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85th General Assembly
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A Bill

SENATE BILL 336

By: Senator Luker
By: Representatives Maloch, Bond

For An Act To Be Entitled

AN ACT TO ADOPT THE ARKANSAS TRUST CODE; AND FOR
OTHER PURPOSES.

Subtitle

AN ACT TO ADOPT THE ARKANSAS TRUST CODE.

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

SECTION 1. Arkansas Code Title 28 is amended to add an additional
chapter to read as follows:

CHAPTER 73

ARKANSAS TRUST CODE

Subchapter 1 – General Provisions and Definitions

28-73-101. Short title.

This chapter may be cited as the "Arkansas Trust Code".

28-73-102. Scope.

(a) This chapter applies to express trusts, charitable or
noncharitable, and trusts created pursuant to a statute, judgment, or decree
that requires the trust to be administered in the manner of an express trust.

(b) Notwithstanding subsection (a) of this section, this chapter does
not apply to public trusts that are governed by §§ 28-72-201 -- 28-72-207.

28-73-103. Definitions.

In this chapter:



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

3 (2) "Ascertainable standard" means a standard relating to an
4 individual's health, education, support, or maintenance within the meaning of
5 Sections 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as
6 in effect on September 1, 2005.

7 (3) "Beneficiary" means a person that:

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

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

12 (4) "Charitable trust" means a trust, or portion of a trust,
13 created for a charitable purpose described in § 28-73-405(a).

14 (5) "Community property" means all personal property, wherever
15 situated, which was acquired as or became, and remained, community property
16 under the laws of another jurisdiction, and all real property situated in
17 another jurisdiction which is community property under the laws of that
18 jurisdiction.

19 (6) "Conservator" means a person appointed by the court pursuant
20 to §§ 28-67-101 – 28-67-111 to administer the estate of an individual who by
21 reason of advanced age or physical disability is unable to manage his or her
22 property.

23 (7) "Environmental law" means a federal, state, or local law,
24 rule, regulation, or ordinance relating to protection of the environment.

25 (8) "Guardian" means a person appointed by a court pursuant to
26 §§ 28-65-101 – 28-65-603 to have the care and custody of the estate of an
27 incapacitated person.

28 (9) "Interests of the beneficiaries" means the beneficial
29 interests provided in the terms of the trust.

30 (10) "Jurisdiction", with respect to a geographic area, includes
31 a state or country.

32 (11) "Person" means an individual, corporation, business trust,
33 estate, trust, partnership, limited liability company, association, joint
34 venture, government, governmental subdivision, agency, or instrumentality,
35 public corporation, or any other legal or commercial entity.

36 (12) "Power of withdrawal" means a presently exercisable general

1 power of appointment other than a power exercisable by a trustee which is
2 limited by an ascertainable standard, or which is exercisable by another
3 person only upon consent of the trustee or a person holding an adverse
4 interest.

5 (13) "Property" means anything that may be the subject of
6 ownership, whether real or personal, legal or equitable, or any interest
7 therein.

8 (14) "Qualified beneficiary" means a living beneficiary who, on
9 the date the beneficiary's qualification is determined:

10 (A) is a distributee or permissible distributee of trust
11 income or principal;

12 (B) would be a distributee or permissible distributee of
13 trust income or principal if the interests of the distributees described in
14 subdivision (14)(A) of this section terminated on that date, but the
15 termination of those interests would not cause the trust to terminate; or

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

18 (15) "Revocable", as applied to a trust, means revocable by the
19 settlor without the consent of the trustee or a person holding an adverse
20 interest.

21 (16) "Settlor" means a person, including a testator, who
22 creates, or contributes property to, a trust. If more than one (1) person
23 creates or contributes property to a trust, each person is a settlor of the
24 portion of the trust property attributable to that person's contribution
25 except to the extent another person has the power to revoke or withdraw that
26 portion.

27 (17) "Spendthrift provision" means a term of a trust which
28 restrains both voluntary and involuntary transfer of a beneficiary's
29 interest.

30 (18) "State" means a State of the United States, the District of
31 Columbia, Puerto Rico, the United States Virgin Islands, or any territory or
32 insular possession subject to the jurisdiction of the United States. The
33 term includes an Indian tribe or band recognized by federal law or formally
34 acknowledged by a state.

35 (19) "Terms of a trust" means the manifestation of the settlor's
36 intent regarding a trust's provisions as expressed in the trust instrument or

1 as may be established by other evidence that would be admissible in a
2 judicial proceeding.

3 (20) "Trust instrument" means an instrument executed by the
4 settlor that contains terms of the trust, including any amendments thereto.
5 and

6 (21) "Trustee" includes an original, additional, successor
7 trustee, and a co-trustee.

8
9 28-73-104. Knowledge.

10 (a) Subject to subsection (b) of this section, a person has knowledge
11 of a fact if the person:

12 (1) has actual knowledge of it;

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

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

16 (b) An organization that conducts activities through employees has
17 notice or knowledge of a fact involving a trust only from the time the
18 information was received by an employee having responsibility to act for the
19 trust or would have been brought to the employee's attention if the
20 organization had exercised reasonable diligence. An organization exercises
21 reasonable diligence if it maintains reasonable routines for communicating
22 significant information to the employee having responsibility to act for the
23 trust and there is reasonable compliance with the routines. Reasonable
24 diligence does not require an employee of the organization to communicate
25 information unless the communication is part of the individual's regular
26 duties or the individual knows a matter involving the trust would be
27 materially affected by the information.

28
29 28-73-105. Default and mandatory rules.

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

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

35 (1) the requirements for creating a trust;

36 (2) the duty of a trustee to act in good faith and in accordance

1 with the purposes of the trust;

2 (3) the requirement that a trust and its terms be for the
 3 benefit of its beneficiaries, and that the trust have a purpose that is
 4 lawful, not contrary to public policy, and possible to achieve;

5 (4) the power of a court to modify or terminate a trust under
 6 §§ 28-73-410 – 28-73-416;

7 (5) the effect of a spendthrift provision and the rights of
 8 certain creditors and assignees to reach a trust as provided in subchapter 5
 9 of this chapter;

10 (6) the power of a court under § 28-73-702 to require, dispense
 11 with, or modify or terminate a bond;

12 (7) the power of a court under § 28-73-708(b) to adjust a
 13 trustee's compensation specified in the terms of the trust which is
 14 unreasonably low or high;

15 (8) the rights under §§ 28-73-1010 – 28-73-1013 of a person
 16 other than a trustee or beneficiary;

17 (9) periods of limitation for commencing a judicial proceeding;

18 (10) the power of a court to take such action and exercise such
 19 jurisdiction as may be necessary in the interests of justice; and

20 (11) the subject-matter jurisdiction of a court and venue for
 21 commencing a proceeding as provided in §§ 28-73-203 and 28-73-204.

22
 23 28-73-106. Common law of trusts – Principles of equity.

24 The common law of trusts and principles of equity supplement this
 25 chapter, except to the extent modified by this chapter or another statute of
 26 this state.

27
 28 28-73-107. Governing law.

29 The meaning and effect of the terms of a trust are determined by:

30 (1) the law of the jurisdiction designated in the terms unless
 31 the designation of that jurisdiction's law is contrary to a strong public
 32 policy of the jurisdiction having the most significant relationship to the
 33 matter at issue; or

34 (2) in the absence of a controlling designation in the terms of
 35 the trust, the law of the jurisdiction having the most significant
 36 relationship to the matter at issue.

28-73-108. Principal place of administration.

(a) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:

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

(2) all or part of the administration occurs in the designated jurisdiction.

(b) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries.

(c) Without precluding the right of a court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection (b) of this section, may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.

(d) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than sixty (60) days before initiating the transfer. The notice of proposed transfer must include:

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

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

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

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

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

(e) The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(f) In connection with a transfer of the trust's principal place of

1 administration, the trustee may transfer some or all of the trust property to
 2 a successor trustee designated in the terms of the trust or appointed
 3 pursuant to § 28-73-704.

4 (g) Subsections (d) and (e) of this section apply only to irrevocable
 5 trusts created on or after September 1, 2005 and to revocable trusts which
 6 become irrevocable on or after September 1, 2005.

7
 8 28-73-109. Methods and waiver of notice.

9 (a) Notice to a person under this chapter or the sending of a document
 10 to a person under this chapter must be accomplished in a manner reasonably
 11 suitable under the circumstances and likely to result in receipt of the
 12 notice or document. Permissible methods of notice or for sending a document
 13 include first-class mail, personal delivery, delivery to the person's last
 14 known place of residence or place of business, or a properly directed
 15 electronic message.

