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2 82nd General Assembly
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4

A Bill

Act 647 of 1999
HOUSE BILL 1701

5 By: Representative Wilkinson
6 By: Senator Harriman
7

For An Act To Be Entitled

"UNIFORM PRINCIPAL AND INCOME ACT."

Subtitle

"UNIFORM PRINCIPAL AND INCOME ACT."

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16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
17

ARTICLE 1. DEFINITIONS AND FIDUCIARY DUTIES.

18
19
20 SECTION 101. SHORT TITLE. This Act may be cited as the "Uniform
21 Principal and Income Act".
22

SECTION 102. DEFINITIONS. In this Act:

23
24 (1) "Accounting period" means a calendar year unless another
25 12-month period is selected by a fiduciary. The term includes a portion of a
26 calendar year or other 12-month period that begins when an income interest
27 begins or ends when an income interest ends.

28 (2) "Beneficiary" includes, in the case of a decedent's estate,
29 an heir, legatee, and devisee and, in the case of a trust, an income
30 beneficiary and a remainder beneficiary.

31 (3) "Fiduciary" means a personal representative or a trustee.
32 The term includes an executor, administrator, successor personal
33 representative, special administrator, and a person performing substantially
34 the same function.

35 (4) "Income" means money or property that a fiduciary receives
36 as current return from a principal asset. The term includes a portion of

1 receipts from a sale, exchange, or liquidation of a principal asset, to the
2 extent provided in Article 4.

3 (5) "Income beneficiary" means a person to whom net income of a
4 trust is or may be payable.

5 (6) "Income interest" means the right of an income beneficiary
6 to receive all or part of net income, whether the terms of the trust require
7 it to be distributed or authorize it to be distributed in the trustee's
8 discretion.

9 (7) "Mandatory income interest" means the right of an income
10 beneficiary to receive net income that the terms of the trust require the
11 fiduciary to distribute.

12 (8) "Net income" means the total receipts allocated to income
13 during an accounting period minus the disbursements made from income during
14 the period, plus or minus transfers under this Act to or from income during
15 the period.

16 (9) "Person" means an individual, corporation, business trust,
17 estate, trust, partnership, limited liability company, association, joint
18 venture, government; governmental subdivision, agency, or instrumentality;
19 public corporation; or any other legal or commercial entity.

20 (10) "Principal" means property held in trust for distribution
21 to a remainder beneficiary when the trust terminates.

22 (11) "Remainder beneficiary" means a person entitled to receive
23 principal when an income interest ends.

24 (12) "Terms of a trust" means the manifestation of the intent of
25 a settlor or decedent with respect to the trust, expressed in a manner that
26 admits of its proof in a judicial proceeding, whether by written or spoken
27 words or by conduct.

28 (13) "Trustee" includes an original, additional, or successor
29 trustee, whether or not appointed or confirmed by a court.

30
31 SECTION 103. FIDUCIARY DUTIES; GENERAL PRINCIPLES.

32 (a) In allocating receipts and disbursements to or between
33 principal and income, and with respect to any matter within the scope of
34 Articles 2 and 3, a fiduciary:

35 (1) shall administer a trust or estate in accordance with
36 the terms of the trust or the will, even if there is a different provision in

1 this Act;

2 (2) may administer a trust or estate by the exercise of a
 3 discretionary power of administration given to the fiduciary by the terms of
 4 the trust or the will, even if the exercise of the power produces a result
 5 different from a result required or permitted by this Act;

6 (3) shall administer a trust or estate in accordance with
 7 this Act if the terms of the trust or the will do not contain a different
 8 provision or do not give the fiduciary a discretionary power of
 9 administration; and

10 (4) shall add a receipt or charge a disbursement to
 11 principal to the extent that the terms of the trust and this Act do not
 12 provide a rule for allocating the receipt or disbursement to or between
 13 principal and income.

14 (b) In exercising the power to adjust under Section 104(a) or a
 15 discretionary power of administration regarding a matter within the scope of
 16 this Act, whether granted by the terms of a trust, a will, or this Act, a
 17 fiduciary shall administer a trust or estate impartially, based on what is
 18 fair and reasonable to all of the beneficiaries, except to the extent that
 19 the terms of the trust or the will clearly manifest an intention that the
 20 fiduciary shall or may favor one or more of the beneficiaries. A
 21 determination in accordance with this Act is presumed to be fair and
 22 reasonable to all of the beneficiaries.

23
 24 SECTION 104. TRUSTEE'S POWER TO ADJUST.

25 (a) A trustee may adjust between principal and income to the
 26 extent the trustee considers necessary if the trustee invests and manages
 27 trust assets as a prudent investor, the terms of the trust describe the
 28 amount that may or must be distributed to a beneficiary by referring to the
 29 trust's income, and the trustee determines, after applying the rules in
 30 Section 103(a), that the trustee is unable to comply with Section 103(b).

31 (b) In deciding whether and to what extent to exercise the power
 32 conferred by subsection (a), a trustee shall consider all factors relevant to
 33 the trust and its beneficiaries, including the following factors to the
 34 extent they are relevant:

35 (1) the nature, purpose, and expected duration of the
 36 trust;

1 (2) the intent of the settlor;

2 (3) the identity and circumstances of the beneficiaries;

3 (4) the needs for liquidity, regularity of income, and
 4 preservation and appreciation of capital;

5 (5) the assets held in the trust; the extent to which they
 6 consist of financial assets, interests in closely held enterprises, tangible
 7 and intangible personal property, or real property; the extent to which an
 8 asset is used by a beneficiary; and whether an asset was purchased by the
 9 trustee or received from the settlor;

10 (6) the net amount allocated to income under the other
 11 sections of this Act and the increase or decrease in the value of the
 12 principal assets, which the trustee may estimate as to assets for which
 13 market values are not readily available;

14 (7) whether and to what extent the terms of the trust give
 15 the trustee the power to invade principal or accumulate income or prohibit
 16 the trustee from invading principal or accumulating income, and the extent to
 17 which the trustee has exercised a power from time to time to invade principal
 18 or accumulate income;

19 (8) the actual and anticipated effect of economic
 20 conditions on principal and income and effects of inflation and deflation;
 21 and

22 (9) the anticipated tax consequences of an adjustment.

23 (c) A trustee may not make an adjustment:

24 (1) that diminishes the income interest in a trust that
 25 requires all of the income to be paid at least annually to a surviving spouse
 26 and for which an estate tax or gift tax marital deduction would be allowed,
 27 in whole or in part, if the trustee did not have the power to make the
 28 adjustment;

29 (2) that reduces the actuarial value of the income interest
 30 in a trust to which a person transfers property with the intent to qualify
 31 for a gift tax exclusion;

32 (3) that changes the amount payable to a beneficiary as a
 33 fixed annuity or a fixed fraction of the value of the trust assets;

34 (4) from any amount that is permanently set aside for
 35 charitable purposes under a will or the terms of a trust unless both income
 36 and principal are so set aside;

1 (5) if possessing or exercising the power to make an
 2 adjustment causes an individual to be treated as the owner of all or part of
 3 the trust for income tax purposes, and the individual would not be treated as
 4 the owner if the trustee did not possess the power to make an adjustment;

5 (6) if possessing or exercising the power to make an
 6 adjustment causes all or part of the trust assets to be included for estate
 7 tax purposes in the estate of an individual who has the power to remove a
 8 trustee or appoint a trustee, or both, and the assets would not be included
 9 in the estate of the individual if the trustee did not possess the power to
 10 make an adjustment;

11 (7) if the trustee is a beneficiary of the trust; or

12 (8) if the trustee is not a beneficiary, but the adjustment
 13 would benefit the trustee directly or indirectly.

14 (d) If subsection (c)(5), (6), (7), or (8) applies to a trustee
 15 and there is more than one trustee, a cotrustee to whom the provision does
 16 not apply may make the adjustment unless the exercise of the power by the
 17 remaining trustee or trustees is not permitted by the terms of the trust.

