

1 SENATE BILL NO. 251

2 INTRODUCED BY WITTICH, DUDIK, JENT, KNUDSEN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO TRUSTS;
5 REPLACING THE TRUST CODE WITH THE MONTANA UNIFORM TRUST CODE; INCLUDING SUBSTITUTED
6 JUDGMENT PROVISIONS WITHIN THE UNIFORM PROBATE CODE; PROVIDING APPLICATION
7 INSTRUCTIONS; AMENDING SECTIONS 31-2-209, 32-1-102, 32-3-506, 35-2-118, 72-1-103, 72-1-310,
8 72-1-311, 72-1-312, 72-6-206, 72-6-214, 72-16-1001, 72-34-424, 72-34-446, 72-36-206, 77-1-219, 77-1-229,
9 77-2-364, AND 82-1-304, MCA; REPEALING SECTIONS 72-6-122, 72-6-215, 72-33-101, 72-33-102, 72-33-103,
10 72-33-104, 72-33-105, 72-33-106, 72-33-107, 72-33-108, 72-33-201, 72-33-202, 72-33-203, 72-33-204,
11 72-33-205, 72-33-206, 72-33-207, 72-33-208, 72-33-209, 72-33-210, 72-33-211, 72-33-216, 72-33-217,
12 72-33-218, 72-33-219, 72-33-220, 72-33-301, 72-33-302, 72-33-303, 72-33-304, 72-33-305, 72-33-306,
13 72-33-401, 72-33-402, 72-33-403, 72-33-406, 72-33-407, 72-33-408, 72-33-409, 72-33-411, 72-33-412,
14 72-33-413, 72-33-414, 72-33-415, 72-33-416, 72-33-501, 72-33-502, 72-33-503, 72-33-504, 72-33-601,
15 72-33-602, 72-33-603, 72-33-604, 72-33-611, 72-33-612, 72-33-613, 72-33-616, 72-33-617, 72-33-618,
16 72-33-619, 72-33-620, 72-33-621, 72-33-622, 72-33-626, 72-33-627, 72-33-628, 72-33-629, 72-33-630,
17 72-33-631, 72-33-632, 72-33-701, 72-33-702, 72-33-703, 72-33-704, 72-33-705, 72-34-101, 72-34-102,
18 72-34-103, 72-34-105, 72-34-106, 72-34-107, 72-34-108, 72-34-109, 72-34-110, 72-34-111, 72-34-112,
19 72-34-113, 72-34-114, 72-34-115, 72-34-116, 72-34-117, 72-34-118, 72-34-124, 72-34-125, 72-34-126,
20 72-34-127, 72-34-128, 72-34-129, 72-34-130, 72-34-201, 72-34-202, 72-34-203, 72-34-204, 72-34-205,
21 72-34-206, 72-34-207, 72-34-301, 72-34-302, 72-34-303, 72-34-304, 72-34-306, 72-34-307, 72-34-308,
22 72-34-309, 72-34-310, 72-34-311, 72-34-316, 72-34-317, 72-34-318, 72-34-319, 72-34-320, 72-34-321,
23 72-34-322, 72-34-323, 72-34-326, 72-34-327, 72-34-328, 72-34-329, 72-34-330, 72-34-331, 72-34-332,
24 72-34-336, 72-34-337, 72-34-338, 72-34-339, 72-34-340, 72-34-341, 72-34-342, 72-34-343, 72-34-501,
25 72-34-502, 72-34-503, 72-34-504, 72-34-506, 72-34-507, 72-34-508, 72-34-509, 72-34-511, 72-34-512,
26 72-34-513, 72-34-514, 72-34-515, 72-34-516, 72-34-517, 72-34-601, 72-34-602, 72-34-603, 72-34-604,
27 72-34-605, 72-34-606, 72-34-607, 72-34-608, 72-34-609, 72-34-610, 72-35-101, 72-35-102, 72-35-103,
28 72-35-104, 72-35-105, 72-35-106, 72-35-107, 72-35-201, 72-35-202, 72-35-203, 72-35-206, 72-35-207,
29 72-35-208, 72-35-209, 72-35-301, 72-35-302, 72-35-303, 72-35-306, 72-35-307, 72-35-308, 72-35-311,
30 72-35-312, 72-35-313, 72-35-314, 72-35-315, 72-35-401, 72-35-402, 72-35-403, 72-35-404, 72-35-405,

1 72-35-406, 72-35-501, 72-35-502, 72-35-503, 72-35-504, 72-35-505, 72-35-506, 72-35-507, 72-35-508,
2 72-36-101, 72-36-102, 72-36-103, 72-36-104, 72-36-105, 72-36-106, 72-36-201, 72-36-202, 72-36-203,
3 72-36-301, AND 72-36-302, MCA; AND PROVIDING AN EFFECTIVE DATE."

4

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

6

7 NEW SECTION. Section 1. Short title. [Sections 1 through 132] may be cited as the Montana Uniform
8 Trust Code.

9

10 NEW SECTION. Section 2. Scope. [Sections 1 through 132] apply to express trusts, charitable or
11 noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be
12 administered in the manner of an express trust. Other than [sections 14 through 17], nothing in [sections 1
13 through 132] affects the law relating to constructive or resulting trusts.

14

15 NEW SECTION. Section 3. Definitions. As used in [sections 1 through 132], unless the context clearly
16 requires otherwise, the following definitions apply:

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

18 (2) "Ascertainable standard" means a standard relating to an individual's health, education, support, or
19 maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986,
20 as in effect on the effective date of [sections 1 through 132], or as later amended.

21 (3) "Beneficiary" means a person who:

22 (a) has a present or future beneficial interest in a trust, vested or contingent; or

23 (b) in a capacity other than that of trustee, holds a power of appointment over trust property.

24 (4) "Charitable trust" means a trust or portion of a trust created for a charitable purpose described in
25 [section 54(1)].

26 (5) "Conservator" means a person appointed by the court to administer the estate of a minor or adult
27 individual.

28 (6) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to
29 protection of the environment.

30 (7) "Guardian" means a person appointed by the court, by a parent, or by a spouse to make decisions

1 regarding the support, care, education, health, and welfare of a minor or adult individual. The term does not
2 include a guardian ad litem.

3 (8) "Interested person" means:

4 (a) the trustee;

5 (b) the qualified beneficiaries who are entitled to notice; and

6 (c) the attorney general if the petition is related to a charitable trust subject to the jurisdiction of the
7 attorney general.

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

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

10 (11) "Permissible distributee" means a beneficiary who is currently eligible to receive distributions of trust
11 income or principal, whether mandatory or discretionary, or who holds a presently exercisable power of
12 appointment over trust property. The term includes a charitable organization only if it is expressly designated to
13 receive distributions under the terms of the charitable trust.

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

17 (13) "Power of withdrawal" means a presently exercisable general power of appointment other than a
18 power:

19 (a) exercisable by a trustee and limited by an ascertainable standard; or

20 (b) exercisable by another person only upon consent of the trustee or a person holding an adverse
21 interest.

22 (14) (a) "Principal place of administration" means the usual place where the day-to-day activity of the trust
23 is carried on by the trustee or its representative who is primarily responsible for the administration of the trust
24 unless otherwise designated by the terms of the trust as provided in [section 8].

25 (b) If the principal place of administration of the trust cannot be determined under subsection (14)(a),
26 then it must be determined as follows:

27 (i) if the trust has a single trustee, the principal place of administration of the trust is the trustee's
28 residence or usual place of business; or

29 (ii) if the trust has more than one trustee, the principal place of administration of the trust is the residence
30 or usual place of business of any of the cotrustees as agreed upon by them. If not agreed upon by the

1 cotrustees, the principal place of administration of the trust is the residence or usual place of business of any of
2 the cotrustees.

3 (15) "Property" means anything that may be the subject of ownership, whether real or personal, legal or
4 equitable, or any interest therein.

5 (16) "Qualified beneficiary" means a beneficiary who on the date the beneficiary's qualification is
6 determined:

7 (a) is a distributee or permissible distributee of trust income or principal;

8 (b) would be a distributee or permissible distributee of trust income or principal if the interests of the
9 distributees described in subsection (16)(a) terminated on that date without causing the trust to terminate; or

10 (c) would be a distributee or permissible distributee of trust income or principal if the trust terminated on
11 that date.

12 (17) "Revocable", as applied to a trust, means revocable by the settlor without the consent of the trustee
13 or a person holding an adverse interest.

14 (18) "Settlor" means a person, including a testator, who creates or contributes property to a trust. If more
15 than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust
16 property attributable to that person's contribution except to the extent another person has the power to revoke
17 or withdraw that portion.

18 (19) "Spendthrift provision" means a term of a trust that restrains both voluntary and involuntary transfer
19 of a beneficiary's interest.

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

23 (21) "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as
24 expressed in the trust instrument or as may be established by other evidence that would be admissible in a
25 judicial proceeding.

26 (22) "Trust instrument" means an instrument executed by the settlor that contains terms of the trust,
27 including any amendments thereto.

28 (23) "Trustee" includes an original, additional, and successor trustee and a cotrustee.

29

30 NEW SECTION. **Section 4. Knowledge.** (1) Subject to subsection (2), a person has knowledge of or

1 knows a fact if the person:

2 (a) has actual knowledge of it;

3 (b) has received a notice or notification of it; or

4 (c) from all the facts and circumstances known to the person at the time in question, has reason to know
5 it.

6 (2) An organization that conducts activities through employees has notice or knowledge of a fact
7 involving a trust only from the time the information was received by an employee having responsibility to act for
8 the trust or would have been brought to the employee's attention if the organization had exercised reasonable
9 diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating
10 significant information to the employee having responsibility to act for the trust and there is reasonable
11 compliance with the routines. Reasonable diligence does not require an employee of the organization to
12 communicate information unless the communication is part of the individual's regular duties or the individual
13 knows a matter involving the trust would be materially affected by the information.

14
15 **NEW SECTION. Section 5. Default and mandatory rules.** (1) Except as otherwise provided in the
16 terms of the trust, [sections 1 through 132] govern the duties and powers of a trustee, relations among trustees,
17 and the rights and interests of a beneficiary.

18 (2) The terms of a trust prevail over any provision of [sections 1 through 132] except:

19 (a) the requirements for creating a trust;

20 (b) the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust
21 and the interests of the beneficiaries;

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

24 (d) the power of the court to modify or terminate a trust under [sections 59 through 65];

25 (e) the effect of a spendthrift provision;

26 (f) the power of the court under [section 80] to require, dispense with, or modify or terminate a bond;

27 (g) the power of the court under [section 86(2)] to adjust a trustee's compensation specified in the terms
28 of the trust that is unreasonably low or high;

29 (h) the effect of an exculpatory term under [section 125];

30 (i) the rights under [sections 127 through 130] of a person other than a trustee or beneficiary;

- 1 (j) the periods of limitation for commencing a judicial proceeding;
- 2 (k) the power of the court to take the action and exercise the jurisdiction that may be necessary in the
- 3 interests of justice; and
- 4 (l) the subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in
- 5 [sections 24 and 28].

6

7 **NEW SECTION. Section 6. Common law of trusts -- principles of equity.** The common law of trusts

8 and principles of equity supplement [sections 1 through 132] except to the extent modified by [sections 1 through

9 132] or another statute of this state.

10

11 **NEW SECTION. Section 7. Governing law.** The meaning and effect of the terms of a trust are

12 determined by:

- 13 (1) the law of the jurisdiction designated in the terms unless the designation of that jurisdiction's law is
- 14 contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue;
- 15 or
- 16 (2) in the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having
- 17 the most significant relationship to the matter at issue.

18

19 **NEW SECTION. Section 8. Principal place of administration.** (1) Without precluding other means

20 for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal

21 place of administration are valid and controlling if:

- 22 (a) a trustee's principal place of business is located in or a trustee is a resident of the designated
- 23 jurisdiction; or
- 24 (b) all or part of the administration occurs in the designated jurisdiction.

25 (2) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its

26 administration, and the interests of the beneficiaries.