16 (b) Notice otherwise required under this chapter or a document
 17 otherwise required to be sent under this chapter need not be provided to a
 18 person whose identity or location is unknown to and not reasonably
 19 ascertainable by the trustee.

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

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

24
 25 28-73-110. Others treated as qualified beneficiaries.

26 (a) Whenever notice to qualified beneficiaries of a trust is required
 27 under this chapter, the trustee must also give notice to any other
 28 beneficiary who has sent the trustee a request for notice.

29 (b) A charitable organization expressly designated to receive
 30 distributions under the terms of a charitable trust has the rights of a
 31 qualified beneficiary under this chapter if the charitable organization, on
 32 the date the charitable organization's qualification is being determined:

33 (1) is a distributee or permissible distributee of trust income
 34 or principal;

35 (2) would be a distributee or permissible distributee of trust
 36 income or principal upon termination of the interests of other distributees

1 or permissible distributees then receiving or eligible to receive
 2 distributions; or

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

5 (c) A person appointed to enforce a trust created for the care of an
 6 animal or another noncharitable purpose as provided in § 28-73-408 or § 28-
 7 73-409 has the rights of a qualified beneficiary under this chapter.

8 (d) The Attorney General of this state has the rights of a qualified
 9 beneficiary with respect to a charitable trust having its principal place of
 10 administration in this state.

11
 12 28-73-111. Nonjudicial settlement agreements.

13 (a) For purposes of this section, "interested persons" means persons
 14 whose consent would be required in order to achieve a binding settlement were
 15 the settlement to be approved by the court.

16 (b) Except as otherwise provided in subsection (c) of this section,
 17 interested persons may enter into a binding nonjudicial settlement agreement
 18 with respect to any matter involving a trust.

19 (c) A nonjudicial settlement agreement is valid only to the extent it
 20 does not violate a material purpose of the trust and includes terms and
 21 conditions that could be properly approved by the court under this chapter or
 22 other applicable law.

23 (d) Matters that may be resolved by a nonjudicial settlement agreement
 24 include:

25 (1) the interpretation or construction of the terms of the
 26 trust;

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

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

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

32 (5) transfer of a trust's principal place of administration; and

33 (6) liability of a trustee for an action relating to the trust.

34 (e) Any interested person may request a court to approve a nonjudicial
 35 settlement agreement, to determine whether the representation as provided in
 36 subchapter 3 of this chapter was adequate, and to determine whether the

1 agreement contains terms and conditions a court could have properly approved.

2
3 28-73-112. Rules of construction.

4 The rules of construction that apply in this state to the
5 interpretation of and disposition of property by will also apply as
6 appropriate to the interpretation of the terms of a trust and the disposition
7 of the trust property.

8
9 Subchapter 2 – Judicial Proceedings

10 28-73-201. Role of court in administration of trust.

11 (a) A court may intervene in the administration of a trust to the
12 extent its jurisdiction is invoked by an interested person or as provided by
13 law.

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

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

19
20 28-73-202. Jurisdiction over trustee and beneficiary.

21 (a) By accepting the trusteeship of a trust having its principal place
22 of administration in this state or by moving the principal place of
23 administration to this state, the trustee submits personally to the
24 jurisdiction of a court of this state regarding any matter involving the
25 trust.

26 (b) With respect to their interests in the trust, the beneficiaries of
27 a trust having its principal place of administration in this state are
28 subject to the jurisdiction of the courts of this state regarding any matter
29 involving the trust. By accepting a distribution from such a trust, the
30 recipient submits personally to the jurisdiction of a court of this state
31 regarding any matter involving the trust.

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

35
36 28-73-203. Subject-matter jurisdiction.

1 The circuit court has exclusive jurisdiction of proceedings in this
2 state brought by a trustee or beneficiary concerning the administration of a
3 trust or of other proceedings involving a trust.

4
5 28-73-204. Venue.

6 (a) Except as otherwise provided in subsection (b) of this section,
7 venue for a judicial proceeding involving a trust is in the county of this
8 state in which the trust's principal place of administration is or will be
9 located and, if the trust is created by will and the estate is not yet
10 closed, in the county in which the decedent's estate is being administered.

11 (b) If a trust has no trustee, venue for a judicial proceeding for the
12 appointment of a trustee is in a county of this state in which a beneficiary
13 resides, in a county in which any trust property is located, and if the trust
14 is created by will, in the county in which the decedent's estate was or is
15 being administered.

16
17 Subchapter 3 – Representation

18 28-73-301. Representation – Basic effect.

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

22 (b) The consent of a person who may represent and bind another person
23 under this subchapter is binding on the person represented unless the person
24 represented objects to the representation before the consent would otherwise
25 have become effective.

26 (c) Except as otherwise provided in §§ 28-73-411 and 28-73-602, a
27 person who under this subchapter may represent a settlor who lacks capacity
28 may receive notice and give a binding consent on the settlor's behalf.

29 (d) A settlor may not represent and bind a beneficiary under this
30 subchapter with respect to the termination or modification of a trust under §
31 28-73-411(a).

32
33 28-73-302. Representation by holder of general testamentary power of
34 appointment.

35 To the extent there is no conflict of interest between the holder of a
36 general testamentary power of appointment and the persons represented with

1 respect to the particular question or dispute, the holder may represent and
2 bind persons whose interests, as permissible appointees, takers in default,
3 or otherwise, are subject to the power.

4
5 28-73-303. Representation by fiduciaries and parents.

6 To the extent there is no conflict of interest between the
7 representative and the person represented or among those being represented
8 with respect to a particular question or dispute:

9 (1) a conservator may represent and bind the estate that the
10 conservator controls;

11 (2) a guardian may represent and bind the ward if a conservator
12 of the ward's estate has not been appointed;

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

15 (4) a trustee may represent and bind the beneficiaries of the
16 trust;

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

19 (6) a parent may represent and bind the parent's minor or unborn
20 child if a guardian for the child has not been appointed.

21
22 28-73-304. Representation by person having substantially identical
23 interest.

24 Unless otherwise represented, a minor, incapacitated, or unborn
25 individual, or a person whose identity or location is unknown and not
26 reasonably ascertainable, may be represented by and bound by another having a
27 substantially identical interest with respect to the particular question or
28 dispute, but only to the extent there is no conflict of interest between the
29 representative and the person represented.

30
31 28-73-305. Appointment of representative.

32 (a) If a court determines that an interest is not represented under
33 this subchapter, or that the otherwise available representation might be
34 inadequate, the court may appoint a guardian ad litem to receive notice, give
35 consent, and otherwise represent, bind, and act on behalf of a minor,
36 incapacitated, or unborn individual, or a person whose identity or location

1 is unknown. A guardian ad litem may be appointed to represent several
 2 persons or interests.

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

6 (c) In making decisions, a guardian ad litem may consider general
 7 benefit accruing to the living members of the individual's family.

8
 9 Subchapter 4 – Creation, Validity, Modification,
 10 and Termination of Trust

11 28-73-401. Methods of creating trust.

12 A trust may be created by:

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

16 (2) declaration by the owner of property that the owner holds
 17 identifiable property as trustee; or

18 (3) exercise of a power of appointment in favor of a trustee.

19
 20 28-73-402. Requirements for creation.

21 (a) A trust is created only if:

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

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

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

25 (A) a charitable trust;

26 (B) a trust for the care of an animal, as provided in
 27 § 28-73-408; or

28 (C) a trust for a noncharitable purpose, as provided in
 29 § 28-73-409;

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

31 (5) the same person is not the sole trustee and sole
 32 beneficiary.

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

35 (c) A power in a trustee to select a beneficiary from an indefinite
 36 class is valid. If the power is not exercised within a reasonable time, the

1 power fails and the property subject to the power passes to the persons who
2 would have taken the property had the power not been conferred.

3
4 28-73-403. Trusts created in other jurisdictions.

5 A trust not created by will is validly created if its creation complies
6 with the law of the jurisdiction in which the trust instrument was executed,
7 or the law of the jurisdiction in which, at the time of creation:

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

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

11 (3) any trust property was located.

12
13 28-73-404. Trust purposes.

14 A trust may be created only to the extent its purposes are lawful, not
15 contrary to public policy, and possible to achieve. A trust and its terms
16 must be for the benefit of its beneficiaries.

17
18 28-73-405. Charitable purposes – Enforcement.

19 (a) A charitable trust may be created for the relief of poverty, the
20 advancement of education or religion, the promotion of health, governmental
21 or municipal purposes, or other purposes the achievement of which is
22 beneficial to the community.

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

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

29
30 28-73-406. Creation of trust induced by fraud, duress, or undue
31 influence.

32 A trust is void to the extent its creation was induced by fraud,
33 duress, or undue influence.

34
35 28-73-407. Evidence of oral trust.

