		
§1101					
§1102					<p style="text-align: center;">X</p> <p>Rewrites this section to read: <u>Sections 456.1-101 to 456.11-1106 modify, limit, and</u></p>

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					<u>supersede the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. section 7001, et seq.) but do not modify, limit, or supersede section 101(c) of that Act (15 U.S.C. section 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. section 7003(b)).</u>
§1103	X Omits this section in its entirety.	X Omits this section	X Omits this section		
§1104			X Omits this section	X Omits this section	
§1105		X Omits this section	X Omits this section	X Omits this section	X Omits this section
§1106	Codified in § 75-7-1103.		[§35-15-1103]	Falls under § 1104	X Adds subpart 1.(6): <u>(6) Section 456.590 shall not apply to trusts created under an instrument executed on or after January 1, 2005.</u>
Additional provisions without corresponding UTC sections	75-7-112. Penalty provisions. 75-7-508. Notice to creditors. 75-7-509. Limitations on presentation of claims. 75-7-510. Manner of presentation of claims. 75-7-511. Classification of claims. 75-7-512. Allowance of claims. 75-7-513. Payment of claims.			564-B:7-711. Directed Trusts 564-B:7-712. Vacancy; Directed Trusts Article XII – Trust Protectors and Trust Advisors	456.4B-411. [Regarding noncharitable irrevocable trusts and adult beneficiaries who have capacity to contract consent for modification of the terms of the trust.]

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	<p>75-7-514. Secured claims. 75-7-515. Claims not due and contingent -- unliquidated claims. 75-7-516. Counterclaims. 75-7-517. Execution and levies prohibited. 75-7-518. Compromise of claims. 75-7-519. Encumbered assets.</p> <p>75-7-816. Recitals when title to real property is in trust -- Failure. 75-7-817. Marital deduction formulas -- Trusts.</p>				
Last Update	March 30, 2005	May 31, 2005	May 16, 2005	August 3, 2006 (Amended by 2006 SB332) (Amended by 2006 SB0394)	August 4, 2006 (Amended by 2006 SB332)