

Tentative Report

# The Proposed Mississippi Uniform Trust Code

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2013 Secretary of State Business Law Reform Study Groups  
Trust Law Study Group

**Uniform Trust Code Task Force**

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Prepared for:  
Secretary of State Delbert Hosemann

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## **1. Introduction**

The Uniform Trust Code Task Force (“Task Force”) recommends the Mississippi Legislature adopt the Uniform Trust Code in Mississippi. The Task Force’s report discusses the need for trust reform in Mississippi, the Uniform Trust Code in general, the process the Task Force used to develop the Mississippi Uniform Trust Code proposals, and key provisions of the proposal. A copy of the proposed Mississippi Uniform Trust Code is included in the appendix of the report.

## **2. The Need for Trust Reform in Mississippi**

Trusts are an important estate planning tool and can be a strong economic driver for a state. Mississippi has little law on trusts. Though some statutory provisions exist, much of the law of trusts is scattered and sparse, leading to uncertainty for both practitioners and citizens wishing to form a trust in Mississippi.

Trusts are easily established in any jurisdiction, regardless of the settlor’s or beneficiaries’ state of residence. And many practitioners and trust professionals are under a fiduciary obligation to recommend the best location for the trust. At present, the best location to form a trust is not Mississippi. Due to the updated trust laws in Tennessee and other states, many Mississippi citizens are taking their trust business elsewhere. This not only hurts Mississippi’s banks and trust companies by making them uncompetitive, but creates a hassle for citizens who are forced to identify an out-of-state trustee to oversee the trust.

In March 2013, a study group comprised of leading trust and estate attorneys, CPAs, financial advisors, and trust banking professionals was formed to review Mississippi’s trust laws and recommend reforms to make Mississippi a more competitive jurisdiction for trust business. At that time, members unanimously agreed to form a task force devoted to reviewing the Uniform Trust Code.

## **3. The Uniform Trust Code**

### **The Uniform Trust Code: General Overview**

The Uniform Trust Code (“UTC”) is the product of over a decade of study and drafting by the National Conference of Commissioners on Uniform State Laws. Uniform Law Commissioners are volunteer lawyers appointed by the Governors or Legislatures of their respective states to draft model state laws. The UTC was approved in August 2000, with amendments made in 2001, 2003, 2004 and 2005.

The UTC has been well-received. Since 2000, twenty-five states and the District of Columbia have enacted the UTC, and several other states are expected to introduce it in 2014. The American Bar Association, the ABA Section of Real Property, Probate and Trust Law, the Financial Planning Association, and the AARP have all endorsed the UTC.

### **The Study and Drafting Process**

The Uniform Trust Code Task Force began meeting on May 7, 2013. The Task Force had two goals. First, review the Uniform Trust Code and determine if it should be adopted in Mississippi. If the group decided the UTC should be adopted, the second goal was to draft the Mississippi Uniform Trust Code by adding any necessary changes and Mississippi specific provisions. The Task Force was co-chaired by Bill Brown of Copeland, Cook, Taylor and Bush, P.A., and Lynne Green of Brunini, Grantham, Grower & Hewes, PLLC.

Also serving on the Task Force were Kathy Briner, Karl Byrd, Stephen Byrne, John Brunini, Richard Crowder, Ted Edwards, Jim Ferguson, Ann Guice, Karen Green, Doug Hassell, Benny Jeansonne, Eric Patterson, George Pickett, Greg Pirkle, Richard Reitano, William Smith, Jody Varner, Stephen Vickers, and Danny Williams. Anthony Sherman and Jamie Houston – co-chairs of the Directed Trustee Task Force – worked with the Task Force on the drafting on the trust protector and trust advisor provisions. Attorneys from the Secretary of State’s Policy & Research Division provided research and drafting assistance as needed.

Due to the volume of information contained in the Uniform Trust Code, the Task Force divided the information into three subparts to conduct an in depth review. Over the next few months, the Task Force held numerous meetings and conference calls and dissected every section of the act line by line. The Task Force also examined the UTC’s potential impact on key local law laws like the Family Trust Preservation Act. Recent legislation from neighboring states, particularly Tennessee, was used to develop the Mississippi Uniform Trust Code proposal. Before finalizing the recommendation, the Task Force consulted with Bryan Howard, an American College of Trust and Estate Counsel Fellow and attorney instrumental in Tennessee’s trust law reform efforts, as well as legislative counsel from the Uniform Law Commission.

## **4. Summary of UTC Task Force’s Recommended Proposal**

The Mississippi Uniform Trust Code borrows heavily from the structure and content of the UTC. Please see the appendix for the full proposed language of the Mississippi Uniform Trust Code.

The Uniform Trust Code is divided into 11 Articles. Article 9 of the Code is the Uniform Prudent Investor Act which was enacted by the Mississippi Legislature in 2006<sup>1</sup> and is codified in Sections 91-9-601 through 91-9-627 of the Mississippi Code. Article 5 of the UTC addresses creditors' rights and is not proposed for adoption at this time. The Task Force also recommends creating a new article of the Mississippi Uniform Trust Code to address directed trustees.

Article 1 – Article 1 of the Mississippi Uniform Trust Code contains general provisions and definitions. The Uniform Trust Code is intended to be supplemental to the common law of trusts and principles of equity; therefore, it does not contain language on every trust issue. The trust code provides default law and rules for trusts.

Article 2 – Article 2 provides guidance on judicial proceedings, and clarifies that courts in the trust's principal place of administration have jurisdiction over both the trustee and beneficiaries regarding matters related to the trust. . The code does not attempt to address most issues surrounding jurisdiction or procedure.

Article 3 – Article 3 governs representation, both by a fiduciary (personal representatives, guardians, conservators) and through virtual representation. It also confirms the court's authority to appoint representatives to represent and approve settlements for minors, incapacitated, unborn, or individuals whose identity or location is not reasonably ascertainable.

Article 4 – Article 4 provides statutory framework for creating, modifying and terminating trusts. The requirements do not generally depart from traditional doctrine. The trust code does utilize a three-part classification of trusts: charitable, non-charitable, and honorary. The most common trust is the non-charitable trusts. Non-charitable trusts require a valid purpose and ascertainable beneficiary (or beneficiaries). Charitable trusts have the opposite purpose which is to benefit the public as a whole. The honorary trust was unenforceable at common law, but is recognized under the trust code. An honorary trust lacks an ascertainable beneficiary; the most common example is a trust to care for an animal.

In addition to the terms on creation and validity, Article 4 provides terms on modification and termination of a trust. The modification provisions are intended to help preserve the intent of the settlor, but provide flexibility in the instance that a provision of the trust no longer serves a material purpose. The Code also provides for termination of trusts, if properly approved, when the size of the trust is insufficient to justify continued administration.

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<sup>1</sup> See House Bill 1112 (2006).

Article 5 – Reserved. Article 5 of the UTC addresses creditors’ rights. The Task Force decided to omit Article 5 from the proposed Mississippi Uniform Trust Code and instead rely on the current creditors’ rights laws existing in Mississippi.

Article 6 – Article 6 addresses revocable trusts. Generally, revocable trusts are treated as the equivalent of a will under the trust code. Trusts are presumed revocable unless the terms provide otherwise. The article also provides the procedure to amend or revoke the trust.

Article 7 – Article 7 covers the Office of the Trustee. All of the default rules found in Article 7 may be modified by the trust terms. The rules address acceptance of the office, the role of co-trustees, changes in trusteeship, resignation, removal, appointing successor trustees, and compensation.

Article 8 – Article 8 governs the duties and powers of trustees.

Article 9 – The Uniform Prudent Investor Act is already enacted in Mississippi and codified in Sections 91-9-601 through 91-9-627. The Task Force recommends reincorporating these provisions into the Mississippi Uniform Trust Code.

Article 10 – Article 10 provides for the liability of trustees and rights of those dealing with trustees.

Article 11 – Article 11 is the miscellaneous provisions section of the act. It provides for the effective date and further provides that the code applies to all trusts created before or after the effective date.

Article 12 – Article 12 address trust advisors and trust protectors.

Repeals – To avoid conflicting and overlapping provisions, the Task Force recommends repealing Articles 1 (General Provisions), Article 3 (Uniform Trustees’ Powers), Article 5 (Resignation and Succession of Trustees), and Article 7 (Removal of Trustees) of Title 91, Chapter 9 of the Mississippi Code.

## **Conclusion**

After lengthy review and discussion, the Uniform Trust Code Task Force has drafted the Mississippi Uniform Trust Code. This proposal takes the best aspects of the uniform law and non-uniform provisions used in other states. The Task Force recommends the adoption of the Mississippi Uniform Trust Code proposal by the legislature in the 2014 session.

Adoption of the Mississippi Uniform Trust Code will make administration of trusts much easier in Mississippi, not only for trustees, but also for beneficiaries. For example, the Code

provides for non-judicial settlements (agreements entered into by the beneficiaries and trustees, generally used to recognize that the trustee is allowed to take action the beneficiaries want), and virtual representation which allows those agreements to apply to other individuals (such as minors) who do not have a materially different position from the representative. It also removes the requirement for court approval to dissolve small trusts, which again recognizes the usefulness of provisions allowing for non-judicial settlements (to determine how to distribute the trust) and virtual representation. These provisions reduce the cost to the trust and its beneficiaries.

In addition, the Mississippi Uniform Trust Code provides an easy-to-find compilation of trust laws that serve the interests of judges, lawyers, and parties to the trust relationship. The Mississippi Uniform Trust Code provides guidance and answers in many areas of law and procedure in which the law is currently thin and inadequate and has developed on a piecemeal basis. The Mississippi Uniform Trust Code replaces default rules and adds others to better deal with today's practical needs in trust administration.

The update to Mississippi's trust law is needed both to bring Mississippi in line with trust friendly states and to provide Mississippians local options for estate planning. Because trusts can so easily be located in any jurisdiction, Mississippi is missing a great business opportunity while also forcing its citizens to look to other states for estate planning.

## Appendix

### Proposed Mississippi Uniform Trust Code

1           AN ACT CREATE THE MISSISSIPPI UNIFORM TRUST CODE, WHICH  
2 SHALL BE CODIFIED IN TITLE 91, CHAPTER 23, MISSISSIPPI CODE OF  
3 1972, ... TO RESERVE ARTICLE 5 OF TITLE 91, CHAPTER 23, MISSISSIPPI  
4 CODE OF 1972; TO REPEAL SECTIONS 91-9-1, 91-9-2, 91-9-3, 91-9-5,  
5 91-9-7, 91-9-9, MISSISSIPPI CODE OF 1972, WHICH CONSTITUTE TITLE  
6 91, CHAPTER 9, ARTICLE 1, TRUSTS - GENERAL PROVISIONS; TO REPEAL  
7 SECTIONS 91-9-101, 91-9-103, 91-9-105, 91-9-107, 91-9-109, 91-9-  
8 111, 91-9-113, 91-9-115, 91-9-117 AND 91-9-119, MISSISSIPPI CODE  
9 OF 1972, WHICH CONSTITUTE TITLE 91, CHAPTER 9, ARTICLE 3, UNIFORM  
10 TRUSTEE POWERS; TO REPEAL SECTIONS 91-9-201, 91-9-203, 91-9-205,  
11 91-9-207, 91-2-209, 91-9-211, 91-9-213, MISSISSIPPI CODE OF 1972,  
12 WHICH CONSTITUTE TITLE 91, CHAPTER 9, ARTICLE 5, RESIGNATION AND  
13 SUCCESSION OF TRUSTEES; TO REPEAL SECTIONS 91-9-301, 91-9-305, 91-  
14 9-305, WHICH CONSTITUTE TITLE 91, CHAPTER 9, ARTICLE 7, REMOVAL OF  
15 TRUSTEES; AND FOR RELATED PURPOSES ..

16           BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

17           **ARTICLE 1.           GENERAL PROVISIONS AND DEFINITIONS**

18           **SECTION 1.** The following shall be codified as Section 91-23-  
19 101, Mississippi Code of 1972.

20           91-23-101. **SHORT TITLE.** This chapter may be cited as the  
21 Mississippi Uniform Trust Code.

22           **SECTION 2.** The following shall be codified as Section 91-23-  
23 102, Mississippi Code of 1972.

24           91-23-102. **SCOPE.** This chapter applies to express trusts,  
25 charitable or noncharitable, and trusts created pursuant to a

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26 statute, judgment, or decree that requires the trust to be  
27 administered in the manner of an express trust.

28 **SECTION 3.** The following shall be codified as Section 91-23-  
29 103, Mississippi Code of 1972.

30 91-23-103. **DEFINITIONS.** In this chapter:

31 (1) "Action," with respect to an act of a trustee, includes  
32 a failure to act.

33 (2) "Ascertainable standard" means a standard relating to an  
34 individual's health, education, support, or maintenance within the  
35 meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal  
36 Revenue Code of 1986, as in effect on the effective date of this  
37 chapter, or as later amended.

38 (3) "Beneficial interest" means a distribution interest or a  
39 remainder interest; provided however, a beneficial interest  
40 specifically excludes a power of appointment or a power reserved  
41 by a settlor.

42 (4) "Beneficiary" means a person that:

43 (A) has a present or future beneficial interest in a  
44 trust, vested or contingent; or

45 (B) in a capacity other than that of trustee, holds a  
46 power of appointment over trust property.

47 (5) "Beneficiary surrogate" means a person, other than a  
48 trustee, designated by the settlor in the trust instrument or in a  
49 writing delivered to the trustee, or designated by a trust  
50 protector or trust advisor pursuant to the terms of the trust

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51 instrument to receive notices, information, and reports otherwise  
52 required to be provided to a beneficiary under section 91-23-813  
53 (a) and (b);

54 (6) "Charitable trust" means a trust, or portion of a trust,  
55 created for a charitable purpose described in Section 91-23-  
56 405(a).

57 (7) "Conservator" means a person appointed by the court to  
58 administer the estate of a minor or adult individual pursuant to  
59 Section 93-13-251.

60 (8) "Directed trust" means a trust where through the terms  
61 of the trust, one or more persons are given the authority to  
62 direct or consent to a fiduciary's actual or proposed investment  
63 decision, distribution decision, or any other decision of the  
64 fiduciary.

65 (9) "Distribution beneficiary" means a beneficiary who is an  
66 eligible distributee or permissible distributee of the income or  
67 principal of a trust.

68 (10) "Distribution interest" means:

69 (A) An interest, other than a remainder interest, held  
70 by a distribution beneficiary under a trust and may be a current  
71 distribution interest or a future distribution interest;

72 (B) A distribution interest is classified as either a  
73 mandatory interest, a support interest or a discretionary  
74 interest; and although not the exclusive means to create each such  
75 respective distribution interest, absent clear and convincing

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76 evidence to the contrary, use of the example language accompanying  
77 the following definitions of each such respective distribution  
78 interest results in the indicated classification of distribution  
79 interest:

80 (i) A mandatory interest means a distribution  
81 interest in which the timing of any distribution must occur within  
82 one (1) year from the date the right to the distribution arises  
83 and the trustee has no discretion in determining whether a  
84 distribution shall be made or the amount of such distribution;  
85 example distribution language indicating a mandatory interest  
86 includes, but is not limited to:

87 (a) All income shall be distributed to a  
88 named beneficiary; or

89 (b) One hundred thousand dollars (\$100,000) a  
90 year shall be distributed to a named beneficiary;

91 (ii) A support interest means a distribution  
92 interest that is not a mandatory interest but still contains  
93 mandatory language such as "shall make distributions" and is  
94 coupled with a standard capable of judicial interpretation;  
95 example distribution language indicating a support interest  
96 includes, but is not limited to:

97 (a) The trustee shall make distributions for  
98 health, education, maintenance, and support;

99 (b) Notwithstanding the distribution language  
100 used, if a trust instrument containing such distribution language

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101 specifically provides that the trustee exercise discretion in a  
102 reasonable manner with regard to a discretionary interest, then  
103 notwithstanding any other provision of this subdivision defining  
104 distribution interests, the distribution interest shall be  
105 classified as a support interest;

106 (iii) A discretionary interest means any interest  
107 that is not a mandatory or a support interest and is any  
108 distribution interest where a trustee has any discretion to make  
109 or withhold a distribution; example distribution language  
110 indicating a discretionary interest includes, but is not limited  
111 to:

112 (a) The trustee may, in the trustee's sole  
113 and absolute discretion, make distributions for health, education,  
114 maintenance, and support;

115 (b) The trustee, in the trustee's sole and  
116 absolute discretion, shall make distributions for health,  
117 education, maintenance, and support;

118 (c) The trustee may make distributions for  
119 health, education, maintenance, and support;

120 (d) The trustee shall make distributions for  
121 health, education, maintenance, and support; however, the trustee  
122 may exclude any of the beneficiaries or may make unequal  
123 distributions among them; or

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124                   (e) The trustee may make distributions for  
125 health, education, maintenance, support, comfort, and general  
126 welfare;

127                   (f) A discretionary interest may also be  
128 evidenced by:

129                               (1) Permissive distribution language  
130 such as "may make distributions";

131                               (2) Mandatory distribution language that  
132 is negated by the discretionary distribution language contained in  
133 the trust such as "the trustee shall make distributions in the  
134 trustee's sole and absolute discretion";

135                   (g) An interest that includes mandatory  
136 distribution language such as "shall" but is subsequently  
137 qualified by discretionary distribution language shall be  
138 classified as a discretionary interest and not as a support or a  
139 mandatory interest;

140                   (C) (i) To the extent a trust contains distribution  
141 language indicating the existence of any combination of a  
142 mandatory, support and discretionary interest, that combined  
143 interest of the trust shall be divided and treated separately as  
144 follows:

145                               (a) The trust shall be a mandatory interest  
146 only to the extent of the mandatory distribution language;

147                               (b) The trust shall be a support interest  
148 only to the extent of such support distribution language; and

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149                   (c) The remaining trust property shall be  
150 held as a discretionary interest;

151                   (ii) For purposes of this subdivision (D), a  
152 support interest that includes mandatory distribution language  
153 such as "shall" but is subsequently qualified by discretionary  
154 distribution language, shall be classified as a discretionary  
155 interest and not as a support interest;

156           (11) "Environmental law" means a federal, state, or local  
157 law, rule, regulation, or ordinance relating to protection of the  
158 environment.

159           (12) "Excluded fiduciary" means any trustee, trust advisor,  
160 or trust protector to the extent that, under the terms of a trust:

161                   (A) The trustee, trust advisor, or trust protector is  
162 excluded from exercising a power, or is relieved of a duty; and

163                   (B) The power or duty is granted or reserved to another  
164 person.

165           (13) "Fiduciary" means:

166                   (A) A trustee, conservator, guardian, agent under any  
167 agency agreement or other instrument, an executor, personal  
168 representative or administrator of a decedent's estate, or any  
169 other party, including a trust advisor or a trust protector, who  
170 is acting in a fiduciary capacity for any person, trust, or  
171 estate;

172                   (B) For purposes of subdivision (A), an agency  
173 agreement includes but is not limited to, any agreement under

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174 which any delegation is made, either pursuant to § 35-15-807 or by  
175 anyone holding a power or duty pursuant to Article 12;

176 (C) For purposes of the definition of fiduciary in  
177 section 91-23-103, fiduciary does not mean any person who is an  
178 excluded fiduciary as such is defined in section 91-23-103.

179 (14) "Guardian" means a person appointed by the court  
180 pursuant to Section 93-13-13 or a parent to make decisions  
181 regarding the support, care, education, health, and welfare of a  
182 minor or adult individual. The term does not include a guardian  
183 ad litem.

184 (15) "Interests of the beneficiaries" means the beneficial  
185 interests provided in the terms of the trust.

186 (16) "Internal Revenue Code" means the Internal Revenue Code  
187 of 1986, as in effect on July 1, 2014, or as later amended.

188 (17) "Jurisdiction," with respect to a geographic area,  
189 includes a State or country.

190 (18) "Person" means an individual, corporation, business  
191 trust, estate, trust, partnership, limited liability company,  
192 association, joint venture, government; governmental subdivision,  
193 agency, or instrumentality; public corporation, or any other legal  
194 or commercial entity.

195 (19) "Power of appointment" means:

196 (A) An inter vivos or testamentary power to direct the  
197 disposition of trust property, other than a distribution decision  
198 made by a trustee or other fiduciary to a beneficiary;

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199           (B) Powers of appointment are held by the person to  
200 whom such power has been given, and not by a settlor in that  
201 person's capacity as settlor;

202           (20) "Power of withdrawal" means a presently exercisable  
203 general power of appointment other than a power: (A) exercisable  
204 by a trustee and limited by an ascertainable standard; or (B)  
205 exercisable by another person only upon consent of the trustee or  
206 a person holding an adverse interest.

207           (21) "Property" means anything that may be the subject of  
208 ownership, whether real or personal, legal or equitable, or any  
209 interest therein.

210           (22) "Qualified beneficiary" means a beneficiary who, on the  
211 date the beneficiary's qualification is determined:

212                 (A) is a distributee or permissible distributee of  
213 trust income or principal;

214                 (B) would be a distributee or permissible distributee  
215 of trust income or principal if the interests of the distributees  
216 described in subparagraph (A) terminated on that date without  
217 causing the trust to terminate; or

218                 (C) would be a distributee or permissible distributee of  
219 trust income or principal if the trust terminated on that date.

220           (23) "Remainder interest" means an interest under which a  
221 trust beneficiary will receive property held by a trust outright  
222 at some time during the future;

223           (24) "Reserved power" means a power held by a settlor;

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224           (25) "Revocable," as applied to a trust, means revocable by  
225 the settlor without the consent of the trustee or a person holding  
226 an adverse interest.

227           (26) "Settlor" means a person, including a testator, who  
228 creates, or contributes property to, a trust. If more than one  
229 person creates or contributes property to a trust, each person is  
230 a settlor of the portion of the trust property attributable to  
231 that person's contribution except to the extent another person has  
232 the power to revoke or withdraw that portion.