27 (3) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in

28 furtherance of the duty prescribed by subsection (2), may transfer the trust's principal place of administration to

29 another state or to a jurisdiction outside of the United States.

30 (4) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place

1 of administration not less than 60 days before initiating the transfer. The notice of proposed transfer must include:

- 2 (a) the name of the jurisdiction to which the principal place of administration is to be transferred;
- 3 (b) the address and telephone number at the new location at which the trustee can be contacted;
- 4 (c) an explanation of the reasons for the proposed transfer;
- 5 (d) the date on which the proposed transfer is anticipated to occur; and
- 6 (e) the date, not less than 60 days after the giving of the notice, by which the qualified beneficiary shall
- 7 notify the trustee of an objection to the proposed transfer.

8 (5) The authority of a trustee under this section to transfer a trust's principal place of administration

9 terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the

10 date specified in the notice.

11 (6) In connection with a transfer of the trust's principal place of administration, the trustee may transfer

12 some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant

13 to [section 82].

14

15 **NEW SECTION. Section 9. Methods and waiver of notice.** (1) (a) Notice to a person under [sections

16 1 through 132] or the sending of a document to a person under [sections 1 through 132] must be accomplished

17 in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document.

18 (b) Permissible methods of notice or for sending a document include first-class mail, personal delivery,

19 delivery to the person's last-known place of residence or place of business, or a properly directed electronic

20 message.

21 (c) Notice of at least 30 days prior to the event for which notice is given must be reasonable unless

22 otherwise specifically provided in [sections 1 through 132].

23 (2) Notice otherwise required under [sections 1 through 132] or a document otherwise required to be sent

24 under [sections 1 through 132] need not be provided to a person whose identity or location is unknown to and

25 not reasonably ascertainable by the trustee.

26 (3) Notice under [sections 1 through 132] or the sending of a document under [sections 1 through 132]

27 may be waived by the person to be notified or sent the document.

28 (4) Notice of a judicial proceeding must be given as provided in [sections 31 through 35].

29

30 **NEW SECTION. Section 10. Others treated as qualified beneficiaries.** (1) Except for [section 100],

1 whenever notice to qualified beneficiaries of a trust is required under [sections 1 through 132], the trustee shall
2 also give notice to any other beneficiary who has sent the trustee a request for notice.

3 (2) A charitable organization expressly designated to receive distributions under the terms of a charitable
4 trust has the rights of a beneficiary and a qualified beneficiary under [sections 1 through 132] if the charitable
5 organization, on the date the charitable organization's qualification is being determined:

6 (a) is a distributee or permissible distributee of trust income or principal;

7 (b) would be a distributee or permissible distributee of trust income or principal upon the termination of
8 the interests of other distributees or permissible distributees then receiving or eligible to receive distributions; or

9 (c) would be a distributee or permissible distributee of trust income or principal if the trust terminated on
10 that date.

11 (3) A person appointed to enforce a trust created for the care of an animal or another noncharitable
12 purpose as provided in [section 57 or 58] has the rights of a qualified beneficiary under [sections 1 through 132].

13 (4) With respect to a charitable trust having its principal place of administration in this state:

14 (a) The attorney general of this state has the rights of a beneficiary.

15 (b) The attorney general of this state has the following two rights of a qualified beneficiary:

16 (i) the right to request information pursuant to [subsection 100(1)]; and

17 (ii) the right to request a copy of the annual report pursuant to [section 100(3)].

18 (c) The attorney general of this state has all of the rights of a qualified beneficiary if, on the date that a
19 determination is being made as to the rights of the attorney general under this subsection:

20 (i) any charitable organization:

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

22 (B) would be a distributee or permissible distributee of trust income or principal if the trust terminated
23 on that date; and

24 (ii) no charitable organization expressly designated to receive distributions under the terms of the
25 charitable trust:

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

27 (B) would be a distributee or permissible distributee of trust income or principal if the trust terminated
28 on that date.

29

30 NEW SECTION. **Section 11. Nonjudicial settlement agreements.** (1) For purposes of this section,

1 "interested persons" means persons whose consent would be required in order to achieve a binding settlement
2 were the settlement to be approved by the court.

3 (2) Except as otherwise provided in subsection (4)(c), interested persons may enter into a binding
4 nonjudicial settlement agreement with respect to any matter involving a trust.

5 (3) Except as provided in [section 60(1)], a nonjudicial settlement agreement is valid only to the extent
6 it does not violate a material purpose of the trust and includes terms and conditions that could be properly
7 approved by the court under [sections 1 through 132].

8 (4) Matters that may be resolved by a nonjudicial settlement agreement include but are not limited to:

9 (a) the interpretation or construction of the terms of the trust;

10 (b) the approval of a trustee's report or accounting;

11 (c) direction to a trustee to refrain from performing a particular act or the grant to a trustee of any
12 necessary or desirable power;

13 (d) the resignation or appointment of a trustee and the determination of a trustee's compensation;

14 (e) transfer of a trust's principal place of administration; and

15 (f) liability of a trustee for an action relating to the trust.

16 (5) Any interested person may request the court to approve a nonjudicial settlement agreement, to
17 determine whether the representation as provided in [sections 45 through 49] was adequate, and to determine
18 whether the agreement contains terms and conditions the court could have properly approved.

19

20 **NEW SECTION. Section 12. Rules of construction.** The rules of construction that apply in this state
21 to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the
22 terms of a trust and the disposition of the trust property.

23

24 **NEW SECTION. Section 13. Insurable interest of trustee.** (1) In this section, "settlor" means a person
25 who executes a trust instrument. The term includes a person for which a fiduciary or agent is acting.

26 (2) A trustee of a trust has an insurable interest in the life of an individual insured under a life insurance
27 policy that is owned by the trustee of the trust acting in a fiduciary capacity or that designates the trust itself as
28 the owner if, on the date the policy is issued:

29 (a) the insured is:

30 (i) a settlor of the trust; or

1 (ii) an individual in whom a settlor of the trust has, or would have had if living at the time the policy was
2 issued, an insurable interest; and

3 (b) the life insurance proceeds are primarily for the benefit of one or more trust beneficiaries who have
4 an insurable interest in the life of the insured as provided in 33-15-201.

5
6 **NEW SECTION. Section 14. Resulting trust upon failure of trust.** When the owner of property
7 gratuitously transfers it and manifests in the trust instrument an intention that the transferee should hold the
8 property in trust but the trust fails, the transferee holds the trust estate as a resulting trust for the transferor or the
9 transferor's estate unless:

10 (1) the transferor manifested in the trust instrument an intention that no resulting trust should arise; or

11 (2) the intended trust fails for illegality and the policy against unjust enrichment of the transferee is
12 outweighed by the policy against giving relief to a person who has entered into an illegal transaction.

13
14 **NEW SECTION. Section 15. Resulting trust upon full performance of trust.** When the owner of
15 property gratuitously transfers it subject to a trust that is properly declared and that is fully performed without
16 exhausting the trust estate, the trustee holds the surplus as a resulting trust for the transferor or the transferor's
17 estate unless the transferor manifested in the trust instrument an intention that no resulting trust of the surplus
18 should arise.

19
20 **NEW SECTION. Section 16. Purchase money resulting trust.** (1) When a transfer of property is made
21 to one person and the purchase price is paid by another, a resulting trust arises in favor of the person who paid
22 the purchase price.

23 (2) Subsection (1) does not apply in any of the following circumstances:

24 (a) whenever the party paying the purchase price manifests an intention that no resulting trust should
25 arise;

26 (b) whenever the transferee is a spouse, child, or other natural object of the bounty of the person who
27 paid the purchase price; or

28 (c) whenever the transfer is made in order to accomplish an illegal purpose and the policy against unjust
29 enrichment of the transferee is outweighed by the policy against giving relief to a person who has entered into
30 an illegal transaction.

1 (3) Subsection (2)(b) does not apply if the party paying the purchase price manifested an intention that
2 the transferee should not have the beneficial interest in the property.

3
4 NEW SECTION. Section 17. Constructive trust. A constructive trust arises when a person holding
5 title to property is subject to an equitable duty to convey it to another on the ground that the person holding title
6 would be unjustly enriched if the holder were permitted to retain it.

7
8 NEW SECTION. Section 18. Resulting trusts -- constructive trusts -- statute of frauds. Resulting
9 trusts and constructive trusts are considered to arise by operation of law and are valid under [section 56(3)].

10
11 NEW SECTION. Section 19. Scope and effect of part -- proposed action or inaction described.

12 (1) Subject to [section 20(2)], a trustee may give a notice of proposed action or notice of proposed inaction
13 regarding a matter governed by [sections 88 through 104], [sections 112 through 117], the provisions of Title 72,
14 chapter 3, part 4, or any other provision of law or [sections 1 through 132] under which a trustee has discretion
15 to act as provided in [sections 19 through 23].

16 (2) For the purpose of [sections 19 through 23], a proposed action includes a course of action or a
17 decision not to take action. [Sections 19 through 23] do not preclude an application or assertion of any other rights
18 or remedies available to an interested party as otherwise provided in [sections 1 through 132] regarding an action
19 to be taken or not to be taken by the trustee.

20
21 NEW SECTION. Section 20. When use of notice authorized. (1) The trustee who elects to provide
22 notice pursuant to this part shall provide notice of the proposed action or notice of proposed inaction to each
23 qualified beneficiary as provided in [sections 19 through 23].

24 (2) Notwithstanding any other provisions of [sections 19 through 23], the trustee may not use a notice
25 of proposed action or notice of proposed inaction in any of the following circumstances:

- 26 (a) allowance of the trustee's compensation;
27 (b) allowance of compensation of the attorney for the trustee;
28 (c) settlement of accounts or reports;
29 (d) preliminary and final distributions and discharge;
30 (e) sale of property of the trust to the trustee or to the attorney for the trustee;

1 (f) exchange of property of the trust for property of the trustee or for property of the attorney for the
2 trustee;

3 (g) grant of an option to purchase property of the trust to the trustee or to the attorney for the trustee;

4 (h) allowance, payment, or compromise of a claim of the trustee, or the attorney for the trustee, against
5 the trust;

6 (i) compromise of settlement of a claim, action, or proceeding by the trust against the trustee or against
7 the attorney for the trust; and

8 (j) extension, renewal, or modification of the terms of a debt or other obligation of the trustee, or the
9 attorney for the trustee, owing to or in favor of the trust.

10 (3) Notice of proposed action or notice of proposed inaction is not required to be given to a qualified
11 beneficiary who consents in writing to the proposed action or inaction. The consent may be executed at any time
12 before or after the effective date of the proposed action or inaction.

13 (4) A trustee is not required to provide a copy of the notice of the proposed action or notice of proposed
14 inaction to a qualified beneficiary who is known to the trustee but who cannot be located by the trustee after
15 reasonable diligence or who is unknown to the trustee.

16

17 **NEW SECTION. Section 21. Content of notice.** The notice of proposed action or notice of proposed
18 inaction must state that it is given pursuant to this part and must include all of the following:

19 (1) the name and mailing address of the trustee;

20 (2) the name and telephone number of a person who may be contacted for additional information;

21 ~~(3) a description of the action or inaction proposed and an explanation of the reasons for the action or~~
22 ~~inaction;~~

23 (3) A DESCRIPTION OF THE ACTION OR INACTION PROPOSED, THE MATERIAL FACTS UPON WHICH THE TRUSTEE
24 HAS RELIED IN MAKING ITS DECISION REGARDING THE PROPOSED ACTION OR INACTION, AND AN EXPLANATION OF THE
25 REASONS FOR THE ACTION OR INACTION;

26 (4) A STATEMENT THAT FAILURE OF A QUALIFIED BENEFICIARY TO OBJECT WITHIN THE ALLOWED TIME BARS THE
27 QUALIFIED BENEFICIARY FROM TAKING ANY LEGAL ACTION AGAINST THE TRUSTEE FOR LIABILITY WITHIN THE SCOPE OF
28 [SECTION 22] EXCEPT AS PROVIDED IN [SECTION 22(3)] AND THAT A QUALIFIED BENEFICIARY MAY WANT TO SEEK
29 INDEPENDENT LEGAL ADVICE REGARDING THE MATTER AT THE QUALIFIED BENEFICIARY'S EXPENSE;

30 (5) THE TIME WITHIN WHICH OBJECTIONS TO THE PROPOSED ACTION OR INACTION CAN BE MADE, WHICH MUST

1 BE AT LEAST 30 DAYS FROM PROVIDING THE NOTICE OF PROPOSED ACTION OR NOTICE OF PROPOSED INACTION;

2 ~~(4)(6)~~ the time within which objections to the proposed action or inaction can be made, which must be
3 at least 30 days from providing the notice of proposed action or notice of proposed inaction; and

4 ~~(5)(7)~~ the date on or after which the proposed action or inaction is effective.