36 Except as required by a statute other than this chapter, a trust need

1 not be evidenced by a trust instrument, but the creation of an oral trust and
2 its terms may be established only by clear and convincing evidence.

3
4 28-73-408. Trust for care of animal.

5 (a) A trust may be created to provide for the care of an animal alive
6 during the settlor's lifetime. The trust terminates upon the death of the
7 animal or, if the trust was created to provide for the care of more than one
8 (1) animal alive during the settlor's lifetime, upon the death of the last
9 surviving animal.

10 (b) A trust authorized by this section may be enforced by a person
11 appointed in the terms of the trust or, if no person is so appointed, by a
12 person appointed by a court. A person having an interest in the welfare of
13 the animal may request the court to appoint a person to enforce the trust or
14 to remove a person appointed.

15 (c) Property of a trust authorized by this section may be applied only
16 to its intended use, except to the extent a court determines that the value
17 of the trust property exceeds the amount required for the intended use.
18 Except as otherwise provided in the terms of the trust, property not required
19 for the intended use must be distributed to the settlor, if then living,
20 otherwise to the settlor's successors in interest.

21
22 28-73-409. Noncharitable trust without ascertainable beneficiary.

23 Except as otherwise provided in § 28-73-408 or by another statute, the
24 following rules apply:

25 (1) a trust may be created for a noncharitable purpose without a
26 definite or definitely ascertainable beneficiary or for a noncharitable but
27 otherwise valid purpose to be selected by the trustee. The trust may not be
28 enforced for more than twenty-one (21) years;

29 (2) a trust authorized by this section may be enforced by a
30 person appointed in the terms of the trust or, if no person is so appointed,
31 by a person appointed by a court; and

32 (3) property of a trust authorized by this section may be
33 applied only to its intended use, except to the extent a court determines
34 that the value of the trust property exceeds the amount required for the
35 intended use. Except as otherwise provided in the terms of the trust,
36 property not required for the intended use must be distributed to the

1 settlor, if then living, otherwise to the settlor's successors in interest.

2
3 28-73-410. Modification or termination of trust – Proceedings for
4 approval or disapproval.

5 (a) In addition to the methods of termination prescribed by §§ 28-73-
6 411 – 28-73-414, a trust terminates to the extent the trust is revoked or
7 expires pursuant to its terms, no purpose of the trust remains to be
8 achieved, or the purposes of the trust have become unlawful, contrary to
9 public policy, or impossible to achieve.

10 (b) A proceeding to approve or disapprove a proposed modification or
11 termination under §§ 28-73-411 – 28-73-416, or trust combination or division
12 under § 28-73-417, may be commenced by a trustee or beneficiary, and a
13 proceeding to approve or disapprove a proposed modification or termination
14 under § 28-73-411 may be commenced by the settlor. The settlor of a
15 charitable trust may maintain a proceeding to modify the trust under § 28-73-
16 413.

17
18 28-73-411. Modification or termination of noncharitable irrevocable
19 trust by consent.

20 (a)(1) A noncharitable irrevocable trust may be modified or terminated
21 upon consent of the settlor and all beneficiaries, even if the modification
22 or termination is inconsistent with a material purpose of the trust.

23 (2) A settlor's power to consent to a trust's modification or
24 termination may be exercised by:

25 (A) an agent under a power of attorney only to the extent
26 expressly authorized by the power of attorney or the terms of the trust;

27 (B) the settlor's conservator with the approval of the
28 court supervising the conservatorship if an agent is not so authorized; or

29 (C) the settlor's guardian with the approval of the court
30 supervising the guardianship if an agent is not so authorized and a
31 conservator has not been appointed.

32 (b) A noncharitable irrevocable trust may be:

33 (1) terminated upon consent of all of the beneficiaries if a
34 court concludes that continuance of the trust is not necessary to achieve any
35 material purpose of the trust; or

36 (2) modified upon consent of all of the beneficiaries if a court

1 concludes that modification is not inconsistent with a material purpose of
 2 the trust.

3 (c) A spendthrift provision in the terms of the trust is presumed to
 4 constitute a material purpose of the trust.

5 (d) Upon termination of a trust under subsections (a) or (b) of this
 6 section, the trustee shall distribute the trust property as agreed by the
 7 beneficiaries.

8 (e) If not all of the beneficiaries consent to a proposed modification
 9 or termination of the trust under subsections (a) or (b) of this section, the
 10 modification or termination may be approved by a court if the court is
 11 satisfied that:

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

14 (2) the interests of a beneficiary who does not consent will be
 15 adequately protected.

16
 17 28-73-412. Modification or termination because of unanticipated
 18 circumstances or inability to administer trust effectively.

19 (a) In addition to the procedure available under §§ 28-69-401 – 28-69-
 20 403, a court may modify the administrative or dispositive terms of a trust or
 21 terminate the trust if, because of circumstances not anticipated by the
 22 settlor, modification or termination will further the purposes of the trust.
 23 To the extent practicable, the modification must be made in accordance with
 24 the settlor's probable intention.

25 (b) A court may modify the administrative terms of a trust if
 26 continuation of the trust on its existing terms would be impracticable or
 27 wasteful or impair the trust's administration.

28 (c) Upon termination of a trust under this section, the trustee shall
 29 distribute the trust property in a manner consistent with the purposes of the
 30 trust.

31
 32 28-73-413. Cy Pres.

33 (a) Except as otherwise provided in subsection (b) of this section, if
 34 a particular charitable purpose becomes unlawful, impracticable, impossible
 35 to achieve, or wasteful:

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

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

3 (3) a court may apply cy pres to modify or terminate the trust
4 by directing that the trust property be applied or distributed, in whole or
5 in part, in a manner consistent with the settlor's charitable purposes.

6 (b) A provision in the terms of a charitable trust that would result
7 in distribution of the trust property to a noncharitable beneficiary prevails
8 over the power of a court under subsection (a) of this section to apply cy
9 pres to modify or terminate the trust only if, when the provision takes
10 effect:

11 (1) the trust property is to revert to the settlor and the
12 settlor is still living; or

13 (2) less than thirty (30) years have elapsed since the date of
14 the trust's creation.

15
16 28-73-414. Modification or termination of uneconomic trust.

17 (a) After notice to the qualified beneficiaries, the trustee of a
18 trust consisting of trust property having a total value less than one hundred
19 thousand dollars (\$100,000) may terminate the trust if the trustee concludes
20 that the value of the trust property is insufficient to justify the cost of
21 administration.

22 (b) A court may modify or terminate a trust or remove the trustee and
23 appoint a different trustee if it determines that the value of the trust
24 property is insufficient to justify the cost of administration.

25 (c) Upon termination of a trust under this section, the trustee shall
26 distribute the trust property in a manner consistent with the purposes of the
27 trust.

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

30
31 28-73-415. Reformation to correct mistakes.

32 A court may reform the terms of a trust, even if unambiguous, to
33 conform the terms to the settlor's intention if it is proved by clear and
34 convincing evidence that both the settlor's intent and the terms of the trust
35 were affected by a mistake of fact or law, whether in expression or
36 inducement.

1
2 28-73-416. Modification to achieve settlor's tax objectives.

3 To achieve the settlor's tax objectives, a court may modify the terms
4 of a trust in a manner that is not contrary to the settlor's probable
5 intention. The court may provide that the modification has retroactive
6 effect.

7
8 28-73-417. Combination and division of trusts.

9 (a)(1) After notice to the qualified beneficiaries, a trustee may
10 combine two (2) or more trusts into a single trust or divide a trust into two
11 (2) or more separate trusts, if the result does not impair rights of any
12 beneficiary or adversely affect achievement of the purposes of the trust.

13 (2) A trustee may exercise the authority granted in this section
14 without court approval.

15 (b) This section does not repeal §§ 28-69-701 – 28-69-706.

16
17 Subchapter 5 – Creditor's Claims – Spendthrift
18 and Discretionary Trusts

19
20 28-73-501. Rights of beneficiary's creditor or assignee.

21 To the extent a beneficiary's interest is not protected by a
22 spendthrift provision, a court may authorize a creditor or assignee of the
23 beneficiary to reach the beneficiary's interest by attachment of present or
24 future distributions to or for the benefit of the beneficiary or other means.
25 The court may limit the award to such relief as is appropriate under the
26 circumstances.

27
28 28-73-502. Spendthrift provision.

29 (a) A spendthrift provision is valid only if it restrains both
30 voluntary and involuntary transfer of a beneficiary's interest.

31 (b) A term of a trust providing that the interest of a beneficiary is
32 held subject to a "spendthrift trust", or words of similar import, is
33 sufficient to restrain both voluntary and involuntary transfer of the
34 beneficiary's interest.