18 (e) A trustee may release the entire power conferred by
 19 subsection (a) or may release only the power to adjust from income to
 20 principal or the power to adjust from principal to income if the trustee is
 21 uncertain about whether possessing or exercising the power will cause a
 22 result described in subsection (c)(1) through (6) or (c)(8) or if the trustee
 23 determines that possessing or exercising the power will or may deprive the
 24 trust of a tax benefit or impose a tax burden not described in subsection
 25 (c). The release may be permanent or for a specified period, including a
 26 period measured by the life of an individual.

27 (f) Terms of a trust that limit the power of a trustee to make
 28 an
 29 application of this section unless it is clear from the terms of the trust
 30 that the terms are intended to deny the trustee the power of adjustment
 31 conferred by subsection (a).

32
 33 ARTICLE 2
 34 DECEDENT'S ESTATE OR
 35 TERMINATING INCOME INTEREST

1 SECTION 201. DETERMINATION AND DISTRIBUTION OF NET INCOME. After a
2 decedent dies, in the case of an estate, or after an income interest in a
3 trust ends, the following rules apply:

4 (1) A fiduciary of an estate or of a terminating income interest
5 shall determine the amount of net income and net principal receipts received
6 from property specifically given to a beneficiary under the rules in Articles
7 3 through 5 which apply to trustees and the rules in paragraph (5). The
8 fiduciary shall distribute the net income and net principal receipts to the
9 beneficiary who is to receive the specific property.

10 (2) A fiduciary shall determine the remaining net income of a
11 decedent's estate or a terminating income interest under the rules in
12 Articles 3 through 5 which apply to trustees and by:

13 (A) including in net income all income from property used
14 to discharge liabilities;

15 (B) paying from income or principal, in the fiduciary's
16 discretion, fees of attorneys, accountants, and fiduciaries; court costs and
17 other expenses of administration; and interest on death taxes, but the
18 fiduciary may pay those expenses from income of property passing to a trust
19 for which the fiduciary claims an estate tax marital or charitable deduction
20 only to the extent that the payment of those expenses from income will not
21 cause the reduction or loss of the deduction; and

22 (C) paying from principal all other disbursements made or
23 incurred in connection with the settlement of a decedent's estate or the
24 winding up of a terminating income interest, including debts, funeral
25 expenses, disposition of remains, family allowances, and death taxes and
26 related penalties that are apportioned to the estate or terminating income
27 interest by the will, the terms of the trust, or applicable law.

28 (3) A fiduciary shall distribute to a beneficiary who receives a
29 pecuniary amount outright the interest or any other amount provided by the
30 will, the terms of the trust, or applicable law from net income determined
31 under paragraph (2) or from principal to the extent that net income is
32 insufficient. If a beneficiary is to receive a pecuniary amount outright
33 from a trust after an income interest ends and no interest or other amount is
34 provided for by the terms of the trust or applicable law, the fiduciary shall
35 distribute the interest or other amount to which the beneficiary would be
36 entitled under applicable law if the pecuniary amount were required to be

1 paid under a will.

2 (4) A fiduciary shall distribute the net income remaining after
 3 distributions required by paragraph (3) in the manner described in Section
 4 202 to all other beneficiaries, including a beneficiary who receives a
 5 pecuniary amount in trust, even if the beneficiary holds an unqualified power
 6 to withdraw assets from the trust or other presently exercisable general
 7 power of appointment over the trust.

8 (5) A fiduciary may not reduce principal or income receipts from
 9 property described in paragraph (1) because of a payment described in Section
 10 501 or 502 to the extent that the will, the terms of the trust, or applicable
 11 law requires the fiduciary to make the payment from assets other than the
 12 property or to the extent that the fiduciary recovers or expects to recover
 13 the payment from a third party. The net income and principal receipts from
 14 the property are determined by including all of the amounts the fiduciary
 15 receives or pays with respect to the property, whether those amounts accrued
 16 or became due before, on, or after the date of a decedent's death or an
 17 income interest's terminating event, and by making a reasonable provision for
 18 amounts that the fiduciary believes the estate or terminating income interest
 19 may become obligated to pay after the property is distributed.

20
 21 SECTION 202. DISTRIBUTION TO RESIDUARY AND REMAINDER BENEFICIARIES.

22 (a) Each beneficiary described in Section 201(4) is entitled to
 23 receive a portion of the net income equal to the beneficiary's fractional
 24 interest in undistributed principal assets, using values as of the
 25 distribution date. If a fiduciary makes more than one distribution of assets
 26 to beneficiaries to whom this section applies, each beneficiary, including
 27 one who does not receive part of the distribution, is entitled, as of each
 28 distribution date, to the net income the fiduciary has received after the
 29 date of death or terminating event or earlier distribution date but has not
 30 distributed as of the current distribution date.

31 (b) In determining a beneficiary's share of net income, the
 32 following rules apply:

33 (1) The beneficiary is entitled to receive a portion of
 34 the net income equal to the beneficiary's fractional interest in the
 35 undistributed principal assets immediately before the distribution date,
 36 including assets that later may be sold to meet principal obligations.

1 an intervening period of administration of the testator's estate; or
2 (3) on the date of an individual's death in the case of an
3 asset that is transferred to a fiduciary by a third party because of the
4 individual's death.

5 (c) An asset becomes subject to a successive income interest on
6 the day after the preceding income interest ends, as determined under
7 subsection (d), even if there is an intervening period of administration to
8 wind up the preceding income interest.

9 (d) An income interest ends on the day before an income
10 beneficiary dies or another terminating event occurs, or on the last day of a
11 period during which there is no beneficiary to whom a trustee may distribute
12 income.

13
14 SECTION 302. APPORTIONMENT OF RECEIPTS AND DISBURSEMENTS WHEN DECEDENT
15 DIES OR INCOME INTEREST BEGINS.

16 (a) A trustee shall allocate an income receipt or disbursement
17 other than one to which Section 201(1) applies to principal if its due date
18 occurs before a decedent dies in the case of an estate or before an income
19 interest begins in the case of a trust or successive income interest.

20 (b) A trustee shall allocate an income receipt or disbursement
21 to income if its due date occurs on or after the date on which a decedent
22 dies or an income interest begins and it is a periodic due date. An income
23 receipt or disbursement must be treated as accruing from day to day if its
24 due date is not periodic or it has no due date. The portion of the receipt
25 or disbursement accruing before the date on which a decedent dies or an
26 income interest begins must be allocated to principal and the balance must be
27 allocated to income.

28 (c) An item of income or an obligation is due on the date the
29 payer is required to make a payment. If a payment date is not stated, there
30 is no due date for the purposes of this Act. Distributions to shareholders
31 or other owners from an entity to which Section 401 applies are deemed to be
32 due on the date fixed by the entity for determining who is entitled to
33 receive the distribution or, if no date is fixed, on the declaration date for
34 the distribution. A due date is periodic for receipts or disbursements that
35 must be paid at regular intervals under a lease or an obligation to pay
36 interest or if an entity customarily makes distributions at regular

1 intervals.

2
3 SECTION 303. APPORTIONMENT WHEN INCOME INTEREST ENDS.

4 (a) In this section, "undistributed income" means net income
5 received before the date on which an income interest ends. The term does not
6 include an item of income or expense that is due or accrued or net income
7 that has been added or is required to be added to principal under the terms
8 of the trust.

9 (b) When a mandatory income interest ends, the trustee shall pay
10 to a mandatory income beneficiary who survives that date, or the estate of a
11 deceased mandatory income beneficiary whose death causes the interest to end,
12 the beneficiary's share of the undistributed income that is not disposed of
13 under the terms of the trust unless the beneficiary has an unqualified power
14 to revoke more than five percent of the trust immediately before the income
15 interest ends. In the latter case, the undistributed income from the portion
16 of the trust that may be revoked must be added to principal.

17 (c) When a trustee's obligation to pay a fixed annuity or a
18 fixed fraction of the value of the trust's assets ends, the trustee shall
19 prorate the final payment if and to the extent required by applicable law to
20 accomplish a purpose of the trust or its settlor relating to income, gift,
21 estate, or other tax requirements.