5
6 **NEW SECTION. Section 22. Objection to proposed action or inaction -- petition -- liability of**

7 **trustee.** (1) A qualified beneficiary may object to the proposed action or inaction by providing a written objection
8 to the trustee at the address stated in the notice of proposed action or notice of proposed inaction within the time
9 period specified in the notice of proposed action or notice of proposed inaction. THE WRITTEN OBJECTION MAY TAKE
10 ANY FORM REASONABLY CALCULATED TO COMMUNICATE THE OBJECTION BUT NEED NOT GIVE ANY REASON FOR THE
11 OBJECTION.

12 (2) ~~A~~ EXCEPT AS PROVIDED IN SUBSECTION (3), A trustee is not liable to a qualified beneficiary for an action
13 or inaction regarding a matter governed by this part if the trustee does not receive a written objection to the
14 proposed action or inaction from the qualified beneficiary within the applicable period and the other requirements
15 of this part are satisfied. ~~If~~ EXCEPT AS PROVIDED IN SUBSECTION (3), IF no qualified beneficiary objects under this
16 section, the trustee is not liable to any qualified beneficiary with respect to the proposed action or inaction. This
17 section does not apply to an unborn or minor child or an incapacitated adult unless notice of the proposed action
18 is provided to an appropriate representative pursuant to [section 47].

19 (3) THE FAILURE OF A QUALIFIED BENEFICIARY TO OBJECT DOES NOT PRECLUDE THE QUALIFIED BENEFICIARY
20 FROM HOLDING THE TRUSTEE LIABLE FOR A BREACH OF TRUST IN ANY OF THE FOLLOWING CIRCUMSTANCES:

21 (A) IF THE QUALIFIED BENEFICIARY AT THE TIME OF THE QUALIFIED BENEFICIARY'S FAILURE TO OBJECT DID NOT
22 HAVE NOTICE OF THE PROPOSED ACTION AS PRESCRIBED IN [SECTIONS 19 THROUGH 23]; OR

23 (B) IF THE QUALIFIED BENEFICIARY'S FAILURE TO OBJECT WAS INDUCED BY IMPROPER CONDUCT OF THE TRUSTEE.

24 ~~(3)(4)~~ If the trustee receives a written objection to a notice of proposed action within the applicable period,
25 either the trustee or a qualified beneficiary may petition the court to have the proposed action taken as proposed,
26 taken with modifications, or denied. In the proceeding, ~~a qualified beneficiary objecting to the proposed action~~
27 THE TRUSTEE has the burden of proving that the trustee's proposed action should ~~not~~ be taken. A qualified
28 beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding.

29 ~~(4)(5)~~ If the trustee decides not to implement the proposed action, the trustee shall notify the qualified
30 beneficiaries of the decision not to take the action and the reasons for the decision, and the trustee's decision

1 not to implement the proposed action does not itself give rise to liability to any beneficiary. A qualified beneficiary
 2 may petition the court to have the action taken, and the qualified beneficiary has the burden of proving that it
 3 should be taken.

4 ~~(5)~~(6) If the trustee receives a written objection to a notice of proposed inaction within the applicable
 5 period, either the trustee or a qualified beneficiary may petition the court to approve the proposed inaction. In
 6 the proceeding, ~~a qualified beneficiary objecting to the proposed inaction~~ THE TRUSTEE has the burden of proving
 7 that the trustee should NOT act. A qualified beneficiary who has not objected is not estopped from opposing the
 8 proposed inaction in the proceeding.

9 ~~(6)~~(7) If after providing a notice of proposed inaction, the trustee decides to act, the trustee shall notify
 10 the qualified beneficiaries of the decision to act and the reasons for the decision, and the trustee's decision does
 11 not itself give rise to liability to any beneficiary. A qualified beneficiary may petition the court to direct the trustee
 12 not to act, and the qualified beneficiary has the burden of proof.

13
 14 NEW SECTION. Section 23. Procedures not required. [Sections 19 through 23] does not require a
 15 trustee to use these procedures prior to taking any action or deciding not to act.

16
 17 NEW SECTION. Section 24. Subject matter jurisdiction. (1) The district court having jurisdiction over
 18 the trust pursuant to [sections 1 through 132] has exclusive jurisdiction of proceedings concerning the internal
 19 affairs of trusts.

20 (2) The district court having jurisdiction over the trust pursuant to [sections 1 through 132] has concurrent
 21 jurisdiction of the following:

- 22 (a) actions and proceedings to determine the existence of trusts;
 23 (b) actions and proceedings by or against creditors or debtors of trusts; and
 24 (c) other actions and proceedings involving trustees and third persons.

25
 26 NEW SECTION. Section 25. Powers of court. In proceedings concerning the internal affairs of trusts
 27 commenced pursuant to [sections 1 through 132], the court has all the powers of a district court exercising its
 28 general jurisdiction.

29
 30 NEW SECTION. Section 26. Jurisdiction over trustees and beneficiaries. Subject to [section 27]:

1 (1) by accepting the trusteeship of a trust having its principal place of administration in this state, the
2 trustee submits personally to the jurisdiction of the court under [sections 1 through 132];

3 (2) to the extent of their interests in the trust, all beneficiaries of a trust having its principal place of
4 administration in this state are subject to the jurisdiction of the court under [sections 1 through 132]; and

5 (3) by accepting a distribution from a trust having its principal place of administration in this state, the
6 recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

7
8 **NEW SECTION. Section 27. Basis of jurisdiction over trust, trust property, and trust parties.** The
9 court may exercise jurisdiction in proceedings under [sections 24 through 44] on any basis permitted by [sections
10 24 through 44] or by Rule 4, Montana Rules of Civil Procedure.

11
12 **NEW SECTION. Section 28. Venue.** (1) Except as otherwise provided in subsection (2), venue for a
13 judicial proceeding involving a trust is in the county of this state in which the trust's principal place of
14 administration is or will be located and, if the trust is created by will and the estate is not yet closed, in the county
15 in which the decedent's estate is being administered.

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

19 (3) Except as otherwise provided in subsections (1) and (2), the proper county for commencement of
20 a proceeding pursuant to [sections 1 through 132] is determined by the rules applicable to civil actions generally.

21
22 **NEW SECTION. Section 29. Rules of procedure in trust proceedings.** (1) The pleadings described
23 in [section 37] are permitted pleadings in judicial proceedings under [sections 1 through 132].

24 ~~(2) Subject to the provisions of subsection (3), the Montana Rules of Civil Procedure, including the rules~~
25 ~~permitting discovery, do not apply to trust proceedings.~~

26 ~~———— (3) Upon motion and for good cause shown in the interest of justice, the court may order that any~~
27 ~~provision or provisions of the Montana Rules of Civil Procedure, including discovery, must apply to a proceeding~~
28 ~~brought under [sections 1 through 132].~~

29 (2) UNLESS SPECIFICALLY PROVIDED TO THE CONTRARY IN [SECTIONS 1 THROUGH 132] OR UNLESS
30 INCONSISTENT WITH [SECTIONS 1 THROUGH 132], THE RULES OF CIVIL PROCEDURE, INCLUDING THE RULES CONCERNING

1 VACATION OF ORDERS AND APPELLATE REVIEW, GOVERN PROCEEDINGS UNDER [SECTIONS 1 THROUGH 132].

2

3 NEW SECTION. Section 30. Jury trial. There is no right to a jury trial in proceedings under [sections
4 1 through 132] concerning the internal affairs of trusts.

5

6 NEW SECTION. Section 31. Application. [Sections 32 through 35] apply to notice in proceedings
7 commenced pursuant to [sections 24 through 44].

8

9 NEW SECTION. Section 32. Notice -- method and time of giving. (1) If notice of a hearing on any
10 petition is required and except for specific notice requirements as otherwise provided in [sections 1 through 132],
11 the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested
12 person or the person's attorney if the person has appeared by attorney or requested that notice be sent to the
13 person's attorney.

14 (2) Notice must be given:

15 (a) by mailing a copy of the notice at least 14 days before the time set for the hearing by certified mail
16 or ordinary first-class mail addressed to the person being notified at the post-office address given in the person's
17 demand for notice, if any, or at the person's office or place of residence, if known;

18 (b) by delivering a copy of the notice to the person being notified personally at least 14 days before the
19 time set for the hearing; or

20 (c) if the address or identity of any person is not known and cannot be ascertained with reasonable
21 diligence, by publishing the notice in a weekly paper once a week for 3 consecutive weeks and, if in a newspaper
22 published more often than once a week, by publishing on at least 3 different days of publication. There must be
23 at least 10 days from the first to the last day of publication, both the first and last day being included.

24 (3) The court for good cause shown may provide for a different method or time of giving notice for any
25 hearing.

26 (4) Proof of the giving of notice must be made on or before the hearing and filed in the proceeding. If it
27 appears to the satisfaction of the court that notice has been regularly given or that the party entitled to notice has
28 waived, the court shall so find in its order. When the order becomes final, it is conclusive on all persons, whether
29 or not in being.

30

1 **NEW SECTION. Section 33. Waiver of notice.** A person, including a guardian ad litem, conservator,
2 or other fiduciary, may waive notice by a writing signed by the person or the person's attorney and filed in the
3 proceeding.

4
5 **NEW SECTION. Section 34. Pleadings -- when orders or notice binding one binds another --**
6 **representation.** In proceedings involving trusts, the following apply:

7 (1) Interests to be affected must be described in pleadings that give reasonable information to owners
8 by name or class, by reference to the instrument creating the interests, or in other appropriate manner.

9 (2) Persons are bound by orders binding others in the following cases:

10 (a) Orders binding the sole holder or all coholders of a power of revocation or a presently exercisable
11 general power of appointment, including one in the form of a power of amendment, bind other persons to the
12 extent their interests, as objects, takers in default, or otherwise, are subject to the power.

13 (b) (i) To the extent there is no conflict of interest between them or among persons represented, orders
14 binding a:

15 (A) conservator bind the person whose estate the conservator controls;

16 (B) guardian bind the ward if a conservator of the ward's estate has not been appointed;

17 (C) trustee bind beneficiaries of the trust in proceedings establishing or adding to a trust, to review the
18 acts or accounts of a prior fiduciary, and in proceedings involving creditors or other third parties; and

19 (D) personal representative bind persons interested in the undistributed assets of a decedent's estate
20 in actions or proceedings by or against the estate.

21 (ii) If there is no conflict of interest and a conservator or guardian has not been appointed, a parent may
22 represent the parent's minor child.

23 (c) An unborn or unascertained person who is not otherwise represented is bound by an order to the
24 extent the person's interest is adequately represented by another party having a substantially identical interest
25 in the proceeding.

26 (3) Notice is required as follows:

27 (a) Notice as prescribed by [section 32] must be given to every interested person or to one who can bind
28 an interested person as described in subsection (2)(a) or (2)(b). Notice may be given both to a person and to
29 another who may bind the person.

30 (b) Notice is given to unborn or unascertained persons who are not represented under subsection (2)(a)

1 or (2)(b) by giving notice to all known persons whose interests in the proceedings are substantially identical to
2 those of the unborn or unascertained persons.

3 (4) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a
4 minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown if
5 the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict
6 of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set
7 out its reasons for appointing a guardian ad litem as a part of the record of the proceeding. The guardian ad litem
8 is entitled to reasonable compensation and to costs and expenses, including attorney fees.