35 (c) A beneficiary may not transfer an interest in a trust in violation
36 of a valid spendthrift provision and, except as otherwise provided in this

1 subchapter, a creditor or assignee of the beneficiary may not reach the
2 interest or a distribution by the trustee before its receipt by the
3 beneficiary.

4
5 28-73-503. (Reserved).

6
7 28-73-504. Discretionary trusts – Effect of standard.

8 (a) Whether or not a trust contains a spendthrift provision, a
9 creditor of a beneficiary may not compel a distribution that is subject to
10 the trustee's discretion, even if:

11 (1) the discretion is expressed in the form of a standard of
12 distribution; or

13 (2) the trustee has abused the discretion.

14 (b) This section does not limit the right of a beneficiary to maintain
15 a judicial proceeding against a trustee for an abuse of discretion or failure
16 to comply with a standard for distribution. Under § 26-78-814(a), a trustee
17 must always exercise a discretionary power in good faith and with regard to
18 the purposes of the trust and the interests of the beneficiaries.

19 (c) A creditor may not reach the interest of a beneficiary who is also
20 a trustee or co-trustee, or otherwise compel a distribution, if the trustee's
21 discretion to make distributions for the trustee's own benefit is limited by
22 an ascertainable standard.

23
24 28-73-505. Creditor's claim against settlor.

25 (a) Whether or not the terms of a trust contain a spendthrift
26 provision, the following rules apply:

27 (1) during the lifetime of the settlor, the property of a
28 revocable trust is subject to claims of the settlor's creditors; and

29 (2) with respect to an irrevocable trust, a creditor or assignee
30 of the settlor may reach the maximum amount that can be distributed to or for
31 the settlor's benefit. If a trust has more than one (1) settlor, the amount
32 the creditor or assignee of a particular settlor may reach may not exceed the
33 settlor's interest in the portion of the trust attributable to that settlor's
34 contribution.

35 (b) For purposes of this section:

36 (1) during the period the power may be exercised, the holder of

a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and

(2) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in Section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986 or Section 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on January 1, 2005.

28-73-506. Overdue distribution.

Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

28-73-507. Personal obligations of trustee.

Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

Subchapter 6 – Revocable Trusts

28-73-601. Capacity of settlor of revocable trust.

The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

28-73-602. Revocation or amendment of revocable trust.

(a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before September 1, 2005.

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

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

1 (2) to the extent the trust consists of property other than
2 community property, each settlor may revoke or amend the trust with regard to
3 the portion of the trust property attributable to that settlor's
4 contribution; and

5 (3) upon the revocation or amendment of the trust by fewer than
6 all of the settlors, the trustee shall promptly notify the other settlors of
7 the revocation or amendment.

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

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

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

13 (A) executing a later will or codicil that expressly
14 refers to the trust or specifically devises property that would otherwise
15 have passed according to the terms of the trust; or

16 (B) any other method manifesting clear and convincing
17 evidence of the settlor's intent.

18 (d) Upon revocation of a revocable trust, the trustee shall deliver
19 the trust property as the settlor directs.

20 (e) A settlor's powers with respect to revocation, amendment, or
21 distribution of trust property may be exercised by an agent under a power of
22 attorney only to the extent expressly authorized by the terms of the trust or
23 the power.

24 (f) A conservator of the settlor or, if no conservator has been
25 appointed, a guardian of the settlor may exercise a settlor's powers with
26 respect to revocation, amendment, or distribution of trust property only with
27 the approval of the court supervising the conservatorship or guardianship.

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

32
33 28-73-603. Settlor's powers – Powers of withdrawal.

34 (a) While a trust is revocable and the settlor has capacity to revoke
35 the trust, rights of the beneficiaries are subject to the control of, and the
36 duties of the trustee are owed exclusively to, the settlor.

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

28-73-604. Limitation on action contesting validity of revocable trust – Distribution of trust property.

(a) A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of:

(1) three (3) years after the settlor's death; or

(2) ninety (90) days after the trustee sent the person a notice informing the person of the trust's existence, the settlor's name, the trustee's name and address, the time allowed for commencing a proceeding, and a description of the beneficiary's interest, if any.

(b) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for the distribution unless:

(1) the trustee knows of a pending judicial proceeding contesting the validity of the trust; or

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

(c) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.

Subchapter 7 – Office of Trustee

28-73-701. Accepting or declining trusteeship.

(a) Except as otherwise provided in subsection (c) of this section, a person designated as trustee accepts the trusteeship:

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

(2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as

1 trustee, or otherwise indicating acceptance of the trusteeship.

2 (b) A person designated as trustee who has not yet accepted the
3 trusteeship may reject the trusteeship. A designated trustee who does not
4 accept the trusteeship within a reasonable time after knowing of the
5 designation is deemed to have rejected the trusteeship.

6 (c) A person designated as trustee, without accepting the trusteeship,
7 may:

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

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

14
15 28-73-702. Trustee's bond.

16 (a) A trustee shall give bond to secure performance of the trustee's
17 duties only if a court finds that a bond is needed to protect the interests
18 of the beneficiaries or is required by the terms of the trust and the court
19 has not dispensed with the requirement.

20 (b) A court may specify the amount of a bond, its liabilities, and
21 whether sureties are necessary. A court may modify or terminate a bond at
22 any time.

23 (c) A regulated financial service institution qualified to do trust
24 business in this State need not give bond, even if required by the terms of
25 the trust.

26
27 28-73-703. Co-trustees.

28 (a) Co-trustees who are unable to reach an unanimous decision may act
29 by majority decision.

30 (b) If a vacancy occurs in a co-trusteeship, the remaining co-trustees
31 may act for the trust.

32 (c) A co-trustee must participate in the performance of a trustee's
33 function unless the co-trustee is unavailable to perform the function because
34 of absence, illness, disqualification under other law, or other temporary
35 incapacity or the co-trustee has properly delegated the performance of the
36 function to another trustee.

1 (d) If a co-trustee is unavailable to perform duties because of
 2 absence, illness, disqualification under other law, or other temporary
 3 incapacity, and prompt action is necessary to achieve the purposes of the
 4 trust or to avoid injury to the trust property, the remaining co-trustee or a
 5 majority of the remaining co-trustees may act for the trust.

6 (e) A trustee may not delegate to a co-trustee the performance of a
 7 function the settlor reasonably expected the trustees to perform jointly.
 8 Unless a delegation was irrevocable, a trustee may revoke a delegation
 9 previously made.

10 (f) Except as otherwise provided in subsection (g) of this section, a
 11 trustee who does not join in an action of another trustee is not liable for
 12 the action.

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

14 (1) prevent a co-trustee from committing a serious breach of
 15 trust; and

16 (2) compel a co-trustee to redress a serious breach of trust.

17 (h) A dissenting trustee who joins in an action at the direction of
 18 the majority of the trustees and who notified any co-trustee of the dissent
 19 at or before the time of the action is not liable for the action unless the
 20 action is a serious breach of trust.

21
 22 28-73-704. Vacancy in trusteeship – Appointment of successor.

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

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

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

27 (3) a trustee resigns;

28 (4) a trustee is disqualified or removed;

29 (5) a trustee dies; or

30 (6) a guardian of the person or conservator is appointed for an
 31 individual serving as trustee.

32 (b) If one (1) or more co-trustees remain in office, a vacancy in a
 33 trusteeship need not be filled. A vacancy in a trusteeship must be filled if
 34 the trust has no remaining trustee.

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

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

3 (2) by a person appointed by unanimous agreement of the
 4 qualified beneficiaries; or

5 (3) by a person appointed by a court.

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

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

10 (2) by a person selected by the charitable organizations
 11 expressly designated to receive distributions under the terms of the trust if
 12 the attorney general concurs in the selection; or

13 (3) by a person appointed by a court.

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

18
 19 28-73-705. Resignation of trustee.

20 (a) A trustee may resign:

21 (1) upon at least thirty (30) days' notice to the qualified
 22 beneficiaries, the settlor, if living, and all co-trustees; or

23 (2) with the approval of a court.

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

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

29 (d) Subsection (a) of this section applies only to irrevocable trusts
 30 created on or after September 1, 2005, and to revocable trusts which become
 31 irrevocable on or after September 1, 2005.

32
 33 28-73-706. Removal of trustee.

34 (a) The settlor, a co-trustee, or a beneficiary may request the court
 35 to remove a trustee, or a trustee may be removed by the court on its own
 36 initiative.