22
23 ARTICLE 4

24 ALLOCATION OF RECEIPTS DURING
25 ADMINISTRATION OF TRUST

26
27 PART 1

28 RECEIPTS FROM ENTITIES

29 SECTION 401. CHARACTER OF RECEIPTS.

30 (a) In this section, "entity" means a corporation, partnership,
31 limited liability company, regulated investment company, real estate
32 investment trust, common trust fund, or any other organization in which a
33 trustee has an interest other than a trust or estate to which Section 402
34 applies, a business or activity to which Section 403 applies, or an asset-
35 backed security to which Section 415 applies.

36 (b) Except as otherwise provided in this section, a trustee

1 shall allocate to income money received from an entity.

2 (c) A trustee shall allocate the following receipts from an
3 entity to principal:

4 (1) property other than money;

5 (2) money received in one distribution or a series of
6 related distributions in exchange for part or all of a trust's interest in
7 the entity;

8 (3) money received in total or partial liquidation of the
9 entity; and

10 (4) money received from an entity that is a regulated
11 investment company or a real estate investment trust if the money distributed
12 is a capital gain dividend for federal income tax purposes.

13 (d) Money is received in partial liquidation:

14 (1) to the extent that the entity, at or near the time of
15 a distribution, indicates that it is a distribution in partial liquidation;
16 or

17 (2) if the total amount of money and property received in a
18 distribution or series of related distributions is greater than 20 percent of
19 the entity's gross assets, as shown by the entity's year-end financial
20 statements immediately preceding the initial receipt.

21 (e) Money is not received in partial liquidation, nor may it be
22 taken into account under subsection (d)(2), to the extent that it does not
23 exceed the amount of income tax that a trustee or beneficiary must pay on
24 taxable income of the entity that distributes the money.

25 (f) A trustee may rely upon a statement made by an entity about
26 the source or character of a distribution if the statement is made at or near
27 the time of distribution by the entity's board of directors or other person
28 or group of persons authorized to exercise powers to pay money or transfer
29 property comparable to those of a corporation's board of directors.

30
31 SECTION 402. DISTRIBUTION FROM TRUST OR ESTATE. A trustee shall
32 allocate to income an amount received as a distribution of income from a
33 trust or an estate in which the trust has an interest other than a purchased
34 interest, and shall allocate to principal an amount received as a
35 distribution of principal from such a trust or estate. If a trustee
36 purchases an interest in a trust that is an investment entity, or a decedent

1 or donor transfers an interest in such a trust to a trustee, Section 401 or
 2 415 applies to a receipt from the trust.

3
 4 SECTION 403. BUSINESS AND OTHER ACTIVITIES CONDUCTED BY TRUSTEE.

5 (a) If a trustee who conducts a business or other activity determines
 6 that it is in the best interest of all the beneficiaries to account
 7 separately for the business or activity instead of accounting for it as part
 8 of the trust's general accounting records, the trustee may maintain separate
 9 accounting records for its transactions, whether or not its assets are
 10 segregated from other trust assets.

11 (b) A trustee who accounts separately for a business or other
 12 activity may determine the extent to which its net cash receipts must be
 13 retained for working capital, the acquisition or replacement of fixed assets,
 14 and other reasonably foreseeable needs of the business or activity, and the
 15 extent to which the remaining net cash receipts are accounted for as
 16 principal or income in the trust's general accounting records. If a trustee
 17 sells assets of the business or other activity, other than in the ordinary
 18 course of the business or activity, the trustee shall account for the net
 19 amount received as principal in the trust's general accounting records to the
 20 extent the trustee determines that the amount received is no longer required
 21 in the conduct of the business.

22 (c) Activities for which a trustee may maintain separate
 23 accounting records include:

- 24 (1) retail, manufacturing, service, and other traditional
- 25 business activities;
- 26 (2) farming;
- 27 (3) raising and selling livestock and other animals;
- 28 (4) management of rental properties;
- 29 (5) extraction of minerals and other natural resources;
- 30 (6) timber operations; and
- 31 (7) activities to which Section 414 applies.

32
 33 PART 2

34 RECEIPTS NOT NORMALLY APPORTIONED

35 SECTION 404. PRINCIPAL RECEIPTS. A trustee shall allocate to
 36 princi pal :

1 (1) to the extent not allocated to income under this Act, assets
 2 received from a transferor during the transferor's lifetime, a decedent's
 3 estate, a trust with a terminating income interest, or a payer under a
 4 contract naming the trust or its trustee as beneficiary;

5 (2) money or other property received from the sale, exchange,
 6 liquidation, or change in form of a principal asset, including realized
 7 profit, subject to this article;

8 (3) amounts recovered from third parties to reimburse the trust
 9 because of disbursements described in Section 502(a)(7) or for other reasons
 10 to the extent not based on the loss of income;

11 (4) proceeds of property taken by eminent domain, but a separate
 12 award made for the loss of income with respect to an accounting period during
 13 which a current income beneficiary had a mandatory income interest is income;

14 (5) net income received in an accounting period during which
 15 there is no beneficiary to whom a trustee may or must distribute income; and

16 (6) other receipts as provided in Part 3.

17
 18 SECTION 405. RENTAL PROPERTY. To the extent that a trustee accounts
 19 for receipts from rental property pursuant to this section, the trustee shall
 20 allocate to income an amount received as rent of real or personal property,
 21 including an amount received for cancellation or renewal of a lease. An
 22 amount received as a refundable deposit, including a security deposit or a
 23 deposit that is to be applied as rent for future periods, must be added to
 24 principal and held subject to the terms of the lease and is not available for
 25 distribution to a beneficiary until the trustee's contractual obligations
 26 have been satisfied with respect to that amount.

27
 28 SECTION 406. OBLIGATION TO PAY MONEY.

29 (a) An amount received as interest, whether determined at a
 30 fixed, variable, or floating rate, on an obligation to pay money to the
 31 trustee, including an amount received as consideration for prepaying
 32 principal, must be allocated to income without any provision for amortization
 33 of premium.

34 (b) A trustee shall allocate to principal an amount received
 35 from the sale, redemption, or other disposition of an obligation to pay money
 36 to the trustee more than one year after it is purchased or acquired by the

1 trustee, including an obligation whose purchase price or value when it is
 2 acquired is less than its value at maturity. If the obligation matures
 3 within one year after it is purchased or acquired by the trustee, an amount
 4 received in excess of its purchase price or its value when acquired by the
 5 trust must be allocated to income.

6 (c) This section does not apply to an obligation to which
 7 Section 409, 410, 411, 412, 414, or 415 applies.

8
 9 SECTION 407. INSURANCE POLICIES AND SIMILAR CONTRACTS.

10 (a) Except as otherwise provided in subsection (b), a trustee
 11 shall allocate to principal the proceeds of a life insurance policy or other
 12 contract in which the trust or its trustee is named as beneficiary, including
 13 a contract that insures the trust or its trustee against loss for damage to,
 14 destruction of, or loss of title to a trust asset. The trustee shall
 15 allocate dividends on an insurance policy to income if the premiums on the
 16 policy are paid from income, and to principal if the premiums are paid from
 17 principal.

18 (b) A trustee shall allocate to income proceeds of a contract
 19 that insures the trustee against loss of occupancy or other use by an income
 20 beneficiary, loss of income, or, subject to Section 403, loss of profits from
 21 a business.

22 (c) This section does not apply to a contract to which Section
 23 409 applies.

24
 25 PART 3

26 RECEIPTS NORMALLY APPORTIONED

27
 28 SECTION 408. INSUBSTANTIAL ALLOCATIONS NOT REQUIRED. If a trustee
 29 determines that an allocation between principal and income required by
 30 Section 409, 410, 411, 412, or 415 is insubstantial, the trustee may allocate
 31 the entire amount to principal unless one of the circumstances described in
 32 Section 104(c) applies to the allocation. This power may be exercised by a
 33 cotrustee in the circumstances described in Section 104(d) and may be
 34 released for the reasons and in the manner described in Section 104(e). An
 35 allocation is presumed to be insubstantial if:

36 (1) the amount of the allocation would increase or decrease net

1 income in an accounting period, as determined before the allocation, by less
2 than 10 percent; or

3 (2) the value of the asset producing the receipt for which the
4 allocation would be made is less than 10 percent of the total value of the
5 trust's assets at the beginning of the accounting period.