233           (27) "Spendthrift provision" means a term of a trust which  
234 restrains both voluntary and involuntary transfer of a  
235 beneficiary's interest.

236           (28) "State" means a State of the United States, the  
237 District of Columbia, Puerto Rico, the United States Virgin  
238 Islands, or any territory or insular possession subject to the  
239 jurisdiction of the United States. The term includes an Indian  
240 tribe or band recognized by federal law or formally acknowledged  
241 by a State.

242           (29) "Successors in interest" means the beneficiaries under  
243 the settlor's will, if the settlor has a will, or in the absence  
244 of an effective will provision, the settlor's heirs at law.

245           (30) "Terms of a trust" means the manifestation of the  
246 settlor's intent regarding a trust's provisions as expressed in  
247 the trust instrument or as may be established by other evidence  
248 that would be admissible in a judicial proceeding.

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249 (31) "Trust advisor" means any person described in section  
250 91-23-1201(a).

251 (32) "Trust instrument" means an instrument executed by the  
252 settlor that contains terms of the trust, including any amendments  
253 thereto.

254 (33) "Trustee" includes an original, additional, and  
255 successor trustee, and a cotrustee.

256 (34) "Trust protector" means any person described in section  
257 91-23-1201(a).

258 **SECTION 4.** The following shall be codified as Section 91-23-  
259 104, Mississippi Code of 1972.

260 91-23-104. **KNOWLEDGE.** (a) Subject to subsection (b), a  
261 person has knowledge of a fact if the person:

262 (1) has actual knowledge of it;

263 (2) has received a notice or notification of it; or

264 (3) from all the facts and circumstances known to the  
265 person at the time in question, has reason to know it.

266 (b) An organization that conducts activities through  
267 employees has notice or knowledge of a fact involving a trust only  
268 from the time the information was received by an employee having  
269 responsibility to act for the trust, or would have been brought to  
270 the employee's attention if the organization had exercised  
271 reasonable diligence. An organization exercises reasonable  
272 diligence if it maintains reasonable routines for communicating  
273 significant information to the employee having responsibility to

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274 act for the trust and there is reasonable compliance with the  
275 routines. Reasonable diligence does not require an employee of the  
276 organization to communicate information unless the communication  
277 is part of the individual's regular duties or the individual knows  
278 a matter involving the trust would be materially affected by the  
279 information.

280         **SECTION 5.** The following shall be codified as Section 91-23-  
281 105, Mississippi Code of 1972.

282         91-23-105.   **DEFAULT AND MANDATORY RULES:** (a) Except as  
283 otherwise provided in the terms of the trust, this chapter governs  
284 the duties and powers of a trustee or any other fiduciary under  
285 this chapter, relations among trustees and such other fiduciaries,  
286 and the rights and interests of a beneficiary. The terms of a  
287 trust may expand, restrict, eliminate, or otherwise vary the  
288 duties and powers of a trustee, any such other fiduciary,  
289 relations among any of them, and the rights and interests of a  
290 beneficiary; provided, however, that nothing contained in this  
291 subsection (a) shall be construed to override or nullify the  
292 provisions under subsection (b). The rule of statutory  
293 construction that states statutes in derogation of the common law  
294 are to be strictly construed shall have no application to this  
295 section. Except as restricted by subsection (b), pursuant to this  
296 section, courts shall give maximum effect to the principal of  
297 freedom of disposition and to the enforceability of trust  
298 instruments.

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299 (b) The terms of a trust prevail over any provision of this  
300 chapter except:

301 (1) the requirements for creating a trust;

302 (2) the duty of a trustee to act in good faith in  
303 accordance with the terms and purposes of the trust and the  
304 interests of the beneficiaries;

305 (3) the requirement that a trust and its terms be for  
306 the benefit of its beneficiaries as the interests of such  
307 beneficiaries are defined under the terms of the trust, and that  
308 the trust have a purpose that is lawful and possible to achieve;

309 (4) the power of the court to modify or terminate a  
310 trust under sections 91-23-410 through 91-23-416;

311 (5) the effect of a spendthrift provision and the  
312 rights of certain creditors and assignees to reach a trust as  
313 provided in the Family Trust Preservation Act, Sections 91-9-501,  
314 et seq.;

315 (6) the power of the court under section 91-23- 702 to  
316 require, dispense with, or modify or terminate a bond;

317 (7) the power of the court under section 91-23- 708(b)  
318 to adjust a trustee's compensation specified in the terms of the  
319 trust which is unreasonably low or high;

320 (8) subject to subsection (d), the duty under section  
321 91-23-813(b) to notify beneficiaries of an irrevocable trust and  
322 anyone who holds of a power of appointment who have attained

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323 twenty-five (25) years of age that the trust has been established  
324 as set forth in that section 91-23-813(b);

325 (9) subject to subsection (d), the duty under section  
326 91-23-813(a)(1) and (2) to keep the beneficiaries and anyone who  
327 holds a power of appointment informed and to respond to the  
328 request of a beneficiary of an irrevocable trust for trustee's  
329 reports and other information reasonably related to the  
330 administration of the trust;

331 (10) the effect of an exculpatory term under section  
332 91-23\_1008;

333 (11) the rights under sections 91-23-1010 through 91-  
334 23-1013 of a person other than a trustee or beneficiary;

335 (12) periods of limitation for commencing a judicial  
336 proceeding;

337 (13) the power of the court to take such action and  
338 exercise such jurisdiction as may be necessary in the interests of  
339 justice; and

340 (14) the subject-matter jurisdiction of the court and  
341 venue for commencing a proceeding as provided in sections 91-23-  
342 203 and 91-23-204.

343 (c) Any purpose enunciated as a material purpose of a trust  
344 in that trust's trust instrument shall be treated as a material  
345 purpose of that trust for all purposes of this chapter.

346 (d) Notwithstanding subsection (b)(8) and (9) above, the  
347 duties of a trustee to give notice, information and reports under

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348 section 91-23-813(a) and (b) may be waived or modified in the  
349 trust instrument or by the settlor of the trust, or a trust  
350 protector or trust advisor that holds the power to so direct,  
351 directs otherwise in a writing delivered to the trustee in any of  
352 the following ways:

353 (1) by waiving or modifying such duties as to all  
354 qualified beneficiaries during the lifetime of the settlor or the  
355 settlor's spouse;

356 (2) by specifying a different age at which a  
357 beneficiary or class of beneficiaries must be notified under  
358 section 91-23-813(b); and

359 (3) with respect to one or more of the beneficiaries,  
360 by designating a beneficiary surrogate to receive such notice,  
361 information and reports who will act in good faith to protect the  
362 interests of the beneficiary or beneficiaries.

363 **SECTION 6.** The following shall be codified as Section 91-23-  
364 106, Mississippi Code of 1972.

365 91-23-106. **COMMON LAW OF TRUSTS; PRINCIPLES OF EQUITY.** The  
366 common law of trusts and principles of equity supplement this  
367 chapter, except to the extent modified by this chapter or another  
368 statute of this state.

369 **SECTION 7.** The following shall be codified as Section 91-23-  
370 107, Mississippi Code of 1972.

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371           91-23-107.   **GOVERNING LAW.**   (a)   The validity, construction  
372 and administration of a trust are determined by the law of the  
373 jurisdiction designated in the terms of the trust instrument.

374           (b)   In the absence of a controlling designation in the terms  
375 of the trust, the laws of the jurisdiction where the trust was  
376 executed determine the validity of the trust, construction of the  
377 trust instrument and the laws of descent, while the laws of the  
378 principal place of administration determine the administration of  
379 the trust.

380           **SECTION 8.**   The following shall be codified as Section 91-23-  
381 108, Mississippi Code of 1972.

382           91-23-108.   **PRINCIPAL PLACE OF ADMINISTRATION.**   (a)   Without  
383 precluding other means for establishing a sufficient connection  
384 with the designated jurisdiction, the terms of a trust designating  
385 the principal place of administration are valid and controlling  
386 if:

387                   (1)   a trustee's principal place of business is located  
388 in or a trustee is a resident of the designated jurisdiction; or

389                   (2)   all or part of the administration occurs in the  
390 designated jurisdiction; which such administration, includes but  
391 is not limited to:

392                           (A)   maintenance of some trust records physically  
393 in the designated jurisdiction; and

394                           (B)   wholly or partly preparing or arranging for  
395 the preparation, either on an exclusive or a nonexclusive basis,

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396 in the designated jurisdiction of an income tax return that must  
397 be filed for the trust; or

398           (3) some or all of the trust assets are deposited in  
399 the designated jurisdiction or physical evidence of such assets is  
400 held in the designated jurisdiction and the trust is being  
401 administered by a person defined in subsection (a)(1). For  
402 purposes of this subsection (a)(3), "deposited in the designated  
403 jurisdiction," includes assets being held in any of a checking  
404 account, time deposit, certificate of deposit, brokerage account,  
405 trust company fiduciary account, or other similar account or  
406 deposit that is located in the designated jurisdiction.

407           (b) Except as otherwise expressly provided by the terms of a  
408 governing instrument specifically addressing the governing law for  
409 trust administration or by court order, the laws of this state  
410 shall govern the administration of a trust while the trust is  
411 administered in this state. Without precluding other means for  
412 establishing that a trust is administered in this state, if any of  
413 the activities described in subsection (a) occur in this state,  
414 the trust is administered in this state.

415           (c) A trustee shall administer the trust at a place  
416 appropriate to its purposes, its administration, and the interests  
417 of the beneficiaries; provided, however, a trustee shall not be  
418 required to transfer the trust's principal place of administration  
419 to another state or to a jurisdiction outside of the United  
420 States.

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421           (d) Without precluding the right of the court to order,  
422 approve, or disapprove a transfer, the trustee may transfer the  
423 trust's principal place of administration to another state or to a  
424 jurisdiction outside of the United States, provided that the  
425 transfer is to a place appropriate to the trust's purposes, its  
426 administration and the interests of the beneficiaries.

427           (e) The trustee shall notify the qualified beneficiaries of  
428 a proposed transfer of a trust's principal place of administration  
429 to another state or to a jurisdiction outside of the United States  
430 not less than sixty (60) days before initiating the transfer. The  
431 notice of proposed transfer must include:

432                   (1) the name of the jurisdiction to which the principal  
433 place of administration is to be transferred;

434                   (2) the address and telephone number at the new  
435 location at which the trustee can be contacted;

436                   (3) an explanation of the reasons for the proposed  
437 transfer;

438                   (4) the date on which the proposed transfer is  
439 anticipated to occur; and

440                   (5) the date, not less than sixty (60) days after the  
441 giving of the notice, by which the qualified beneficiary must  
442 notify the trustee of an objection to the proposed transfer.

443           (f) The authority of a trustee under this section to  
444 transfer a trust's principal place of administration terminates if  
445 a majority of the qualified beneficiaries described in section 91-

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446 23-103 notify the trustee of an objection to the proposed transfer  
447 on or before the date specified in the notice.

448 (g) In connection with a transfer of the trust's principal  
449 place of administration, the trustee may transfer some or all of  
450 the trust property to a successor trustee designated in the terms  
451 of the trust or appointed pursuant to section 91-23-704.

452 **SECTION 9.** The following shall be codified as Section 91-23-  
453 109, Mississippi Code of 1972.

454 91-23-109. **METHODS AND WAIVER OF NOTICE:** (a) Notice to a  
455 person under this chapter or the sending of a document to a person  
456 under this chapter must be accomplished in a manner reasonably  
457 suitable under the circumstances and likely to result in receipt  
458 of the notice or document. Permissible methods of notice or for  
459 sending a document include first-class mail, personal delivery,  
460 delivery to the person's last known place of residence or place of  
461 business, or a properly directed electronic message.

462 (b) Notice otherwise required under this chapter or a  
463 document otherwise required to be sent under this chapter need not  
464 be provided to a person whose identity or location is unknown to  
465 and not reasonably ascertainable by the trustee.

466 (c) Notice under this chapter or the sending of a document  
467 under this chapter may be waived by the person to be notified or  
468 sent the document.

469 (d) Notice of a judicial proceeding must be given as  
470 provided in the applicable rules of civil procedure.

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471           **SECTION 10.** The following shall be codified as Section 91-  
472 23-110, Mississippi Code of 1972.

473           91-23-110.   **OTHERS TREATED AS QUALIFIED BENEFICIARIES.** A  
474 charitable organization expressly designated to receive  
475 distributions under the terms of a charitable trust has the rights  
476 of a qualified beneficiary under this chapter if the charitable  
477 organization, on the date the charitable organization's  
478 qualification is being determined:

479           (1) is a distributee or permissible distributee of trust  
480 income or principal;

481           (2) would be a distributee or permissible distributee of  
482 trust income or principal if the interests of other distributees or  
483 permissible distributees then receiving or eligible to receive  
484 distributions terminated on that date without causing the trust to  
485 terminate; or

486           (3) would be a distributee or permissible distributee of  
487 trust income or principal if the trust terminated on that date.

488           **SECTION 11.** The following shall be codified as Section 91-  
489 23-111, Mississippi Code of 1972.

490           91-23-111.   **NONJUDICIAL SETTLEMENT AGREEMENTS.** (a) Except  
491 as otherwise provided in subsection (b), the trustee and qualified  
492 beneficiaries may enter into a binding nonjudicial settlement  
493 agreement with respect to any matter involving a trust.

494           (b) A nonjudicial settlement agreement is valid only to the  
495 extent it does not violate a material purpose of the trust and

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496 includes terms and conditions that could be properly approved by  
497 the court under this chapter or other applicable law.

498 (c) Matters that may be resolved by a nonjudicial settlement  
499 agreement include:

500 (1) the interpretation or construction of the terms of  
501 the trust;

502 (2) the approval of a trustee's report or accounting;

503 (3) direction to a trustee to refrain from performing a  
504 particular act or the grant to a trustee of any necessary or  
505 desirable power;

506 (4) the resignation or appointment of a trustee and the  
507 determination of a trustee's compensation;

508 (5) transfer of a trust's principal place of  
509 administration;

510 (6) liability of a trustee for an action relating to  
511 the trust;

512 (7) the extent or waiver of bond of a trustee;

513 (8) the governing law of the trust; and

514 (9) the criteria for distribution to a beneficiary  
515 where the trustee is given discretion.

516 (d) Any qualified beneficiary or trustee may request the  
517 court to approve a nonjudicial settlement agreement, to determine  
518 whether the representation as provided in Article 3 was adequate,  
519 and to determine whether the agreement contains terms and  
520 conditions the court could have properly approved.

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521           **SECTION 12.** The following shall be codified as Section 91-  
522 23-112, Mississippi Code of 1972.

523           91-23-112.   **RULES OF CONSTRUCTION.** The rules of construction  
524 that apply in this state to the interpretation of and disposition  
525 of property by will also apply as appropriate to the  
526 interpretation of the terms of a trust and the disposition of the  
527 trust property.

528           **SECTION 13.** The following shall be codified as Section 91-  
529 23-113, Mississippi Code of 1972.

530           91-23-113.   **INSURABLE INTEREST OF TRUSTEE.** (a) In this  
531 section, "settlor" means a person that executes a trust  
532 instrument. The term includes a person for which a fiduciary or  
533 agent is acting.

534           (b) A trustee of a trust has an insurable interest in the  
535 life of an individual insured under a life insurance policy that  
536 is owned by the trustee of the trust acting in a fiduciary  
537 capacity or that designates the trust itself as the owner if, on  
538 the date the policy is issued:

539                   (1) the insured is:

540                           (A) a settlor or beneficiary of the trust; or

541                           (B) an individual in whom a settlor or beneficiary  
542 of the trust has, or would have had if living at the time the  
543 policy was issued, an insurable interest in the life of the  
544 insured under section 83-5-251; and

545           (2) the life insurance proceeds are primarily for the  
546 benefit of one or more trust beneficiaries that have an insurable  
547 interest in the life of the insured under section 83-5-251.

548           (c) This section applies to any trust existing before, on,  
549 or after July 1, 2014, regardless of the effective date of the  
550 governing instrument under which the trust was created, but only  
551 as to a life insurance policy that is in force and for which an  
552 insured is alive on or after July 1, 2014.

553                           **ARTICLE 2. JUDICIAL PROCEEDINGS**

554           **SECTION 14.** The following shall be codified as Section 91-  
555 23-201, Mississippi Code of 1972.

556           91-23-201.   **ROLE OF COURT IN ADMINISTRATION OF TRUST.** (a)  
557 The court may intervene in the administration of a trust to the  
558 extent its jurisdiction is invoked by an interested person or as  
559 provided by law.

560           (b) A trust is not subject to continuing judicial  
561 supervision unless ordered by the court.

562           (c) A judicial proceeding involving a trust may relate to  
563 any matter involving the trust's administration, including a  
564 request for instructions and an action to declare rights.

565           (d) A judicial proceeding involving a trust may relate to  
566 any matter involving the trust's administration, including, but  
567 not being limited to a proceeding to:

568                   (1) request instructions;

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- 569           (2) determine the existence or nonexistence of any  
570 immunity, power, privilege, duty or right;
- 571           (3) approve a nonjudicial settlement;
- 572           (4) interpret or construe the terms of the trust;
- 573           (5) determine the validity of a trust or of any of its  
574 terms;
- 575           (6) approve a trustee's report or accounting or compel  
576 a trustee to report or account;
- 577           (7) direct a trustee to refrain from performing a  
578 particular act or grant to a trustee any necessary or desirable  
579 power;
- 580           (8) review the actions or approve the proposed actions  
581 of a trustee, including the exercise of a discretionary power;
- 582           (9) accept the resignation of a trustee;
- 583           (10) appoint or remove a trustee;
- 584           (11) determine a trustee's compensation;
- 585           (12) transfer a trust's principal place of  
586 administration or a trust's property to another jurisdiction;
- 587           (13) determine the liability of a trustee for an action  
588 relating to the trust and compel redress of a breach of trust by  
589 any available remedy;
- 590           (14) modify or terminate a trust;
- 591           (15) combine trusts or divide a trust;
- 592           (16) determine liability of a trust for debts of a  
593 beneficiary and living settlor;

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594           (17) determine liability of a trust for debts, expenses  
595 of administration, and statutory allowances chargeable against the  
596 estate of a deceased settlor;

597           (18) determine the liability of a trust for claims,  
598 expenses and taxes in connection with the settlement of a trust  
599 that was revocable at the settlor's death; and

600           (19) ascertain beneficiaries and determine to whom  
601 property will pass upon final or partial termination of a trust.

602           **SECTION 15.** The following shall be codified as Section 91-  
603 23-202, Mississippi Code of 1972.

604           91-23-202.   **JURISDICTION OVER TRUSTEE AND BENEFICIARY.** (a)  
605 By accepting the trusteeship of a trust having its principal place  
606 of administration in this state or by moving the principal place  
607 of administration to this state, the trustee submits personally to  
608 the jurisdiction of the courts of this state regarding any matter  
609 involving the trust.

610           (b) With respect to their interests in the trust, the  
611 beneficiaries of a trust having its principal place of  
612 administration in this state are subject to the jurisdiction of  
613 the courts of this state regarding any matter involving the trust.  
614 By accepting a distribution from such a trust, the recipient  
615 submits personally to the jurisdiction of the courts of this state  
616 regarding any matter involving the trust.

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617 (c) This section does not preclude other methods of  
618 obtaining jurisdiction over a trustee, beneficiary, or other  
619 person receiving property from the trust.

620 **SECTION 16.** The following shall be codified as Section 91-  
621 23-203, Mississippi Code of 1972.

622 91-23-203. **SUBJECT-MATTER JURISDICTION.** (a) Except as  
623 provided in subsections (b) and (c), the Chancery court has  
624 exclusive jurisdiction of proceedings in this state brought by a  
625 trustee or beneficiary concerning the administration of a trust.

626 (b) Any other court granted statutory equitable jurisdiction  
627 has concurrent jurisdiction with the Chancery court in any  
628 proceedings in this state brought by a trustee or beneficiary  
629 concerning the administration of a trust.

630 (c) The Chancery court has concurrent jurisdiction with  
631 other courts of this state in other proceedings involving a trust.

632 **SECTION 17.** The following shall be codified as Section 91-  
633 23-204, Mississippi Code of 1972.

634 91-23-204. **VENUE.** (a) Except as otherwise provided in  
635 subsection (b), venue for a judicial proceeding involving a trust  
636 is in the county of this state in which the trust's principal  
637 place of administration is or will be located and, if the trust is  
638 created by will and the estate is not yet closed, in the county in  
639 which the decedent's estate is being administered.

640 (b) If a trust has no trustee, venue for a judicial  
641 proceeding for the appointment of a trustee is in a county of this

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642 state in which a beneficiary resides, in a county in which any  
643 trust property is located, and if the trust is created by will, in  
644 the county in which the decedent's estate was or is being  
645 administered.

646         **SECTION 18.**         The following shall be codified as Section 91-  
647 23-205, Mississippi Code of 1972.

648         91-23-205.     **JUDICIAL ACCOUNTINGS AND SETTLEMENTS.**     (a) A  
649 trustee may file an accounting of the trustee's administration of  
650 a trust in court at any time and seek a partial or final  
651 settlement thereof or, upon petition of an interested party, a  
652 court may order a trustee to render an accounting of the trustee's  
653 administration of a trust and require a partial or final  
654 settlement thereof. Notice of such judicial proceeding shall be  
655 provided to the trustee and each beneficiary, or representative  
656 thereof pursuant to Article 3, as provided by the applicable rules  
657 of civil procedure.

658         (b) A trust accounting must be a reasonably understandable  
659 report from the date of the last accounting or, if none, from the  
660 date upon which the trustee became accountable, or other such date  
661 the court may set, which provides reasonable detail of the  
662 transactions affecting the administration of the trust, and which  
663 adequately discloses the following information:

664                 (1) The accounting must identify the trust, the trustee  
665 furnishing the accounting, and the time period covered by the  
666 accounting.