9 (5) The notice for a petition and hearing requesting the court to settle reports or pass upon the acts of
10 the trustee or that otherwise may affect substantive property rights of a beneficiary or other interested party must
11 state that fact in the notice and must further state that failure to appear and object bars any further claims against
12 the trustee relating to the subject matter of the petition.

13
14 **NEW SECTION. Section 35. Additional notice.** (1) The court may, on its own motion or on motion of
15 a trustee or other person interested in the trust, require that further or additional notice be given at any stage of
16 the proceeding. The court may prescribe the form and method of the notice to be given.

17 (2) A petitioner or other person required to give notice may cause notice to be given to any person
18 interested in the trust without the need for a court order.

19
20 **NEW SECTION. Section 36. Petitioners -- grounds for petition.** (1) Except as provided in [section
21 75], a trustee or beneficiary of a trust may petition the court under [sections 1 through 132] concerning the internal
22 affairs of the trust or to determine the existence of the trust.

23 (2) Proceedings concerning the internal affairs of a trust include but are not limited to proceedings for
24 any of the following purposes:

- 25 (a) determining questions of construction of a trust instrument;
- 26 (b) determining the existence or nonexistence of any immunity, power, privilege, duty, or right;
- 27 (c) determining the validity of a trust provision;
- 28 (d) ascertaining beneficiaries and determining to whom property must pass or be delivered upon final
29 or partial termination of the trust, to the extent the determination is not made by the trust instrument;
- 30 (e) settling the accounts and passing upon the acts of the trustee, including the exercise of discretionary

- 1 powers;
- 2 (f) instructing the trustee;
- 3 (g) compelling the trustee to provide information about the trust or submit a report to a qualified
- 4 beneficiary if:
- 5 (i) the trustee has failed to provide information or submit a requested report within 60 days after written
- 6 request of the qualified beneficiary; and
- 7 (ii) in the case of a report, no report has been made within 6 months preceding the request;
- 8 (h) granting powers to the trustee;
- 9 (i) fixing or allowing payment of the trustee's compensation;
- 10 (j) appointing or removing a trustee;
- 11 (k) accepting the resignation of a trustee;
- 12 (l) compelling redress of a breach of the trust by any available remedy;
- 13 (m) approving or directing the modification or termination of the trust;
- 14 (n) approving or directing the combination or division of trusts;
- 15 (o) amending or conforming the trust instrument in the manner required to qualify a decedent's estate
- 16 for the charitable estate tax deduction under federal law, including the addition of mandatory governing instrument
- 17 requirements for a charitable remainder trust as required by final regulations and rulings of the United States
- 18 Internal Revenue Service, in any case in which all parties interested in the trust have submitted written agreement
- 19 to the proposed changes or written disclaimer of interest;
- 20 (p) authorizing or directing transfer of a trust or trust property to or from another jurisdiction;
- 21 (q) directing transfer of a testamentary trust subject to continuing court jurisdiction from one county to
- 22 another;
- 23 (r) approving removal of a testamentary trust from continuing court jurisdiction; or
- 24 (s) reforming or excusing compliance with the governing instrument of an organization pursuant to
- 25 [section 110].

26

27 **NEW SECTION. Section 37. Commencement of proceedings.** (1) A proceeding under [sections 1

28 through 132] is commenced by filing a verified petition stating facts showing that the petition is authorized under

29 [sections 1 through 132] and the grounds of the petition.

30 (2) The following pleadings are specifically permitted:

- 1 (a) a petition filed pursuant to [sections 1 through 132];
2 (b) a report or account filed in regard to a petition filed pursuant to [sections 1 through 132]; and
3 (c) an objection or response filed in regard to a petition, report, or account filed pursuant to [sections 1
4 through 132].
- 5 (3) When a petition that requires a hearing is filed with the court clerk, the clerk shall set the matter for
6 hearing.
- 7 (4) Except as provided in 25-4-203 regarding verification by an agent or attorney, all pleadings described
8 in subsection (2) must be verified as follows:
- 9 (a) A petition must be verified by the petitioner or, if there are two or more parties joining in the petition,
10 by any one of the petitioners.
- 11 (b) A report or account must be verified by the person who has the duty to make the report or, if there
12 are two or more persons having a duty to report, by any one of the persons having the duty.
- 13 (c) An objection or response must be verified by the objector or respondent or, if there are two or more
14 parties joining in the objection or response, by any one of the objectors or respondents.
- 15 (5) In any trust proceeding, an affidavit or verified petition must be received as evidence when offered
16 in an uncontested proceeding under [sections 1 through 132].
- 17 (6) In addition to the verification required by 25-4-203 and subsection (5), every pleading filed in
18 connection with any trust proceeding must be signed by the attorney of the person filing the pleading if the person
19 is represented by an attorney.
- 20 (7) Nothing in [sections 1 through 132] precludes the commencement, within a decedent's probate, of
21 a trust proceeding for the construction of a testamentary trust, provided the probate has not previously been
22 closed pursuant to Title 72, chapter 3, part 10.

23
24 **NEW SECTION. Section 38. Dismissal of petition.** The court may dismiss a petition if it appears that
25 the proceeding is not reasonably necessary for the protection of the interests of the trustee or beneficiary.

26
27 **NEW SECTION. Section 39. Request for special notice.** (1) If proceedings involving a trust are
28 pending, a beneficiary of the trust may, in person or by attorney, serve on the trustee or the trustee's attorney and
29 file with the court clerk where the proceedings are pending a written request stating that the beneficiary desires
30 special notice of the filing of all pleadings in the proceeding relating to any or all of the purposes described in

1 [section 36] and giving an address for receiving notice by mail. Proof of service of the request on the trustee must
2 be filed with the court clerk when the request is filed.

3 (2) Except as provided in subsection (3), after serving and filing a request and proof of service pursuant
4 to subsection (1), the beneficiary is entitled to notice pursuant to [section 32].

5 (3) A request for special notice made by a beneficiary whose right to notice is restricted by [section 75]
6 is not effective.

7
8 **NEW SECTION. Section 40. Request for copy of petition.** If a trustee or beneficiary has served and
9 filed either a notice of appearance, in person or by counsel, directed to the petitioner or the petitioner's counsel
10 in connection with a particular petition and proceeding or a written request for a copy of the petition and has given
11 an address to which notice or a copy of the petition may be mailed or delivered, the petitioner shall mail a copy
12 of the petition to the trustee or beneficiary within 5 days after service of the notice of appearance or receipt of the
13 request.

14
15 **NEW SECTION. Section 41. Authority to make necessary orders -- temporary trustee.** The court
16 in its discretion may make any orders and take any other action necessary or proper to dispose of the matters
17 presented by the petition, including appointment of a temporary trustee to administer the trust in whole or in part.
18

19 **NEW SECTION. Section 42. Appeal.** An appeal may be taken from the grant or denial of any final order
20 made under [sections 1 through 132] except the following:

21 (1) compelling the trustee to provide information or submit a report to a qualified beneficiary pursuant
22 to [section 36(2)(g)];

23 (2) accepting the resignation of a trustee pursuant to [section 36(2)(k)]; or

24 (3) approving removal of a testamentary trust from continuing court jurisdiction pursuant to [section
25 36(2)(r)].

26
27 **NEW SECTION. Section 43. Intermittent judicial intervention in trust administration.** The
28 administration of trusts is intended to proceed expeditiously and free of judicial intervention, subject to the
29 jurisdiction of the court.

30

1 **NEW SECTION. Section 44. Enforcement of beneficiary's rights under charitable trust by attorney**
2 **general.** In a case involving a charitable trust subject to the jurisdiction of the attorney general, the attorney
3 general may petition under [sections 1 through 132].
4

5 **NEW SECTION. Section 45. Representation -- basic effect.** (1) Notice to a person who may represent
6 and bind another person under [sections 45 through 49] has the same effect as if notice were given directly to
7 the other person.

8 (2) The consent of a person who may represent and bind another person under [sections 45 through 49]
9 is binding on the person represented unless the person represented objects to the representation by notifying
10 the trustee or representative before the consent would otherwise have become effective.

11 (3) Except as otherwise provided in [sections 59 and 74], a person who under [sections 45 through 49]
12 may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

13 (4) A settlor may not represent and bind a beneficiary under [sections 45 through 49] with respect to the
14 termination or modification of a trust under [section 59(1)].
15

16 **NEW SECTION. Section 46. Representation by holder of general testamentary power of**
17 **appointment.** To the extent there is no conflict of interest between the holder of a general testamentary power
18 of appointment and the persons represented with respect to the particular question or dispute, the holder may
19 represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are
20 subject to the power.
21

22 **NEW SECTION. Section 47. Representation by fiduciaries and parents.** To the extent there is no
23 conflict of interest between the representative and the person represented or among those being represented
24 with respect to a particular question or dispute:

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

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

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

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

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

3 (6) a parent may represent and bind the parent's minor or unborn child if a conservator or guardian for
4 the child has not been appointed. The parent entitled to represent and bind the child is determined in the
5 following order of priority:

6 (a) the parent who is a lineal descendant of a settlor;

7 (b) the parent who is a beneficiary of the trust that is the subject of the representation;

8 (c) the parent with legal custody of the child; and

9 (d) if one parent cannot be determined pursuant to the preceding criteria and if a disagreement arises
10 between the parents seeking to represent the same child, a guardian ad litem must be appointed to represent
11 the minor child.

12

13 **NEW SECTION. Section 48. Representation by person having substantially identical interest.**

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

18

19 **NEW SECTION. Section 49. Appointment of representative.** (1) If the court determines that an
20 interest is not represented under [sections 45 through 49] or that the otherwise available representation might
21 be inadequate, the court may appoint a representative to receive notice, give consent, and otherwise represent,
22 bind, and act on behalf of a minor, incapacitated, or unborn individual or a person whose identity or location is
23 unknown. A representative may be appointed to represent several persons or interests.

24 (2) A representative may act on behalf of the individual represented with respect to any matter arising
25 under [sections 1 through 132], whether or not a judicial proceeding concerning the trust is pending.

26 (3) In making decisions, a representative may consider general benefit accruing to the living members
27 of the individual's family.

28

29 **NEW SECTION. Section 50. Methods of creating trust.** A trust may be created by:

30 (1) transfer of property to a person as trustee during the settlor's lifetime or by will or other disposition

1 taking effect upon the settlor's death;

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

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

4

5 **NEW SECTION. Section 51. Requirements for creation.** (1) A trust is created only if:

6 (a) the settlor has capacity to create a trust;

7 (b) the settlor indicates an intention to create the trust;

8 (c) the trust has a definite beneficiary or is:

9 (i) a charitable trust;

10 (ii) a trust for the care of an animal, as provided in [section 57]; or

11 (iii) a trust for a noncharitable purpose, as provided in [section 58];

12 (d) the trustee has duties to perform; and

13 (e) the same person is not the sole trustee and sole beneficiary.

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

16 (3) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not
17 exercised within a reasonable time, the power fails and the property subject to the power passes to the persons
18 who would have taken the property had the power not been conferred.

19 (4) A conservation easement created or conveyed under Title 76, chapter 6, does not create a charitable
20 trust unless the settlor expresses a clear intention in the conservation easement instrument to create or convey
21 the conservation easement as a charitable trust.

22

23 **NEW SECTION. Section 52. Trusts created in other jurisdictions.** A trust not created by will is validly
24 created if its creation complies with the law of the jurisdiction in which the trust instrument was executed or the
25 law of the jurisdiction in which, at the time of creation:

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

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

28 (3) any trust property was located.

29

30 **NEW SECTION. Section 53. Trust purposes.** A trust may be created only to the extent its purposes

1 are lawful, not contrary to public policy, and possible to achieve. A trust and its terms must be for the benefit of
2 its beneficiaries.

3
4 **NEW SECTION. Section 54. Charitable purposes -- enforcement.** (1) A charitable trust may be
5 created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental
6 or municipal purposes, or other purposes the achievement of which is beneficial to the community.