6
7 SECTION 409. DEFERRED COMPENSATION, ANNUITIES, AND SIMILAR PAYMENTS.

8 (a) In this section, "payment" means a payment that a trustee
9 may receive over a fixed number of years or during the life of one or more
10 individuals because of services rendered or property transferred to the payer
11 in exchange for future payments. The term includes a payment made in money
12 or property from the payer's general assets or from a separate fund created
13 by the payer, including a private or commercial annuity, an individual
14 retirement account, and a pension, profit-sharing, stock-bonus, or stock-
15 ownership plan.

16 (b) To the extent that a payment is characterized as interest or
17 a dividend or a payment made in lieu of interest or a dividend, a trustee
18 shall allocate it to income. The trustee shall allocate to principal the
19 balance of the payment and any other payment received in the same accounting
20 period that is not characterized as interest, a dividend, or an equivalent
21 payment.

22 (c) If no part of a payment is characterized as interest, a
23 dividend, or an equivalent payment, and all or part of the payment is
24 required to be made, a trustee shall allocate to income 10 percent of the
25 part that is required to be made during the accounting period and the balance
26 to principal. If no part of a payment is required to be made or the payment
27 received is the entire amount to which the trustee is entitled, the trustee
28 shall allocate the entire payment to principal. For purposes of this
29 subsection, a payment is not "required to be made" to the extent that it is
30 made because the trustee exercises a right of withdrawal.

31 (d) If, to obtain an estate tax marital deduction for a trust, a
32 trustee must allocate more of a payment to income than provided for by this
33 section, the trustee shall allocate to income the additional amount necessary
34 to obtain the marital deduction.

35 (e) This section does not apply to payments to which Section 410
36 applies.

1
2 SECTION 410. LIQUIDATING ASSET.

3 (a) In this section, "liquidating asset" means an asset whose
4 value will diminish or terminate because the asset is expected to produce
5 receipts for a period of limited duration. The term includes a leasehold,
6 patent, copyright, royalty right, and right to receive payments during a
7 period of more than one year under an arrangement that does not provide for
8 the payment of interest on the unpaid balance. The term does not include a
9 payment subject to Section 409, resources subject to Section 411, timber
10 subject to Section 412, an activity subject to Section 414, an asset subject
11 to Section 415, or any asset for which the trustee establishes a reserve for
12 depreciation under Section 503.

13 (b) A trustee shall allocate to income 10 percent of the
14 receipts from a liquidating asset and the balance to principal.

15
16 SECTION 411. MINERALS, WATER, AND OTHER NATURAL RESOURCES.

17 (a) To the extent that a trustee accounts for receipts from an
18 interest in minerals or other natural resources pursuant to this section, the
19 trustee shall allocate them as follows:

20 (1) If received as nominal delay rental or nominal annual
21 rent on a lease, a receipt must be allocated to income.

22 (2) If received from a production payment, a receipt must
23 be allocated to income if and to the extent that the agreement creating the
24 production payment provides a factor for interest or its equivalent. The
25 balance must be allocated to principal.

26 (3) If an amount received as a royalty, shut-in-well
27 payment, take-or-pay payment, bonus, or delay rental is more than nominal, 90
28 percent must be allocated to principal and the balance to income.

29 (4) If an amount is received from a working interest or
30 any other interest not provided for in paragraph (1), (2), or (3), 90 percent
31 of the net amount received must be allocated to principal and the balance to
32 income.

33 (b) An amount received on account of an interest in water that
34 is renewable must be allocated to income. If the water is not renewable, 90
35 percent of the amount must be allocated to principal and the balance to
36 income.

1 (c) This Act applies whether or not a decedent or donor was
2 extracting minerals, water, or other natural resources before the interest
3 became subject to the trust.

4 (d) If a trust owns an interest in minerals, water, or other
5 natural resources on the effective date of this Act, the trustee may allocate
6 receipts from the interest as provided in this Act or in the manner used by
7 the trustee before the effective date of this Act. If the trust acquires an
8 interest in minerals, water, or other natural resources after the effective
9 date of this Act, the trustee shall allocate receipts from the interest as
10 provided in this Act.

11
12 SECTION 412. TIMBER.

13 (a) To the extent that a trustee accounts for receipts from the
14 sale of timber and related products pursuant to this section, the trustee
15 shall allocate the net receipts:

16 (1) to income to the extent that the amount of timber
17 removed from the land does not exceed the rate of growth of the timber during
18 the accounting periods in which a beneficiary has a mandatory income
19 interest;

20 (2) to principal to the extent that the amount of timber
21 removed from the land exceeds the rate of growth of the timber or the net
22 receipts are from the sale of standing timber;

23 (3) to or between income and principal if the net receipts
24 are from the lease of timberland or from a contract to cut timber from land
25 owned by a trust, by determining the amount of timber removed from the land
26 under the lease or contract and applying the rules in paragraphs (1) and (2);

27 or

28 (4) to principal to the extent that advance payments,
29 bonuses, and other payments are not allocated pursuant to paragraph (1), (2),
30 or (3).

31 (b) In determining net receipts to be allocated pursuant to
32 subsection (a), a trustee shall deduct and transfer to principal a reasonable
33 amount for depletion.

34 (c) This Act applies whether or not a decedent or transferor was
35 harvesting timber from the property before it became subject to the trust.

36 (d) If a trust owns an interest in timberland on the effective

1 date of this Act, the trustee may allocate net receipts from the sale of
2 timber and related products as provided in this Act or in the manner used by
3 the trustee before the effective date of this Act. If the trust acquires an
4 interest in timberland after the effective date of this Act, the trustee
5 shall allocate net receipts from the sale of timber and related products as
6 provided in this Act.

7
8 SECTION 413. PROPERTY NOT PRODUCTIVE OF INCOME.

9 (a) If a marital deduction is allowed for all or part of a trust
10 whose assets consist substantially of property that does not provide the
11 surviving spouse with sufficient income from or use of the trust assets, and
12 if the amounts that the trustee transfers from principal to income under
13 Section 104 and distributes to the spouse from principal pursuant to the
14 terms of the trust are insufficient to provide the spouse with the beneficial
15 enjoyment required to obtain the marital deduction, the spouse may require
16 the trustee to make property productive of income, convert property within a
17 reasonable time, or exercise the power conferred by Section 104(a). The
18 trustee may decide which action or combination of actions to take.

19 (b) In cases not governed by subsection (a), proceeds from the
20 sale or other disposition of an asset are principal without regard to the
21 amount of income the asset produces during any accounting period.

22
23 SECTION 414. DERIVATIVES AND OPTIONS.

24 (a) In this section, "derivative" means a contract or financial
25 instrument or a combination of contracts and financial instruments which
26 gives a trust the right or obligation to participate in some or all changes
27 in the price of a tangible or intangible asset or group of assets, or changes
28 in a rate, an index of prices or rates, or other market indicator for an
29 asset or a group of assets.

30 (b) To the extent that a trustee accounts for transactions in
31 derivatives pursuant to this section, the trustee shall allocate to principal
32 receipts from and disbursements made in connection with those transactions.

33 (c) If a trustee grants an option to buy property from the
34 trust, whether or not the trust owns the property when the option is granted,
35 grants an option that permits another person to sell property to the trust,
36 or acquires an option to buy property for the trust or an option to sell an

1 asset owned by the trust, and the trustee or other owner of the asset is
 2 required to deliver the asset if the option is exercised, an amount received
 3 for granting the option must be allocated to principal. An amount paid to
 4 acquire the option must be paid from principal. A gain or loss realized upon
 5 the exercise of an option, including an option granted to a settlor of the
 6 trust for services rendered, must be allocated to principal.

7
 8 SECTION 415. ASSET-BACKED SECURITIES.

9 (a) In this section, "asset-backed security" means an asset
 10 whose value is based upon the right it gives the owner to receive
 11 distributions from the proceeds of financial assets that provide collateral
 12 for the security. The term includes an asset that gives the owner the right
 13 to receive from the collateral financial assets only the interest or other
 14 current return or only the proceeds other than interest or current return.
 15 The term does not include an asset to which Section 401 or 409 applies.