1 (b) A court may remove a trustee if:

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

3 (2) lack of cooperation among co-trustees substantially impairs
4 the administration of the trust;

5 (3) because of unfitness, unwillingness, or persistent failure
6 of the trustee to administer the trust effectively, the court determines that
7 removal of the trustee best serves the interests of the beneficiaries; or

8 (4) there has been a substantial change of circumstances or
9 removal is requested by all of the qualified beneficiaries, the court finds
10 that removal of the trustee best serves the interests of all of the
11 beneficiaries and is not inconsistent with a material purpose of the trust,
12 and a suitable co-trustee or successor trustee is available.

13 (c) Pending a final decision on a request to remove a trustee, or in
14 lieu of or in addition to removing a trustee, the court may order such
15 appropriate relief under § 28-73-1001(b) as may be necessary to protect the
16 trust property or the interests of the beneficiaries.

17
18 28-73-707. Delivery of property by former trustee.

19 (a) Unless a co-trustee remains in office or a court otherwise orders,
20 and until the trust property is delivered to a successor trustee or other
21 person entitled to it, a trustee who has resigned or been removed has the
22 duties of a trustee and the powers necessary to protect the trust property.

23 (b) A trustee who has resigned or been removed shall proceed
24 expeditiously to deliver the trust property within the trustee's possession
25 to the co-trustee, successor trustee, or other person entitled to it.

26
27 28-73-708. Compensation of trustee.

28 (a) If the terms of a trust do not specify the trustee's compensation,
29 a trustee is entitled to compensation that is reasonable under the
30 circumstances.

31 (b) If the terms of a trust specify the trustee's compensation, the
32 trustee is entitled to be compensated as specified, but the court may allow
33 more or less compensation if:

34 (1) the duties of the trustee are substantially different from
35 those contemplated when the trust was created; or

36 (2) the compensation specified by the terms of the trust would

1 be unreasonably low or high.

2
3 28-73-709. Reimbursement of expenses.

4 (a) A trustee is entitled to be reimbursed out of the trust property,
5 with interest as appropriate, for:

6 (1) expenses that were properly incurred in the administration
7 of the trust; and

8 (2) to the extent necessary to prevent unjust enrichment of the
9 trust, expenses that were not properly incurred in the administration of the
10 trust.

11 (b) An advance by the trustee of money for the protection of the trust
12 gives rise to a lien against trust property to secure reimbursement with
13 reasonable interest.

14
15 Subchapter 8 – Duties and Powers of Trustee

16 28-73-801. Duty to administer trust.

17 Upon acceptance of a trusteeship, the trustee shall administer the
18 trust in good faith, in accordance with its terms and purposes and the
19 interests of the beneficiaries, and in accordance with this chapter.

20
21 28-73-802. Duty of loyalty.

22 (a) A trustee shall administer the trust solely in the interests of
23 the beneficiaries.

24 (b) Subject to the rights of persons dealing with or assisting the
25 trustee as provided in § 28-73-1012, a sale, encumbrance, or other
26 transaction involving the investment or management of trust property entered
27 into by the trustee for the trustee's own personal account or which is
28 otherwise affected by a conflict between the trustee's fiduciary and personal
29 interests is voidable by a beneficiary affected by the transaction unless:

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

31 (2) the transaction was approved by a court;

32 (3) the beneficiary did not commence a judicial proceeding
33 within the time allowed by § 28-73-1005;

34 (4) the beneficiary consented to the trustee's conduct, ratified
35 the transaction, or released the trustee in compliance with § 28-73-1009; or

36 (5) the transaction involves a contract entered into or claim

1 acquired by the trustee before the person became or contemplated becoming
2 trustee.

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

7 (1) the trustee's spouse;

8 (2) the trustee's descendants, siblings, parents, or their
9 spouses;

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

11 (4) a corporation or other person or enterprise in which the
12 trustee, or a person who owns a significant interest in the trustee, has an
13 interest that might affect the trustee's best judgment.

14 (d) A transaction between a trustee and a beneficiary that does not
15 concern trust property but that occurs during the existence of the trust or
16 while the trustee retains significant influence over the beneficiary and from
17 which the trustee obtains an advantage is voidable by the beneficiary unless
18 the trustee establishes that the transaction was fair to the beneficiary.

19 (e) A transaction not concerning trust property in which the trustee
20 engages in the trustee's individual capacity involves a conflict between
21 personal and fiduciary interests if the transaction concerns an opportunity
22 properly belonging to the trust.

23 (f)(1) An investment by a trustee in securities of an investment
24 company or investment trust to which the trustee, or its affiliate, provides
25 services in a capacity other than as trustee is not presumed to be affected
26 by a conflict between personal and fiduciary interests if the investment
27 complies with the prudent investor rule of subchapter 9 of this chapter.

28 (2) The trustee may be compensated by the investment company or
29 investment trust for providing those services out of fees charged to the
30 trust.

31 (3) If the trustee receives compensation from the investment
32 company or investment trust for providing management services, the trustee
33 shall at least annually notify the persons entitled under § 28-73-813 to
34 receive a copy of the trustee's annual report of the rate and method by which
35 the compensation was determined.

36 (g) In voting shares of stock or in exercising powers of control over

1 similar interests in other forms of enterprise, the trustee shall act in the
2 best interests of the beneficiaries. If the trust is the sole owner of a
3 corporation or other form of enterprise, the trustee shall elect or appoint
4 directors or other managers who will manage the corporation or enterprise in
5 the best interests of the beneficiaries.

6 (h) This section does not preclude the following transactions, if fair
7 to the beneficiaries:

8 (1) an agreement between a trustee and a beneficiary relating to
9 the appointment or compensation of the trustee;

10 (2) payment of reasonable compensation to the trustee;

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

14 (4) a deposit of trust money in a regulated financial service
15 institution operated by the trustee; or

16 (5) an advance by the trustee of money for the protection of the
17 trust.

18 (i) A court may appoint a special fiduciary to make a decision with
19 respect to any proposed transaction that might violate this section if
20 entered into by the trustee.

21 (j) Subsections (b) – (e) of this section apply only to irrevocable
22 trusts created on or after September 1, 2005, and to revocable trusts which
23 become irrevocable on or after September 1, 2005.

24
25 28-73-803. Impartiality.

26 If a trust has two (2) or more beneficiaries, the trustee shall act
27 impartially in investing, managing, and distributing the trust property,
28 giving due regard to the beneficiaries' respective interests.

29
30 28-73-804. Prudent administration.

31 A trustee shall administer the trust as a prudent person would, by
32 considering the purposes, terms, distributional requirements, and other
33 circumstances of the trust. In satisfying this standard, the trustee shall
34 exercise reasonable care, skill, and caution.

35
36 28-73-805. Costs of administration.

1 In administering a trust, the trustee may incur only costs that are
2 reasonable in relation to the trust property, the purposes of the trust, and
3 the skills of the trustee.

4
5 28-73-806. Trustee's skills.

6 A trustee who has special skills or expertise, or is named trustee in
7 reliance upon the trustee's representation that the trustee has special
8 skills or expertise, shall use those special skills or expertise.

9
10 28-73-807. Delegation by trustee.

11 (a) A trustee may delegate duties and powers that a prudent trustee of
12 comparable skills could properly delegate under the circumstances. The
13 trustee shall exercise reasonable care, skill, and caution in:

14 (1) selecting an agent;

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

17 (3) periodically reviewing the agent's actions in order to
18 monitor the agent's performance and compliance with the terms of the
19 delegation.

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

22 (c) A trustee who complies with subsection (a) of this section is not
23 liable to the beneficiaries or to the trust for an action of the agent to
24 whom the function was delegated.

25 (d) By accepting a delegation of powers or duties from the trustee of
26 a trust that is subject to the law of this state, an agent submits to the
27 jurisdiction of a court of this state.

28
29 28-73-808. Powers to direct.

30 (a) While a trust is revocable, the trustee may follow a direction of
31 the settlor that is contrary to the terms of the trust.

32 (b) If the terms of a trust confer upon a person other than the
33 settlor of a revocable trust power to direct certain actions of the trustee,
34 the trustee shall act in accordance with an exercise of the power unless the
35 attempted exercise is manifestly contrary to the terms of the trust or the
36 trustee knows the attempted exercise would constitute a serious breach of a

1 fiduciary duty that the person holding the power owes to the beneficiaries of
2 the trust.

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

5 (d) A person, other than a beneficiary, who holds a power to direct is
6 presumptively a fiduciary who, as such, is required to act in good faith with
7 regard to the purposes of the trust and the interests of the beneficiaries.
8 The holder of a power to direct is liable for any loss that results from
9 breach of a fiduciary duty.

10
11 28-73-809. Control and protection of trust property.

12 A trustee shall take reasonable steps to take control of and protect
13 the trust property.

14
15 28-73-810. Recordkeeping and identification of trust property.