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

10 (3) A proceeding to enforce a charitable trust may be brought by the settlor, the attorney general, a
11 charitable organization expressly named in the trust to receive distributions, or any other person with standing.

12
13 **NEW SECTION. Section 55. Creation of trust induced by fraud, duress, or undue influence.** A trust
14 is void to the extent its creation was induced by fraud, duress, or undue influence.

15
16 **NEW SECTION. Section 56. Statute of frauds.** A trust is not valid unless evidenced by one of the
17 following methods:

18 (1) by a written instrument signed by the trustee or by the trustee's agent if authorized in writing to do
19 so;

20 (2) by a written instrument signed by the settlor or by the settlor's agent if authorized in writing to do so;
21 or

22 (3) by operation of law.

23
24 **NEW SECTION. Section 57. Trust for care of animal.** (1) A trust may be created to provide for the
25 care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust
26 was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of
27 the last surviving animal.

28 (2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or,
29 if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of
30 the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

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

5
6 **NEW SECTION. Section 58. Noncharitable trust without ascertainable beneficiary.** Except as
7 otherwise provided in [section 57] or by another statute, the following rules apply:

8 (1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable
9 beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be
10 enforced for more than 21 years.

11 (2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or,
12 if no person is so appointed, by a person appointed by the court.

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

17
18 **NEW SECTION. Section 59. Modification or termination of trust -- proceedings for approval or**
19 **disapproval.** (1) In addition to the methods of termination prescribed by [sections 60 through 63], a trust
20 terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to
21 be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to
22 achieve.

23 (2) A proceeding to approve or disapprove a proposed modification or termination under [sections 60
24 through 65] or a trust combination or division under [section 66] may be commenced by a trustee or beneficiary,
25 and a proceeding to approve or disapprove a proposed modification or termination under [section 60] may be
26 commenced by the settlor. The settlor of a charitable trust may maintain a proceeding to modify the trust under
27 [section 62].

28
29 **NEW SECTION. Section 60. Modification or termination of irrevocable trust by consent.** (1) An
30 irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the

1 modification or termination is inconsistent with a material noncharitable purpose of the trust. Modification or
2 termination of a charitable trust requires the consent of the attorney general. A settlor's power to consent to a
3 trust's modification or termination may be exercised by an agent under a power of attorney only to the extent
4 expressly authorized by the power of attorney and the terms of the trust; by the settlor's conservator with the
5 approval of the court supervising the conservatorship if an agent is not so authorized; or by the settlor's guardian
6 with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has
7 not been appointed. This subsection does not apply to irrevocable trusts created before or to revocable trusts that
8 became irrevocable before October 1, 1989.

9 (2) An irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes
10 that continuance of the trust is not necessary to achieve any material purpose of the trust. An irrevocable trust
11 may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent
12 with a material purpose of the trust. Modification or termination of a charitable trust requires the consent of the
13 attorney general.

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

16 (4) Upon termination of a trust under subsection (1) or (2), the trustee shall distribute the trust property
17 as agreed by the beneficiaries. In the case of a charitable trust, the trust property must be distributed in accord
18 with the terms of the trust, and in the absence of applicable terms, consistent with the charitable purposes of the
19 trust as agreed by the attorney general and the beneficiaries or, if there are no charitable organizations with the
20 rights of a beneficiary and the termination is pursuant to subsection (1), then as agreed by the settlor and the
21 attorney general, but if the termination is pursuant to subsection (2), then as decided by the court.

22 (5) If not all of the beneficiaries consent to a proposed modification or termination of the trust under
23 subsection (1) or (2), the modification or termination may be approved by the court if the court is satisfied that:

24 (a) if all of the beneficiaries had consented, the trust could have been modified or terminated under this
25 section; and

26 (b) the interests of a beneficiary who does not consent will be adequately protected.

27
28 **NEW SECTION. Section 61. Modification or termination because of unanticipated circumstances**
29 **or inability to administer trust effectively.** (1) The court may modify the administrative or dispositive terms of
30 a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination

1 will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with
2 the settlor's probable intention.

3 (2) The court may modify the administrative terms of a trust if continuation of the trust on its existing
4 terms would be impracticable or wasteful or impair the trust's administration.

5 (3) Upon termination of a trust under this section, the trustee shall distribute the trust property in a
6 manner consistent with the purposes of the trust.

7
8 **NEW SECTION. Section 62. Cy pres.** (1) Except as otherwise provided in subsection (2), if a particular
9 charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful:

10 (a) the trust does not fail, in whole or in part;

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

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

14 (2) A provision in the terms of a charitable trust that would result in distribution of the trust property to
15 a noncharitable beneficiary prevails over the power of the court under subsection (1) to apply cy pres to modify
16 or terminate the trust only if, when the provision takes effect:

17 (a) the trust property is to revert to the settlor and the settlor is still living; or

18 (b) fewer than 21 years have elapsed since the date of the trust's creation.

19
20 **NEW SECTION. Section 63. Modification or termination of uneconomic trust.** (1) After notice to
21 the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than \$100,000
22 may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost
23 of administration.

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

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

28
29 **NEW SECTION. Section 64. Reformation to correct mistakes.** The court may reform the terms of
30 a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing

1 evidence what the settlor's intention was and that the terms of the trust were affected by a mistake of fact or law,
2 whether in expression or inducement.

3
4 **NEW SECTION. Section 65. Modification to achieve settlor's tax objectives.** To achieve the settlor's
5 tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable
6 intention. The court may provide that the modification has retroactive effect.

7
8 **NEW SECTION. Section 66. Combination and division of trusts.** After notice to the qualified
9 beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more
10 separate trusts if the result does not impair rights of any beneficiary or adversely affect achievement of the
11 purposes of the trust.

12
13 **NEW SECTION. Section 67. Rights of beneficiary's creditor or assignee.** To the extent a
14 beneficiary's interest is not subject to a spendthrift provision, the court may authorize a creditor or assignee of
15 the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the
16 benefit of the beneficiary or other means. The court may limit the award to the relief that is appropriate under the
17 circumstances.

18
19 **NEW SECTION. Section 68. Spendthrift provision.** (1) A spendthrift provision is valid only if it
20 restrains both voluntary and involuntary transfer of a beneficiary's interest.

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

23 (3) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision, and
24 except as otherwise provided in [sections 67 through 72], a creditor or assignee of the beneficiary may not reach
25 the interest or a distribution by the trustee before its receipt by the beneficiary.

26
27 **NEW SECTION. Section 69. Discretionary trusts -- effect of standard.** (1) Whether or not a trust
28 contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the
29 trustee's discretion even if:

30 (a) the discretion is expressed in the form of a standard of distribution; or

1 (b) the trustee has abused the discretion.

2 (2) This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee
3 for an abuse of discretion or failure to comply with a standard for distribution.

4 (3) If the trustee's or cotrustee's discretion to make distributions for the trustee's or cotrustee's own
5 benefit is limited by an ascertainable standard, a creditor may not reach or compel distribution of the beneficial
6 interest except to the extent the interest would be subject to the creditor's claim were the beneficiary not acting
7 as trustee or cotrustee.

8
9 **NEW SECTION. Section 70. Creditor's claim against settlor.** (1) Whether or not the terms of a trust
10 contain a spendthrift provision, the following rules apply:

11 (a) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's
12 creditors.

13 (b) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum
14 amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the
15 creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust
16 attributable to that settlor's contribution. A trustee's discretionary authority to pay directly or to reimburse the
17 settlor for any tax that is payable by the settlor on trust income or principal may not be considered to be an
18 amount that can be distributed to or for the settlor's benefit, and a creditor or assignee of the settlor is not entitled
19 to reach any amount solely by reason of this discretionary authority.

20 (c) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities
21 will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's
22 creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of
23 remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate
24 is inadequate to satisfy those claims, costs, expenses, and allowances.

25 (2) For purposes of this section:

26 (a) during the period the power may be exercised, the holder of a power of withdrawal is treated in the
27 same manner as the settlor of a revocable trust to the extent of the property subject to the power; and

28 (b) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only
29 to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount
30 specified in section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986, or section 2503(b) of the Internal

1 Revenue Code of 1986, in each case as in effect on the effective date of [sections 1 through 132] or as later
2 amended.

3
4 **NEW SECTION. Section 71. Overdue distribution.** (1) (a) In this section, "mandatory distribution"
5 means a distribution of income or principal that the trustee is required to make to a beneficiary under the terms
6 of the trust, including a distribution upon termination of the trust.

7 (b) The term does not include a distribution subject to the exercise of the trustee's discretion even if:

8 (i) the discretion is expressed in the form of a standard of distribution; or

9 (ii) the terms of the trust authorizing a distribution couple language of discretion with language of
10 direction.

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

15
16 **NEW SECTION. Section 72. Personal obligations of trustee.** Trust property is not subject to personal
17 obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

18
19 **NEW SECTION. Section 73. Capacity of settlor of revocable trust.** The capacity required to create,
20 amend, revoke, or add property to a revocable trust or to direct the actions of the trustee of a revocable trust is
21 the same as that required to make a will.

22
23 **NEW SECTION. Section 74. Revocation or amendment of revocable trust.** (1) Unless the terms of
24 a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection
25 does not apply to a trust created under an instrument executed before October 1, 1989.

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

27 (a) to the extent the trust consists of community property, the trust may be revoked by either party acting
28 alone but may be amended only by joint action of both parties;

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

1 (c) upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall
2 promptly provide notice to the other settlors of the revocation or amendment.

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

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

5 (b) if the terms of the trust do not provide a method, by a writing delivered to the trustee manifesting clear
6 and convincing evidence of the settlor's intent.

7 (4) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.
8 However, with respect to community property under subsection (2)(a), the trustee shall deliver the property to the
9 respective spouses, proportionate to their respective shares of the community property as prescribed by the laws
10 of the state out of which the community property interest arose, and the nonrevoking spouse may elect to have
11 the trust continue with respect to that spouse's share of the community property.

12 (5) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be
13 exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust
14 and the power of attorney.

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

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

21
22 **NEW SECTION. Section 75. Settlor's powers -- powers of withdrawal.** (1) Notwithstanding any other
23 provision in [sections 1 through 132], while a trust is revocable, all rights of the beneficiaries, including the right
24 to consent to any action, are exercisable solely by the settlor, and all duties of the trustee, including the duty to
25 provide notice, are owed exclusively to the settlor.

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

28
29 **NEW SECTION. Section 76. Limitation on action contesting validity of revocable trust --**
30 **distribution of trust property.** (1) A person may commence a judicial proceeding to contest the validity of a trust

1 that was revocable at the settlor's death within the earlier of:

2 (a) 3 years after the settlor's death; or

3 (b) 120 days after the trustee sent the person a copy of the trust instrument and a notice informing the
4 person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a
5 proceeding.

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

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

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

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

14
15 **NEW SECTION. Section 77. Fees and expenses -- by whom paid.** When the validity of a trust that
16 was revocable at the settlor's death is contested through a judicial proceeding, the attorney fees and costs, as
17 provided in 25-10-201, incurred in defending the validity of the trust must be paid by the party contesting the
18 validity of the trust if the trust is found valid. If the trust is found invalid, costs as provided in 25-10-201, but not
19 attorney fees of the objecting party, must be paid by the party who defended the validity of the trust or out of the
20 trust property, as the court directs.

21
22 **NEW SECTION. Section 78. Separate writing identifying disposition of tangible personal**
23 **property.** (1) A revocable trust instrument may refer to a written statement or list to dispose of items of tangible
24 personal property not otherwise specifically disposed of by the trust, other than money.

25 (2) To be admissible under this section as evidence of the intended disposition, the writing must be
26 signed by the settlor and must describe the items and the devisees with reasonable certainty.

27 (3) The writing may be:

28 (a) referred to as one to be in existence at the time of the settlor's death;

29 (b) prepared before or after the execution of the trust;

30 (c) altered by the settlor after its preparation; and

1 (d) a writing that has no significance apart from its effect upon the dispositions made by the trust.