16 (b) If a trust receives a payment from interest or other current
 17 return and from other proceeds of the collateral financial assets, the
 18 trustee shall allocate to income the portion of the payment which the payer
 19 identifies as being from interest or other current return and shall allocate
 20 the balance of the payment to principal.

21 (c) If a trust receives one or more payments in exchange for the
 22 trust's entire interest in an asset-backed security in one accounting period,
 23 the trustee shall allocate the payments to principal. If a payment is one of
 24 a series of payments that will result in the liquidation of the trust's
 25 interest in the security over more than one accounting period, the trustee
 26 shall allocate 10 percent of the payment to income and the balance to
 27 principal.

28
 29 ARTICLE 5

30 ALLOCATION OF DISBURSEMENTS DURING
 31 ADMINISTRATION OF TRUST

32 SECTION 501. DISBURSEMENTS FROM INCOME. A trustee shall make the
 33 following disbursements from income to the extent that they are not
 34 disbursements to which Section 201(2)(B) or (C) applies:

35 (1) one-half of the regular compensation of the trustee and of
 36 any person providing investment advisory or custodial services to the

1 trustee;

2 (2) one-half of all expenses for accountings, judicial
 3 proceedings, or other matters that involve both the income and remainder
 4 interests;

5 (3) all of the other ordinary expenses incurred in connection
 6 with the administration, management, or preservation of trust property and
 7 the distribution of income, including interest, ordinary repairs, regularly
 8 recurring taxes assessed against principal, and expenses of a proceeding or
 9 other matter that concerns primarily the income interest; and

10 (4) recurring premiums on insurance covering the loss of a
 11 principal asset or the loss of income from or use of the asset.

12
 13 SECTION 502. DISBURSEMENTS FROM PRINCIPAL.

14 (a) A trustee shall make the following disbursements from
 15 principal:

16 (1) the remaining one-half of the disbursements described
 17 in Section 501(1) and (2);

18 (2) all of the trustee's compensation calculated on
 19 principal as a fee for acceptance, distribution, or termination, and
 20 disbursements made to prepare property for sale;

21 (3) payments on the principal of a trust debt;

22 (4) expenses of a proceeding that concerns primarily
 23 principal, including a proceeding to construe the trust or to protect the
 24 trust or its property;

25 (5) premiums paid on a policy of insurance not described in
 26 Section 501(4) of which the trust is the owner and beneficiary;

27 (6) estate, inheritance, and other transfer taxes,
 28 including penalties, apportioned to the trust; and

29 (7) disbursements related to environmental matters,
 30 including reclamation, assessing environmental conditions, remedying and
 31 removing environmental contamination, monitoring remedial activities and the
 32 release of substances, preventing future releases of substances, collecting
 33 amounts from persons liable or potentially liable for the costs of those
 34 activities, penalties imposed under environmental laws or regulations and
 35 other payments made to comply with those laws or regulations, statutory or
 36 common law claims by third parties, and defending claims based on

1 environmental matters.

2 (b) If a principal asset is encumbered with an obligation that
 3 requires income from that asset to be paid directly to the creditor, the
 4 trustee shall transfer from principal to income an amount equal to the income
 5 paid to the creditor in reduction of the principal balance of the obligation.

7 SECTION 503. TRANSFERS FROM INCOME TO PRINCIPAL FOR DEPRECIATION.

8 (a) In this section, "depreciation" means a reduction in value
 9 due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset
 10 having a useful life of more than one year.

11 (b) A trustee may transfer to principal a reasonable amount of
 12 the net cash receipts from a principal asset that is subject to depreciation,
 13 but may not transfer any amount for depreciation:

14 (1) of that portion of real property used or available for
 15 use by a beneficiary as a residence or of tangible personal property held or
 16 made available for the personal use or enjoyment of a beneficiary;

17 (2) during the administration of a decedent's estate; or

18 (3) under this section if the trustee is accounting under
 19 Section 403 for the business or activity in which the asset is used.

20 (c) An amount transferred to principal need not be held as a
 21 separate fund.

23 SECTION 504. TRANSFERS FROM INCOME TO REIMBURSE PRINCIPAL.

24 (a) If a trustee makes or expects to make a principal
 25 disbursement described in this section, the trustee may transfer an
 26 appropriate amount from income to principal in one or more accounting periods
 27 to reimburse principal or to provide a reserve for future principal
 28 disbursements.

29 (b) Principal disbursements to which subsection (a) applies
 30 include the following, but only to the extent that the trustee has not been
 31 and does not expect to be reimbursed by a third party:

32 (1) an amount chargeable to income but paid from principal
 33 because it is unusually large, including extraordinary repairs;

34 (2) a capital improvement to a principal asset, whether in the form of
 35 changes to an existing asset or the construction of a new asset, including
 36 special assessments;

1 (3) disbursements made to prepare property for rental,
 2 including tenant allowances, leasehold improvements, and broker's
 3 commissions;

4 (4) periodic payments on an obligation secured by a
 5 principal asset to the extent that the amount transferred from income to
 6 principal for depreciation is less than the periodic payments; and

7 (5) disbursements described in Section 502(a)(7).

8 (c) If the asset whose ownership gives rise to the disbursements
 9 becomes subject to a successive income interest after an income interest
 10 ends, a trustee may continue to transfer amounts from income to principal as
 11 provided in subsection (a).

12
 13 SECTION 505. INCOME TAXES.

14 (a) A tax required to be paid by a trustee based on receipts
 15 allocated to income must be paid from income.

16 (b) A tax required to be paid by a trustee based on receipts
 17 allocated to principal must be paid from principal, even if the tax is called
 18 an income tax by the taxing authority.

19 (c) A tax required to be paid by a trustee on the trust's share
 20 of an entity's taxable income must be paid proportionately:

21 (1) from income to the extent that receipts from the entity
 22 are allocated to income; and

23 (2) from principal to the extent that:

24 (A) receipts from the entity are allocated to
 25 principal; and

26 (B) the trust's share of the entity's taxable income
 27 exceeds the total receipts described in paragraphs (1) and (2)(A).

28 (d) For purposes of this section, receipts allocated to
 29 principal or income must be reduced by the amount distributed to a
 30 beneficiary from principal or income for which the trust receives a deduction
 31 in calculating the tax.

32
 33 SECTION 506. ADJUSTMENTS BETWEEN PRINCIPAL AND INCOME BECAUSE OF
 34 TAXES.

35 (a) A fiduciary may make adjustments between principal and
 36 income to offset the shifting of economic interests or tax benefits between
income beneficiaries and remainder beneficiaries which arise from:

1 (1) elections and decisions, other than those described in
 2 subsection (b), that the fiduciary makes from time to time regarding tax
 3 matters;

4 (2) an income tax or any other tax that is imposed upon the
 5 fiduciary or a beneficiary as a result of a transaction involving or a
 6 distribution from the estate or trust; or

7 (3) the ownership by an estate or trust of an interest in
 8 an entity whose taxable income, whether or not distributed, is includable in
 9 the taxable income of the estate, trust, or a beneficiary.

10 (b) If the amount of an estate tax marital deduction or
 11 charitable contribution deduction is reduced because a fiduciary deducts an
 12 amount paid from principal for income tax purposes instead of deducting it
 13 for estate tax purposes, and as a result estate taxes paid from principal are
 14 increased and income taxes paid by an estate, trust, or beneficiary are
 15 decreased, each estate, trust, or beneficiary that benefits from the decrease
 16 in income tax shall reimburse the principal from which the increase in estate
 17 tax is paid. The total reimbursement must equal the increase in the estate
 18 tax to the extent that the principal used to pay the increase would have
 19 qualified for a marital deduction or charitable contribution deduction but
 20 for the payment. The proportionate share of the reimbursement for each
 21 estate, trust, or beneficiary whose income taxes are reduced must be the same
 22 as its proportionate share of the total decrease in income tax. An estate or
 23 trust shall reimburse principal from income.

24
 25 ARTICLE 6

26 MISCELLANEOUS PROVISIONS

27
 28 SECTION 601. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying
 29 and construing this Uniform Act, consideration must be given to the need to
 30 promote uniformity of the law with respect to its subject matter among States
 31 that enact it.