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691           **SECTION 19.** The following shall be codified as Section 91-  
692 23-301, Mississippi Code of 1972.

693           91-23-301.   **REPRESENTATION: BASIC EFFECT.** (a) Notice to a  
694 person who may represent and bind another person under this  
695 Article has the same effect as if notice were given directly to  
696 the other person.

697           (b) The consent of a person who may represent and bind  
698 another person under this Article is binding on the person  
699 represented unless the person represented objects to the  
700 representation before the consent would otherwise have become  
701 effective.

702           (c) Except as otherwise provided in sections 91-23-411 and  
703 91-23-602, a person who under this Article may represent a settlor  
704 who lacks capacity may receive notice and give a binding consent  
705 on the settlor's behalf.

706           (d) A settlor may not represent and bind a beneficiary under  
707 this Article with respect to the termination or modification of a  
708 trust under section 91-23-411(a).

709           **SECTION 20.** The following shall be codified as Section 91-  
710 23-302, Mississippi Code of 1972.

711           91-23-302.   **REPRESENTATION BY HOLDER OF POWER OF APPOINTMENT.**  
712 To the extent there is no material conflict of interest between  
713 the holder of a power of appointment and the persons represented  
714 with respect to the particular question or dispute, the holder may  
715 represent and bind persons whose interests, as permissible

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716 appointees, takers in default, or otherwise, are subject to the  
717 power.

718 **SECTION 21.** The following shall be codified as Section 91-  
719 23-303, Mississippi Code of 1972.

720 91-23-303. **REPRESENTATION BY FIDUCIARIES AND PARENTS.** To  
721 the extent there is no material conflict of interest between the  
722 representative and the person represented or among those being  
723 represented with respect to a particular question or dispute:

724 (1) a conservator or guardian may represent and bind the  
725 estate that the conservator or guardian controls;

726 (2) a conservator or guardian may represent and bind the  
727 ward if a conservator or guardian of the ward's estate has not  
728 been appointed;

729 (3) an agent having authority to act with respect to the  
730 particular question or dispute may represent and bind the  
731 principal;

732 (4) a trustee may represent and bind the beneficiaries of  
733 the trust;

734 (5) a personal representative of a decedent's estate may  
735 represent and bind persons interested in the estate;

736 (6) a person may represent and bind the person's minor or  
737 unborn descendant if a conservator or guardian for the descendant  
738 has not been appointed; and

739 (7) a person designated by the settlor in the trust  
740 instrument or in a writing delivered to the trustee to represent

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741 the beneficiaries of the trust may represent and bind such  
742 beneficiaries.

743 **SECTION 22.** The following shall be codified as Section 91-  
744 23-304, Mississippi Code of 1972.

745 91-23-304. **REPRESENTATION BY PERSON HAVING SUBSTANTIALLY**  
746 **IDENTICAL INTEREST.** (a) Unless otherwise represented, a minor,  
747 incapacitated, or unborn individual, or a person whose identity or  
748 location is unknown and not reasonably ascertainable, may be  
749 represented by and bound by another having a substantially  
750 identical interest with respect to the particular question or  
751 dispute, but only to the extent there is no material conflict of  
752 interest between the representative and the person represented.

753 (b) Unless otherwise represented, whenever survivorship of  
754 another person is an express or implied condition of receiving  
755 property from a trust, the successor contingent remainder  
756 beneficiary may be represented and bound by the presumptive  
757 remainder beneficiary upon whose death the rights of the successor  
758 contingent remainder beneficiary depend, but only to the extent  
759 there is no material conflict of interest between the presumptive  
760 remainder beneficiary and the successor contingent remainder  
761 beneficiary.

762 **SECTION 23.** The following shall be codified as Section 91-  
763 23-305, Mississippi Code of 1972.

764 91-23-305. **APPOINTMENT OF REPRESENTATIVE.** (a) If the court  
765 determines that an interest is not represented under this Article,

766 or that the otherwise available representation might be  
767 inadequate, the court may appoint a guardian ad litem or other  
768 representative to receive notice, give consent, and otherwise  
769 represent, bind, and act on behalf of a minor, incapacitated, or  
770 unborn individual, or a person whose identity or location is  
771 unknown. A guardian  
772 ad litem or other representative may be appointed to represent  
773 several persons or interests.

774 (b) A guardian ad litem or other representative may act on  
775 behalf of the individual represented with respect to any matter  
776 arising under this chapter, whether or not a judicial proceeding  
777 concerning the trust is pending.

778 (c) In making decisions, a guardian ad litem or other  
779 representative may consider general benefit accruing to the living  
780 members of the individual's family.

781 **ARTICLE 4. CREATION, VALIDITY, MODIFICATION, AND TERMINATION**  
782 **OF TRUST**

783 **SECTION 24.** The following shall be codified as Section 91-  
784 23-401, Mississippi Code of 1972.

785 91-23-401. **METHODS OF CREATING TRUST.** A trust may be  
786 created by:

787 (1) transfer of property to another person as trustee  
788 during the settlor's lifetime or by will or other disposition  
789 taking effect upon the settlor's death;

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790           (2) declaration by the owner of property that the owner  
791 holds identifiable property as trustee;

792           (3) exercise of a power of appointment in favor of a  
793 trustee; or

794           (4) a court pursuant to its statutory or equitable  
795 powers; or

796           (5) (A) by an agent or attorney-in-fact under a power  
797 of attorney that expressly grants authority to create the trust;  
798 or

799                       (B) by an agent or attorney-in-fact under a power  
800 of attorney that grants the agent or attorney-in-fact the  
801 authority to act in the management and disposition of the  
802 principal's property that is as broad or comprehensive as the  
803 principal could exercise for himself or herself and that does not  
804 expressly exclude the authority to create a trust. An agent or  
805 attorney-in-fact may file a petition for the court to determine  
806 whether a power of attorney described in this subdivision grants  
807 the agent or attorney-in-fact authority that is as broad or  
808 comprehensive as that which the principal could exercise for  
809 himself or herself.

810           **SECTION 25.** The following shall be codified as Section 91-  
811 23-402, Mississippi Code of 1972.

812           91-23-402.   **REQUIREMENTS FOR CREATION.** (a) A trust is  
813 created only if:

814           (1) the settlor has capacity to create a trust;

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815                   (2) the settlor indicates an intention to create the  
816 trust;

817                   (3) the trust has a definite beneficiary or is:

818                           (A) a charitable trust;

819                           (B) a trust for the care of an animal, as provided  
820 in Section 408; or

821                           (C) a trust for a noncharitable purpose, as  
822 provided in Section 409;

823                   (4) the trustee has duties to perform; and

824                   (5) the same person is not the sole trustee and sole  
825 beneficiary.

826           (b) A beneficiary is definite if the beneficiary can be  
827 ascertained now or in the future, subject to any applicable rule  
828 against perpetuities.

829           (c) A power in a trustee to select a beneficiary from an  
830 indefinite class is valid. If the power is not exercised within a  
831 reasonable time, the power fails and the property subject to the  
832 power passes to the persons who would have taken the property had  
833 the power not been conferred.

834           (d) A settlor is deemed to have the capacity to create a  
835 trust if:

836                   (1) the trust is created by an agent of the settlor  
837 under a power of attorney as described in section 91-23-401(5);  
838 and

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839           (2) the settlor had capacity to create a trust at the  
840 time the power of attorney was executed.

841           **SECTION 26.** The following shall be codified as Section 91-  
842 23-403, Mississippi Code of 1972.

843           91-23-403. **TRUSTS CREATED IN OTHER JURISDICTIONS.** A trust  
844 not created by will is validly created if its creation complies  
845 with the law of the jurisdiction in which the trust instrument was  
846 executed, or the law of the jurisdiction in which, at the time of  
847 creation:

848           (1) the settlor was domiciled, had a place of abode, or  
849 was a national;

850           (2) a trustee was domiciled or had a place of business;  
851 or

852           (3) any trust property was located.

853           **SECTION 27.** The following shall be codified as Section 91-  
854 23-404, Mississippi Code of 1972.

855           91-23-404. **TRUST PURPOSES.** A trust may be created only to  
856 the extent its purposes are lawful and possible to achieve. A  
857 trust and its terms must be for the benefit of its beneficiaries  
858 as the interests of such beneficiaries are defined under the terms  
859 of the trust.

860           **SECTION 28.** The following shall be codified as Section 91-  
861 23-405, Mississippi Code of 1972.

862           91-23-405. **CHARITABLE PURPOSES; ENFORCEMENT.** (a) A  
863 charitable trust may be created for the relief of poverty, the

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864 advancement of education or religion, the promotion of health,  
865 governmental or municipal purposes, or other purposes the  
866 achievement of which is beneficial to the community.

867 (b) If the terms of a charitable trust do not indicate a  
868 particular charitable purpose or beneficiary, the court may select  
869 one (1) or more charitable purposes or beneficiaries. The  
870 selection must be consistent with the settlor's intention to the  
871 extent it can be ascertained.

872 (c) The settlor of a charitable trust, among others, may  
873 maintain a proceeding to enforce the trust.

874 **SECTION 29.** The following shall be codified as Section 91-  
875 23-406, Mississippi Code of 1972.

876 91-23-406. **CREATION OF TRUST INDUCED BY FRAUD, DURESS, OR**  
877 **UNDUE INFLUENCE.** A trust is void to the extent its creation was  
878 induced by fraud, duress, or undue influence.

879 **SECTION 30.** The following shall be codified as Section 91-  
880 23-407, Mississippi Code of 1972.

881 91-23-407. **EVIDENCE OF ORAL TRUST; TRUST IN LAND.** (a)  
882 Except as provided in subsection (b) and except as required by a  
883 statute other than this chapter, a trust need not be evidenced by  
884 a trust instrument, but the creation of an oral trust and its  
885 terms may be established only by clear and convincing evidence.

886 (b) (1) No trust of or in any real property can be created  
887 except by a written instrument signed by the party who declares or  
888 creates such trust (the Asettlor@), or by his last will, in

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889 writing. Every writing declaring or creating a trust in real  
890 property, other than a last will, may be acknowledged and proved  
891 as other writing and filed for record with the clerk of the  
892 Chancery Court in which the real property, or part of it, is  
893 located, and such filing shall serve as constructive notice of the  
894 existence and terms of the trust from and after filing.

895 (2) In lieu of filing the trust instrument, there may  
896 be filed a memorandum of trust signed by the settlor, trustee, or  
897 successor trustee and acknowledged or proved as other writings,  
898 which memorandum shall contain the following information:

899 (A) the name of the trust;

900 (B) the street and mailing address of the office,  
901 and the name and street and mailing address and telephone number  
902 of the trustee;

903 (C) the name and street and mailing address and  
904 telephone number of the settlor of the trust;

905 (D) a legally sufficient description of all  
906 interests in real property owned by or conveyed to the trust;

907 (E) the anticipated date of termination of the  
908 trust or the event upon which the trust will be terminated; and

909 (F) the general powers granted to the trustee. The  
910 memorandum may also contain the name and street and mailing  
911 address and telephone number of any successor trustee, and if so,  
912 no amendment to the memorandum will be required to be filed if and  
913 when the successor trustee so named assumes office. The

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914 memorandum of trust may be filed with the clerk of the appropriate  
915 chancery court either before or after a deed of conveyance of real  
916 property to the trust or trustee, in his capacity as such. The  
917 memorandum need not comply with item (d) above if filed prior to  
918 or contemporaneously with a conveyance of any real property to the  
919 trust or trustee in his capacity as such, and need not be amended  
920 upon a subsequent conveyance of real property to the trust or  
921 trustee in his capacity as such, so long as the deed of conveyance  
922 is recorded in the appropriate county, and such recording of the  
923 deed of conveyance to the trust or trustee, as the case may be,  
924 shall constitute compliance with item (d) above. In addition, the  
925 deed of conveyance may also serve as a memorandum of trust, or an  
926 amendment to such document, as the case may be, so long as the  
927 deed of conveyance contains the information required for a  
928 memorandum of trust as set forth in this subsection (b).

929           (3) The settlor may amend the memorandum if the  
930 trust to which it relates is subject to a power of amendment or  
931 revocation by the settlor; otherwise, only the then-serving  
932 trustee may amend the memorandum. The memorandum of amendment  
933 shall set forth the amendment to the original memorandum with  
934 particularity. The amended memorandum of trust may be made  
935 effective on a future date, which must be a date certain. The  
936 memorandum of amendment may be signed by the creator, trustee or  
937 successor trustee, as the case may be, and acknowledged or proved

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938 as other writings and filed for record with the clerk of the  
939 chancery court where the original memorandum is of record.

940 (4) The provision of Sections 89-5-24 and 89-5-33  
941 shall apply to any trust instrument, memorandum, or amendment that  
942 is to be recorded under this subsection (b).

943 (5) The provisions of this subsection (b) shall  
944 have no application to trusts of personal property, nor to any  
945 trust arising or resulting by implication of law out of a  
946 conveyance of land. The failure to file a copy of the trust  
947 instrument, memorandum or deed of conveyance shall not affect the  
948 validity of the trust or the trust instrument.

949 **SECTION 31.** The following shall be codified as Section 91-  
950 23-408, Mississippi Code of 1972.

951 91-23-408. **TRUST FOR CARE OF ANIMAL.** (a) A trust may be  
952 created to provide for the care of an animal alive during the  
953 settlor's lifetime. The trust terminates upon the death of the  
954 animal or, if the trust was created to provide for the care of  
955 more than one (1) animal alive during the settlor's lifetime, upon  
956 the death of the last surviving animal.

957 (b) A trust authorized by this section may be enforced by a  
958 person appointed in the terms of the trust or, if no person is so  
959 appointed, by a person appointed by the court. In addition, a  
960 person having a demonstrated interest in the welfare of the animal  
961 may request the court to appoint a person to enforce the trust or  
962 to remove a person appointed.

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963 (c) Property of a trust authorized by this section may be  
964 applied only to its intended use, except to the extent the court  
965 determines that the value of the trust property exceeds the amount  
966 required for the intended use. Except as otherwise provided in  
967 the terms of the trust, property not required for the intended use  
968 must be distributed to the settlor, if then living, otherwise to  
969 the settlor's successors in interest.

970 **SECTION 32.** The following shall be codified as Section 91-  
971 23-409, Mississippi Code of 1972.

972 91-23-409. **NONCHARITABLE TRUST WITHOUT ASCERTAINABLE**

973 **BENEFICIARY.** Except as otherwise provided in section 91-23-408,  
974 section 41-43-51 or by another statute, the following rules apply:

975 (1) A trust may be created for a noncharitable purpose  
976 without a definite or definitely ascertainable beneficiary or for  
977 a noncharitable but otherwise valid purpose to be selected by the  
978 trustee. The trust may not be enforced for more than twenty-one  
979 (21) years;

980 (2) A trust authorized by this section may be enforced by a  
981 person appointed under the terms of the trust, if no person is so  
982 appointed, by a person appointed by the court.

983 (3) Property of a trust authorized by this section may be  
984 applied only to its intended use, except to the extent the court  
985 determines that the value of the trust property exceeds the amount  
986 required for the intended use. Except as otherwise provided in  
987 the terms of the trust, property not required for the intended use

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988 must be distributed to the settlor, if then living, otherwise to  
989 the settlor's successors in interest.

990         **SECTION 33.** The following shall be codified as Section 91-  
991 23-410, Mississippi Code of 1972.

992         91-23-410.   **MODIFICATION OR TERMINATION OF TRUST; PROCEEDINGS**  
993 **FOR APPROVAL OR DISAPPROVAL.** (a) In addition to the methods of  
994 termination prescribed by sections 91-23-411 through 91-23-414, a  
995 trust terminates to the extent the trust is revoked or expires  
996 pursuant to its terms, no purpose of the trust remains to be  
997 achieved, or the purposes of the trust have become unlawful or  
998 impossible to achieve.

999         (b) A proceeding to approve or disapprove a proposed  
1000 modification or termination under sections 91-23-411 through 91-  
1001 23-416, or trust combination or division under section 91-23-417,  
1002 may be commenced by a trustee or beneficiary. The settlor of a  
1003 charitable trust may maintain a proceeding to modify the trust  
1004 under section 91-23-413.

1005         (c) Nothing in this section or this chapter is intended to  
1006 create or imply a duty for a trustee to make or seek approval of a  
1007 modification, termination, combination or division, and a trustee  
1008 is not liable for not making or seeking approval of a  
1009 modification, termination, combination or division.

1010         **SECTION 34.** The following shall be codified as Section 91-  
1011 23-411, Mississippi Code of 1972.

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1012           91-23-411.   **MODIFICATION OR TERMINATION OF NONCHARITABLE**  
1013 **IRREVOCABLE TRUST BY CONSENT.** (a) During the settlor's lifetime,  
1014 a noncharitable irrevocable trust may be modified or terminated by  
1015 the trustee upon consent of all qualified beneficiaries, even if  
1016 the modification or termination is inconsistent with a material  
1017 purpose of the trust if the settlor does not object to the  
1018 proposed modification or termination. The trustee shall notify  
1019 the settlor of the proposed modification or termination not less  
1020 than sixty (60) days before initiating the modification or  
1021 termination. The notice of modification or termination must  
1022 include:

1023                   (1) an explanation of the reasons for the proposed  
1024 modification or termination;

1025                   (2) the date on which the proposed modification or  
1026 termination is anticipated to occur; and

1027                   (3) the date, not less than sixty (60) days after the  
1028 giving of notice, by which the settlor must notify the trustee of  
1029 an objection to the proposed modification or termination.

1030           (b) Following the settlor's death, a noncharitable  
1031 irrevocable trust may be terminated upon consent of all of the  
1032 beneficiaries if the court concludes that continuance of the trust  
1033 is not necessary to achieve any material purpose of the trust. A  
1034 noncharitable irrevocable trust may be modified upon consent of  
1035 all of the beneficiaries if the court concludes that modification  
1036 is not inconsistent with a material purpose of the trust.

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1037           (c) Upon termination of a trust under subsection (a) or (b),  
1038 the trustee shall distribute the trust property as agreed by the  
1039 qualified beneficiaries.

1040           (d) If not all of the qualified beneficiaries consent to a  
1041 proposed modification or termination of the trust under subsection  
1042 (a) or (b), the modification or termination may be approved by the  
1043 court if the court is satisfied that:

1044                   (1) if all of the beneficiaries had consented, the  
1045 trust could have been modified or terminated under this section;  
1046 and

1047                   (2) the interests of a qualified beneficiary who does  
1048 not consent will be adequately protected.

1049           (e) Solely for purposes of this section, the term  
1050 "noncharitable irrevocable trust" refers to a trust that is not  
1051 revocable by the settlor with respect to which:

1052                   (1) no federal or state income, gift, estate or  
1053 inheritance tax charitable deduction was allowed upon transfers to  
1054 the trust; and

1055                   (2) the value of all interests in the trust owned by  
1056 charitable organizations does not exceed five percent (5%) of the  
1057 value of the trust.

1058           (f) Notwithstanding subsection (a), the trustee may seek  
1059 court approval of a modification or termination.

1060           **SECTION 35.** The following shall be codified as Section 91-  
1061 23-412, Mississippi Code of 1972.

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1062           91-23-412.   **MODIFICATION OR TERMINATION BECAUSE OF**  
1063 **UNANTICIPATED CIRCUMSTANCES OR INABILITY TO ADMINISTER TRUST**  
1064 **EFFECTIVELY.** (a) The court may modify the administrative or  
1065 dispositive terms of a trust or terminate the trust if, because of  
1066 circumstances not anticipated by the settlor, modification or  
1067 termination will further the purposes of the trust. To the extent  
1068 practicable, the modification must be made in accordance with the  
1069 settlor's probable intention.

1070           (b) The court may modify the administrative terms of a trust  
1071 if continuation of the trust on its existing terms would be  
1072 impracticable or wasteful or impair the trust's administration.

1073           (c) Upon termination of a trust under this section, the  
1074 trustee shall distribute the trust property in a manner consistent  
1075 with the purposes of the trust.

1076           **SECTION 36.** The following shall be codified as Section 91-  
1077 23-413, Mississippi Code of 1972.

1078           91-23-413.   **CY PRES.** (a) Except as otherwise provided in  
1079 subsection (b), if a particular charitable purpose becomes  
1080 unlawful, impracticable, impossible to achieve, obsolete or  
1081 ineffective:

1082                   (1) the trust does not fail, in whole or in part;

1083                   (2) the trust property does not revert to the settlor  
1084 or the settlor's successors in interest; and

1085                   (3) the court may apply cy pres to modify or terminate  
1086 the trust by directing that the trust property be applied or

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1087 distributed, in whole or in part, in a manner that fulfills as  
1088 nearly as possible the settlor's charitable intent and purposes.

1089 (b) A provision in the terms of a charitable trust that  
1090 would result in distribution of the trust property to a  
1091 noncharitable beneficiary prevails over the power of the court  
1092 under subsection (a) to apply cy pres to modify or terminate the  
1093 trust only if, when the provision takes effect:

1094 (1) the trust property is to revert to the settlor and  
1095 the settlor is still living; or

1096 (2) fewer than twenty-one (21) years have elapsed since  
1097 the date of the trust's creation.

1098 **SECTION 37.** The following shall be codified as Section 91-  
1099 23-414, Mississippi Code of 1972.

1100 91-23-414. **MODIFICATION OR TERMINATION OF UNECONOMIC TRUST.**

1101 (a) After notice to the qualified beneficiaries, the trustee  
1102 of a trust consisting of trust property having a total value less  
1103 than one hundred fifty thousand dollars (\$150,000) may terminate  
1104 the trust if the trustee concludes that the value of the trust  
1105 property is insufficient to justify the cost of administration.

1106 (b) The court may modify or terminate a trust or remove the  
1107 trustee and appoint a different trustee if it determines that the  
1108 value of the trust property is insufficient to justify the cost of  
1109 administration.