16 (a) A trustee shall keep adequate records of the administration of the
17 trust.

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

20 (c) Except as otherwise provided in subsection (d) of this section, a
21 trustee shall cause the trust property to be designated so that the interest
22 of the trust, to the extent feasible, appears in records maintained by a
23 party other than a trustee or beneficiary.

24 (d) If the trustee maintains records clearly indicating the respective
25 interests, a trustee may invest as a whole the property of two (2) or more
26 separate trusts.

27
28 28-73-811. Enforcement and defense of claims.

29 A trustee shall take reasonable steps to enforce claims of the trust
30 and to defend claims against the trust.

31
32 28-73-812. Collecting trust property.

33 A trustee shall take reasonable steps to compel a former trustee or
34 other person to deliver trust property to the trustee and to redress a breach
35 of trust known to the trustee to have been committed by a former trustee.
36

1 28-73-813. Duty to inform and report.

2 (a) A trustee shall keep the qualified beneficiaries of the trust
3 reasonably informed about the administration of the trust and of the material
4 facts necessary for them to protect their interests. Unless unreasonable
5 under the circumstances, a trustee shall promptly respond to a beneficiary's
6 request for information related to the administration of the trust.

7 (b) A trustee:

8 (1) shall promptly furnish to the beneficiary a copy of the
9 trust instrument upon request of a beneficiary;

10 (2) within sixty (60) days after accepting a trusteeship, shall
11 notify the qualified beneficiaries of the acceptance and of the trustee's
12 name, address, and telephone number; and

13 (3) within sixty (60) days after the date the trustee acquires
14 knowledge of the creation of an irrevocable trust, or the date the trustee
15 acquires knowledge that a formerly revocable trust has become irrevocable,
16 whether by the death of the settlor or otherwise, shall notify the qualified
17 beneficiaries:

18 (A) of the trust's existence;

19 (B) of the identity of the settlor or settlors;

20 (C) of the right to request a copy of the trust
21 instrument; and

22 (D) of the right to a trustee's report as provided in
23 subsection (c) of this section; and

24 (E) in advance of any change in the method or rate of the
25 trustee's compensation.

26 (c)(1) A trustee shall send to the distributees or permissible
27 distributees of trust income or principal, and to other qualified or
28 nonqualified beneficiaries who request it, at least annually and at the
29 termination of the trust, a report of the trust property, liabilities,
30 receipts, and disbursements, including the source and amount of the trustee's
31 compensation, a listing of the trust assets and, if feasible, their
32 respective market values.

33 (2) Upon a vacancy in a trusteeship, unless a co-trustee remains
34 in office, a report must be sent to the qualified beneficiaries by the former
35 trustee.

36 (3) A personal representative, conservator, or guardian may send

1 the qualified beneficiaries a report on behalf of a deceased or incapacitated
2 trustee.

3 (d) A beneficiary may waive the right to a trustee's report or other
4 information otherwise required to be furnished under this section. A
5 beneficiary, with respect to future reports and other information, may
6 withdraw a waiver previously given.

7 (e) Subsections (a) – (c) of this section apply only to an irrevocable
8 trust created on or after September 1, 2005, and to a revocable trust which
9 becomes irrevocable on or after September 1, 2005.

10
11 28-73-814. Discretionary powers – Tax savings.

12 (a) Notwithstanding the breadth of discretion granted to a trustee in
13 the terms of the trust, including the use of such terms as “absolute”,
14 “sole”, or “uncontrolled”, the trustee shall exercise a discretionary power
15 in good faith and in accordance with the terms and purposes of the trust and
16 the interests of the beneficiaries.

17 (b) Subject to subsection (d) of this section, and unless the terms of
18 the trust expressly indicate that a rule in this subsection does not apply:

19 (1) a person other than a settlor who is a beneficiary and
20 trustee of a trust that confers on the trustee a power to make discretionary
21 distributions to or for the trustee's personal benefit may exercise the power
22 only in accordance with an ascertainable standard; and

23 (2) a trustee may not exercise a power to make discretionary
24 distributions to satisfy a legal obligation of support that the trustee
25 personally owes another person.

26 (c) A power whose exercise is limited or prohibited by subsection (b)
27 of this section may be exercised by a majority of the remaining trustees
28 whose exercise of the power is not so limited or prohibited. If the power of
29 all trustees is so limited or prohibited, a court may appoint a special
30 fiduciary with authority to exercise the power.

31 (d) Subsection (b) of this section does not apply to:

32 (1) a power held by the settlor's spouse who is the trustee of a
33 trust for which a marital deduction, as defined in Section 2056(b)(5) or
34 Section 2523(e) of the Internal Revenue Code of 1986, as in effect on January
35 1, 2005, was previously allowed;

36 (2) any trust during any period that the trust may be revoked or

1 amended by its settlor; or

2 (3) a trust if contributions to the trust qualify for the annual
 3 exclusion under Section 2503(c) of the Internal Revenue Code of 1986, as in
 4 effect on January 1, 2005.

5
 6 28-73-815. General powers of trustee.

7 (a) A trustee, without authorization by a court, may exercise:

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

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

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

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

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

15 (b) The exercise of a power is subject to the fiduciary duties
 16 prescribed by this subchapter.

17
 18 28-73-816. Specific powers of trustee.

19 Without limiting the authority conferred by § 28-73-815, a trustee may:

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

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

24 (3) exchange, partition, or otherwise change the character of
 25 trust property;

26 (4) deposit trust money in an account in a regulated financial
 27 service institution;

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

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

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

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

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

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

10 (D) deposit the securities with a depository or other
11 regulated financial service institution;

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

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

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

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

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

31 (13) with respect to possible liability for violation of
32 environmental law:

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

1 the property;

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

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

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

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

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

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

18 (16) exercise elections with respect to federal, state, and
19 local taxes;

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

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

29 (19) pledge trust property to guarantee loans made by others to
30 the beneficiary;

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

36 (21) pay an amount distributable to a beneficiary who is under a

1 legal disability or who the trustee reasonably believes is incapacitated, by
2 paying it directly to the beneficiary or applying it for the beneficiary's
3 benefit, or by:

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

6 (B) paying it to the beneficiary's custodian under the
7 Uniform Transfers to Minors Act, § 9-26-201 et seq. or custodial trustee
8 under §§ 28-72-401 – 28-72-422, and, for that purpose, creating a
9 custodianship or custodial trust;

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

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

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

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

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

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

30 (26) on termination of the trust, exercise the powers
31 appropriate to wind up the administration of the trust and distribute the
32 trust property to the persons entitled to it.

33 28-73-817. Distribution upon termination.

34 (a) Upon termination or partial termination of a trust, the trustee
35 may send to the beneficiaries a proposal for distribution. The right of any
36

beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within thirty (30) days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

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

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

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

(2) the beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

Subchapter 9 – Uniform Prudent Investor Act

28-73-901. Prudent investor rule.

(a) Except as otherwise provided in subsection (b) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this subchapter.

(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

28-73-902. Standard of care – Portfolio strategy – Risk and return objectives.

(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

1 (c) Among circumstances that a trustee shall consider in investing and
2 managing trust assets are such of the following as are relevant to the trust
3 or its beneficiaries:

4 (1) general economic conditions;

5 (2) the possible effect of inflation or deflation;

6 (3) the expected tax consequences of investment decisions or
7 strategies;

8 (4) the role that each investment or course of action plays
9 within the overall trust portfolio, which may include financial assets,
10 interests in closely held enterprises, tangible and intangible personal
11 property, and real property;

12 (5) the expected total return from income and the appreciation
13 of capital;

14 (6) other resources of the beneficiaries;

15 (7) needs for liquidity, regularity of income, and preservation
16 or appreciation of capital; and

17 (8) an asset's special relationship or special value, if any, to
18 the purposes of the trust or to one or more of the beneficiaries.

19 (d) A trustee shall make a reasonable effort to verify facts relevant
20 to the investment and management of trust assets.

21 (e) A trustee may invest in any kind of property or type of investment
22 consistent with the standards of this subchapter.

23
24 28-73-903. Diversification.

25 A trustee shall diversify the investments of the trust unless the
26 trustee reasonably determines that, because of special circumstances, the
27 purposes of the trust are better served without diversifying.

28
29 28-73-904. Duties at inception of trusteeship.

30 Within a reasonable time after accepting a trusteeship or receiving
31 trust assets, a trustee shall review the trust assets and make and implement
32 decisions concerning the retention and disposition of assets, in order to
33 bring the trust portfolio into compliance with the purposes, terms,
34 distribution requirements, and other circumstances of the trust, and with the
35 requirements of this subchapter.

28-73-905. Reviewing compliance.