32
 33 SECTION 602. SEVERABILITY CLAUSE. If any provision of this Act or its
 34 application to any person or circumstance is held invalid, the invalidity
 35 does not affect other provisions or applications of this Act which can be
 36 given effect without the invalid provision or application, and to this end

1 the provisions of this Act are severable.

2
3 SECTION 603. REPEAL. Arkansas Code §§ 28-70-101 through 28-70-118 are
4 hereby repealed.

5 ~~§28-70-101. Definitions.~~

6 ~~—— (1) "Income beneficiary" means any person to whom income is presently~~
7 ~~payable or for whom it is accumulated for distribution as income;~~

8 ~~—— (2) "Inventory value" means the cost of property purchased by the~~
9 ~~trustee and the cost or adjusted cost value of other property at the time it~~
10 ~~becomes subject to the trust, but in the case of a testamentary trust the~~
11 ~~trustee shall use the value finally determined for the purposes of federal~~
12 ~~estate tax, if applicable, or inheritance tax;~~

13 ~~—— (3) "Remainderman" means any person entitled to principal, including~~
14 ~~income which has been accumulated and added to principal;~~

15 ~~—— (4) "Trustee" means an original trustee and any successor or added~~
16 ~~trustee.~~

17 ~~§28-70-102. Duty of trustee as to receipts and expenditures.~~

18 ~~—— (a) A trust shall be administered with due regard to the respective~~
19 ~~interests of income beneficiaries and remaindermen. A trust is so~~
20 ~~administered with respect to the allocation of receipts and expenditures if a~~
21 ~~receipt is credited or an expenditure is charged to income or principal or~~
22 ~~partly to each:~~

23 ~~—— (1) In accordance with the terms of the trust instrument,~~
24 ~~notwithstanding contrary provisions of this chapter;~~

25 ~~—— (2) In the absence of any contrary terms of the trust instrument, in~~
26 ~~accordance with the provisions of this chapter; or~~

27 ~~—— (3) If neither of the preceding rules of administration is applicable,~~
28 ~~in accordance with what is reasonable and equitable in view of the interests~~
29 ~~of those entitled to income as well as of those entitled to principal, and in~~
30 ~~view of the manner in which men of ordinary prudence, discretion, and~~
31 ~~judgment would act in the management of their own affairs.~~

32 ~~—— (b) If the trust instrument gives the trustee discretion in crediting a~~
33 ~~receipt or charging an expenditure to income or principal or partly to each,~~
34 ~~no inference of imprudence or partiality arises from the fact that the~~
35 ~~trustee has made an allocation contrary to a provision of this chapter.~~

36 ~~§28-70-103. Income; principal; charges.~~

~~1 (a) Income is the return in money or property derived from the use of
2 principal, including return received as:~~

~~3 (1) Rent of real or personal property, including sums received
4 for cancellation or renewal of a lease;~~

~~5 (2) Interest on money lent, including sums received as
6 consideration for the privilege of prepayment of principal, except as
7 provided in §28-70-107 on bond premium and bond discounts;~~

~~8 (3) Income earned during administration of a decedent's estate
9 as provided in § 28-70-105;~~

~~10 (4) Corporate distributions as provided in § 28-70-106;~~

~~11 (5) Accrued increment on bonds or other obligations issued at
12 discount as provided in § 28-70-107;~~

~~13 (6) Receipts from business and farming operations as provided in
14 § 28-70-108;~~

~~15 (7) Receipts from disposition of natural resources as provided
16 in §§ 28-70-109 and 28-70-110;~~

~~17 (8) Receipts from other principal subject to depletion as
18 provided in § 28-70-111;~~

~~19 (9) Receipts from disposition of underproductive property as
20 provided in § 28-70-112.~~

~~21 (b) Principal is the property which has been set aside by the owner or
22 the person legally empowered so that it is held in trust eventually to be
23 delivered to a remainderman while the return or use of the principal is in
24 the meantime taken or received by or held for accumulation for an income
25 beneficiary. Principal includes:~~

~~26 (1) Consideration received by the trustee on the sale or other
27 transfer of principal or on repayment of a loan or as a refund or replacement
28 or change in the form of principal;~~

~~29 (2) Proceeds of property taken on eminent domain proceedings;~~

~~30 (3) Proceeds of insurance upon property forming part of the
31 principal except proceeds of insurance upon a separate interest of an income
32 beneficiary;~~

~~33 (4) Stock dividends, receipts on liquidation of a corporation,
34 and other corporate distributions as provided in § 28-70-106;~~

~~35 (5) Receipts from the disposition of corporate securities as
36 provided in § 28-70-107;~~

~~_____ (6) Royalties and other receipts from disposition of natural resources as provided in §§ 28-70-109 and 28-70-110;~~

~~_____ (7) Receipts from other principal subject to depletion as provided in § 28-70-111;~~

~~_____ (8) Any profit resulting from any change in the form of principal except as provided in § 28-70-112 on underproductive property;~~

~~_____ (9) Receipts from disposition of underproductive property as provided in § 28-70-112;~~

~~_____ (10) Any allowances for depreciation established under §§ 28-70-108 and 28-70-113(a)(2).~~

~~_____ (c) After determining income and principal in accordance with the terms of the trust instrument or of this chapter, the trustee shall charge to income or principal expenses and other charges as provided in § 28-70-113. §28-70-104. When right to income arises; apportionment of income.~~

~~_____ (a) An income beneficiary is entitled to income from the date specified in the trust instrument, or, if none is specified, from the date an asset becomes subject to the trust. In the case of an asset becoming subject to a trust by reason of a will, it becomes subject to the trust as of the date of the death of the testator even though there is an intervening period of administration of the testator's estate.~~

~~_____ (b) In the administration of a decedent's estate or an asset becoming subject to a trust by reason of a will:~~

~~_____ (1) Receipts due but not paid at the date of death of the testator are principal;~~

~~_____ (2) Receipts in the form of periodic payments (other than corporate distributions to stockholders), including rent, interest, or annuities, not due at the date of the death of the testator shall be treated as accruing from day to day. That portion of the receipt accruing before the date of death is principal, and the balance is income.~~

~~_____ (c) In all other cases, any receipt from an income producing asset is income even though the receipt was earned or accrued in whole or in part before the date when the asset became subject to the trust.~~

~~_____ (d) On termination of an income interest, the income beneficiary whose interest is terminated, or his estate, is entitled to:~~

~~_____ (1) Income undistributed on the date of termination;~~

~~_____ (2) Income due but not paid to the trustee on the date of~~

1 termination;

2 ~~_____ (3) Income in the form of periodic payments (other than~~
3 ~~corporate distributions to stockholders), including rent, interest, or~~
4 ~~annuities, not due on the date of termination, accrued from day to day.~~

5 ~~_____ (e) Corporate distributions to stockholders shall be treated as due on~~
6 ~~the "ex" dividend date. In the absence of an "ex" dividend date, then the~~
7 ~~date fixed by the corporation for determination of stockholders of record~~
8 ~~entitled to distribution shall be used, and, if no such date is fixed, then~~
9 ~~the date of declaration of the distribution by the corporation shall be used.~~
10 ~~§28-70-105. Income earned during administration of a decedent's estate.~~

11 ~~_____ (a) Unless the will otherwise provides and subject to subsection (b)~~
12 ~~of this section, all expenses incurred in connection with the settlement of a~~
13 ~~decedent's estate, including debts, funeral expenses, estate taxes, interest~~
14 ~~and penalties concerning taxes, family allowances, fees of attorneys and~~
15 ~~personal representatives, and court costs shall be charged against the~~
16 ~~principal of the estate.~~

17 ~~_____ (b) Unless the will otherwise provides, income from the assets of a~~
18 ~~decedent's estate after the death of the testator and before distribution,~~
19 ~~including income from property used to discharge liabilities, shall be~~
20 ~~determined in accordance with the rules applicable to a trustee under this~~
21 ~~chapter and distributed as follows:~~

22 ~~_____ (1) To specific legatees and devisees, the income from the~~
23 ~~property bequeathed or devised to them respectively, less taxes, ordinary~~
24 ~~repairs, and other expense of management and operation of the property, and~~
25 ~~an appropriate portion of interest accrued since the death of the testator~~
26 ~~and of taxes imposed on income (excluding taxes on capital gains) which~~
27 ~~accrue during the period of administration;~~