2

3 **NEW SECTION. Section 79. Accepting or declining trusteeship.** (1) Except as otherwise provided

4 in subsection (3), a person designated as trustee accepts the trusteeship:

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

6 (b) if the terms of the trust do not provide a method or the method provided in the terms is not expressly
7 made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee,
8 or otherwise indicating acceptance of the trusteeship.

9 (2) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship.

10 A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the
11 designation is considered to have rejected the trusteeship.

12 (3) A person designated as trustee, without accepting the trusteeship, may:

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

15 (b) inspect or investigate trust property to determine potential liability under environmental or other law
16 or for any other purpose.

17

18 **NEW SECTION. Section 80. Trustee's bond.** (1) A trustee shall give bond to secure performance of
19 the trustee's duties only if the court finds that a bond is needed to protect the interests of the beneficiaries or is
20 required by the terms of the trust and the court has not dispensed with the requirement.

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

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

25

26 **NEW SECTION. Section 81. Cotrustees.** (1) Cotrustees who are unable to reach a unanimous
27 decision may act by majority decision.

28 (2) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

29 (3) A cotrustee shall participate in the performance of a trustee's function unless the cotrustee is
30 unavailable to perform the function because of absence, illness, disqualification under other law, or other

1 temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

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

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

8 (6) Except as otherwise provided in subsection (7), a trustee who does not join in an action of another
9 trustee is not liable for the action.

10 (7) Each trustee shall exercise reasonable care to:

11 (a) prevent a cotrustee from committing a serious breach of trust; and

12 (b) compel a cotrustee to redress a serious breach of trust.

13 (8) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who
14 notifies any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action
15 is a serious breach of trust.

16

17 **NEW SECTION. Section 82. Vacancy in trusteeship -- appointment of successor.** (1) A vacancy
18 in a trusteeship occurs if:

19 (a) a person designated as trustee rejects the trusteeship;

20 (b) a person designated as trustee cannot be identified or does not exist;

21 (c) a trustee resigns;

22 (d) a trustee is disqualified or removed;

23 (e) a trustee dies;

24 (f) a guardian or conservator is appointed for an individual serving as trustee; or

25 (g) a trustee has been ordered committed as provided in 53-21-102.

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

28 (3) A vacancy in a trusteeship of a trust that is required to be filled must be filled in the following order
29 of priority:

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

1 (b) by a person appointed by unanimous agreement of the qualified beneficiaries; or

2 (c) by a person appointed by the court.

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

6

7 NEW SECTION. Section 83. Resignation of trustee. (1) A trustee may resign:

8 (a) upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees; or

9 (b) with the approval of the court.

10 (2) In approving a resignation, the court may issue orders and impose conditions reasonably necessary
11 for the protection of the trust property.

12 (3) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the
13 trustee is not discharged or affected by the trustee's resignation.

14

15 NEW SECTION. Section 84. Removal of trustee. (1) The settlor, a cotrustee, or a beneficiary may
16 request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.

17 (2) The court may remove a trustee if:

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

19 (b) lack of cooperation among cotrustees substantially impairs the administration of the trust;

20 (c) because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust
21 effectively and impartially, the court determines that removal of the trustee best serves the interests of the
22 beneficiaries; or

23 (d) there has been a substantial change of circumstances or removal is requested by all of the qualified
24 beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and
25 is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

26 (3) Pending a final decision on a request to remove a trustee or in lieu of or in addition to removing a
27 trustee, the court may order appropriate relief under [section 118(2)] as may be necessary to protect the trust
28 property or the interests of the beneficiaries.

29

30 NEW SECTION. Section 85. Delivery of property by former trustee. (1) Unless a cotrustee remains

1 in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other
2 person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers
3 necessary to protect the trust property.

4 (2) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property
5 within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it. If a trustee fails
6 to deliver trust property as required in this subsection:

7 (a) the resigned or removed trustee is personally liable for the actual damages incurred as a result of
8 the failure to deliver trust property; and

9 (b) the court, in its discretion, may order the resigned or removed trustee personally to pay the
10 reasonable attorney fees incurred in enforcing the resigned or removed trustee's duty to deliver trust property.

11
12 **NEW SECTION. Section 86. Compensation of trustee.** (1) If the terms of a trust do not specify the
13 trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

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

16 (a) the duties of the trustee are substantially different from those contemplated when the trust was
17 created; or

18 (b) the compensation specified by the terms of the trust would be unreasonably low or high.

19
20 **NEW SECTION. Section 87. Reimbursement of expenses.** (1) A trustee is entitled to be reimbursed
21 out of the trust property, with interest as appropriate, for:

22 (a) expenses that were properly incurred in the administration of the trust; and

23 (b) to the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly
24 incurred in the administration of the trust.

25 (2) An advance by the trustee of money for the protection of the trust gives rise to a lien against trust
26 property to secure reimbursement with reasonable interest.

27
28 **NEW SECTION. Section 88. Duty to administer trust.** Upon acceptance of a trusteeship, the trustee
29 shall administer the trust expeditiously and in good faith, in accordance with its terms and purposes and the
30 interests of the beneficiaries, and in accordance with [sections 1 through 132].

1
2 **NEW SECTION. Section 89. Duty of loyalty.** (1) A trustee shall administer the trust solely in the
3 interests of the beneficiaries.

4 (2) Subject to the rights of persons dealing with or assisting the trustee as provided in [section 130], a
5 sale, encumbrance, or other transaction involving the investment or management of trust property entered into
6 by the trustee for the trustee's own personal account or that is otherwise affected by a conflict between the
7 trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

- 8 (a) the transaction was authorized by the terms of the trust;
9 (b) the transaction was approved by the court;
10 (c) the beneficiary did not commence a judicial proceeding within the time allowed by [section 122];
11 (d) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee
12 in compliance with [section 126]; or
13 (e) the transaction involves a contract entered into or claim acquired by the trustee before the person
14 became or contemplated becoming trustee.

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

- 18 (a) the trustee's spouse;
19 (b) the trustee's descendants, siblings, parents, or their spouses;
20 (c) an agent or attorney of the trustee; or
21 (d) a corporation or other person or enterprise in which the trustee, or a person who owns a significant
22 interest in the trustee, has an interest that might affect the trustee's best judgment.

23 (4) A transaction between a trustee and a beneficiary that does not concern trust property but that occurs
24 during the existence of the trust or while the trustee retains significant influence over the beneficiary and from
25 which the trustee obtains an advantage is voidable by the beneficiary unless the trustee establishes that the
26 transaction was fair to the beneficiary. However, a beneficiary's gift to charity or to a trust for a charity's benefit
27 is not voidable by this subsection even though the charity may be, or may have been, serving as trustee of a trust
28 created for the benefit of the beneficiary.

29 (5) A transaction not concerning trust property in which the trustee engages in the trustee's individual
30 capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity

1 properly belonging to the trust.

2 (6) An investment by a trustee in securities of an investment company or investment trust to which the
3 trustee or its affiliate provides services in a capacity other than as trustee is not presumed to be affected by a
4 conflict between personal and fiduciary interests if the investment otherwise complies with the prudent investor
5 rule of [sections 112 through 117]. In addition to its compensation for acting as trustee, the trustee may be
6 compensated by the investment company or investment trust for providing those services out of fees charged
7 to the trust. If the trustee receives compensation from the investment company or investment trust for providing
8 investment advisory or investment management services, the trustee must at least annually notify the persons
9 entitled under [section 100] to receive a copy of the trustee's annual report of the rate and method by which that
10 compensation was determined.

11 (7) In voting shares of stock or in exercising powers of control over similar interests in other forms of
12 enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a
13 corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will
14 manage the corporation or enterprise in the best interests of the beneficiaries.

15 (8) This section does not preclude the following transactions, if fair to the beneficiaries:

16 (a) an agreement between a trustee and a beneficiary relating to the appointment or compensation of
17 the trustee;

18 (b) payment of reasonable compensation to the trustee;

19 (c) a transaction between a trust and another trust, decedent's estate, or conservatorship of which the
20 trustee is a fiduciary or in which a beneficiary has an interest;

21 (d) a deposit of trust money in a regulated financial-service institution operated by the trustee; or

22 (e) an advance by the trustee of money for the protection of the trust.

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

25

26 **NEW SECTION. Section 90. Impartiality.** If a trust has two or more beneficiaries, the trustee shall act
27 impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries'
28 respective interests.

29

30 **NEW SECTION. Section 91. Prudent administration.** A trustee shall administer the trust as a prudent

1 person would, by considering the purposes, terms, distributional requirements, and other circumstances of the
2 trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

3
4 **NEW SECTION. Section 92. Costs of administration.** In administering a trust, the trustee may incur
5 only costs that are reasonable in relation to the trust property, the purposes of the trust, and the skills of the
6 trustee.

7
8 **NEW SECTION. Section 93. Trustee's skills.** A trustee who has special skills or expertise or is named
9 trustee in reliance upon the trustee's representation that the trustee has special skills or expertise shall use those
10 special skills or expertise.

11
12 **NEW SECTION. Section 94. Delegation by trustee.** (1) A trustee may delegate duties and powers that
13 a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall
14 exercise reasonable care, skill, and caution in:

15 (a) selecting an agent;
16 (b) establishing the scope and terms of the delegation, consistent with the purposes and terms of the
17 trust; and

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

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

22 (3) A trustee who complies with subsection (1) is not liable to the beneficiaries or to the trust for an action
23 of the agent to whom the function was delegated.

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

26
27 **NEW SECTION. Section 95. Powers to direct.** (1) While a trust is revocable, the trustee may follow
28 a direction of the settlor that is contrary to the terms of the trust.

29 (2) If the terms of a trust confer upon a person other than the settlor of a revocable trust the power to
30 direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the

1 attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise
2 would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries
3 of the trust.

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

6 (4) A person other than a beneficiary who holds a power to direct is presumptively a fiduciary who, as
7 such, is required to act in good faith with 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 breach of a fiduciary duty.

9
10 **NEW SECTION. Section 96. Control and protection of trust property.** A trustee shall take
11 reasonable steps to take control of and protect the trust property.

12
13 **NEW SECTION. Section 97. Recordkeeping and identification of trust property.** (1) A trustee shall
14 keep adequate records of the administration of the trust.

15 (2) A trustee shall keep trust property separate from the trustee's own property.

16 (3) Except as otherwise provided in subsection (4), a trustee shall designate the trust property so that
17 the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or
18 beneficiary.

19 (4) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a
20 whole the property of two or more separate trusts.

21
22 **NEW SECTION. Section 98. Enforcement and defense claims.** A trustee shall take reasonable steps
23 to enforce claims of the trust and to defend claims against the trust.

24
25 **NEW SECTION. Section 99. Collecting trust property.** A trustee shall take reasonable steps to
26 compel a former trustee or other person to deliver trust property to the trustee and to redress a breach of trust
27 known to the trustee to have been committed by a former trustee.

28
29 **NEW SECTION. Section 100. Duty to inform and report.** A trustee shall comply with the following
30 provisions unless the trust instrument specifically limits or waives any of these requirements:

1 (1) A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the
2 administration of the trust and of the material facts necessary for them to protect their interests. A trustee shall
3 promptly respond to a qualified beneficiary's request for information that is reasonably necessary to enable the
4 qualified beneficiary to enforce the rights of the qualified beneficiary under the trust or to prevent or redress a
5 breach of trust.

6 (2) A trustee:

7 (a) upon request of any beneficiary, shall promptly furnish to the beneficiary a copy of the portions of the
8 trust instrument that describe or affect the beneficiary's interest;

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

11 (c) within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust
12 or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by
13 the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity
14 of the settlor or settlors, of the right to request a copy of portions of the trust instrument as provided in subsection
15 (2)(a), and of the right to a trustee's report as provided in subsection (3); and

16 (d) shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's
17 compensation.