1110 (c) Upon termination of a trust under this section, the  
1111 trustee shall distribute the trust property to or for the benefit

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1112 of the beneficiaries, in such shares as the trustee, or the court  
1113 in a court proceeding, determines, after taking into account the  
1114 interests of income and remainder beneficiaries so as to conform  
1115 as nearly as possible to the intention of the settlor, but a trust  
1116 that qualified for the marital deduction for tax purposes shall  
1117 only be distributed to the spouse of the settlor for whom the  
1118 trust was created.

1119 (d) This section does not apply to an easement for  
1120 conservation or preservation.

1121 (e) This section shall not limit the right of a trustee,  
1122 acting alone, to terminate a trust in accordance with applicable  
1123 provisions of the governing instrument.

1124 **SECTION 38.** The following shall be codified as Section 91-  
1125 23-415, Mississippi Code of 1972.

1126 91-23-415. **REFORMATION TO CORRECT MISTAKES.** The court may  
1127 reform the terms of a trust, even if unambiguous, to conform the  
1128 terms to the settlor's intention if it is proved by clear and  
1129 convincing evidence that both the settlor's intent and the terms  
1130 of the trust were affected by a mistake of fact or law, whether in  
1131 expression or inducement.

1132 **SECTION 39.** The following shall be codified as Section 91-  
1133 23-416, Mississippi Code of 1972.

1134 91-23-416. **MODIFICATION TO ACHIEVE SETTLOR'S TAX OBJECTIVES.**  
1135 To achieve the settlor's tax objectives, the court may modify the  
1136 terms of a trust in a manner that is not contrary to the settlor's

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1137 probable intention. The court may provide that the modification  
1138 has retroactive effect.

1139 **SECTION 40.** The following shall be codified as Section 91-  
1140 23-417, Mississippi Code of 1972.

1141 91-23-417. **COMBINATION AND DIVISION OF TRUSTS.**

1142 (a) After notice to the qualified beneficiaries, a trustee  
1143 may combine two (2) or more trusts into a single trust or divide a  
1144 trust into two (2) or more separate trusts, if the result does not  
1145 impair the rights of any beneficiary or adversely affect  
1146 achievement of the purposes of the trust. In addition to any  
1147 other combination or division the result of which does not impair  
1148 the rights of any beneficiary or adversely affect achievement of  
1149 the purposes of the trust, a combination or division pursuant to  
1150 subsection (d) of this Section 91-23-417 shall not be considered  
1151 as impairing the rights of any beneficiary or adversely affecting  
1152 the achievement of the purposes of the trust. If the trusts to be  
1153 combined or divided have different trustees, the trustees may  
1154 negotiate the terms of the combined or divided trusts, including  
1155 which trusts will be the surviving trust or trusts, who will be  
1156 the trustee or trustees of the surviving trust or trusts and any  
1157 other matter relating to the operation of the surviving trust or  
1158 trusts.

1159 (b) In addition to combining two (2) or more trusts into a  
1160 single trust or dividing a trust into two (2) or more separate  
1161 trusts, a trustee, after notice to the qualified beneficiaries,

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1162 may segregate by allocation to a separate account or trust a  
1163 specific amount from, a portion of, or a specific asset included  
1164 in the trust property of any trust to reflect a disclaimer, to  
1165 reflect or result in differences in federal tax attributes, to  
1166 satisfy any federal tax requirement, to make federal tax  
1167 elections, to reduce potential generation-skipping transfer tax  
1168 liability, or for any other tax planning purposes or other  
1169 reasons.

1170 (c) A separate trust created by severance or segregation  
1171 must be treated as a separate trust for all purposes from the  
1172 effective date in which the severance or segregation is effective.  
1173 The effective date of the severance or segregation may be  
1174 retroactive. In managing, investing, administering and  
1175 distributing the trust property of any separate account or trust  
1176 and in making applicable tax elections, the trustee may consider  
1177 the differences in federal tax attributes and all other factors  
1178 the trustee believes pertinent and may make disproportionate  
1179 distributions from the separate trusts or accounts created.

1180 (d) A trust or account created by consolidation, severance  
1181 or segregation under this Section 91-23-417 shall not be  
1182 considered as impairing the rights of a beneficiary if the trust  
1183 is held on terms and conditions that are substantially equivalent  
1184 to the terms of the trust before consolidation, severance or  
1185 segregation so that the aggregate interests of each beneficiary  
1186 are substantially equivalent to the beneficiary's interests in the

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1187 trust or trusts before consolidation, severance or segregation. In  
1188 determining whether a beneficiary's aggregate interests are  
1189 substantially equivalent, the trustee shall consider the economic  
1190 value of those interests to the extent they can be valued,  
1191 considering actuarial factors as appropriate. If a beneficiary's  
1192 interest cannot be valued with any reasonable degree of certainty  
1193 because of the nature of the trust property, the terms of the  
1194 trust, or other reasons, the trustee shall base the determination  
1195 upon such other factors as are reasonable and appropriate under  
1196 the facts and circumstances applicable to that particular trust,  
1197 including the purposes of the trust. Provided, however, the terms  
1198 of any trust before consolidation, severance or segregation which  
1199 permit qualification of that trust for an applicable federal tax  
1200 deduction, exclusion, election, exemption, or other special  
1201 federal tax status must remain identical in the consolidated trust  
1202 or in each of the separate trusts or accounts created by severance  
1203 or segregation.

1204 (e) A trustee who acts in good faith is not liable to any  
1205 person for taking into consideration differences in federal tax  
1206 attributes and other pertinent factors in administering trust  
1207 property of any separate account or trust, in making tax  
1208 elections, and making distributions pursuant to the terms of the  
1209 separate trust.

1210 (f) Income earned on a consolidated or severed or segregated  
1211 amount, portion, or specific asset after the consolidation or

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1212 severance is effective passes with that amount, portion or  
1213 specific asset.

1214 (g) This Section 91-23-417 applies to all trusts whenever  
1215 created, whether before, on, or after July 1, 2014, and whether  
1216 such trusts are inter vivos or testamentary, are created by the  
1217 same or different instruments, by the same or different persons  
1218 and regardless of where created or administered.

1219 (h) This Section 91-23-417 does not limit the right of a  
1220 trustee acting in accordance with the applicable provisions of the  
1221 governing instrument to divide or consolidate trusts.

1222 (i) Nothing contained in this Section 91-23-417 shall be  
1223 construed as granting to any trustee a general power of  
1224 appointment over any trust not otherwise expressly granted in the  
1225 trust instrument.

1226 **ARTICLE 5. CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY**  
1227 **TRUSTS**

1228 (Reserved)

1229 **ARTICLE 6. REVOCABLE TRUSTS**

1230 **SECTION 41.** The following shall be codified as Section 91-  
1231 23-601, Mississippi Code of 1972.

1232 91-23-601. **CAPACITY OF SETTLOR OF REVOCABLE TRUST.** The  
1233 capacity required to create, amend, revoke, or add property to a  
1234 revocable trust, or to direct the actions of the trustee of a  
1235 revocable trust, is the same as that required to make a will. To  
1236 be effective as a post death disposition of property transferred

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1237 during the transferor's life or by the transferor's will to a  
1238 trust of which the transferor is the settlor or deemed to be the  
1239 settlor, neither a revocable nor an irrevocable trust existing on  
1240 or executed after [insert effective date of chapter], has to be  
1241 executed with the formalities of a will.

1242         **SECTION 42.** The following shall be codified as Section 91-  
1243 23-602, Mississippi Code of 1972.

1244         91-23-602.   **REVOCATION OR AMENDMENT OF REVOCABLE TRUST.**   (a)  
1245 Unless the terms of a trust expressly provide that the trust is  
1246 irrevocable, the settlor may revoke or amend the trust. This  
1247 subsection (a) does not apply to a trust created under an  
1248 instrument executed before the effective date of this chapter.

1249         (b) If a revocable trust is created or funded by more than  
1250 one (1) settlor:

1251                 (1) to the extent the trust consists of community  
1252 property, the trust may be revoked by either spouse acting alone  
1253 but may be amended only by joint action of both spouses;

1254                 (2) to the extent the trust consists of property other  
1255 than community property, each settlor may revoke or amend the  
1256 trust with regard the portion of the trust property attributable  
1257 to that settlor's contribution;

1258                 (3) at the death of one (1) settlor, each surviving  
1259 settlor shall have the right to revoke the trust as to the  
1260 surviving settlor's portion of the trust as determined by the type  
1261 of property in accordance with subsection (b)(1) or (b)(2); and

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1262           (4) Upon the revocation or amendment of the trust by  
1263 fewer than all of the settlors or upon the death of one (1) of the  
1264 settlors, the trustee shall promptly notify the other settlors of  
1265 the revocation, amendment or death.

1266           (c) The settlor may revoke or amend a revocable trust:

1267               (1) by substantial compliance with a method provided in  
1268 the terms of the trust; or

1269               (2) if the terms of the trust do not provide a method  
1270 or the method provided in the terms is not expressly made  
1271 exclusive, by:

1272                   (A) a later will or codicil that expressly refers  
1273 to the trust or specifically devises property that would otherwise  
1274 have passed according to the terms of the trust; or

1275                   (B) any other method manifesting clear and  
1276 convincing evidence of the settlor's intent; provided however,  
1277 that a written revocable trust may only be amended and revoked by  
1278 a later written instrument delivered to the trustee.

1279           (d) Upon revocation of a revocable trust, the trustee shall  
1280 deliver the trust property as the settlor directs. However, with  
1281 respect to community property under (b)(1), the trustee shall  
1282 deliver the property one-half (1/2) to each spouse unless the  
1283 trust instrument specifically states otherwise.

1284           (e) A settlor's powers with respect to revocation,  
1285 amendment, or distribution of trust property may be exercised by

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1286 an agent under a power of attorney only to the extent expressly  
1287 authorized by the terms of the trust or the power.

1288 (f) A conservator or guardian of the settlor may exercise a  
1289 settlor's powers with respect to revocation, amendment, or  
1290 distribution of trust property only with the approval of the court  
1291 supervising the conservatorship or guardianship.

1292 (g) A trustee who does not know that a trust has been  
1293 revoked or amended is not liable to the settlor or settlor's  
1294 successors in interest for distributions made and other actions  
1295 taken on the assumption that the trust had not been amended or  
1296 revoked.

1297 **SECTION 43.** The following shall be codified as Section 91-  
1298 23-603, Mississippi Code of 1972.

1299 91-23-603. **SETTLOR'S POWERS; POWERS OF WITHDRAWAL.** (a)  
1300 While a trust is revocable rights of the beneficiaries are subject  
1301 to the control of, and the duties of the trustee are owed  
1302 exclusively to, the settlor.

1303 (b) If a revocable trust has more than one (1) settlor, the  
1304 duties of the trustee are owed to all of the settlors having  
1305 capacity to revoke the trust.

1306 (c) During the period the power may be exercised, the holder  
1307 of a power of withdrawal has the rights of a settlor of a  
1308 revocable trust under this section to the extent of the property  
1309 subject to the power.

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1310           **SECTION 44.** The following shall be codified as Section 91-  
1311 23-604, Mississippi Code of 1972.

1312           91-23-604.   **LIMITATION ON ACTION CONTESTING VALIDITY OF**

1313 **REVOCABLE TRUST; DISTRIBUTION OF TRUST PROPERTY.** (a) A person  
1314 may commence a judicial proceeding to contest the validity of all  
1315 or part of the terms of a trust that was revocable at the  
1316 settlor's death within the earlier of:

1317                   (1) two (2) years after the settlor's death; or

1318                   (2) one hundred and twenty (120) days after the trustee  
1319 sent the person a copy of the trust instrument and a notice  
1320 informing the person of the trust's existence, of the trustee's  
1321 name and address, and of the time allowed for commencing a  
1322 proceeding.

1323           (b) Upon the death of the settlor of a trust that was  
1324 revocable at the settlor's death, the trustee may proceed to  
1325 distribute the trust property in accordance with the terms of the  
1326 trust. The trustee is subject to liability for doing so if:

1327                   (1) the trustee knows of a pending judicial proceeding  
1328 contesting the validity of all or part of the terms of the trust;  
1329 or

1330                   (2) a potential contestant has notified the trustee of  
1331 a possible judicial proceeding to contest the trust and a judicial  
1332 proceeding is commenced within sixty (60) days after the  
1333 contestant sent the notification.

1334 (c) A beneficiary of a trust that is determined by a court  
1335 proceeding to be invalid in whole or in part is liable to return  
1336 to the court any distribution received for proper distribution to  
1337 the extent that the invalidity applies to the distribution. If  
1338 the beneficiary refuses to return the distribution after being  
1339 ordered by the court, the beneficiary shall be liable for all  
1340 costs incurred for recovery of the distribution.

1341 **ARTICLE 7. OFFICE OF TRUSTEE**

1342 **SECTION 45.** The following shall be codified as Section 91-  
1343 23-701, Mississippi Code of 1972.

1344 91-23-701. **ACCEPTING OR DECLINING TRUSTEESHIP.** (a) Except  
1345 as otherwise provided in subsection (c), a person designated as  
1346 trustee accepts the trusteeship:

1347 (1) by substantially complying with a method of  
1348 acceptance provided in the terms of the trust; or

1349 (2) if the terms of the trust do not provide a method  
1350 or the method provided in the terms is not expressly made  
1351 exclusive, by accepting delivery of the trust property, exercising  
1352 powers or performing duties as trustee, or otherwise indicating  
1353 acceptance of the trusteeship.

1354 (b) A person designated as trustee who has not yet accepted  
1355 the trusteeship may reject the trusteeship. A designated trustee  
1356 who does not accept the trusteeship within a reasonable time after  
1357 knowing of the designation is deemed to have rejected the  
1358 trusteeship.

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1359 (c) A person designated as trustee, without accepting the  
1360 trusteeship, may:

1361 (1) act to preserve the trust property if, within a  
1362 reasonable time after acting, the person sends a rejection of the  
1363 trusteeship to the settlor or, if the settlor is dead or lacks  
1364 capacity, to a qualified beneficiary; and

1365 (2) inspect or investigate trust property to determine  
1366 potential liability under environmental or other law or for any  
1367 other purpose.

1368 **SECTION 46.** The following shall be codified as Section 91-  
1369 23-702, Mississippi Code of 1972.

1370 91-23-702. **TRUSTEE'S BOND.** (a) A trustee shall give bond  
1371 to secure performance of the trustee's duties only if the court  
1372 finds that a bond is needed to protect the interests of the  
1373 beneficiaries or is required by the terms of the trust and the  
1374 court has not dispensed with the requirement.

1375 (b) The court may specify the amount of a bond, its  
1376 liabilities, and whether sureties are necessary. The court may  
1377 modify or terminate a bond at any time.

1378 (c) A state or national bank, savings institution, or trust  
1379 company authorized to exercise fiduciary powers and regulated by  
1380 the office of the comptroller of the currency, office of thrift  
1381 supervision, the Mississippi Department of Banking and Consumer  
1382 Finance or equivalent state banking supervisors need not give  
1383 bond, even if required by the terms of the trust.

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1384           **SECTION 47.** The following shall be codified as Section 91-  
1385 23-703, Mississippi Code of 1972.

1386           91-23-703. **COTRUSTEES.** (a) Cotrustees who are unable to  
1387 reach a unanimous decision after consultation among all the  
1388 cotrustees may act by majority decision.

1389           (b) If a vacancy occurs in a cotrusteeship, the remaining  
1390 cotrustees may act for the trust.

1391           (c) A cotrustee must participate in the performance of a  
1392 trustee's function and consult with the other cotrustees unless  
1393 the cotrustee is unavailable to perform the function because of  
1394 absence, illness, disqualification under other law, or other  
1395 temporary incapacity or the cotrustee has properly delegated the  
1396 performance of the function to another trustee.

1397           (d) If a cotrustee is unavailable to perform duties because  
1398 of absence, illness, disqualification under other law, or other  
1399 temporary incapacity, and prompt action is necessary to achieve  
1400 the purposes of the trust or to avoid injury to the trust  
1401 property, the remaining cotrustee or a majority of the remaining  
1402 cotrustees may act for the trust.

1403           (e) A trustee may delegate to a cotrustee the performance of  
1404 a function other than a function that the terms of the trust  
1405 instrument expressly require the trustees to perform jointly.  
1406 Unless a delegation was irrevocable, a trustee may revoke a  
1407 delegation previously made.

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1408           (f) Except as otherwise provided in subsection (g), a  
1409 trustee who does not join in an action of another trustee is not  
1410 liable for the action.

1411           (g) Each trustee shall exercise reasonable care to:

1412                 (1) prevent a cotrustee from committing a serious  
1413 breach of trust; and

1414                 (2) compel a cotrustee to redress a serious breach of  
1415 trust.

1416           (h) A dissenting trustee who joins in an action at the  
1417 direction of the majority of the trustees and who notified any  
1418 cotrustee of the dissent at or before the time of the action is  
1419 not liable for the action unless the action is a serious breach of  
1420 trust.

1421           (i) A trustee shall keep each cotrustee and any other  
1422 fiduciary reasonably informed about the administration of the  
1423 trust, to the extent the trustee has knowledge that each such  
1424 cotrustee or other fiduciary does not have such knowledge of the  
1425 trustee's actions, or regarding other material information or the  
1426 availability of such information, related to the administration of  
1427 the trust that would be reasonably necessary for each such  
1428 cotrustee or other fiduciary to perform his or her duties as a  
1429 trustee or other fiduciary of the trust.

1430           **SECTION 48.** The following shall be codified as Section 91-  
1431 23-704, Mississippi Code of 1972.

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1432           91-23-704.   **VACANCY IN TRUSTEESHIP; APPOINTMENT OF SUCCESSOR.**

1433           (a) A vacancy in a trusteeship occurs if:

1434                   (1) a person designated as trustee rejects the  
1435 trusteeship;

1436                   (2) a person designated as trustee cannot be identified  
1437 or does not exist;

1438                   (3) a trustee resigns;

1439                   (4) a trustee is disqualified or removed;

1440                   (5) a trustee dies; or

1441                   (6) a conservator or guardian is appointed for an  
1442 individual serving as trustee.

1443           (b) If one or more cotrustees remain in office, a vacancy in  
1444 a trusteeship need not be filled. A vacancy in a trusteeship must  
1445 be filled if the trust has no remaining trustee.

1446           (c) A vacancy in a trusteeship of a noncharitable trust that  
1447 is required to be filled must be filled in the following order of  
1448 priority:

1449                   (1) by a person designated in the terms of the trust to  
1450 act as successor trustee;

1451                   (2) by a person appointed by unanimous agreement of the  
1452 qualified beneficiaries; or

1453                   (3) by a person appointed by the court.

1454           (d) A vacancy in a trusteeship of a charitable trust that is  
1455 required to be filled must be filled in the following order of  
1456 priority:

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1457           (1) by a person designated in the terms of the trust to  
1458 act as successor trustee;

1459           (2) by a person selected by the unanimous agreement of  
1460 the charitable organizations expressly designated to receive  
1461 distributions under the terms of the trust if the attorney general  
1462 does not affirmatively object within thirty (30) days of receipt  
1463 of notice of the person selected; or

1464           (3) by a person appointed by the court.

1465           (e) Whether or not a vacancy in a trusteeship exists or is  
1466 required to be filled, the court may appoint an additional trustee  
1467 or special fiduciary whenever the court considers the appointment  
1468 necessary for the administration of the trust.

1469           **SECTION 49.** The following shall be codified as Section 91-  
1470 23-705, Mississippi Code of 1972.

1471           91-23-705. **RESIGNATION OF TRUSTEE.** (a) A trustee may  
1472 resign:

1473           (1) upon at least thirty (30) days' notice to the  
1474 qualified beneficiaries, the settlor, if living, and all  
1475 cotrustees; or

1476           (2) with the approval of the court.

1477           (b) In approving a resignation, the court may issue orders  
1478 and impose conditions reasonably necessary for the protection of  
1479 the trust property.

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1480 (c) Any liability of a resigning trustee or of any sureties  
1481 on the trustee's bond for acts or omissions of the trustee is not  
1482 discharged or affected by the trustee's resignation.

1483 **SECTION 50.** The following shall be codified as Section 91-  
1484 23-706, Mississippi Code of 1972.

1485 91-23-706. **REMOVAL OF TRUSTEE.** (a) The settlor, a  
1486 cotrustee, or a beneficiary may request the court to remove a  
1487 trustee, or a trustee may be removed by the court on its own  
1488 initiative.

1489 (b) The court may remove a trustee if:

1490 (1) the trustee has committed a serious breach of  
1491 trust;

1492 (2) lack of cooperation among cotrustees substantially  
1493 impairs the administration of the trust;

1494 (3) because of unfitness, unwillingness, or persistent  
1495 failure of the trustee to administer the trust effectively, the  
1496 court determines that removal of the trustee best serves the  
1497 interests of the beneficiaries; or

1498 (4) there has been a substantial change of  
1499 circumstances or removal is requested by all of the qualified  
1500 beneficiaries, the court finds that removal of the trustee best  
1501 serves the interests of all of the beneficiaries and is not  
1502 inconsistent with a material purpose of the trust, and a suitable  
1503 cotrustee or successor trustee is available.

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1504 (c) Pending a final decision on a request to remove a  
1505 trustee, or in lieu of or in addition to removing a trustee, the  
1506 court may order such appropriate relief under section 91-23-  
1507 1001(b) as may be necessary to protect the trust property or the  
1508 interests of the beneficiaries.

1509 **SECTION 51.** The following shall be codified as Section 91-  
1510 23-707, Mississippi Code of 1972.

1511 91-23-707. **DELIVERY OF PROPERTY BY FORMER TRUSTEE.** (a)  
1512 Unless a cotrustee remains in office or the court otherwise  
1513 orders, and until the trust property is delivered to a successor  
1514 trustee or other person entitled to it, a trustee who has resigned  
1515 or been removed has the duties of a trustee and the powers  
1516 necessary to protect the trust property.