28 ~~_____ (2) To all other legatees and devisees, except legatees of~~
29 ~~pecuniary bequests not in trust, the balance of the income, less the balance~~
30 ~~of taxes, ordinary repairs, and other expenses of management and operation of~~
31 ~~all property from which the estate is entitled to income, interest accrued~~
32 ~~since the death of the testator, and taxes imposed on income (excluding taxes~~
33 ~~on capital gains) which accrue during the period of administration, in~~
34 ~~proportion to their respective interests in the undistributed assets of the~~
35 ~~estate computed at times of distribution on the basis of inventory value.~~

36 ~~_____ (c) Income received by a trustee under subsection (b) of this section~~

1 ~~shall be treated as income of the trust.~~

2 ~~§28-70-106. Corporate distributions.~~

3 ~~—— (a) Corporate distributions of shares of the distributing corporation,~~
4 ~~including distributions in the form of a stock split or stock dividend, are~~
5 ~~principal. A right to subscribe to shares or other securities issued by the~~
6 ~~distributing corporation accruing to stockholders on account of their~~
7 ~~ownership and the proceeds of any sale of the right are principal.~~

8 ~~—— (b) Except to the extent that the corporation indicates that some part~~
9 ~~of a corporate distribution is a settlement of preferred or guaranteed~~
10 ~~dividends accrued since the trustee became a stockholder or is in lieu of an~~
11 ~~ordinary cash dividend, a corporate distribution is principal if the~~
12 ~~distribution is pursuant to:~~

13 ~~—— (1) A call of shares;~~

14 ~~—— (2) A merger, consolidation, reorganization, or other plan by~~
15 ~~which assets of the corporation are acquired by another corporation; or~~

16 ~~—— (3) A total or partial liquidation of the corporation, including~~
17 ~~any distribution which the corporation indicates is a distribution in total~~
18 ~~or partial liquidation or any distribution of assets, other than cash,~~
19 ~~pursuant to a court decree or final administrative order by a government~~
20 ~~agency ordering distribution of the particular assets.~~

21 ~~—— (c) Distributions made from ordinary income by a regulated investment~~
22 ~~company or by a trust qualifying and electing to be taxed under federal law~~
23 ~~as a real estate investment trust are income. All other distributions made by~~
24 ~~the company or trust, including distributions from capital gains,~~
25 ~~depreciation, or depletion, whether in the form of cash or an option to take~~
26 ~~new stock or cash or an option to purchase additional shares, are principal.~~

27 ~~—— (d) Except as provided in subsections (a), (b), and (c) of this section,~~
28 ~~all corporate distributions are income, including cash dividends,~~
29 ~~distributions of or rights to subscribe to shares or securities or~~
30 ~~obligations of corporations other than the distributing corporation, and the~~
31 ~~proceeds of the rights or property distributions. Except as provided in~~
32 ~~subsections (b) and (c) of this section, if the distributing corporation~~
33 ~~gives a stockholder an option to receive a distribution either in cash or in~~
34 ~~its own shares, the distribution chosen is income.~~

35 ~~—— (e) The trustee may rely upon any statement of the distributing~~
36 ~~corporation as to any fact relevant under any provision of this chapter~~

1 ~~concerning the source or character of dividends or distributions of corporate~~
2 ~~assets.~~

3 ~~§28-70-107. Bond premium and discount.~~

4 ~~—— (a) Bonds or other obligations for the payment of money are principal~~
5 ~~at their inventory value, except as provided in subsection (b) of this~~
6 ~~section for discount bonds. Provisions may be made for amortization of bond~~
7 ~~premiums or for accretion of discounts. The proceeds of sale, redemption, or~~
8 ~~other disposition of the bonds or obligations are principal.~~

9 ~~—— (b) The increment in value of a bond or other obligation for the~~
10 ~~payment of money payable at a future time in accordance with a fixed schedule~~
11 ~~of appreciation in excess of the price at which it was issued is~~
12 ~~distributable as income. The increment in value is distributable to the~~
13 ~~beneficiary who was the income beneficiary at the time of increment from the~~
14 ~~first principal cash available or, if none is available, when realized by~~
15 ~~sale, redemption, or other disposition. Whenever unrealized increment is~~
16 ~~distributed as income but out of principal, the principal shall be reimbursed~~
17 ~~for the increment when realized.~~

18 ~~§28-70-108. Business and farming operations.~~

19 ~~—— (a) If a trustee uses any part of the principal in the operation of a~~
20 ~~trade, business, or farming operation, the proceeds and losses of the~~
21 ~~business shall be allocated in accordance with what is reasonable and~~
22 ~~equitable in view of the interest of those entitled to principal, and in view~~
23 ~~of the manner in which men of ordinary prudence, discretion, and intelligence~~
24 ~~would act in the management of their own affairs in accordance with § 28-70-~~
25 ~~102(a)(3). The operation of real estate for rent is considered a business.~~

26 ~~—— (b) Generally accepted accounting principles shall be used to determine~~
27 ~~income from an agricultural or farming operation, including the raising of~~
28 ~~animals or the operation of a nursery.~~

29 ~~§28-70-109. Disposition of natural resources.~~

30 ~~—— (a) If any part of the principal consists of a right to receive~~
31 ~~royalties, overriding or limited royalties, working interests, production~~
32 ~~payments, net profit interests, or other interests in minerals or other~~
33 ~~natural resources in, on, or under land, the receipts from taking the natural~~
34 ~~resources from the land shall be allocated as follows:~~

35 ~~—— (1) If received as rent on a lease or extension payments on a~~
36 ~~lease, the receipts are income;~~

1 ~~_____ (2) If received from a production payment, the receipts are~~
2 ~~income to the extent of any factor for interest or its equivalent provided in~~
3 ~~the governing instrument. There shall be allocated to principal the fraction~~
4 ~~of the balance of the receipts which the unrecovered cost of the production~~
5 ~~payments bears to the balance owed on the production payment, exclusive of~~
6 ~~any factor for interest or its equivalent. The receipts not allocated to~~
7 ~~principal are income;~~

8 ~~_____ (3) If received as a royalty, overriding or limited royalty, or~~
9 ~~bonus, or from a working, net profit, or any other interest in minerals or~~
10 ~~other natural resources, receipts not provided for in subdivisions (a)(1) and~~
11 ~~(2) shall be apportioned on a yearly basis in accordance with this~~
12 ~~subdivision whether or not any natural resource was being taken from the land~~
13 ~~at the time the trust was established. Twenty-two percent (22%) of the gross~~
14 ~~receipts (but not to exceed fifty percent (50%) of the net receipts remaining~~
15 ~~after payment of all expenses, direct and indirect, computed without~~
16 ~~allowance for depletion) shall be added to principal as an allowance for~~
17 ~~depletion. The balance of the gross receipts, after payment therefrom of all~~
18 ~~expenses, direct and indirect, is income.~~

19 ~~_____ (b) If a trustee, on July 19, 1971, held an item of depletable property~~
20 ~~of a type specified in this section he shall allocate receipts from the~~
21 ~~property in the manner used before July 19, 1971, but as to all depletable~~
22 ~~property acquired after July 19, 1971, by an existing or new trust, the~~
23 ~~method of allocation provided herein shall be used.~~

24 ~~_____ (c) This section does not apply to timber, water, soil, sod, dirt, turf,~~
25 ~~or mosses.~~

26 ~~§28-70-110. Timber.~~

27 ~~_____ If any part of the principal consists of land from which merchantable~~
28 ~~timber may be removed, the receipts from taking the timber from the land~~
29 ~~shall be allocated in accordance with § 28-70-102(a)(3).~~

30 ~~§28-70-111. Other property subject to depletion.~~

31 ~~_____ Except as provided in §§ 28-70-109 and 28-70-110, if the principal~~
32 ~~consists of property subject to depletion, including leaseholds, patents,~~
33 ~~copyrights, royalty rights, and rights to receive payments on a contract for~~
34 ~~deferred compensation, receipts from the property, not in excess of five~~
35 ~~percent (5%) per year of its inventory value, are income, and the balance is~~
36 ~~principal.~~