18 (3) A trustee shall send to the distributees or permissible distributees of trust income or principal and to
19 other qualified beneficiaries who request it, at least annually, on a calendar year or fiscal year basis consistent
20 with tax reporting requirements and at the termination of the trust, a report of the trust property, liabilities, receipts,
21 and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets
22 and, if feasible, their respective market values including any cash, cash equivalents, stocks, bonds, mutual funds,
23 or other securities, investments, or investment property held by the trustee as of the last business day of the
24 calendar year or fiscal period, if the fair market value is readily ascertainable or the property is traded on an
25 established public market. An appraisal or statement of fair market value may not be required for any real estate,
26 closely held business, or other property held by the trustee as of that date if the fair market value is not readily
27 ascertainable or traded on an established public market. A qualified beneficiary must also receive, upon request,
28 copies of any applicable income, estate, or transfer tax returns relevant to the administration of the trust. Upon
29 a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be sent to the qualified
30 beneficiaries by the former trustee. A personal representative, conservator, or guardian may send the qualified

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

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

5 (5) Subsections (2)(b) and (2)(c) do not apply to a trustee who accepts a trusteeship before October 1,
6 2013, to an irrevocable trust created before October 1, 2013, or to a revocable trust that becomes irrevocable
7 before October 1, 2013.

8

9 **NEW SECTION. Section 101. Discretionary powers -- tax savings.** (1) Notwithstanding the breadth
10 of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute", "sole",
11 or "uncontrolled", the trustee shall exercise a discretionary power in good faith and in accordance with the terms
12 and purposes of the trust and the interests of the beneficiaries.

13 (2) Subject to subsection (4) and unless the terms of the trust expressly indicate that a rule in this
14 subsection does not apply:

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

18 (b) a trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation
19 of support that the trustee personally owes another person.

20 (3) A power whose exercise is limited or prohibited by subsection (2) may be exercised by a majority of
21 the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is
22 so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

23 (4) Subsection (2) does not apply to:

24 (a) a power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as
25 defined in section 2056(b)(5) or 2523(e) of the Internal Revenue Code of 1986, as in effect on the effective date
26 of [sections 1 through 132] or as later amended, was previously allowed;

27 (b) any trust during any period that the trust may be revoked or amended by its settlor; or

28 (c) a trust if contributions to the trust qualify for the annual exclusion under section 2503(c) of the Internal
29 Revenue Code of 1986, as in effect on the effective date of [sections 1 through 132] or as later amended.

30

1 **NEW SECTION. Section 102. General powers of trustee.** (1) A trustee, without authorization by the
2 court, may exercise:

3 (a) powers conferred by the terms of the trust; and

4 (b) except as limited by the terms of the trust:

5 (i) all powers over the trust property that an unmarried competent owner has over individually owned
6 property;

7 (ii) any other powers appropriate to achieve the proper investment, management, and distribution of the
8 trust property; and

9 (iii) any other powers conferred by [sections 1 through 132].

10 (2) The exercise of a power is subject to the fiduciary duties prescribed by [sections 88 through 104].

11

12 **NEW SECTION. Section 103. Specific powers of trustee.** Without limiting the authority conferred by
13 [section 102], a trustee may:

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

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

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

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

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

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

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

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

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

1 (c) pay calls, assessments, and other sums chargeable or accruing against the securities and sell or
2 exercise stock subscription or conversion rights; and

3 (d) deposit the securities with a depository or other regulated financial-service institution;

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

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

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

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

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

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

19 (a) inspect or investigate property the trustee holds or has been asked to hold, or property owned or
20 operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of
21 determining the application of environmental law with respect to the property;

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

25 (c) decline to accept property into trust or disclaim any power with respect to property that is or may be
26 burdened with liability for violation of environmental law;

27 (d) compromise claims against the trust that may be asserted for an alleged violation of environmental
28 law; and

29 (e) pay the expense of any inspection, review, abatement, or remedial action to comply with
30 environmental law;

- 1 (14) pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a
2 claim belonging to the trust;
- 3 (15) pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and
4 other expenses incurred in the administration of the trust;
- 5 (16) exercise elections with respect to federal, state, and local taxes;
- 6 (17) select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance
7 payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses
8 and against liabilities, and take appropriate action to collect the proceeds;
- 9 (18) make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee
10 considers to be fair and reasonable under the circumstances, and assert a lien on future distributions for
11 repayment of those loans;
- 12 (19) pledge trust property to guarantee loans made by others to the beneficiary;
- 13 (20) appoint a trustee to act in another jurisdiction with respect to trust property located in the other
14 jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that
15 the appointed trustee furnish security, and remove any trustee so appointed;
- 16 (21) pay an amount distributable to a beneficiary who is under a legal disability, or who the trustee
17 reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's
18 benefit or by:
- 19 (a) paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the
20 beneficiary's guardian;
- 21 (b) paying it to the beneficiary's custodian named under the Uniform Transfers to Minors Act or to a
22 custodial trustee pursuant to the laws of any state and, for that purpose, creating a custodianship or custodial
23 trust;
- 24 (c) if the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it to
25 an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on
26 the beneficiary's behalf; or
- 27 (d) managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right
28 to withdraw the distribution;
- 29 (22) on distribution of trust property or the division or termination of a trust, make distributions in divided
30 or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust

- 1 property for those purposes, and adjust for resulting differences in valuation;
- 2 (23) resolve a dispute concerning the interpretation of the trust or its administration by mediation,
- 3 arbitration, or other procedure for alternative dispute resolution;
- 4 (24) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property
- 5 and the trustee in the performance of the trustee's duties;
- 6 (25) sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise
- 7 of the trustee's powers; and
- 8 (26) on termination of the trust, exercise the powers appropriate to wind up the administration of the trust
- 9 and distribute the trust property to the persons entitled to it.

10

11 **NEW SECTION. Section 104. Distribution upon termination.** (1) Upon termination or partial

12 termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any

13 beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an

14 objection within 30 days after the proposal was sent but only if the proposal informed the beneficiary of the right

15 to object and of the time allowed for objection.

16 (2) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed

17 expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain

18 a reasonable reserve for the payment of debts, expenses, and taxes.

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

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

21 (b) the beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material

22 facts relating to the breach.

23

24 **NEW SECTION. Section 105. Definitions.** As used in [sections 105 through 111], the following

25 definitions apply:

26 (1) "Charitable trust" means a charitable trust as described in section 4947(a)(1) of the Internal Revenue

27 Code.

28 (2) "Private foundation" means a private foundation as defined in section 509 of the Internal Revenue

29 Code.

30 (3) "Split-interest trust" means a split-interest trust as described in section 4947(a)(2) of the Internal

1 Revenue Code.

2

3 **NEW SECTION. Section 106. Distribution under charitable trust or private foundation.** During any
4 period when a trust is considered to be a charitable trust or a private foundation, the trustee shall distribute its
5 income for each taxable year (and principal if necessary) at a time and in a manner that will not subject the
6 property of the trust to tax under section 4942 of the Internal Revenue Code.

7

8 **NEW SECTION. Section 107. Restrictions on trustees under charitable trust, private foundations,**
9 **or split-interest trust.** During any period when a trust is considered to be a charitable trust, a private foundation,
10 or a split-interest trust, the trustee may not do any of the following:

- 11 (1) engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code;
12 (2) retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code;
13 (3) make any investments in a manner that subjects the property of the trust to tax under section 4944
14 of the Internal Revenue Code; or
15 (4) make any taxable expenditure as defined in section 4945(d) of the Internal Revenue Code.

16

17 **NEW SECTION. Section 108. Exceptions applicable to split-interest trusts.** (1) [Section 107(2) and
18 (3)] do not apply to any trust described in section 4947(b)(3) of the Internal Revenue Code.

19 (2) [Section 107] does not apply with respect to any of the following:

20 (a) any amounts payable under the terms of a trust to income beneficiaries unless a deduction was
21 allowed under section 170(f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B) of the Internal Revenue Code;

22 (b) any amounts in trust other than amounts for which a deduction was allowed under section 170,
23 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 of the Internal Revenue Code if the amounts are
24 segregated, as that term is defined in section 4947(a)(3) of the Internal Revenue Code, from amounts for which
25 no deduction was allowable; or

26 (c) any amounts irrevocably transferred in trust before May 27, 1969.

27

28 **NEW SECTION. Section 109. Incorporation in trust instruments.** The provisions of [sections 106
29 through 108 and 111] must be considered to be contained in the terms of the trust to which [sections 105 through
30 111] applies. Any term of the trust inconsistent with or contrary to [sections 105 through 111] is without effect

1 unless that term is more restrictive.

2

3 **NEW SECTION. Section 110. Proceedings.** (1) A proceeding contemplated by section 101(l)(3) of the
4 federal Tax Reform Act of 1969 (Public Law 91-172) may be commenced pursuant to [section 36] by the
5 organization involved. All specifically named beneficiaries of the organization and the attorney general must be
6 parties to the proceedings. Notwithstanding [section 24], this provision is not exclusive and does not limit any
7 jurisdiction that otherwise exists.

8 (2) If an instrument creating a trust affected by this section has been recorded, a notice of pendency of
9 judicial proceedings under this section must be recorded in a similar manner within 10 days from the
10 commencement of the proceedings. A duly certified copy of any final judgment or decree in the proceedings must
11 be similarly recorded.

12

13 **NEW SECTION. Section 111. Disposition of property upon termination of a charitable trust,**
14 **private foundation, or split-interest trust.** At the termination of a charitable trust, private foundation organized
15 as a trust, or any other trust described in section 501(c)(3) of the Internal Revenue Code, the trust property must
16 be distributed for one or more exempt purposes or to organizations that are organized and operated exclusively
17 for exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code or must be distributed
18 to the federal government or to a state or local government for a public purpose. At the termination of a
19 split-interest trust, the charitable portion of the trust property must be distributed to one or more organizations
20 described in sections 170(c), 2055(a), and 2522(a) of the Internal Revenue Code.

21

22 **NEW SECTION. Section 112. Prudent investor rule.** (1) Except as provided in subsection (2), a
23 trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the
24 prudent investor rule.

25 (2) The settlor may expand or restrict the prudent investor rule by express provisions in the trust
26 instrument. A trustee is not liable to a beneficiary for the trustee's good faith reliance on these express provisions.

27

28 **NEW SECTION. Section 113. Standard of care -- investments and management -- considerations.**
29 (1) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes,
30 terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall

1 exercise reasonable care, skill, and caution.

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

5 (3) Among circumstances that are appropriate to consider in investing and managing trust assets are
6 the following, to the extent relevant to the trust or its beneficiaries:

7 (a) general economic conditions;

8 (b) the possible effect of inflation or deflation;

9 (c) the expected tax consequences of investment decisions or strategies;

10 (d) the role that each investment or course of action plays within the overall trust portfolio;

11 (e) the expected total return from income and the appreciation of capital;

12 (f) other resources of the beneficiaries known to the trustee as determined from information provided
13 by the beneficiaries;

14 (g) needs for liquidity, regularity of income, and preservation or appreciation of capital; and

15 (h) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more
16 of the beneficiaries.

17 (4) A trustee shall make a reasonable effort to ascertain facts relevant to the investment and
18 management of trust assets.

19 (5) A trustee may invest in any kind of property or type of investment or engage in any course of action
20 or investment strategy consistent with the standards of this Act.

21

22 **NEW SECTION. Section 114. Diversification -- duty of trustee -- exception.** (1) Subject to subsection
23 (2), in making and implementing investment decisions, the trustee has a duty to diversify the investments of the
24 trust unless, under the circumstances, it is not prudent to do so.

25 (2) If trust assets include farm or ranch property, a closely held family business, timber interests, or
26 interests in oil, gas, or minerals, the trustee may elect to retain those assets. A trustee's exercise of discretion
27 to retain assets of the character described in this subsection is not a breach of the trustee's duty to diversify
28 investments.

29

30 **NEW SECTION. Section 115. Review of assets -- time for compliance.** Within a reasonable time

1 after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and
2 implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into
3 compliance with the purposes, terms, distribution requirements, and other circumstances of the trust and with the
4 requirements of [sections 112 through 117].