1517 (b) A trustee who has resigned or been removed shall, within  
1518 a reasonable time, deliver the trust property within the trustee's  
1519 possession to the cotrustee, successor trustee, or other person  
1520 entitled to it.

1521 **SECTION 52.** The following shall be codified as Section 91-  
1522 23-708, Mississippi Code of 1972.

1523 91-23-708. **COMPENSATION OF TRUSTEE, TRUST ADVISOR AND TRUST**  
1524 **PROTECTOR.** (a) If the terms of a trust do not specify the  
1525 trustee's, trust advisor's or trust protector's compensation, and  
1526 if the settlor, if living, or otherwise a majority of the  
1527 qualified beneficiaries as defined in section 91-23-103, have not  
1528 otherwise agreed with the trustee, trust advisor or trust

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1529 protector, a trustee, trust advisor or trust protector is entitled  
1530 to compensation that is reasonable under the circumstances.

1531 (b) If the terms of a trust specify the trustee's, trust  
1532 advisor's or trust protector's compensation, the trustee, trust  
1533 advisor or trust protector is entitled to be compensated as  
1534 specified in the trust, but the court may allow more or less  
1535 compensation if:

1536 (1) the duties of the trustee, trust advisor or trust  
1537 protector are substantially different from those contemplated when  
1538 the trust was created; or

1539 (2) the compensation specified by the terms of the  
1540 trust would be unreasonably low or high.

1541 (c) Factors for the court to consider in deciding upon a  
1542 trustee's, trust advisor's or trust protector's compensation shall  
1543 include the size of the trust, the nature and number of the  
1544 assets, the income produced, the time and responsibility required,  
1545 the expertise required, any management or sale of real property or  
1546 closely held business interests, any involvement in litigation to  
1547 protect trust property, and other relevant factors.

1548 (d) Subject to the court's authority as provided in  
1549 subsection (b), regardless of its form of entity, the fees set  
1550 forth in the published fee schedule of a trustee, trust advisor or  
1551 trust protector that is regulated by the Mississippi Department of  
1552 Banking and Consumer Finance, the equivalent regulatory agency of  
1553 another state, the office of the comptroller of the currency or

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1554 the office of thrift supervision shall be presumed to be  
1555 reasonable, unless otherwise provided by the terms of the trust.

1556 **SECTION 53.** The following shall be codified as Section 91-  
1557 23-709, Mississippi Code of 1972.

1558 91-23-709. **REIMBURSEMENT OF EXPENSES.** (a) A trustee, trust  
1559 advisor or trust protector is entitled to be reimbursed out of the  
1560 trust property, with interest as appropriate, for:

1561 (1) expenses that were properly incurred in the  
1562 administration of the trust, including the defense or prosecution  
1563 of any action, whether successful or not, unless the trustee is  
1564 determined to have willfully or wantonly committed a material  
1565 breach of trust; and

1566 (2) to the extent necessary to prevent unjust  
1567 enrichment of the trust, expenses that were not properly incurred  
1568 in the administration of the trust.

1569 (b) An advance by the trustee, trust advisor or trust  
1570 protector or by a person named in section 91-23-701(c)(1) of money  
1571 for the protection of the trust gives rise to a lien against trust  
1572 property to secure reimbursement with reasonable interest.

1573 **SECTION 54.** The following shall be codified as Section 91-  
1574 23-710, Mississippi Code of 1972.

1575 91-23-710. **DIRECTED TRUSTS.** If the terms of the trust  
1576 require a trustee, trust advisor, or trust protector to follow the  
1577 direction of a trust advisor or trust protector, and the trustee,  
1578 trust advisor, or trust protector acts in accordance with such

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1579 direction, then the trustee, trust advisor, or trust protector so  
1580 directed shall be treated as an excluded fiduciary.

1581 **SECTION 55.** The following shall be codified as Section 91-  
1582 23-711, Mississippi Code of 1972.

1583 91-23-711. **DIRECTED TRUSTS; ACCEPTING OR DECLINING FIDUCIARY**  
1584 **APPOINTMENT.** (a) A trust advisor, trust protector or other  
1585 fiduciary other than a cotrustee, such cotrustee already being  
1586 provided for in § 91-23-701(a), may accept its appointment as such  
1587 respective fiduciary in a like manner as provided for a trustee  
1588 under § 91-23-701(a).

1589 (b) A trust advisor, trust protector or other fiduciary  
1590 other than a cotrustee, such cotrustee already being provided for  
1591 in § 91-23-701(b), may reject its appointment as such respective  
1592 fiduciary in a like manner as provided for a trustee under § 91-  
1593 23-701(b).

1594 (c) A trust advisor, trust protector or other fiduciary  
1595 other than a cotrustee, such cotrustee already being provided for  
1596 in § 91-23-701(c), may, without accepting its appointment as such  
1597 respective fiduciary, carry out the appropriate activities  
1598 relative to such respective fiduciary as are provided for a  
1599 trustee under § 91-23-701(c).

1600 **SECTION 56.** The following shall be codified as Section 91-  
1601 23-712, Mississippi Code of 1972.

1602 91-23-712. **DIRECTED TRUSTS; FIDUCIARY'S BOND.** (a) Section  
1603 91-23-702 applies to trust advisors, trust protectors or other

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1604 fiduciaries other than cotrustees, such cotrustees already being  
1605 provided for in § 91-23-702.

1606 (b) When exercising its powers under this section, the court  
1607 shall consider the powers, duties and liabilities relative to such  
1608 respective fiduciaries other than a cotrustee and whether any of  
1609 such respective fiduciaries are excluded fiduciaries.

1610 **SECTION 57.** The following shall be codified as Section 91-  
1611 23-713, Mississippi Code of 1972.

1612 91-23-713. **VACANCY; DIRECTED TRUSTS.** (a) Except as  
1613 otherwise provided by the terms of the trust upon obtaining  
1614 knowledge of a vacancy in the office of trust advisor or trust  
1615 protector, the trustee shall be vested with any fiduciary power or  
1616 duty that otherwise would be vested in the trustee but that by the  
1617 terms of the trust was vested in the trust advisor or trust  
1618 protector, until such time that the vacancy in the office of trust  
1619 advisor or trust protector, as applicable is filled.

1620 (b) Such vacancy shall be filled in the same manner as would  
1621 a vacancy in trusteeship that is required to be filled, either as  
1622 provided by § 91-23-704(c) if the trust is a noncharitable trust,  
1623 or as provided by § 91-23-704(d) if the trust is a charitable  
1624 trust. Section 91-23-704(e) shall also apply relative to trust  
1625 advisors and trust protectors in the same manner as that  
1626 subsection does to trustees and vacancies in trusteeship.

1627 (c) Notwithstanding subsection (a), a trustee shall not be  
1628 liable for failing to exercise or assume any power or duty held by

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1629 a trust advisor or trust protector and conferred upon the trustee  
1630 by subsection (a) for the one hundred and twenty-day period  
1631 immediately following the date the trustee obtains knowledge of  
1632 such vacancy.

1633 **SECTION 58.** The following shall be codified as Section 91-  
1634 23-714, Mississippi Code of 1972.

1635 91-23-714. **DIRECTED TRUSTS; RESIGNATION OF FIDUCIARY.** (a)  
1636 A trust advisor, trust protector or other fiduciary other than a  
1637 cotrustee, such cotrustee's resignation already being provided for  
1638 in § 91-23-705, may resign its appointment as such respective  
1639 fiduciary in a like manner as provided for a trustee under § 91-  
1640 23-705.

1641 (b) When exercising its powers under this section relative  
1642 to resignation, the court shall consider the powers, duties and  
1643 liabilities relative to such respective fiduciaries other than a  
1644 cotrustee and whether any of such respective fiduciaries are  
1645 excluded fiduciaries.

1646 **SECTION 59.** The following shall be codified as Section 91-  
1647 23-715, Mississippi Code of 1972.

1648 91-23-715. **DIRECTED TRUSTS; REMOVAL OF FIDUCIARY.** (a) A  
1649 trust advisor, trust protector or other fiduciary other than a  
1650 cotrustee, such cotrustee's removal already being provided for in  
1651 § 91-23-706, may be removed as such respective fiduciary in a like  
1652 manner as provided for a trustee under § 91-23-706.

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1653           (b) When exercising its powers under this section relative  
1654 to removal of such respective fiduciary, the court shall consider  
1655 the powers, duties and liabilities relative to such respective  
1656 fiduciaries other than a cotrustee and whether any of such  
1657 respective fiduciaries are excluded fiduciaries.

1658                           **ARTICLE 8. DUTIES AND POWERS OF TRUSTEE**

1659           **SECTION 60.** The following shall be codified as Section 91-  
1660 23-801, Mississippi Code of 1972.

1661           91-23-801.   **DUTY TO ADMINISTER TRUST.** Upon acceptance of a  
1662 trusteeship, the trustee shall administer the trust until such  
1663 time as the trust terminates or a successor trustee is appointed  
1664 and all assets are delivered in good faith, in accordance with its  
1665 terms and purposes and the interests of the beneficiaries, and in  
1666 accordance with this chapter.

1667           **SECTION 61.** The following shall be codified as Section 91-  
1668 23-802, Mississippi Code of 1972.

1669           91-23-802.   **DUTY OF LOYALTY.** (a) A trustee shall administer  
1670 the trust solely in the interests of the beneficiaries.

1671           (b) Subject to the rights of persons dealing with or  
1672 assisting the trustee as provided in Section 91-23-1012 or as may  
1673 otherwise be allowed under Mississippi law, a sale, encumbrance,  
1674 or other transaction involving the investment or management of  
1675 trust property entered into by the trustee for the trustee's own  
1676 personal account or which is otherwise affected by a conflict

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1677 between the trustee's fiduciary and personal interests is voidable  
1678 by a beneficiary affected by the transaction unless:

1679 (1) the transaction was authorized by the terms of the  
1680 trust;

1681 (2) the transaction was approved by the court;

1682 (3) the beneficiary did not commence a judicial  
1683 proceeding within the time allowed by Section 91-23-1005;

1684 (4) the beneficiary consented to the trustee's conduct,  
1685 ratified the transaction, or released the trustee in compliance  
1686 with Section 91-23-1009; or

1687 (5) the transaction involves a contract entered into or  
1688 claim acquired by the trustee before the person became or  
1689 contemplated becoming trustee.

1690 (c) A sale, encumbrance, or other transaction involving the  
1691 investment or management of trust property is presumed to be  
1692 affected by a conflict between personal and fiduciary interests if  
1693 it is entered into by the trustee with:

1694 (1) the trustee's spouse;

1695 (2) the trustee's descendants, siblings, parents, or  
1696 their spouses;

1697 (3) an agent or attorney of the trustee; or

1698 (4) a corporation or other person or enterprise in  
1699 which the trustee, or a person that owns a significant interest in  
1700 the trustee, has an interest that might affect the trustee's best  
1701 judgment.

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1702           (d) A transaction not concerning trust property in which the  
1703 trustee engages in the trustee's individual capacity involves a  
1704 conflict between personal and fiduciary interests if the  
1705 transaction concerns an opportunity properly belonging to the  
1706 trust.

1707           (e) In addition to all other permissible investments and  
1708 delegatable duties listed in this title, so long as they are  
1709 fairly priced and in accordance with the interest of the  
1710 beneficiaries and the interests of the fiduciary's appointment and  
1711 otherwise comply with the Mississippi Uniform Prudent Investor Act  
1712 or Article 12 of this chapter, a fiduciary may purchase, sell,  
1713 hold or otherwise deal with an affiliate or an interest in an  
1714 affiliated investment, as well as delegate to an affiliate or  
1715 other agent associated with the fiduciary and, upon satisfaction  
1716 of the conditions stated in subsection (g), such fiduciary may  
1717 receive fiduciary compensation from such account at the same rate  
1718 as the fiduciary would otherwise be entitled to be compensated.  
1719 Such activities shall occur without any presumption of a conflict  
1720 between personal and fiduciary interests of the trustee or other  
1721 fiduciary.

1722           (f) As used in this section:

1723                 (1) "Affiliate" means any corporation or other entity  
1724 that directly or indirectly through one or more intermediaries  
1725 controls, is controlled by or is under common control with the  
1726 fiduciary;

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1727           (2) "Affiliated investment" means an investment for  
1728 which the fiduciary or an affiliate of the fiduciary acts as  
1729 adviser, administrator, distributor, placement agent, underwriter,  
1730 broker or in any other capacity for which it receives or has  
1731 received a fee or commission from such investment or an investment  
1732 acquired or disposed of in a transaction for which the fiduciary  
1733 or an affiliate of the fiduciary receives or has received a fee or  
1734 commission. "Affiliated investment" also means an investment in an  
1735 insurance contract purchased from an insurance agency owned by, or  
1736 affiliated with, the fiduciary, or any of its affiliates;

1737           (3) "Delegate to an affiliate or associated agent"  
1738 means a proper delegation of any duty of the fiduciary to any  
1739 person or entity that is affiliated with, or associated with, the  
1740 fiduciary. The action of doing any of the above shall be known as  
1741 a "delegation to an affiliate or associated agent";

1742           (4) "Fee or commission" means compensation paid to a  
1743 fiduciary or an affiliate thereof on account of its services to or  
1744 on behalf of an investment;

1745           (5) For purposes of this section, "fiduciary" means any  
1746 fiduciary as defined in § 91-23-103, as well as any other  
1747 fiduciary; and

1748           (6) "Investment" shall mean any security as defined in  
1749 § 2(a)(1) of the Securities Act of 1933, any contract of sale of a  
1750 commodity for future delivery within the meaning of § 2(i) of the  
1751 Commodity Exchange Act, or any other asset permitted for fiduciary

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1752 accounts pursuant to the terms of [the Mississippi Uniform Prudent  
1753 Investor Act or by the terms of the governing instrument,  
1754 including by way of illustration and not limitation: shares or  
1755 interests in a public or private investment fund, which shall  
1756 include, but not be limited to, a public or private investment  
1757 fund organized as a limited partnership, limited liability  
1758 company, statutory or common law business trust, real estate  
1759 investment trust, joint venture or other general or limited  
1760 partnership; or an open-end or closed-end management type  
1761 investment company or investment trust registered under the  
1762 Investment Company Act of 1940.

1763 (g) A fiduciary seeking compensation pursuant to subsection  
1764 (e) shall, as is applicable relative to the fiduciary's particular  
1765 appointment, disclose either: to those persons entitled to be kept  
1766 informed about the administration of a trust under section 91-23-  
1767 813(a), subject to the provisions of sections 91-23-813(d) and 91-  
1768 23-105(d); to each principal in an agency relationship; or to all  
1769 current recipients of statements of any other fiduciary account  
1770 not described above; all fees or commissions paid or to be paid by  
1771 the account, or received or to be received by an affiliate arising  
1772 from such affiliated investment or delegation to an affiliate or  
1773 associated agent. The disclosure required under this subsection  
1774 (g) may be given either in a copy of the prospectus or any other  
1775 disclosure document prepared for the affiliated investment under  
1776 federal or state securities laws or in a written summary that

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1777 includes all fees or commissions received or to be received by the  
1778 fiduciary or any affiliate of the fiduciary and an explanation of  
1779 the manner in which such fees or commissions are calculated,  
1780 either as a percentage of the assets invested or by some other  
1781 method. Such disclosure shall be made at least annually unless  
1782 there has been no increase in the rate at which such fees or  
1783 commissions are calculated since the most recent disclosure.  
1784 Notwithstanding this subsection (g), no such disclosure is  
1785 required if the governing instrument or a court order expressly  
1786 authorizes the fiduciary to invest the fiduciary account in  
1787 affiliated investments or to perform the delegation to an  
1788 affiliate or associated agent.

1789 (h) A fiduciary that has complied with subsection (g),  
1790 whether by making the applicable disclosure or by relying on the  
1791 terms of a governing instrument or court order, shall have full  
1792 authority to administer an affiliated investment, including the  
1793 authority to vote proxies thereon, without regard to the  
1794 affiliation between the fiduciary and the investment or the  
1795 fiduciary and delegatee, as the case may be.

1796 (i) In voting shares of stock or in exercising powers of  
1797 control over similar interests in other forms of enterprise, the  
1798 trustee shall act in the best interests of the beneficiaries. If  
1799 the trust is the sole owner of a corporation or other form of  
1800 enterprise, the trustee shall elect or appoint directors or other

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1801 managers who will manage the corporation or enterprise in the best  
1802 interests of the beneficiaries.

1803         (j) The following transactions, if fairly priced and in  
1804 accordance with the interest of the beneficiaries and the purposes  
1805 of the trust, are not presumed to be affected by a conflict  
1806 between the trustee's personal and fiduciary interest provided  
1807 that any investment made pursuant to the transaction otherwise  
1808 complies with the Mississippi Prudent Investor Act:

1809             (1) an agreement between a trustee and a beneficiary  
1810 relating to the appointment or compensation of the trustee, or any  
1811 of its affiliates;

1812             (2) payment of reasonable compensation to the trustee,  
1813 or any of its affiliates;

1814             (3) a transaction between a trust and another trust,  
1815 decedent's estate, guardianship or conservatorship of which the  
1816 trustee is a fiduciary or in which a beneficiary has an interest;

1817             (4) a deposit of trust money in a regulated financial-  
1818 service institution operated by the trustee or an affiliate;

1819             (5) an advance by the trustee of money for the  
1820 protection of the trust;

1821             (6) an investment by a trustee in securities of an  
1822 investment company or investment trust to which the trustee, or  
1823 its affiliates, provides services in a capacity other than as a  
1824 trustee provided that any investment made pursuant to the

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1825 transaction otherwise complies with Mississippi Prudent Investor  
1826 Act;

1827 (7) the placing of securities transactions by a trustee  
1828 through a securities broker that is part of the same company as  
1829 the trustee, is owned by the trustee, or is affiliated with the  
1830 trustee;

1831 (8) any loan from the trustee or its affiliate;

1832 (9) an investment in an insurance contract purchased  
1833 from an insurance agency owned by, or affiliated with the trustee,  
1834 or any of its affiliates; or

1835 (10) a delegation and any transaction made pursuant to  
1836 the delegation from a trustee to an agent that is affiliated or  
1837 associated with the trustee.

1838 (k) The court may appoint a special fiduciary to make a  
1839 decision with respect to any proposed transaction that might  
1840 violate this section if entered into by the trustee.

1841 **SECTION 62.** The following shall be codified as Section 91-  
1842 23-803, Mississippi Code of 1972.

1843 91-23-803. **IMPARTIALITY.** If a trust has two (2) or more  
1844 beneficiaries, the trustee shall act impartially in investing,  
1845 managing, and distributing the trust property, giving due regard  
1846 to the beneficiaries' respective interests and the purposes of the  
1847 trust.

1848 **SECTION 63.** The following shall be codified as Section 91-  
1849 23-804, Mississippi Code of 1972.

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1850           91-23-804.   **PRUDENT ADMINISTRATION.**   A trustee shall  
1851 administer the trust as a prudent person would, by considering the  
1852 purposes, terms, distributional requirements, and other  
1853 circumstances of the trust. In satisfying this standard, the  
1854 trustee shall exercise reasonable care, skill, and caution.

1855           **SECTION 64.**   The following shall be codified as Section 91-  
1856 23-805, Mississippi Code of 1972.

1857           91-23-805.   **COSTS OF ADMINISTRATION.**   In administering a  
1858 trust, the trustee may incur only costs that are reasonable in  
1859 relation to the trust property, the purposes of the trust, and the  
1860 skills of the trustee.

1861           **SECTION 65.**   The following shall be codified as Section 91-  
1862 23-806, Mississippi Code of 1972.

1863           91-23-806.   **TRUSTEE'S SKILLS.**   A trustee who has special  
1864 skills or expertise, or is named trustee in reliance upon the  
1865 trustee's representation that the trustee has special skills or  
1866 expertise, shall use those special skills or expertise.

1867           **SECTION 66.**   The following shall be codified as Section 91-23-  
1868 807, Mississippi Code of 1972.

1869           91-23-807.   **DELEGATION BY TRUSTEE.**   (a) A trustee may  
1870 delegate duties and powers that a prudent trustee could properly  
1871 delegate under the circumstances. The trustee shall exercise  
1872 reasonable care, skill, and caution in:

1873                   (1) selecting an agent;

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1874           (2) establishing the scope and terms of the delegation,  
1875 consistent with the purposes and terms of the trust; and

1876           (3) periodically reviewing the agent's actions in order  
1877 to monitor the agent's performance and compliance with the terms  
1878 of the delegation.

1879           (b) In performing a delegated function, an agent owes a duty  
1880 to the trust to exercise reasonable care, skill, and caution to  
1881 comply with the terms of the delegation.

1882           (c) A trustee who complies with subsection (a) is not liable  
1883 to the beneficiaries or to the trust for an action or inaction of  
1884 the agent to whom the function was delegated.

1885           (d) By accepting a delegation of powers or duties from the  
1886 trustee of a trust that is subject to the law of this state, an  
1887 agent submits to the jurisdiction of the courts of this state.

1888           **SECTION 67.** The following shall be codified as Section 91-  
1889 23-808, Mississippi Code of 1972.

1890           91-23-808. **POWERS TO DIRECT.** (a) While a trust is  
1891 revocable, the trustee may follow a direction of the settlor that  
1892 is contrary to the terms of the trust or contrary to the normal  
1893 practice of the trustee in regard to the action requested.

1894           (b) If the terms of a trust confer upon a person other than  
1895 the settlor of a revocable trust power to direct certain actions  
1896 of the trustee, the trustee shall act in accordance with an  
1897 exercise of the power.

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1898           (c) The terms of a trust may confer upon a trustee or other  
1899 person a power to direct the modification or termination of the  
1900 trust.

1901           (d) If a person holds a power to direct pursuant to Article  
1902 12 of this chapter, that person is a trust advisor, trust  
1903 protector or both. Such power holder is subject to all the  
1904 provisions of Article 12, including any duties prescribed by  
1905 Article 12 and any provisions that make the power holder a  
1906 fiduciary. Any trustee or other person that under Article 12 is  
1907 relieved of any duty or any liability, or is otherwise protected  
1908 under Article 12, shall be so relieved and otherwise protected.