1 ~~§28-70-112. Underproductive estate.~~

2 ~~— (a) Except as otherwise provided in this section, a portion of the net~~
3 ~~proceeds of sale of any part of principal which has not produced an average~~
4 ~~net income of at least one percent (1%) per year of its inventory value for~~
5 ~~more than a year (including as income the value of any beneficial use of the~~
6 ~~property by the income beneficiary) shall be treated as delayed income to~~
7 ~~which the income beneficiary is entitled as provided in this section. The net~~
8 ~~proceeds of sale are the gross proceeds received, including the value of any~~
9 ~~property received in substitution for the property disposed of, less the~~
10 ~~expenses, including capital gains tax, if any, incurred in disposition and~~
11 ~~less any carrying charge paid while the property was underproductive.~~

12 ~~— (b) The sum allocated as delayed income is the difference between the~~
13 ~~net proceeds and the amount which, had it been invested at simple interest at~~
14 ~~four percent (4%) per year while the property was underproductive, would have~~
15 ~~produced the net proceeds. This sum, plus any carrying charges and expenses~~
16 ~~previously charged against income while the property was underproductive,~~
17 ~~less any income received by the income beneficiary from the property and less~~
18 ~~the value of any beneficial use of the property by the income beneficiary, is~~
19 ~~income, and the balance is principal.~~

20 ~~— (c) An income beneficiary or his estate is entitled to delayed income~~
21 ~~under this section as if it accrued from day to day during the time he was a~~
22 ~~beneficiary.~~

23 ~~— (d) If principal subject to this section is disposed of by conversion~~
24 ~~into property which cannot be apportioned easily, including land or mortgages~~
25 ~~(for example, realty acquired by or in lieu of foreclosure), the income~~
26 ~~beneficiary is entitled to the net income from any property or obligation~~
27 ~~into which the original principal is converted while the substituted property~~
28 ~~or obligation is held. If within five (5) years after the conversion the~~
29 ~~substituted property has not been further converted into easily apportionable~~
30 ~~property, no allocation as provided in this section shall be made.~~

31 ~~§28-70-113. Charges against income and principal.~~

32 ~~— (a) The following charges shall be made against income:~~

33 ~~— (1) Ordinary expenses incurred in connection with the~~
34 ~~administration, management, or preservation of the trust property, including~~
35 ~~regularly recurring taxes assessed against any portion of the principal,~~
36 ~~water rates, premiums on insurance taken upon the interests of the income~~

1 beneficiary, remainderman, or trustee, interest paid by the trustee, and
 2 ordinary repairs;

3 ~~_____ (2) A reasonable allowance for depreciation on property subject~~
 4 ~~to depreciation under generally accepted accounting principals, but no~~
 5 ~~allowance shall be made for depreciation of that portion of any real property~~
 6 ~~used by a beneficiary as a residence or for depreciation of any property held~~
 7 ~~by the trustee on July 19, 1971, for which the trustee is not then making an~~
 8 ~~allowance for depreciation, or on property acquired in trust other than by~~
 9 ~~purchase except where required by the instrument;~~

10 ~~_____ (3) No less than one-half (1/2) of court costs, attorney's fees,~~
 11 ~~and other fees on periodic judicial accounting, unless the court directs~~
 12 ~~otherwise;~~

13 ~~_____ (4) Court costs, attorney's fees, and other fees on other~~
 14 ~~accountings or judicial proceedings if the matter primarily concerns the~~
 15 ~~income interest, unless the court directs otherwise;~~

16 ~~_____ (5) No less than one-half (1/2) of the trustee's regular~~
 17 ~~compensation, whether based on a percentage of principal or income, and all~~
 18 ~~expenses reasonably incurred for current management of principal and~~
 19 ~~application of income;~~

20 ~~_____ (6) Any tax levied upon receipts defined as income under this~~
 21 ~~chapter or the trust instrument and payable by the trustee.~~

22 ~~_____ (b) If charges against income are of unusual amount, the trustee may by~~
 23 ~~means of reserves or other reasonable means charge them over a reasonable~~
 24 ~~period of time and withhold from distribution sufficient sums to regularize~~
 25 ~~distributions.~~

26 ~~_____ (c) The following charges shall be made against principal:~~

27 ~~_____ (1) Trustee's compensation not chargeable to income under~~
 28 ~~subdivisions (a)(4) and (5) of this section, special compensation of~~
 29 ~~trustees, expenses reasonably incurred in connection with principal, court~~
 30 ~~costs and attorney's fees primarily concerning matters of principal, and~~
 31 ~~trustee's compensation computed on principal as an acceptance, distribution,~~
 32 ~~or termination fee;~~

33 ~~_____ (2) Charges not provided for in subsection (a), including the~~
 34 ~~cost of investing and reinvesting principal, the payments on principal of an~~
 35 ~~indebtedness (including a mortgage amortized by periodic payments of~~
 36 ~~principal), expenses for preparation of property for rental or sale, and,~~

1 ~~unless the court directs otherwise, expenses incurred in maintaining or~~
 2 ~~defending any action to construe the trust or protect it or the property or~~
 3 ~~assure the title of any trust property;~~

4 ~~_____ (3) Extraordinary repairs or expenses incurred in making a~~
 5 ~~capital improvement to principal, including special assessments, but, a~~
 6 ~~trustee may establish an allowance for depreciation out of income to the~~
 7 ~~extent permitted by subdivision (a)(2) of this section and by § 28-70-108;~~

8 ~~_____ (4) Any tax levied upon profit, gain, or other receipts~~
 9 ~~allocated to principal notwithstanding denomination of the tax as an income~~
 10 ~~tax by the taxing authority;~~

11 ~~_____ (5) If an estate or inheritance tax is levied in respect to a~~
 12 ~~trust in which both an income beneficiary and a remainderman have an~~
 13 ~~interest, any amount apportioned to the trust, including interest and~~
 14 ~~penalties, even though the income beneficiary also has rights in the~~
 15 ~~principal.~~

16 ~~_____ (d) Regularly recurring charges payable from income shall be apportioned~~
 17 ~~to the same extent and in the same manner that income is apportioned under §~~
 18 ~~28-70-104.~~

19 ~~§28-70-114. Application of chapter.~~

20 ~~_____ Except as specifically provided in the trust instrument or the will or~~
 21 ~~in this chapter, this chapter shall apply to any receipt or expense received~~
 22 ~~or incurred after July 19, 1971, by any trust or decedent's estate whether~~
 23 ~~established before or after July 19, 1971, and whether the asset involved was~~
 24 ~~acquired by the trustee before or after July 19, 1971.~~

25 ~~§28-70-115. Uniformity of interpretation.~~

26 ~~_____ This chapter shall be so construed as to effectuate its general purpose~~
 27 ~~to make uniform the law of those states which enact it.~~

28 ~~§28-70-116. Short title.~~

29 ~~_____ This chapter may be cited as the "Arkansas Revised Uniform Principal~~
 30 ~~and Income Act."~~

31 ~~§28-70-117. Severability.~~

32 ~~_____ If any provision of this chapter or the application thereof to any~~
 33 ~~person or circumstance is held invalid, the invalidity does not affect other~~
 34 ~~provisions or applications of the chapter which can be given effect without~~
 35 ~~the invalid provision or application, and to this end the provisions of this~~
 36 ~~chapter are severable.~~

1 ~~§28-70-118. Repeal.~~

2 ~~— All laws and parts of laws in conflict with this chapter are hereby~~
3 ~~repealed.~~

4
5 SECTION 604. EFFECTIVE DATE. This Act takes effect on January 1,
6 2000.

7
8 SECTION 605. APPLICATION OF ACT TO EXISTING TRUSTS AND ESTATES. This
9 Act applies to every trust or decedent's estate existing on the effective
10 date of this Act except as otherwise expressly provided in the will or terms
11 of the trust or in this Act.

12
13 SECTION 606. Codification. All provisions of this act of a general
14 and permanent nature are amendatory to the Arkansas Code of 1987 Annotated
15 and the Arkansas Code Revision Commission shall incorporate the same in the
16 Code.

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19 APPROVED: 3/16/1999
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