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

28-73-906. Language invoking standard of subchapter.

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this subchapter: "investments permissible by law for investment of trust funds", "legal investments", "authorized investments", "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital", "prudent man rule", "prudent trustee rule", "prudent person rule", and "prudent investor rule".

28-73-907. Application to existing trusts.

This subchapter applies to trusts existing on and created after September 1, 2005.

28-73-908. Uniformity of application and construction.

This subchapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this subchapter among the states enacting it.

Subchapter 10 - Liability of Trustees and Rights
of Persons Dealing With Trustees

28-73-1001. Remedies for breach of trust.

(a) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

(b) To remedy a breach of trust that has occurred or may occur, the court may:

- (1) compel the trustee to perform the trustee's duties;
- (2) enjoin the trustee from committing a breach of trust;
- (3) compel the trustee to redress a breach of trust by paying

1 money, restoring property, or other means;

2 (4) order a trustee to account;

3 (5) appoint a special fiduciary to take possession of the trust
4 property and administer the trust;

5 (6) suspend the trustee;

6 (7) remove the trustee as provided in § 28-73-706;

7 (8) reduce or deny compensation to the trustee;

8 (9) subject to § 28-73-1012, void an act of the trustee, impose
9 a lien or a constructive trust on trust property, or trace trust property
10 wrongfully disposed of and recover the property or its proceeds; or

11 (10) order any other appropriate relief.

12
13 28-73-1002. Damages for breach of trust.

14 (a) A trustee who commits a breach of trust is liable to the
15 beneficiaries affected for the greater of:

16 (1) the amount required to restore the value of the trust
17 property and trust distributions to what they would have been had the breach
18 not occurred; or

19 (2) the profit the trustee made by reason of the breach.

20 (b) Except as otherwise provided in this subsection, if more than one
21 (1) trustee is liable to the beneficiaries for a breach of trust, a trustee
22 is entitled to contribution from the other trustee or trustees. A trustee is
23 not entitled to contribution if the trustee was substantially more at fault
24 than another trustee or if the trustee committed the breach of trust in bad
25 faith or with reckless indifference to the purposes of the trust or the
26 interests of the beneficiaries. A trustee who received a benefit from the
27 breach of trust is not entitled to contribution from another trustee to the
28 extent of the benefit received.

29
30 28-73-1003. Damages in absence of breach.

31 (a) A trustee is accountable to an affected beneficiary for any profit
32 made by the trustee arising from the administration of the trust, even absent
33 a breach of trust.

34 (b) Absent a breach of trust, a trustee is not liable to a beneficiary
35 for a loss or depreciation in the value of trust property or for not having
36 made a profit.

1
2 28-73-1004. Attorney's fees and costs.

3 In a judicial proceeding involving the administration of a trust, a
4 court, as justice and equity may require, may award costs and expenses,
5 including reasonable attorney's fees, to any party, to be paid by another
6 party or from the trust that is the subject of the controversy.

7
8 28-73-1005. Limitation of action against trustee.

9 (a) A beneficiary may not commence a proceeding against a trustee for
10 breach of trust more than one (1) year after the date the beneficiary or a
11 representative of the beneficiary was sent a report that adequately disclosed
12 the existence of a potential claim for breach of trust and informed the
13 beneficiary of the time allowed for commencing a proceeding.

14 (b) A report adequately discloses the existence of a potential claim
15 for breach of trust if it provides sufficient information so that the
16 beneficiary or representative knows of the potential claim or should have
17 inquired into its existence.

18 (c) If subsection (a) of this section does not apply, a judicial
19 proceeding by a beneficiary against a trustee for breach of trust must be
20 commenced within five (5) years after the first to occur of:

21 (1) the removal, resignation, or death of the trustee;

22 (2) the termination of the beneficiary's interest in the trust;

23 or

24 (3) the termination of the trust.

25
26 28-73-1006. Reliance on trust instrument.

27 A trustee who acts in reasonable reliance on the terms of the trust as
28 expressed in the trust instrument is not liable to a beneficiary for a breach
29 of trust to the extent the breach resulted from the reliance.

30
31 28-73-1007. Event affecting administration or distribution.

32 If the happening of an event, including marriage, divorce, performance
33 of educational requirements, or death, affects the administration or
34 distribution of a trust, a trustee who has exercised reasonable care to
35 ascertain the happening of the event is not liable for a loss resulting from
36 the trustee's lack of knowledge.

1
2 28-73-1008. Exculpation of trustee.

3 (a) A term of a trust relieving a trustee of liability for breach of
4 trust is unenforceable to the extent that it:

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

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

10 (b) An exculpatory term drafted or caused to be drafted by the trustee
11 is invalid as an abuse of a fiduciary or confidential relationship unless the
12 trustee proves that the exculpatory term is fair under the circumstances and
13 that its existence and contents were adequately communicated to the settlor.

14 (c) This section applies only to irrevocable trusts created on or
15 after September 1, 2005, and to revocable trusts which become irrevocable on
16 or after September 1, 2005.

17
18 28-73-1009. Beneficiary's consent, release, or ratification.

19 A trustee is not liable to a beneficiary for breach of trust if the
20 beneficiary consented to the conduct constituting the breach, released the
21 trustee from liability for the breach, or ratified the transaction
22 constituting the breach, unless:

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

25 (2) at the time of the consent, release, or ratification, the
26 beneficiary did not know of the beneficiary's rights or of the material facts
27 relating to the breach.

28
29 28-73-1010. Limitation on personal liability of trustee.

30 (a) Except as otherwise provided in the contract, a trustee is not
31 personally liable on a contract properly entered into in the trustee's
32 fiduciary capacity in the course of administering the trust if the trustee in
33 the contract disclosed the fiduciary capacity.

34 (b) A trustee is personally liable for torts committed in the course
35 of administering a trust, or for obligations arising from ownership or
36 control of trust property, including liability for violation of environmental

1 law, only if the trustee is personally at fault.

2 (c) A claim based on a contract entered into by a trustee in the
3 trustee's fiduciary capacity, on an obligation arising from ownership or
4 control of trust property, or on a tort committed in the course of
5 administering a trust, may be asserted in a judicial proceeding against the
6 trustee in the trustee's fiduciary capacity, whether or not the trustee is
7 personally liable for the claim.

8
9 28-73-1011. Interest as general partner.

10 (a) Except as otherwise provided in subsection (c) of this section or
11 unless personal liability is imposed in the contract, a trustee who holds an
12 interest as a general partner in a general or limited partnership is not
13 personally liable on a contract entered into by the partnership after the
14 trust's acquisition of the interest if the fiduciary capacity was disclosed
15 in the contract or in a statement previously filed pursuant to §§ 4-46-101 -
16 4-46-1207 or §§ 4-43-101 - 4-43-1206.

17 (b) Except as otherwise provided in subsection (c) of this section, a
18 trustee who holds an interest as a general partner is not personally liable
19 for torts committed by the partnership or for obligations arising from
20 ownership or control of the interest unless the trustee is personally at
21 fault.

22 (c) The immunity provided by this section does not apply if an
23 interest in the partnership is held by the trustee in a capacity other than
24 that of trustee or is held by the trustee's spouse or one or more of the
25 trustee's descendants, siblings, or parents, or the spouse of any of them.

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

29
30 28-73-1012. Protection of person dealing with trustee.

31 (a) A person other than a beneficiary who in good faith assists a
32 trustee, or who in good faith and for value deals with a trustee, without
33 knowledge that the trustee is exceeding or improperly exercising the
34 trustee's powers is protected from liability as if the trustee properly
35 exercised the power.

36 (b) A person other than a beneficiary who in good faith deals with a

1 trustee is not required to inquire into the extent of the trustee's powers or
2 the propriety of their exercise.

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

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

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

12
13 28-73-1013. Certification of trust.

14 (a) Instead of furnishing a copy of the trust instrument to a person
15 other than a beneficiary, the trustee may furnish to the person a
16 certification of trust containing the following information:

17 (1) a statement that the trust exists and the date the trust
18 instrument was executed;

19 (2) the identity of the settlor;

20 (3) the identity and address of the currently acting trustee;

21 (4) the powers of the trustee;

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

24 (6) the authority of co-trustees to sign or otherwise
25 authenticate and whether all or less than all are required in order to
26 exercise powers of the trustee; and

27 (7) the manner of taking title to trust property.

28 (b) A certification of trust may be signed or otherwise authenticated
29 by any trustee.

30 (c) A certification of trust must state that the trust has not been
31 revoked, modified, or amended in any manner that would cause the
32 representations contained in the certification of trust to be incorrect.

33 (d) A certification of trust need not contain the dispositive terms of
34 a trust.