1909           **SECTION 68.** The following shall be codified as Section 91-  
1910 23-809, Mississippi Code of 1972.

1911           91-23-809.   **CONTROL AND PROTECTION OF TRUST PROPERTY.** A  
1912 trustee shall take reasonable steps to take control of and protect  
1913 the trust property.

1914           **SECTION 69.** The following shall be codified as Section 91-  
1915 23-810, Mississippi Code of 1972.

1916           91-23-810.   **RECORDKEEPING AND IDENTIFICATION OF TRUST**  
1917 **PROPERTY.** (a) A trustee shall keep adequate records of the  
1918 administration of the trust.

1919           (b) A trustee shall keep trust property separate from the  
1920 trustee's own property.

1921           (c) Except as otherwise provided in subsection (d), a  
1922 trustee shall cause the trust property to be designated so that

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1923 the interest of the trust, to the extent feasible, appears in  
1924 records maintained by a party other than a trustee or beneficiary.

1925 (d) If the trustee maintains records clearly indicating the  
1926 respective interests, a trustee may invest as a whole the property  
1927 of two or more separate trusts.

1928 **SECTION 70.** The following shall be codified as Section 91-  
1929 23-811, Mississippi Code of 1972.

1930 91-23-811. **ENFORCEMENT AND DEFENSE OF CLAIMS.** (a) A  
1931 trustee shall take reasonable steps to enforce claims of the trust  
1932 and to defend claims against the trust.

1933 (b) A trustee may abandon or assign any claim that it  
1934 believes is unreasonable to enforce to one or more of the  
1935 beneficiaries of the trust holding the claim.

1936 **SECTION 71.** The following shall be codified as Section 91-  
1937 23-812, Mississippi Code of 1972.

1938 91-23-812. **COLLECTING TRUST PROPERTY.** A trustee shall take  
1939 reasonable steps to compel a former trustee or other person to  
1940 deliver trust property to the trustee, and to redress a breach of  
1941 trust known to the trustee to have been committed by a former  
1942 trustee. No successor trustee appointed after the examination of  
1943 the accounts of a trustee or the waiver of the examination by the  
1944 beneficiaries shall be responsible for the acts and omissions of  
1945 the prior trustee.

1946 **SECTION 72.** The following shall be codified as Section 91-  
1947 23-813, Mississippi Code of 1972.

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1948           91-23-813.   **DUTY TO INFORM AND REPORT.**   (a)   (1)   A trustee  
1949 shall keep the beneficiaries of the trust who are current  
1950 mandatory or permissible distributees of trust income or  
1951 principal, or both, reasonably informed about the administration  
1952 of the trust and of the material facts necessary for them to  
1953 protect their interests.

1954                   (2)   Unless unreasonable under the circumstances, a  
1955 trustee shall respond in a reasonable amount of time to a  
1956 qualified beneficiary's request for information related to the  
1957 administration of the trust. Additionally, a qualified beneficiary  
1958 shall reimburse the trustee for any reasonable expenses incurred  
1959 in responding to requests for information.

1960                   (3)   The requirements of subdivisions (a)(1) and (a)(2)  
1961 shall also apply to the benefit of anyone who, in a capacity other  
1962 than that of a fiduciary, as defined by section 91-23-103, holds a  
1963 power of appointment.

1964           (b)   The trustee of an irrevocable or non-grantor trust  
1965 within sixty (60) days after the acceptance and funding of a  
1966 trust, excluding nominal funding for the trust to have corpus or  
1967 the depositing of insurance policies on the life of a living  
1968 person, shall notify each current income beneficiary, each vested  
1969 ultimate beneficiary of a remainder interest and anyone who, in a  
1970 capacity other than that of a fiduciary, as defined by section 91-  
1971 23-103, holds a power of appointment, that the trust has been  
1972 established.

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1973                   (1) The required notice shall:  
1974                    (A) be sent by first class mail or personal  
1975 delivery; and  
1976                    (B) consist of either a complete copy of the  
1977 document establishing the trust together with the trustee's name,  
1978 address and telephone number or an abstract of the trust,  
1979 whichever the trustee, in the trustee's absolute discretion, may  
1980 choose.

1981                   (2) The abstract shall contain:  
1982                    (A) the name, address and telephone number of each  
1983 trustee; and  
1984                    (B) if for a current income beneficiary:  
1985                       (i) the number of other current income  
1986 beneficiaries;  
1987                       (ii) whether distributions of income are  
1988 required or discretionary; and  
1989                       (iii) whether distributions of principal are  
1990 permitted and, if so, for what purpose or purposes; and  
1991                    (C) If for a remainder beneficiary:  
1992                       (i) the number of other remainder  
1993 beneficiaries; and  
1994                       (ii) the conditions which must be met before  
1995 the beneficiary's share is distributable.  
1996                    (D) If for anyone who, in a capacity other than  
1997 that of a fiduciary, as defined by section 91-23-103, holds a

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1998 power of appointment, all of the information required by  
1999 subdivisions (b)(2)(A) through (C) necessary or beneficial for  
2000 that person to effectively determine whether or not to exercise  
2001 that power of appointment.

2002 (c) Upon the termination of an interest of any one (1) or  
2003 more of the current income beneficiaries:

2004 (1) The trustee shall similarly notify the income  
2005 beneficiaries who are takers of the terminated interest of their  
2006 interest by sending or delivering them the notice required in  
2007 subsection (b); and

2008 (2) If at that time the period described in subsection  
2009 (b) has lapsed, the trustee shall similarly notify anyone who, in  
2010 a capacity other than that of a fiduciary, as defined by section  
2011 91-23-103, holds a power of appointment by sending or delivering  
2012 to such person the notice required in subsection (b).

2013 (d) A beneficiary may waive the right to a trustee's report  
2014 or other information otherwise required to be furnished under this  
2015 section. A beneficiary, with respect to future reports and other  
2016 information, may withdraw a waiver previously given. Anyone who,  
2017 in a capacity other than that of a fiduciary, as defined by  
2018 section 91-23-103, holds a power of appointment has the same power  
2019 as provided a beneficiary in this subsection to waive reports and  
2020 other information and to withdraw a waiver previously given.

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2021           (e) Subsections (a) and (b) shall not apply to the extent  
2022 that those provisions are waived or modified in accordance with  
2023 section 91-23-105(d).

2024           (f) Subdivision (a)(1) and subsection (b) do not apply to a  
2025 trust created under a trust agreement that became irrevocable  
2026 before the date of enactment of this Act. Trust law in effect  
2027 prior to the enactment of this Act, regarding the subject matter  
2028 of subdivision (a)(1) and subsection (b) shall continue to apply  
2029 to those trusts.

2030           (g) If the trustee of a trust is bound by any written  
2031 confidentiality restrictions with respect to an asset of a trust,  
2032 a trustee may require that any beneficiary who is eligible to  
2033 receive information pursuant to this or any other section of this  
2034 title about such asset shall agree in writing to be bound by the  
2035 confidentiality restrictions that bind the trustee before  
2036 receiving such information from the trustee.

2037           (h) A trust advisor, trust protector, or other fiduciary  
2038 designated by the terms of the trust shall keep each excluded  
2039 fiduciary designated by the terms of the trust reasonably informed  
2040 about:

2041                 (1) The administration of the trust with respect to any  
2042 specific duty or function being performed by the trust advisor,  
2043 trust protector, or other fiduciary to the extent that the duty or  
2044 function would normally be performed by the excluded fiduciary or  
2045 to the extent that providing such information to the excluded

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2046 fiduciary is reasonably necessary for the excluded fiduciary to  
2047 perform its duties; and

2048           (2) Any other material information that the excluded  
2049 fiduciary would be required to disclose to the specified  
2050 beneficiaries under subsection (a) regardless of whether the terms  
2051 of the trust relieve the excluded fiduciary from providing such  
2052 information to qualified beneficiaries. Neither the performance  
2053 nor the failure to perform of a trust advisor, trust protector, or  
2054 other fiduciary designated by the terms of the trust as provided  
2055 in this subsection shall affect the limitation on the liability of  
2056 any excluded fiduciary provided by Article 12 of this chapter.

2057           **SECTION 73.** The following shall be codified as Section 91-  
2058 23-814, Mississippi Code of 1972.

2059           91-23-814.   **EXERCISE OF POWERS OVER DISCRETIONARY AND OTHER**  
2060 **INTERESTS; TAX SAVINGS.** (a) Relative to exercise of powers over  
2061 discretionary and other interests:

2062           (1) "Improper motive" means to demonstrate action such  
2063 as the following:

2064           (A) A trustee refusing to make or limiting  
2065 distributions to beneficiaries other than the trustee due to the  
2066 trustee's self-interest when the trustee also holds a beneficial  
2067 interest subject to a discretionary interest; or

2068           (B) A trustee making a distribution in excess of  
2069 an ascertainable standard to himself or herself as beneficiary

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2070 when the trustee is restricted by an ascertainable standard in the  
2071 trust.

2072 (2) Unless otherwise provided in the trust:

2073 (A) If the settlor's spouse is named as a  
2074 beneficiary, the settlor's spouse is still living and the trust is  
2075 classified as a support trust, then the trustee shall consider the  
2076 resources of the settlor's spouse, including the settlor's  
2077 obligation of support, prior to making a distribution; and

2078 (B) In all other cases, unless otherwise provided  
2079 in the trust, the trustee need not consider the beneficiary's  
2080 resources in determining whether a distribution should be made.

2081 (b) The following provisions apply only to discretionary  
2082 interests:

2083 (1) A discretionary interest is neither a property  
2084 interest nor an enforceable right; it is a mere expectancy;

2085 (2) A court may review a trustee's distribution  
2086 discretion only if the trustee acts dishonestly, acts with an  
2087 improper motive, or fails to act if under a duty to do so;

2088 (3) A reasonableness standard shall not be applied to  
2089 the exercise of discretion by the trustee with regard to a  
2090 discretionary interest;

2091 (4) Other than for the three circumstances listed in  
2092 subdivision (b)(2), a court has no jurisdiction to review the  
2093 trustee's discretion or to force a distribution; and

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2094           (5) Absent express language in the trust instrument to  
2095 the contrary, in the event that the distribution language in a  
2096 discretionary interest permits unequal distributions between  
2097 beneficiaries or distributions to the exclusion of other  
2098 beneficiaries, the trustee may distribute all of the accumulated,  
2099 accrued, or undistributed income and principal to one beneficiary  
2100 in the trustee's discretion.

2101           (c) The following provisions apply only to mandatory or  
2102 support interests:

2103           (1) A beneficiary of a mandatory or a support interest  
2104 has an enforceable right to a distribution pursuant to a court's  
2105 review;

2106           (2) A trustee's distribution decision may be reviewed  
2107 for unreasonableness, dishonesty, improper motivation, or failure  
2108 to act if under a duty to do so; and

2109           (3) In the case of a support interest, nothing in this  
2110 section shall raise a beneficiary's support interest to the level  
2111 of a property interest.

2112           (d) Unless otherwise provided in subsection (f), and unless  
2113 the terms of the trust expressly indicate that a rule in this  
2114 subsection does not apply:

2115           (1) A person other than a settlor who is a beneficiary  
2116 and trustee of a trust that confers on the trustee a power to make  
2117 discretionary distributions to or for the trustee's personal

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2118 benefit may exercise the power only in accordance with an  
2119 ascertainable standard; and

2120           (2) A trustee may not exercise a power to make  
2121 discretionary distributions to satisfy a legal obligation of  
2122 support that the trustee personally owes another person.

2123           (e) A power that is limited or prohibited by subsection (d)  
2124 may be exercised by a majority of the remaining trustees whose  
2125 exercise of the power is not so limited or prohibited. If the  
2126 power of all trustees is so limited or prohibited, the court may  
2127 appoint a special fiduciary with authority to exercise the power.

2128           (f) Subsection (d) shall not apply to:

2129           (1) A power held by the settlor's spouse who is the  
2130 trustee of a trust for which a marital deduction, as defined in  
2131 section 2056(b)(5) or 2523(e) of the Internal Revenue Code was  
2132 previously allowed;

2133           (2) Any trust during any period that the trust may be  
2134 revoked or amended by its settlor; or

2135           (3) A trust if contributions to the trust qualify for  
2136 the annual exclusion under section 2503(c) of the Internal Revenue  
2137 Code.

2138           **SECTION 74.** The following shall be codified as Section 91-  
2139 23-815, Mississippi Code of 1972.

2140           91-23-815. **GENERAL POWERS OF TRUSTEE.** (a) A trustee,  
2141 without authorization by the court, may exercise:

2142           (1) powers conferred by the terms of the trust; and

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2143 (2) except as limited by the terms of the trust:

2144 (A) all powers over the trust property which an  
2145 unmarried competent owner has over individually owned property;

2146 (B) any other powers appropriate to achieve the  
2147 proper investment, management, and distribution of the trust  
2148 property; and

2149 (C) any other powers conferred by this chapter.

2150 (b) The exercise of a power is subject to the fiduciary  
2151 duties prescribed by this Article.

2152 **SECTION 75.** The following shall be codified as Section 91-  
2153 23-816, Mississippi Code of 1972.

2154 91-23-816. **SPECIFIC POWERS OF TRUSTEE.** (a) Any references  
2155 contained in a will or trust incorporating by reference the powers  
2156 enumerated in §91-9-101, et. seq. will incorporate by reference  
2157 the powers contained in this section.

2158 (b) Unless the terms of the instrument expressly provide  
2159 otherwise and without limiting the authority conferred by §91-23-  
2160 815, a trustee may:

2161 (1) collect trust property and accept or reject  
2162 additions to the trust property from a settlor or any other  
2163 person;

2164 (2) acquire or sell property, for cash or on credit, at  
2165 public or private sale;

2166 (3) exchange, partition, or otherwise change the  
2167 character of trust property;

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2168           (4) deposit trust money in an account in a regulated  
2169 financial-service institution;

2170           (5) borrow money, with or without security, and  
2171 mortgage or pledge trust property for a period within or extending  
2172 beyond the duration of the trust;

2173           (6) with respect to an interest in a proprietorship,  
2174 partnership, limited liability company, business trust,  
2175 corporation, or other form of business or enterprise, continue the  
2176 business or other enterprise and take any action that may be taken  
2177 by shareholders, members, or property owners, including merging,  
2178 dissolving, or otherwise changing the form of business  
2179 organization or contributing additional capital;

2180           (7) with respect to stocks or other securities,  
2181 exercise the rights of an absolute owner, including the right to:

2182                   (A) vote, or give proxies to vote, with or without  
2183 power of substitution, or enter into or continue a voting trust  
2184 agreement;

2185                   (B) hold a security in the name of a nominee or in  
2186 other form without disclosure of the trust so that title may pass  
2187 by delivery;

2188                   (C) pay calls, assessments, and other sums  
2189 chargeable or accruing against the securities, and sell or  
2190 exercise stock subscription or conversion rights; and

2191                   (D) deposit the securities with a depository or  
2192 other regulated financial-service institution;

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2193           (8) with respect to an interest in real property,  
2194 construct, or make ordinary or extraordinary repairs to,  
2195 alterations to, or improvements in, buildings or other structures,  
2196 demolish improvements, raze existing or erect new party walls or  
2197 buildings, subdivide or develop land, dedicate land to public use  
2198 or grant public or private easements, and make or vacate plats and  
2199 adjust boundaries;

2200           (9) enter into a lease for any purpose as lessor or  
2201 lessee, including a lease or other arrangement for exploration and  
2202 removal of natural resources, with or without the option to  
2203 purchase or renew, for a period within or extending beyond the  
2204 duration of the trust;

2205           (10) grant an option involving a sale, lease, or other  
2206 disposition of trust property or acquire an option for the  
2207 acquisition of property, including an option exercisable beyond  
2208 the duration of the trust, and exercise an option so acquired;

2209           (11) insure the property of the trust against damage or  
2210 loss and insure the trustee, the trustee's agents, and  
2211 beneficiaries against liability arising from the administration of  
2212 the trust;

2213           (12) abandon or decline to administer property of no  
2214 value or of insufficient value to justify its collection or  
2215 continued administration;

2216           (13) with respect to possible liability for violation  
2217 of environmental law:

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2218                   (A) inspect or investigate property the trustee  
2219 holds or has been asked to hold, or property owned or operated by  
2220 an organization in which the trustee holds or has been asked to  
2221 hold an interest, for the purpose of determining the application  
2222 of environmental law with respect to the property;

2223                   (B) take action to prevent, abate, or otherwise  
2224 remedy any actual or potential violation of any environmental law  
2225 affecting property held directly or indirectly by the trustee,  
2226 whether taken before or after the assertion of a claim or the  
2227 initiation of governmental enforcement;

2228                   (C) decline to accept property into trust or  
2229 disclaim any power with respect to property that is or may be  
2230 burdened with liability for violation of environmental law;

2231                   (D) compromise claims against the trust which may  
2232 be asserted for an alleged violation of environmental law; and

2233                   (E) pay the expense of any inspection, review,  
2234 abatement, or remedial action to comply with environmental law;

2235                   (14) pay or contest any claim, settle a claim by or  
2236 against the trust, and release, in whole or in part, a claim  
2237 belonging to the trust;

2238                   (15) pay taxes, assessments, compensation of the  
2239 trustee and of employees and agents of the trust, and other  
2240 expenses incurred in the administration of the trust;

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2241           (16) exercise elections with respect to federal, state,  
2242 and local taxes, including allocating capital gains to  
2243 distributable net income;

2244           (17) select a mode of payment under any employee  
2245 benefit or retirement plan, annuity, or life insurance payable to  
2246 the trustee, exercise rights thereunder, including exercise of the  
2247 right to indemnification for expenses and against liabilities, and  
2248 take appropriate action to collect the proceeds;

2249           (18) make loans out of trust property, including loans  
2250 to a beneficiary on terms and conditions the trustee considers to  
2251 be fair and reasonable under the circumstances, and the trustee  
2252 has a lien on future distributions for repayment of those loans;

2253           (19) pledge trust property to guarantee loans made by  
2254 others to the beneficiary;

2255           (20) appoint a trustee to act in another jurisdiction  
2256 with respect to trust property located in the other jurisdiction,  
2257 confer upon the appointed trustee all of the powers and duties of  
2258 the appointing trustee, require that the appointed trustee furnish  
2259 security, and remove any trustee so appointed;

2260           (21) pay an amount distributable to a beneficiary who  
2261 is under a legal disability or who the trustee reasonably believes  
2262 is incapacitated, by paying it directly to the beneficiary or  
2263 applying it for the beneficiary's benefit, or by:

2264                   (A) paying it to the conservator or guardian of  
2265 the beneficiary's estate or, if there is no conservator or

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2266 guardian of the beneficiary's estate, to the conservator or  
2267 guardian of the beneficiary;

2268 (B) paying it to the beneficiary's custodian under  
2269 the Uniform Transfers to Minors Act, and, for that purpose,  
2270 creating a custodianship or custodial trust;

2271 (C) if the trustee does not know of a conservator,  
2272 guardian, custodian, or custodial trustee, paying it to an adult  
2273 relative or other person having legal or physical care or custody  
2274 of the beneficiary, to be expended on the beneficiary's behalf; or

2275 (D) managing it as a separate fund on the  
2276 beneficiary's behalf, subject to the beneficiary's continuing  
2277 right to withdraw the distribution;

2278 (22) on distribution of trust property or the division  
2279 or termination of a trust, make distributions in divided or  
2280 undivided interests, allocate particular assets in proportionate  
2281 or disproportionate shares, value the trust property for those  
2282 purposes, and adjust for resulting differences in valuation and  
2283 basis for income tax purposes;

2284 (23) resolve a dispute concerning the interpretation of  
2285 the trust or its administration by mediation, arbitration, or  
2286 other procedure for alternative dispute resolution;

2287 (24) prosecute or defend an action, claim, or judicial  
2288 proceeding in any jurisdiction to protect trust property and the  
2289 trustee in the performance of the trustee's duties;

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2290           (25) sign and deliver contracts and other instruments  
2291 that are useful to achieve or facilitate the exercise of the  
2292 trustee's powers;

2293           (26) on termination of the trust, exercise the powers  
2294 appropriate to wind up the administration of the trust and  
2295 distribute the trust property to the persons entitled to it;

2296           (27) employ persons, including attorneys, auditors,  
2297 investment advisors or agents, even if they are associated with  
2298 the trustee, to advise or assist the trustee in the performance of  
2299 his administrative duties; to act without independent  
2300 investigation upon their recommendations; and instead of acting  
2301 personally, to employ one or more agents to perform any act of  
2302 administration, whether or not discretionary; and

2303           (28) (A) A trustee may insure the life of any person in  
2304 which the trustee of the trust has an insurable interest as set  
2305 forth in section 91-23-113.

2306           (B) A trustee may retain any life insurance policy  
2307 contributed to a trust by a settlor, or purchased by the trustee  
2308 upon the request of the settlor, as an asset of the trust without  
2309 regard to any lack of diversification caused thereby and without  
2310 regard to the terms and conditions of the life insurance policy.  
2311 The trustee shall not be liable for lack of diversification to any  
2312 beneficiary of a trust for the trustee's retention of the life  
2313 insurance policy.

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2314 (C) With respect to a life insurance policy owned  
2315 by the trust a trustee may:

2316 (i) borrow funds from any party, including an  
2317 insurance company, for the purpose of paying premiums on any  
2318 policy of insurance owned by the trust and enter into a "split  
2319 dollar" or other similar arrangement;

2320 (ii) collaterally assign any policy to a  
2321 creditor of the trust;

2322 (iii) exercise any and all rights under any  
2323 life insurance policy, including the power to pay, forego or  
2324 adjust the amount of any premium payments, adjust the type and  
2325 amount of death benefit, receive or apply dividends to premiums or  
2326 purchase additional insurance, and allocate policy values among  
2327 any subaccounts available under any variable or similar policy;  
2328 and

2329 (iv) with the consent of the insured, to sell  
2330 any policy to a third party in a life settlement or viatical  
2331 settlement transaction.