35 (e) A recipient of a certification of trust may require the trustee to
36 furnish copies of those excerpts from the original trust instrument and later

amendments which designate the trustee and confer upon the trustee the power to act in the pending transaction.

(f)(1) A person who acts in reliance upon a certification of trust without knowledge that the representations contained therein are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification.

(2) Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.

(g) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

(h) A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages if a court determines that the person did not act in good faith in demanding the trust instrument.

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

Subchapter 11 – Miscellaneous Provisions

28-73-1101. Uniformity of application and construction.

In applying and construing this chapter consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

28-73-1102. Electronic records and signatures.

The provisions of this chapter governing the legal effect, validity, or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7002) and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

28-73-1103. Severability clause

1 If any provision of this chapter or its application to any person or
2 circumstances is held invalid, the invalidity does not affect other
3 provisions or applications of this chapter which can be given effect without
4 the invalid provision or application, and to this end the provisions of this
5 chapter are severable.

6
7 28-73-1104. Effective date.

8 This chapter takes effect on September 1, 2005.

9
10 28-73-1105. Application to existing relationships.

11 (a) Except as otherwise provided in this chapter, on September 1,
12 2005:

13 (1) this chapter applies to all trusts created before, on, or
14 after September 1, 2005;

15 (2) this chapter applies to all judicial proceedings concerning
16 trusts commenced on or after September 1, 2005;

17 (3) this chapter applies to judicial proceedings concerning
18 trusts commenced before September 1, 2005 unless the court finds that
19 application of a particular provision of this chapter would substantially
20 interfere with the effective conduct of the judicial proceedings or prejudice
21 the rights of the parties, in which case the particular provision of this
22 chapter does not apply and the superseded law applies;

23 (4) any rule of construction or presumption provided in this
24 chapter applies to trust instruments executed before September 1, 2005,
25 unless there is a clear indication of a contrary intent in the terms of the
26 trust; and

27 (5) an act done before September 1, 2005, is not affected by
28 this chapter.

29 (b) If a right is acquired, extinguished, or barred upon the
30 expiration of a prescribed period that has commenced to run under any other
31 statute before September 1, 2005, that statute continues to apply to the
32 right even if it has been repealed or superseded.

33
34 SECTION 2. Arkansas Code § 23-51-192 is amended to read as follows:

35 23-51-192. Delegation and fiduciary responsibility.

36 (a) Any person acting as a trustee or as any other fiduciary under the

laws of this state may delegate any investment, management or administrative function if such person exercises reasonable care, judgment and caution in:

(1) Selecting the delegate, taking into account the delegate's financial standing and reputation;

(2) Establishing the scope and other terms of any delegation; and

(3) Reviewing periodically the delegate's actions in order to monitor overall performance and compliance with the scope and other terms of the delegation.

(b) Notwithstanding any delegation permitted by subsection (a) of this section, any person acting as a trustee, except as provided in ~~§ 23-51-208~~ § 28-73-807, or in any other fiduciary capacity under the laws of this state shall retain responsibility for the due performance of any delegated fiduciary function.

SECTION 3. Arkansas Code § 28-71-105 is amended to read as follows:

28-71-105. Standard of judgment and care - Prudent investor rule.

In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property held in a fiduciary capacity, other than trusts subject to the prudent investor rule as set forth in ~~§§ 23-51-200 — 23-51-211~~ the Arkansas Trust Code, § 28-73-101 et seq., the fiduciary shall exercise the judgment and care under the circumstances then prevailing which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

SECTION 4. Arkansas Code §§ 23-51-200 through 23-51-211 are repealed.

~~23-51-200. Prudent investor rule.~~

~~(a) Except as otherwise provided in subsection (b) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this chapter.~~

~~(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted~~

1 ~~in reasonable reliance on the provisions of the trust.~~

2
3 ~~23-51-201. Standard of care—Portfolio strategy—Risk and return~~
4 ~~objectives.~~

5 ~~(a) A trustee shall invest and manage trust assets as a prudent~~
6 ~~investor would, by considering the purposes, terms, distribution~~
7 ~~requirements, and other circumstances of the trust. In satisfying this~~
8 ~~standard, the trustee shall exercise reasonable care, skill and caution.~~

9 ~~(b) A trustee's investment and management decisions respecting~~
10 ~~individual assets must be evaluated not in isolation but in the context of~~
11 ~~the trust portfolio as a whole and as a part of an overall investment~~
12 ~~strategy having risk return objectives reasonably suited to the trust.~~

13 ~~(c) Among circumstances that a trustee shall consider in investing and~~
14 ~~managing trust assets are such of the following as are relevant to the trust~~
15 ~~or its beneficiaries:~~

16 ~~(1) General economic conditions;~~
17 ~~(2) The possible effect of inflation or deflation;~~
18 ~~(3) The expected tax consequences of investment decisions or~~
19 ~~strategies;~~

20 ~~(4) The role that each investment or course of action plays~~
21 ~~within the overall trust portfolio, which may include financial assets,~~
22 ~~interests in closely held enterprises, tangible and intangible personal~~
23 ~~property, and real property;~~

24 ~~(5) The expected total return from income and the appreciation~~
25 ~~of capital;~~

26 ~~(6) Other resources of the beneficiaries;~~

27 ~~(7) Needs for liquidity, regularity of income, and preservation~~
28 ~~or appreciation of capital; and~~

29 ~~(8) An asset's special relationship or special value, if any, to~~
30 ~~the purpose of the trust or to one or more of the beneficiaries.~~

31 ~~(d) A trustee shall make a reasonable effort to verify facts relevant~~
32 ~~to the investment and management of trust assets.~~

33 ~~(e) A trustee may invest in any kind of property or type of investment~~
34 ~~consistent with the standards of this chapter.~~

35 ~~(f) A trustee who has special skills or expertise, or is named trustee~~
36 ~~in reliance upon the trustee's representation that the trustee has special~~

1 ~~skills or expertise, has a duty to use those special skills or expertise.~~

2
3 ~~23-51-202. Diversification.~~

4 ~~A trustee shall diversify the investments of the trust unless the~~
5 ~~trustee reasonably determines that, because of special circumstances, the~~
6 ~~purposes of the trust are better served without diversifying.~~

7
8 ~~23-51-203. Duties at inception of trusteeship.~~

9 ~~Within a reasonable time after accepting a trusteeship or receiving~~
10 ~~trust assets, a trustee shall review the trust assets and make and implement~~
11 ~~decisions concerning the retention and disposition of assets, in order to~~
12 ~~bring the trust portfolio into compliance with the purposes, terms,~~
13 ~~distribution requirements, and other circumstances of the trust, and with the~~
14 ~~requirements of this chapter.~~

15
16 ~~23-51-204. Loyalty.~~

17 ~~A trustee shall invest and manage the trust assets solely in the~~
18 ~~interest of the beneficiaries. This duty is consistent with and shall not be~~
19 ~~construed to abrogate the powers granted to banks and trust companies~~
20 ~~pursuant to § 28-71-104.~~

21
22 ~~23-51-205. Impartiality.~~

23 ~~If a trust has two or more beneficiaries, the trustee shall act~~
24 ~~impartially in investing and managing the trust assets, taking into account~~
25 ~~any differing interests of the beneficiaries.~~

26
27 ~~23-51-206. Investment costs.~~

28 ~~In investing and managing trust assets, a trustee may only incur costs~~
29 ~~that are appropriate and reasonable in relation to the assets, the purposes~~
30 ~~of the trust, and the skills of the trustee.~~

31
32 ~~23-51-207. Reviewing compliance.~~

33 ~~Compliance with the prudent investor rule is determined in light of the~~
34 ~~facts and circumstances existing at the time of a trustee's decision or~~
35 ~~action and not by hindsight.~~

~~23-51-208. Delegation of agent.~~

~~(a) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill and caution in:~~

~~(1) Selecting an agent;~~

~~(2) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and~~

~~(3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.~~

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

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

~~(d) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.~~

~~23-51-209. Language invoking standard of chapter.~~

~~The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this chapter: "investments permissible by law for investment of trust funds," "legal investments," "authorized investments," "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," "prudent man rule," "prudent trustee rule," "prudent person rule," and "prudent investor rule."~~

~~23-51-210. Application to existing trusts.~~

~~This chapter applies to trusts existing on and created after August 1, 1997. As applied to trusts existing on August 1, 1997, this chapter governs only decisions or actions occurring after that date.~~

1
2 ~~23-51-211. Uniformity of application and construction.~~

3 ~~This chapter shall be applied and construed to effectuate its general~~
4 ~~purpose to make uniform the law with respect to the subject of this chapter~~
5 ~~among the states enacting it.~~