2332 **SECTION 76.** The following shall be codified as Section 91-  
2333 23-817, Mississippi Code of 1972.

2334 91-23-817. **DISTRIBUTION UPON TERMINATION.** (a) Upon  
2335 termination or partial termination of a trust, the trustee may  
2336 send to the beneficiaries a proposal for distribution. The right  
2337 of any beneficiary to object to the proposed distribution  
2338 terminates if the beneficiary does not notify the trustee of an

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2339 objection within thirty (30) days after the proposal was sent but  
2340 only if the proposal informed the beneficiary of the right to  
2341 object and of the time allowed for objection. For the purpose of  
2342 determining the date a proposed distribution was sent, where exact  
2343 confirmation was unavailable it can be assumed it was received  
2344 five (5) days after the date of mailing.

2345 (b) Upon the occurrence of an event terminating or partially  
2346 terminating a trust, the trustee shall proceed expeditiously to  
2347 distribute the trust property to the persons entitled to it,  
2348 subject to the right of the trustee to retain a reasonable reserve  
2349 for the payment of debts, expenses, and taxes.

2350 (c) A release by a beneficiary of a trustee from liability  
2351 for breach of trust is invalid to the extent:

2352 (1) it was induced by improper conduct of the trustee;  
2353 or

2354 (2) the beneficiary, at the time of the release, did  
2355 not know of the material facts relating to the alleged breach and  
2356 the trustee had actual knowledge of the facts relating to the  
2357 alleged breach.

2358 **ARTICLE 9. UNIFORM PRUDENT INVESTOR ACT**

2359 **SECTION 77.** The following shall be codified as Section 91-  
2360 23-901, Mississippi Code of 1972.

2361 91-23-901. **Prudent Investor Act Incorporated by Reference.**  
2362 Title 91, Chapter 9, Article 13, the Mississippi Uniform Prudent  
2363 Investor Act, is incorporated in this chapter by reference.

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2389           (10) order any other appropriate relief whether  
2390 provided elsewhere in this chapter, available at common law or  
2391 under equity principles.

2392           **SECTION 79.** The following shall be codified as Section 91-  
2393 23-1002, Mississippi Code of 1972.

2394           91-23-1002. **DAMAGES FOR BREACH OF TRUST.** (a) A trustee who  
2395 commits a breach of trust is liable to the beneficiaries affected  
2396 for:

2397           (1) the greater of:

2398                   (A) the amount required to restore the value of  
2399 the trust property and trust distributions to what they would have  
2400 been had the breach not occurred; or

2401                   (B) the profit the trustee made by reason of the  
2402 breach; and

2403           (2) any measure of damages otherwise provided by law.

2404           (b) Except as otherwise provided in this subsection (b), if  
2405 more than one (1) trustee is liable to the beneficiaries for a  
2406 breach of trust, a trustee is entitled to contribution from the  
2407 other trustee or trustees. A trustee is not entitled to  
2408 contribution if the trustee was substantially more at fault than  
2409 another trustee or if the trustee committed the breach of trust in  
2410 bad faith or with reckless indifference to the purposes of the  
2411 trust or the interests of the beneficiaries. A trustee who  
2412 received a benefit from the breach of trust is not entitled to

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2413 contribution from another trustee to the extent of the benefit  
2414 received.

2415         **SECTION 80.** The following shall be codified as Section 91-  
2416 23-1003, Mississippi Code of 1972.

2417         91-23-1003.   **DAMAGES IN ABSENCE OF BREACH.** Absent a breach  
2418 of trust, a trustee is not liable to a beneficiary for a loss or  
2419 depreciation in the value of trust property or for not having made  
2420 a profit.

2421         **SECTION 81.**vvThe following shall be codified as Section 91-  
2422 23-1004, Mississippi Code of 1972.

2423         91-23-1004.   **ATTORNEY'S FEES AND COSTS.** (a) In a judicial  
2424 proceeding involving the administration of a trust, the court, as  
2425 justice and equity may require, may award costs and expenses,  
2426 including reasonable attorney's fees, to any party, to be paid by  
2427 another party or from the trust that is the subject of the  
2428 controversy.

2429         (b) In a nonjudicial proceeding involving the administration  
2430 of a trust, the trustee may pay fees, other reasonable costs and  
2431 expenses from trust assets where all of the parties to the  
2432 proceeding agree in writing.

2433         (c) In a mediation or arbitration proceeding involving the  
2434 administration of a trust, the mediator or arbitrator may award  
2435 fees, other reasonable costs and expenses against the assets of  
2436 the trust.

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2437           **SECTION 82.** The following shall be codified as Section 91-  
2438 23-1005, Mississippi Code of 1972.

2439           91-23-1005.   **LIMITATION OF ACTION AGAINST TRUSTEE BY A**  
2440 **BENEFICIARY; LIMITATION ON ACTION AGAINST TRUSTEE BY A TRUSTEE,**  
2441 **TRUST ADVISOR OR TRUST PROTECTOR.** (a) A beneficiary may not  
2442 commence a proceeding against a trustee for breach of trust more  
2443 than one (1) year after the date the beneficiary or a  
2444 representative of the beneficiary was sent a report that  
2445 adequately disclosed the existence of a potential claim for breach  
2446 of trust.

2447           (b) A report adequately discloses the existence of a  
2448 potential claim for breach of trust if it provides sufficient  
2449 information so that the beneficiary or beneficiary's  
2450 representative knows of the potential claim or has sufficient  
2451 information to be presumed to know of it, or to be put on notice  
2452 to inquire into its existence.

2453           (c) If subsection (a) does not apply, a judicial proceeding  
2454 by a beneficiary against a trustee for breach of trust must be  
2455 commenced within three (3) years after the first to occur of:

- 2456                   (1) the removal, resignation, or death of the trustee;  
2457                   (2) the termination of the beneficiary's interest in  
2458 the trust; or  
2459                   (3) the termination of the trust.

2460           (d) A trustee may not commence a proceeding against a  
2461 cotrustee or a former trustee for breach of trust more than one

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2462 (1) year after the date the trustee or a representative of the  
2463 trustee was sent a report that adequately disclosed facts  
2464 indicating the existence of a potential claim for breach of trust.

2465 (e) A report adequately discloses facts indicating the  
2466 existence of a potential claim for breach of trust if it provides  
2467 sufficient information so that the trustee or the trustee's  
2468 representative knows of the potential claim or has sufficient  
2469 information to be presumed to know of it, or to be put on notice  
2470 to inquire into its existence.

2471 (f) If subsection (d) does not apply, a judicial proceeding  
2472 by a trustee against a cotrustee or former trustee for breach of  
2473 trust must be commenced within three (3) years after the first to  
2474 occur of:

2475 (1) The removal, resignation, or death of the cotrustee  
2476 or a former trustee;

2477 (2) The termination of the beneficiary's interest in  
2478 the trust; or

2479 (3) The termination of the trust.

2480 (g) A trust advisor or trust protector may not commence a  
2481 proceeding against a trustee or a former trustee for breach of  
2482 trust more than one (1) year after the date the trust advisor or  
2483 trust protector or the respective representative of each was sent  
2484 a report that adequately disclosed facts indicating the existence  
2485 of a potential claim for breach of trust.

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2486 (h) A report adequately discloses facts indicating the  
2487 existence of a potential claim for breach of trust if it provides  
2488 sufficient information so that the trust advisor or trust  
2489 protector or the respective representative of each knows of the  
2490 potential claim or has sufficient information to be presumed to  
2491 know of it, or to be put on notice to inquire into its existence.

2492 (i) If subsection (g) does not apply, a judicial proceeding  
2493 by a trust advisor or trust protector against a trustee or former  
2494 trustee for breach of trust must be commenced within three (3)  
2495 years after the first to occur of:

2496 (1) The removal, resignation, or death of the trustee  
2497 or a former trustee;

2498 (2) The termination of the beneficiary's interest in  
2499 the trust; or

2500 (3) The termination of the trust.

2501 (j) Notwithstanding subsections (d)-(i), no trustee, trust  
2502 advisor or trust protector, may commence a proceeding against a  
2503 trustee or a former trustee if, under § 91-23-1005(a) through (c),  
2504 none of the beneficiaries may commence a proceeding against the  
2505 cotrustee or former trustee for such breach of trust.

2506 **SECTION 83.** The following shall be codified as Section 91-  
2507 23-1006, Mississippi Code of 1972.

2508 91-23-1006. **RELIANCE ON TRUST INSTRUMENT.** A trustee who  
2509 acts in reasonable reliance on the terms of the trust as expressed  
2510 in the trust instrument is not liable to a beneficiary for a

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2511 breach of trust to the extent the breach resulted from the  
2512 reliance.

2513           **SECTION 84.** The following shall be codified as Section 91-  
2514 23-1007, Mississippi Code of 1972.

2515           91-23-1007.   **EVENT AFFECTING ADMINISTRATION OR DISTRIBUTION.**

2516 If the happening of an event, including marriage, divorce,  
2517 performance of educational requirements, or death, affects the  
2518 administration or distribution of a trust, a trustee who has  
2519 exercised reasonable care to ascertain the happening of the event  
2520 is not liable for a loss resulting from the trustee's lack of  
2521 knowledge.

2522           **SECTION 85.** The following shall be codified as Section 91-  
2523 23-1008, Mississippi Code of 1972.

2524           91-23-1008.   **EXCULPATION OF TRUSTEE.** (a) A provision of a  
2525 trust relieving a trustee of liability for breach of trust is  
2526 unenforceable to the extent that it:

2527                   (1) relieves the trustee of liability for breach of  
2528 trust committed in bad faith or with reckless indifference to the  
2529 purposes of the trust or the interests of the beneficiaries; or

2530                   (2) was inserted as the result of an abuse by the  
2531 trustee of a fiduciary or confidential relationship to the  
2532 settlor.

2533           (b) Except for provisions intended to provide protection for  
2534 carrying out a stated purposes, an exculpatory provision drafted  
2535 or caused to be drafted by the trustee is invalid as an abuse of a

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2536 fiduciary or confidential relationship unless the trustee proves  
2537 that the exculpatory provision is fair under the circumstances and  
2538 that its existence and contents were adequately communicated to  
2539 the settlor.

2540         **SECTION 86.** The following shall be codified as Section 91-  
2541 23-1009, Mississippi Code of 1972.

2542         91-23-1009.   **BENEFICIARY'S CONSENT, RELEASE, OR RATIFICATION.**

2543 A trustee is not liable to a beneficiary for breach of trust if  
2544 the beneficiary consented to the conduct constituting the breach,  
2545 released the trustee from liability for the breach, or ratified  
2546 the transaction constituting the breach, unless:

2547         (1) the consent, release, or ratification of the beneficiary  
2548 was induced by improper conduct of the trustee; or

2549         (2) at the time of the consent, release, or ratification,  
2550 the beneficiary did not know of the material facts relating to the  
2551 breach and the trustee had actual knowledge of the facts relating  
2552 to the alleged breach.

2553         **SECTION 87.** The following shall be codified as Section 91-  
2554 23-1010, Mississippi Code of 1972.

2555         91-23-1010.   **LIMITATION ON PERSONAL LIABILITY OF TRUSTEE.**

2556         (a) Except as otherwise provided in the contract, a trustee  
2557 is not personally liable on a contract properly entered into in  
2558 the trustee's fiduciary capacity in the course of administering  
2559 the trust if the trustee in the contract disclosed the fiduciary  
2560 capacity.

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2561           (b) Except as otherwise provided in subsection (a) or (c),  
2562 the debts, obligations and liabilities incurred by a trustee by  
2563 reason of the ownership, management or control of trust property  
2564 in the trustee's fiduciary capacity, shall be enforceable solely  
2565 against the trust and its property, without any obligation or  
2566 liability personally being borne by any trustee of the trust.

2567           (c) Except as otherwise limited by state law, a trustee is  
2568 personally liable for torts committed in the course of  
2569 administering a trust only if the trustee is personally at fault  
2570 on account of the trustee's own willful misconduct proven by clear  
2571 and convincing evidence.

2572           (d) A claim based on a contract entered into by a trustee in  
2573 the trustee's fiduciary capacity, on an obligation arising from  
2574 ownership or control of trust property, or on a tort committed in  
2575 the course of administering a trust, may be asserted in a judicial  
2576 proceeding against the trustee in the trustee's fiduciary  
2577 capacity, whether or not the trustee is personally liable for the  
2578 claim.

2579           **SECTION 88.** The following shall be codified as Section 91-  
2580 23-1011, Mississippi Code of 1972.

2581           91-23-1011. **INTEREST AS GENERAL PARTNER.** (a) Except as  
2582 otherwise provided in subsection (c) or unless personal liability  
2583 is imposed in the contract, a trustee who holds an interest as a  
2584 general partner in a general or limited partnership is not  
2585 personally liable on a contract entered into by the partnership

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2586 after the trust's acquisition of the interest if the fiduciary  
2587 capacity was disclosed in the contract or in a statement  
2588 previously filed pursuant to the Uniform Partnership Act, compiled  
2589 in title 79, chapter 13, or Mississippi Limited Partnership Act,  
2590 compiled in title 79, chapter 14.

2591 (b) Except as otherwise provided in subsection (c), a  
2592 trustee who holds an interest as a general partner is not  
2593 personally liable for torts committed by the partnership or for  
2594 obligations arising from ownership or control of the interest  
2595 unless the trustee is personally at fault on account of the  
2596 trustee's own willful misconduct proven by clear and convincing  
2597 evidence.

2598 (c) The immunity provided by this section does not apply if  
2599 an interest in the partnership is held by the trustee in a  
2600 capacity other than that of trustee.

2601 (d) If the trustee of a revocable trust holds an interest as  
2602 a general partner, the settlor is personally liable for contracts  
2603 and other obligations of the partnership as if the settlor were a  
2604 general partner.

2605 **SECTION 89.** The following shall be codified as Section 91-  
2606 23-1012, Mississippi Code of 1972.

2607 91-23-1012. **PROTECTION OF PERSON DEALING WITH TRUSTEE.** (a)  
2608 A person other than a beneficiary who in good faith assists a  
2609 trustee, or who in good faith and for value deals with a trustee,  
2610 without knowledge that the trustee is exceeding or improperly

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2611 exercising the trustee's powers is protected from liability as if  
2612 the trustee properly exercised the power.

2613 (b) A person other than a beneficiary who in good faith  
2614 deals with a trustee is not required to inquire into the extent of  
2615 the trustee's powers or the propriety of their exercise.

2616 (c) A person who in good faith delivers assets to a trustee  
2617 need not ensure their proper application.

2618 (d) A person other than a beneficiary who in good faith  
2619 assists a former trustee, or who in good faith and for value deals  
2620 with a former trustee, without knowledge that the trusteeship has  
2621 terminated is protected from liability as if the former trustee  
2622 were still a trustee.

2623 (e) Comparable protective provisions of other laws relating  
2624 to commercial transactions or transfer of securities by  
2625 fiduciaries prevail over the protection provided by this section.

2626 **SECTION 90.** The following shall be codified as Section 91-  
2627 23-1013, Mississippi Code of 1972.

2628 91-23-1013. **CERTIFICATION OF TRUST.** (a) Instead of  
2629 furnishing a copy of the trust instrument to any person to  
2630 evidence the existence and validity of the trust, the trustee may  
2631 furnish to such person a certification of trust, signed by the  
2632 trustee or trustees having signatory authority as identified in  
2633 subdivision (a)(5) and attested by a notary public and shall  
2634 contain the following :

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2635           (1) an affirmation of the current existence of the  
2636 trust and the date on which the trust came into existence;

2637           (2) the identity of the settlor or settlors;

2638           (3) the identity and address of the currently acting  
2639 trustee or trustees and may contain the identity and address of  
2640 the named successor trustee or trustees or a statement that no  
2641 successor is named;

2642           (4) the administrative or managerial powers of the  
2643 trustee in a pending transaction or relevant to the request;

2644           (5) the revocability or irrevocability of the trust and  
2645 the identity of any person holding a power to revoke the trust;

2646           (6) when there are multiple trustees or multiple  
2647 successor trustees, the signature authority of the trustees  
2648 indicating whether all or less than all of the currently acting  
2649 trustees are required to sign in order to exercise various powers  
2650 of the trustee;

2651           (7) where there are successor trustees designated, a  
2652 statement detailing the conditions for their succession or a  
2653 statement that a third party may rely on the authority of one (1)  
2654 or more successors without proof of their succession;

2655           (8) the trust's taxpayer identification number, whether  
2656 a social security number or employer identification number, but  
2657 only if the trust's identification number is essential to the  
2658 transaction for which the request for the trust document is made;

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2659           (9) the name in which title to trust property may be  
2660 taken; and

2661           (10) A statement that, to the best of the trustee's  
2662 knowledge, the trust has not been revoked, modified or amended in  
2663 any manner that would cause the representations contained in the  
2664 certification of trust to be incorrect.

2665           (b) The certification of trust shall not be required to  
2666 contain the dispositive provisions of a trust that set forth the  
2667 distribution of the trust estate.

2668           (c) The trustee offering the certification of trust may  
2669 provide copies of all or any part of the trust document and  
2670 amendments, if any. Nothing in this section is intended to  
2671 require or imply an obligation to provide dispositive provisions  
2672 of the trust or a copy of the entire trust documents and  
2673 amendments.

2674           (d) A person who acts in reliance upon a certification of  
2675 trust without knowledge that the representations contained therein  
2676 are incorrect is not liable to any person for so acting. A person  
2677 who does not have actual knowledge that the facts contained in the  
2678 certification of trust are incorrect may assume without inquiry  
2679 the existence of the facts contained in the certification. Actual  
2680 knowledge of shall not be inferred solely from the fact that a  
2681 copy of all or part of the trust instrument is held by the person  
2682 relying on the trust certification. Nothing contained in this  
2683 section shall limit the rights of the beneficiaries of the trust

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2684 against the trustee. Any person relying on the certification of  
2685 trust shall be indemnified from the assets of the trust to the  
2686 extent of the share of the trust attributable to the beneficiary  
2687 or beneficiaries bringing any action against the person for any  
2688 costs, damage, attorney fees or other expenses incurred in  
2689 defending any action against the person arising for the  
2690 transaction to which a certification of trust related.

2691 (e) A person's failure to request a certification of trust  
2692 does not affect the protections provided that person in this  
2693 section. No inference that the person has not acted in good faith  
2694 or that the person was negligent may be drawn from the failure of  
2695 the person to request a certification of trust. Nothing in this  
2696 section is intended to create an implication that a person is  
2697 liable for acting in reliance on a certification of trust under  
2698 circumstances where the requirements of this section are not  
2699 satisfied.

2700 (f) Nothing in this section shall be construed to require a  
2701 third party, when presented with a trust certificate, to enter  
2702 into a contract with a trustee relating to trust assets or  
2703 obligations, or to preclude a third party from demanding as a  
2704 precondition to any contract that the trustee provide additional  
2705 information in order to clarify any ambiguities or inconsistencies  
2706 in the trust certificate.

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2707 (g) This section does not limit the right of a person to  
2708 obtain a copy of the trust instrument in a judicial proceeding  
2709 concerning the trust.

2710 **SECTION 91.** The following shall be codified as Section 91-  
2711 23-1014, Mississippi Code of 1972.

2712 91-23-1014. **ENFORCEMENT OF NO-CONTEST, IN TERROREM OR**  
2713 **FORFEITURE PROVISIONS.** (a) For the purposes of this section,  
2714 "no-contest provision" includes a "no-contest provision," "in  
2715 terrorem provision" or "forfeiture provision" of a trust  
2716 instrument. A "no-contest provision" means a provision that, if  
2717 given effect, would reduce or eliminate the interest of any  
2718 beneficiary of such trust who, directly or indirectly, initiates  
2719 or otherwise pursues:

2720 (1) Any action to contest the validity of the trust or  
2721 the terms of the trust;

2722 (2) Any action to set aside or vary the terms of the  
2723 trust;

2724 (3) Any action to challenge the acts of the trustee or  
2725 other fiduciary of the trust in the performance of the trustee's  
2726 or other fiduciary's duties as described in the terms of the  
2727 trust; or

2728 (4) Any other act or proceedings to frustrate or defeat  
2729 the settlor's intent as expressed in the terms of the trust.

2730 (b) Regardless of whether or not the beneficiary sought,  
2731 received or relied upon legal counsel, a no-contest provision

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2732 shall be enforceable according to the express terms of the no-  
2733 contest provision without regard to the beneficiary's good or bad  
2734 faith in taking the action that would justify the complete or  
2735 partial forfeiture of the beneficiary's interest in the trust  
2736 under the terms of the no-contest provision unless probable cause  
2737 exists for the beneficiary taking such action on the grounds of:

- 2738 (1) Fraud;
- 2739 (2) Duress;
- 2740 (3) Revocation;
- 2741 (4) Lack of testamentary capacity;
- 2742 (5) Undue influence;
- 2743 (6) Mistake;
- 2744 (7) Forgery; or
- 2745 (8) Irregularity in the execution of the trust  
2746 instrument.

2747 (c) Subsection (b) shall not apply to:

2748 (1) Any action brought solely to challenge the acts of  
2749 the trustee or other fiduciary of the trust to the extent that the  
2750 trustee or other fiduciary has committed a breach of fiduciary  
2751 duties or breach of trust;

2752 (2) Any action brought by the trustee or any other  
2753 fiduciary serving under the terms of the trust, unless the trustee  
2754 or other fiduciary is a beneficiary against whom the no-contest  
2755 provision is otherwise enforceable;

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2756           (3) Any agreement among the beneficiaries and any other  
2757 interested persons in settlement of a dispute or resolution of any  
2758 other matter relating to the trust, including without limitation  
2759 any nonjudicial settlement agreement;

2760           (4) Any action to determine whether a proposed or  
2761 pending motion, petition, or other proceeding constitutes a  
2762 contest within the meaning of a no-contest provision;

2763           (5) Any action brought by a beneficiary or on behalf of  
2764 any such beneficiary for a construction or interpretation of the  
2765 terms of the trust; or

2766           (6) Any action brought by the attorney general for a  
2767 construction or interpretation of a charitable trust or a trust  
2768 containing a charitable interest if a provision exists in a trust  
2769 purporting to penalize a charity or charitable interest for  
2770 contesting the trust if probable cause exists for instituting  
2771 proceedings.

2772           (d) Pursuant to this section, courts shall enforce the  
2773 settlor's intent as reflected in a no-contest provision to the  
2774 greatest extent possible.

2775                           **ARTICLE 11. MISCELLANEOUS PROVISIONS.**

2776           **SECTION 92.** The following shall be codified as Section 91-  
2777 23-1101, Mississippi Code of 1972.

2778           91-23-1101. **UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In  
2779 applying and construing this chapter, consideration must be given

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2780 to the need to promote uniformity of the law with respect to its  
2781 subject matter among states that enact it.

2782         **SECTION 93.** The following shall be codified as Section 91-  
2783 23-1102, Mississippi Code of 1972.

2784         91-23-1102.   **ELECTRONIC RECORDS AND SIGNATURES.** The  
2785 provisions of this chapter governing the legal effect, validity,  
2786 or enforceability of electronic records or electronic signatures,  
2787 and of contracts formed or performed with the use of such records  
2788 or signatures, conform to the requirements of Section 102 of the  
2789 Electronic Signatures in Global and National Commerce Act (15  
2790 U.S.C. § 7002) and supersede, modify, and limit the requirements  
2791 of the Electronic Signatures in Global and National Commerce Act.

2792         **SECTION 94.** The following shall be codified as Section 91-  
2793 23-1103, Mississippi Code of 1972.

2794         91-23-1103.   **SEVERABILITY CLAUSE.** If any provision of this  
2795 chapter or its application to any person or circumstances is held  
2796 invalid, the invalidity does not affect other provisions or  
2797 applications of this chapter which can be given effect without the  
2798 invalid provision or application, and to this end the provisions  
2799 of this chapter are severable.

2800         **SECTION 95.** The following shall be codified as Section 91-  
2801 23-1104, Mississippi Code of 1972.

2802         91-23-1104.   **EFFECTIVE DATE** This chapter takes effect on  
2803 July 1, 2014, the "effective date of this chapter."

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2804           **SECTION 96.** The following shall be codified as Section 91-  
2805 23-1105, Mississippi Code of 1972.

2806           91-23-1105.   **REPEALS.** The statutes found in Title 91,  
2807 chapter 9, articles 1, 3, 5 and 7 are repealed effective after  
2808 June 30, 2014.

2809           **SECTION 97.** The following shall be codified as Section 91-  
2810 23-1106, Mississippi Code of 1972.

2811           91-23-1106.   **APPLICATION TO EXISTING RELATIONSHIPS.** (a)  
2812 Except as otherwise provided in this chapter, on July 1, 2014, the  
2813 effective date of this chapter:

2814                   (1) this chapter applies to all trusts created before,  
2815 on, or after July 1, 2014;

2816                   (2) this chapter applies to all judicial proceedings  
2817 concerning trusts commenced on or after July 1, 2014;

2818                   (3) this chapter applies to judicial proceedings  
2819 concerning trusts commenced before July 1, 2014 unless the court  
2820 finds that application of a particular provision of this chapter  
2821 would substantially interfere with the effective conduct of the  
2822 judicial proceedings or prejudice the rights of the parties, in  
2823 which case the particular provision of this chapter does not apply  
2824 and the superseded law applies;

2825                   (4) any rule of construction or presumption provided in  
2826 this chapter applies to trust instruments executed before July 1,  
2827 2014 unless there is a clear indication of a contrary intent in  
2828 the terms of the trust; and

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2829           (5) an act done before July 1, 2014 is not affected by  
2830 this chapter.

2831           (b) If a right is acquired, extinguished, or barred upon the  
2832 expiration of a prescribed period that has commenced to run under  
2833 any other statute before July 1, 2014, that statute continues to  
2834 apply to the right even if it has been repealed or superseded.

2835           **SECTION 98.** The following shall be codified as Section 91-  
2836 23-1107, Mississippi Code of 1972.

2837           91-23-1107. **ALTER EGO.** (a) Absent clear and convincing  
2838 evidence, no settlor of an irrevocable trust may be deemed to be  
2839 the alter ego of a trustee of such trust.

2840           (b) None of the following factors, by themselves or in  
2841 combination, may be considered sufficient evidence for a court to  
2842 conclude that the settlor controls a trustee, or is the alter ego  
2843 of a trustee of such trust:

2844           (1) Any combination of the factors listed in section  
2845 91-23-1108 regarding dominion and control over a trust;

2846           (2) Isolated occurrences where the settlor has signed  
2847 checks, made disbursements, or executed other documents related to  
2848 such trust as a trustee, a trust advisor or a trust protector,  
2849 when in fact the settlor was not such a trustee, trust advisor or  
2850 trust protector;

2851           (3) Making any requests for distributions on behalf of  
2852 beneficiaries; or

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2853           (4) Making any requests to the trustee to hold,  
2854 purchase, or sell any trust property.

2855           **SECTION 99.** The following shall be codified as Section 91-  
2856 23-1108, Mississippi Code of 1972.

2857           91-23-1108.   **DOMINION AND CONTROL OVER A TRUST.** In the event  
2858 a person challenges a settlor's or a beneficiary's influence over  
2859 a trust, none of the following factors, alone or in combination,  
2860 shall enter into a determination that dominion and control over a  
2861 trust exists:

2862           (1) The settlor or a beneficiary is serving as a trustee, a  
2863 trust advisor, a trust protector or other fiduciary as described  
2864 in section 91-23-508;

2865           (2) The settlor or a beneficiary holds an unrestricted power  
2866 to remove or replace a trustee, a trust advisor, a trust protector  
2867 or other fiduciary;

2868           (3) The settlor or a beneficiary is a trust administrator, a  
2869 general partner of a partnership, a manager of a limited liability  
2870 company, an officer of a corporation, or holds any other  
2871 managerial function relative to any type of entity specified in  
2872 this subdivision, or relative to any other type of entity not so  
2873 specified, and part or all of the trust property consists of an  
2874 interest in such entity;

2875           (4) A person related by blood or adoption to the settlor or  
2876 a beneficiary is appointed as a trustee, a trust advisor, a trust  
2877 protector or other fiduciary;

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2878           (5) The settlor's or a beneficiary's agent, accountant,  
2879 attorney, financial advisor, or friend is appointed as a trustee,  
2880 a trust advisor, a trust protector or other fiduciary;

2881           (6) A business associate is appointed as a trustee, a trust  
2882 advisor, a trust protector or other fiduciary;

2883           (7) A beneficiary holds any power of appointment over any or  
2884 all of the trust property;

2885           (8) The settlor holds a power to substitute property of  
2886 equivalent value for property held by the trust, regardless of  
2887 whether such power is:

2888                   (A) Held in a fiduciary or nonfiduciary capacity;

2889                   (B) Exercisable with or without the approval of any  
2890 person in a fiduciary capacity; or

2891                   (C) Exercisable with or without the approval of any  
2892 person having an interest adverse to such settlor;

2893           (9) A trustee, a trust advisor, a trust protector or other  
2894 fiduciary has the power to loan trust property to the settlor for  
2895 less than a full and adequate rate of interest or without adequate  
2896 security;

2897           (10) Any language relative to the power to make any  
2898 distribution provides for any discretion relative to such  
2899 distribution;

2900           (11) The trust has only one beneficiary eligible for current  
2901 distributions; or

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2902           (12) The beneficiary is serving as a cotrustee, or as a  
2903 trust advisor or trust protector under Article 12, or as any other  
2904 fiduciary.

2905           **SECTION 100.** The following shall be codified as Section 91-  
2906 23-1109, Mississippi Code of 1972.

2907           91-23-1109.   **PROTECTION OF SPECIAL NEEDS TRUSTS AND OTHER**  
2908 **SIMILAR TRUSTS FOR DISABLED PERSONS.** Notwithstanding the  
2909 provisions of the Mississippi Uniform Trust Code that may  
2910 otherwise be applicable to a trust, no provision thereof shall  
2911 apply to any special needs trust, supplemental needs trust, or  
2912 other similar trust established for a person with a disability as  
2913 a beneficiary, including without limitation, any trust established  
2914 pursuant to the provisions of 42 U.S.C. § 1396 (p) (d) (4)A or C,  
2915 as amended from time to time, or other similar federal or state  
2916 statute, to the extent that such provision would disqualify such  
2917 trust beneficiary at any time from eligibility for public needs-  
2918 based assistance benefits for which the beneficiary would  
2919 otherwise qualify.

2920           **ARTICLE 12.       TRUST ADVISORS AND TRUST PROTECTORS**

2921           **SECTION 101.** The following shall be codified as Section 91-  
2922 23-1201, Mississippi Code of 1972.

2923           91-23-1201.   **POWERS OF TRUST ADVISORS AND TRUST PROTECTORS.**

2924           (a) A trust protector or trust advisor is any person, and  
2925 may be a committee of more than one person, other than a trustee,  
2926 who under the terms of the trust has a power or duty with respect

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2927 to a trust, including but not limited to, one or more of the  
2928 following powers:

2929 (1) The power to modify or amend the trust instrument  
2930 to achieve favorable tax status or respond to changes in any  
2931 applicable federal, state, or other tax law affecting the trust,  
2932 including but not limited to, any rulings, regulations, or other  
2933 guidance implementing or interpreting such laws;

2934 (2) The power to amend or modify the trust instrument  
2935 to take advantage of changes in the rule against perpetuities,  
2936 laws governing restraints on alienation, or other state laws  
2937 restricting the terms of the trust, the distribution of trust  
2938 property, or the administration of the trust;

2939 (3) The power to appoint a successor trust protector or  
2940 trust advisor;

2941 (4) The power to review and approve a trustee's trust  
2942 reports or accountings;

2943 (5) The power to change the governing law or principal  
2944 place of administration of the trust;

2945 (6) The power to remove and replace any trust advisor  
2946 or trust protector for the reasons stated in the trust instrument;

2947 (7) The power to remove a trustee, cotrustee, or  
2948 successor trustee, for the reasons stated in the trust instrument,  
2949 and appoint a successor;

2950 (8) The power to consent to a trustee's or cotrustee's  
2951 action or inaction in making distributions to beneficiaries;

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2952           (9) The power to increase or decrease any interest of  
2953 the beneficiaries in the trust, to grant a power of appointment to  
2954 one (1) or more trust beneficiaries, or to terminate or amend any  
2955 power of appointment granted in the trust;

2956           (10) The power to perform a specific duty or function  
2957 that would normally be required of a trustee or cotrustee;

2958           (11) The power to advise the trustee or cotrustee  
2959 concerning any beneficiary;

2960           (12) The power to consent to a trustee's or cotrustee's  
2961 action or inaction relating to investments of trust assets;

2962           (13) The power to direct the acquisition, disposition,  
2963 or retention of any trust investment;

2964           (14) The power to terminate all or part of a trust;

2965           (15) The power to veto or direct all or part of any  
2966 trust distribution;

2967           (16) The power to borrow money with or without  
2968 security, and mortgage or pledge trust property for a period  
2969 within or extending beyond the duration of the trust;

2970           (17) The power to make loans out of trust property,  
2971 including but not limited to, loans to a beneficiary on terms and  
2972 conditions, including without interest, considered to be fair and  
2973 reasonable under the circumstances;

2974           (18) The power to vote proxies and exercise all other  
2975 rights of ownership relative to securities and business entities  
2976 held by the trust;

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2977           (19) The power to select one (1) or more investment  
2978 advisors, managers or counselors, including but not limited to, a  
2979 trustee and delegate to them any of its powers; and

2980           (20) The power to direct the trustee with respect to  
2981 any additional powers and discretions over investment and  
2982 management of trust assets provided in the trust instrument.

2983           (b) The exercise of a power by a trust advisor or a trust  
2984 protector shall be exercised in the sole and absolute discretion  
2985 of the trust advisor or trust protector and shall be binding on  
2986 all other persons.

2987           (c) Any power of a trust advisor or trust protector to  
2988 directly or indirectly modify a trust may be granted  
2989 notwithstanding the provisions of sections 91-23-410 through 91-  
2990 23-412 and 91-23-414.

2991           (d) An excluded fiduciary may continue to follow the  
2992 direction of a trust protector or trust advisor upon the  
2993 incapacity or death of the grantor of a trust to the extent  
2994 provided in the trust instrument.

2995           (e) Notwithstanding anything in this section to the  
2996 contrary, no modification, amendment or grant of a power of  
2997 appointment with respect to a trust all of whose beneficiaries are  
2998 charitable organizations may authorize a trust protector or trust  
2999 advisor to grant a beneficial interest in such trust to any non-  
3000 charitable interest or purpose.

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3001           **SECTION 102.** The following shall be codified as Section 91-  
3002 23-1202, Mississippi Code of 1972.

3003           91-23-1202.   **TRUST ADVISORS AND TRUST PROTECTORS AS**  
3004 **FIDUCIARIES.** (a) A trust advisor or trust protector, other than  
3005 a beneficiary, is a fiduciary with respect to each power granted  
3006 to such trust advisor or trust protector. In exercising any power  
3007 or refraining from exercising any power, a trust advisor or trust  
3008 protector shall act in good faith and in accordance with the terms  
3009 and purposes of the trust and the interests of the beneficiaries.

3010           (b) A trust advisor or trust protector is an excluded  
3011 fiduciary with respect to each power granted or reserved  
3012 exclusively to any one or more other trustees, trust advisors, or  
3013 trust protectors.

3014           **SECTION 103.** The following shall be codified as Section 91-  
3015 23-1203, Mississippi Code of 1972.

3016           91-23-1203.   **TRUST ADVISOR AND TRUST PROTECTOR SUBJECT TO**  
3017 **COURT JURISDICTION.** By accepting appointment to serve as a trust  
3018 advisor or trust protector, the trust advisor or the trust  
3019 protector submits personally to the jurisdiction of the courts of  
3020 this state even if investment advisory agreements or other related  
3021 agreements provide otherwise, and the trust advisor or trust  
3022 protector may be made a party to any action or proceeding relating  
3023 to a decision, action, or inaction of the trust advisor or trust  
3024 protector.

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3025           **SECTION 104.** The following shall be codified as Section 91-  
3026 23-1204, Mississippi Code of 1972.

3027           91-23-1204.   **NO DUTY TO REVIEW ACTIONS OF TRUSTEE, TRUST**  
3028 **ADVISOR, OR TRUST PROTECTOR.** (a) Whenever, pursuant to the terms  
3029 of a trust, an excluded fiduciary is to follow the direction of a  
3030 trustee, trust advisor, or trust protector with respect to  
3031 investment decisions, distribution decisions, or other decisions  
3032 of the non-excluded fiduciary, then, except to the extent that the  
3033 terms of the trust provide otherwise, the excluded fiduciary shall  
3034 have no duty to:

3035                   (1) Review, evaluate, perform investment reviews,  
3036 suitability reviews, inquiries, or investigations, or in any other  
3037 way monitor the conduct of the trustee, trust advisor, or trust  
3038 protector;

3039                   (2) Make recommendations or evaluations or in any way  
3040 provide advice to the trustee, trust advisor, or trust protector  
3041 or consult with the trustee, trust advisor, or trust protector; or

3042                   (3) Communicate with or warn or apprise any beneficiary  
3043 or third party concerning instances in which the excluded  
3044 fiduciary would or might have exercised the excluded fiduciary's  
3045 own discretion in a manner different from the manner directed by  
3046 the trustee, trust advisor, or trust protector.

3047           (b) Absent provisions in the trust instrument to the  
3048 contrary, the actions of the excluded fiduciary pertaining to  
3049 matters within the scope of the trustee, trust advisor, or trust

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3050 protector's authority, including but not limited to, confirming  
3051 that the trustee, trust advisor, or trust protector's directions  
3052 have been carried out and recording and reporting actions taken at  
3053 the trustee, trust advisor, or trust protector's direction or  
3054 other information pursuant to section 91-23-813, shall be deemed  
3055 to be administrative actions taken by the excluded fiduciary  
3056 solely to allow the excluded fiduciary to perform those duties  
3057 assigned to the excluded fiduciary under the terms of the trust;  
3058 such administrative actions, as well as any communications made by  
3059 the excluded fiduciary to the trust advisor, trust protector or  
3060 any of their agents or persons they have selected to provide  
3061 services to the trust, shall not be deemed to constitute an  
3062 undertaking by the excluded fiduciary to monitor the trustee,  
3063 trust advisor, or trust protector or otherwise participate in  
3064 actions within the scope of the trustee, trust advisor, or trust  
3065 protector's authority.

3066       **SECTION 105.** The following shall be codified as Section 91-  
3067 23-1205, Mississippi Code of 1972.

3068       91-23-1205.   **FIDUCIARY'S LIABILITY FOR ACTION OR INACTION OF**  
3069 **TRUSTEE, TRUST ADVISOR, AND TRUST PROTECTOR.** An excluded  
3070 fiduciary is not liable, either individually or as a fiduciary,  
3071 for:

3072       (1) Any loss resulting from compliance with a direction of a  
3073 trustee, trust advisor or trust protector, including but not  
3074 limited to, any loss from the trustee, trust advisor or trust

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3075 protector breaching fiduciary responsibilities or acting beyond  
3076 the trustee's, trust advisor's or trust protector's scope of  
3077 authority;

3078 (2) Any loss resulting from any action or inaction of a  
3079 trustee, trust advisor, or trust protector; or

3080 (3) Any loss that results from the failure of a trustee,  
3081 trust advisor, or trust protector to take any action proposed by  
3082 the excluded fiduciary where such action requires the  
3083 authorization of the trustee, trust advisor, or trust protector,  
3084 provided that an excluded fiduciary who had a duty to propose such  
3085 action timely sought but failed to obtain the authorization.

3086 **SECTION 106.** The following shall be codified as Section 91-  
3087 23-1206, Mississippi Code of 1972.

3088 91-23-1206. **LIMITATION OF ACTION AGAINST TRUST ADVISOR OR**  
3089 **TRUST PROTECTOR.** (a) A beneficiary may not commence a proceeding  
3090 against a trust advisor or trust protector for breach of trust  
3091 more than one (1) year after the date the beneficiary or a  
3092 representative of the beneficiary was sent a report that  
3093 adequately disclosed facts indicating the existence of a potential  
3094 claim for breach of trust.

3095 (b) A report adequately discloses facts indicating the  
3096 existence of a potential claim for breach of trust if it provides  
3097 sufficient information so that the beneficiary or the  
3098 beneficiary's representative knows of the potential claim or has

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3099 sufficient information to be presumed to know of it, or to be put  
3100 on notice to inquire into its existence.

3101 (c) If subsection (a) does not apply, a judicial proceeding  
3102 by a beneficiary against a trust advisor or trust protector for  
3103 breach of trust must be commenced within three (3) years after the  
3104 first to occur of:

3105 (1) The removal, resignation, or death of the trust  
3106 advisor or trust protector;

3107 (2) The termination of the beneficiary's interest in  
3108 the trust; or

3109 (3) The termination of the trust.

3110 (d) A trustee may not commence a proceeding against a trust  
3111 advisor or trust protector for breach of trust more than one (1)  
3112 year after the date the trustee or a representative of the trustee  
3113 was sent a report that adequately disclosed facts indicating the  
3114 existence of a potential claim for breach of trust.

3115 (e) A report adequately discloses facts indicating the  
3116 existence of a potential claim for breach of trust if it provides  
3117 sufficient information so that the trustee or the trustee's  
3118 representative knows of the potential claim or has sufficient  
3119 information to be presumed to know of it, or to be put on notice  
3120 to inquire into its existence.

3121 (f) If subsection (d) does not apply, a judicial proceeding  
3122 by a trustee against a trust advisor or trust protector for breach

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3123 of trust must be commenced within three (3) years after the first  
3124 to occur of:

3125           (1) The removal, resignation, or death of the trust  
3126 advisor or trust protector;

3127           (2) The termination of the beneficiary's interest in  
3128 the trust; or

3129           (3) The termination of the trust.

3130           (g) A trust advisor or trust protector may not commence a  
3131 proceeding against another trust advisor or another trust  
3132 protector for breach of trust more than one (1) year after the  
3133 date the trust advisor or trust protector or the respective  
3134 representative of each was sent a report that adequately disclosed  
3135 facts indicating the existence of a potential claim for breach of  
3136 trust.

3137           (h) A report adequately discloses facts indicating the  
3138 existence of a potential claim for breach of trust if it provides  
3139 sufficient information so that the trust advisor or trust  
3140 protector or the respective representative of each knows of the  
3141 potential claim or has sufficient information to be presumed to  
3142 know of it, or to be put on notice to inquire into its existence.

3143           (i) If subsection (g) does not apply, a judicial proceeding  
3144 by a trust advisor or trust protector against another trust  
3145 advisor or another trust protector for breach of trust must be  
3146 commenced within three (3) years after the first to occur of:

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3147                   (1) The removal, resignation, or death of the other  
3148 trust advisor or other trust protector;

3149                   (2) The termination of the beneficiary's interest in  
3150 the trust; or

3151                   (3) The termination of the trust.

3152                   (j) Notwithstanding subsections (d)–(i), no trustee, trust  
3153 advisor or trust protector, may commence a proceeding against a  
3154 trust advisor or trust protector or another trust advisor or  
3155 another trust protector if, under either subsections (a)–(c) or  
3156 section 91-23-1005(a)–(c), none of the beneficiaries may commence  
3157 a proceeding against the trust advisor or trust protector for such  
3158 breach of trust.  
3159