5
6 **NEW SECTION. Section 116. Compliance determinations -- standards.** Compliance with the prudent
7 investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or
8 action and not by hindsight.

9
10 **NEW SECTION. Section 117. Interpretation of trust terms construing legal investments.** The
11 following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, must
12 be construed as authorizing any investment or strategy permitted under [sections 112 through 117]: "investments
13 permissible by law for investment of trust funds", "legal investments", "authorized investments", "using the
14 judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence
15 exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent
16 disposition of their funds, considering the probable income as well as the probable safety of their capital",
17 "prudent man rule", "prudent trustee rule", "prudent person rule", and "prudent investor rule".

18
19 **NEW SECTION. Section 118. Remedies for breach of trust.** (1) A violation by a trustee of a duty the
20 trustee owes to a beneficiary is a breach of trust.

21 (2) To remedy a breach of trust that has occurred or may occur, the court may:
22 (a) compel the trustee to perform the trustee's duties;
23 (b) enjoin the trustee from committing a breach of trust;
24 (c) compel the trustee to redress a breach of trust by paying money, restoring property, or other means;
25 (d) order a trustee to account;
26 (e) appoint a special fiduciary to take possession of the trust property and administer the trust;
27 (f) suspend the trustee;
28 (g) remove the trustee as provided in [section 84];
29 (h) reduce or deny compensation to the trustee;
30 (i) subject to [section 129], void an act of the trustee, impose a lien or a constructive trust on trust

1 property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or
 2 (j) order any other appropriate relief.

3
 4 **NEW SECTION. Section 119. Damages for breach of trust.** (1) A trustee who commits a breach of
 5 trust is liable to the beneficiaries affected for the greater of:

6 ~~(a) the amount required to restore the value of the trust property and trust distributions to what they~~
 7 ~~would have been had the breach not occurred; or~~

8 (A) ANY LOSS OR DEPRECIATION IN VALUE OF THE TRUST ESTATE RESULTING FROM THE BREACH OF TRUST, WITH
 9 INTEREST;

10 (b) the profit the trustee made by reason of the breach OF TRUST, WITH INTEREST; OR

11 (C) ANY PROFIT THAT WOULD HAVE ACCRUED TO THE TRUST ESTATE IF THE LOSS OF PROFIT IS THE RESULT OF
 12 THE BREACH OF TRUST.

13 (2) Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries
 14 for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled
 15 to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the
 16 breach of trust in bad faith or with reckless indifference to the FIDUCIARY DUTIES OF THE TRUSTEE, THE TERMS OR
 17 purposes of the trust, or the interests of the beneficiaries. A trustee who received a benefit from the breach of
 18 trust is not entitled to contribution from another trustee to the extent of the benefit received.

19 (3) IF THE TRUSTEE IS LIABLE FOR INTEREST PURSUANT TO THIS SECTION, INTEREST MUST BE DETERMINED AS
 20 THE GREATER OF THE FOLLOWING AMOUNTS:

21 (A) THE AMOUNT OF INTEREST THAT ACCRUES AT THE LEGAL RATE ON JUDGMENTS; OR

22 (B) THE AMOUNT OF INTEREST THE TRUSTEE ACTUALLY RECEIVED AS A RESULT OF THE BREACH OF TRUST.

23
 24 **NEW SECTION. Section 120. Damages in absence of breach.** (1) A trustee is accountable to an
 25 affected beneficiary for any profit made by the trustee arising from the administration of the trust, even absent
 26 a breach of trust.

27 (2) Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value
 28 of trust property or for not having made a profit.

29
 30 **NEW SECTION. Section 121. Attorney's fees and costs.** In a judicial proceeding involving the

1 administration of a trust, the court, as justice and equity may require, may award costs and expenses, including
2 reasonable attorney fees, to any party, to be paid by another party or from the trust that is the subject of the
3 controversy.

4

5 **NEW SECTION. Section 122. Limitation of action against trustee.** (1) A beneficiary may not
6 commence a proceeding against a trustee for breach of trust more than 3 years after the date the beneficiary or
7 a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim
8 for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

9 (2) A report adequately discloses the existence of a potential claim for breach of trust if it provides
10 sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired
11 into its existence.

12 (3) If subsection (1) does not apply, a judicial proceeding by a beneficiary against a trustee for breach
13 of trust must be commenced within 5 years after the first to occur of:

- 14 (a) the removal, resignation, or death of the trustee;
15 (b) the termination of the beneficiary's interest in the trust; or
16 (c) the termination of the trust.

17

18 **NEW SECTION. Section 123. Reliance on trust instrument.** A trustee who acts in reasonable
19 reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach
20 of trust to the extent the breach resulted from the reliance.

21

22 **NEW SECTION. Section 124. Event affecting administration or distribution.** If the happening of an
23 event, including marriage, divorce, performance of educational requirements, or death, affects the administration
24 or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is
25 not liable for a loss resulting from the trustee's lack of knowledge.

26

27 **NEW SECTION. Section 125. Exculpation of trustee.** (1) A term of a trust relieving a trustee of liability
28 for breach of trust is unenforceable to the extent that it:

- 29 (a) relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference
30 to the FIDUCIARY DUTIES OF THE TRUSTEE, THE TERMS OR purposes of the trust, or the interests of the beneficiaries;

1 or

2 (b) was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the
3 settlor; OR

4 (C) RELIEVES THE TRUSTEE OF ACCOUNTABILITY FOR PROFITS DERIVED FROM A BREACH OF TRUST.

5 (2) An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary
6 or confidential relationship unless the trustee proves that the exculpatory term is fair under the circumstances
7 and, that its existence and contents were adequately communicated to the settlor, AND THAT THE SETTLOR WAS
8 REPRESENTED BY INDEPENDENT LEGAL COUNSEL BEFORE ADOPTING THE EXCULPATORY TERM.

9
10 NEW SECTION. Section 126. Beneficiary's consent, release, or ratification. A trustee is not liable
11 to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released
12 the trustee from liability for the breach, or ratified the transaction constituting the breach unless:

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

14 or

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

17
18 NEW SECTION. Section 127. Limitation on personal liability of trustee. (1) Except as otherwise
19 provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's
20 fiduciary capacity in the course of administering the trust if the trustee in the contract disclosed the fiduciary
21 capacity.

22 (2) A trustee is personally liable for torts committed in the course of administering a trust or for
23 obligations arising from ownership or control of trust property, including liability for violation of environmental law,
24 only if the trustee is personally at fault.

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

29
30 NEW SECTION. Section 128. Interest as general partner. (1) Unless personal liability is imposed in

1 the contract, a trustee who in the trustee's fiduciary capacity holds an interest as a general partner in a general
2 or limited partnership is not personally liable on a contract entered into by the partnership after the trust's
3 acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a statement previously filed
4 pursuant to the Montana Uniform Partnership Act or the Montana Uniform Limited Partnership Act. The addition
5 of the phrase "trustee" or "as trustee" or a similar designation to the signature of a trustee on a written contract
6 is satisfactory disclosure of the fiduciary capacity.

7 (2) A trustee who, in the trustee's fiduciary capacity, holds an interest as a general partner is not
8 personally liable for torts committed by the partnership or for obligations arising from ownership or control of the
9 interest, but this does not affect the liability of the trustee for the trustee's own negligence, wrongful act, or
10 misconduct.

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

13
14 **NEW SECTION. Section 129. Protection of person dealing with trustee.** (1) A person other than a
15 beneficiary who in good faith assists a trustee or who in good faith and for value deals with a trustee without
16 knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability
17 as if the trustee properly exercised the power.

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

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

21 (4) A person other than a beneficiary who in good faith assists a former trustee or who in good faith and
22 for value deals with a former trustee without knowledge that the trusteeship has terminated is protected from
23 liability as if the former trustee were still a trustee.

24 (5) Comparable protective provisions of other laws relating to commercial transactions or transfer of
25 securities by fiduciaries prevail over the protection provided by this section.

26
27 **NEW SECTION. Section 130. Certification of trust.** (1) Instead of furnishing a copy of the trust
28 instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust
29 containing the following information:

30 (a) that the trust exists and the date the trust instrument was executed;

- 1 (b) the identity of the settlor;
- 2 (c) the identity and address of the currently acting trustee;
- 3 (d) the relevant powers of the trustee;
- 4 (e) the revocability or irrevocability of the trust and the identity of any person holding a power to revoke
- 5 the trust; and
- 6 (f) the authority of cotrustees to sign or otherwise authenticate and whether all or less than all are
- 7 required in order to exercise powers of the trustee.

8 (2) A certification of trust may be signed or otherwise authenticated by any trustee. Upon request, the

9 trustee shall acknowledge the certification in order that the certification may be recorded.

10 (3) A certification of trust must state that the trust has not been revoked, modified, or amended in any

11 manner that would cause the representations contained in the certification of trust to be incorrect.

12 (4) A certification of trust need not contain the dispositive terms of a trust.

13 (5) A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from

14 the original trust instrument and later amendments that designate the trustee and confer upon the trustee the

15 power to act in the pending transaction.

16 (6) A person who acts in reliance upon a certification of trust without knowledge that the representations

17 contained therein are incorrect is not liable to any person for so acting and may assume without inquiry the

18 existence of the facts contained in the certification. Knowledge of the terms of the trust may not be inferred solely

19 from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.

20 (7) A person who in good faith enters into a transaction in reliance upon a certification of trust may

21 enforce the transaction against the trust property as if the representations contained in the certification were

22 correct.

23 (8) A person making a demand for the trust instrument in addition to a certification of trust or excerpts

24 is liable for damages if the court determines that the person did not act in good faith in demanding the trust

25 instrument.

26 (9) This section does not limit the right of a person to obtain a copy of the trust instrument when required

27 to be furnished by law or in a judicial proceeding concerning the trust.

28

29 **NEW SECTION. Section 131. Uniformity of application and construction.** In applying and construing

30 [sections 1 through 132], consideration must be given to the need to promote uniformity of the law with respect

1 to its subject matter among states that enact it.

2

3 **NEW SECTION. Section 132. Electronic records and signatures.** The provisions of [sections 1
4 through 132] governing the legal effect, validity, or enforceability of electronic records or electronic signatures and
5 of contracts formed or performed with the use of such records or signatures conform to the requirements of
6 section 102 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7002) and supersede,
7 modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

8

9 **NEW SECTION. Section 133. Petition to authorize proposed action -- SUBSTITUTED JUDGMENT.** (1)

10 The conservator or other interested person may file a petition under [sections 133 through 139] for an order of
11 the court authorizing or requiring the conservator to take a proposed action for any one or more of the following
12 purposes:

13 (a) benefiting the protected person or the estate;

14 (b) minimizing current or prospective taxes or expenses of administration of the conservatorship estate
15 or of the estate upon the death of the protected person; or

16 (c) providing gifts for any purposes and to any charities, relatives (including the protected person's
17 spouse, descendants, or ancestors), friends, or other objects of bounty as would be likely beneficiaries of gifts
18 from the protected person.

19 (2) The action proposed in the petition may include but is not limited to the following:

20 (a) making gifts of principal or income, or both, of the estate, outright or in trust;

21 (b) conveying or releasing the protected person's contingent and expectant interests in property,
22 including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety;

23 (c) exercising or releasing the protected person's powers as donee of a power of appointment;

24 (d) entering into contracts;

25 (e) creating for the benefit of the protected person or others revocable or irrevocable trusts of the
26 property of the estate that may extend beyond the protected person's disability or life;

27 (f) transferring to a trust created by the conservator or protected person any property unintentionally
28 omitted from the trust;

29 (g) exercising options of the protected person to purchase or exchange securities or other property;

30 (h) exercising the rights of the protected person to elect benefit or payment options, to terminate or to

1 change beneficiaries or ownership, to assign rights, to borrow, or to receive cash value in return for a surrender
2 of rights under any of the following:

- 3 (i) life insurance policies, plans, or benefits;
4 (ii) annuity policies, plans, or benefits;
5 (iii) mutual fund and other dividend investment plans; or
6 (iv) retirement, profit sharing, and employee welfare plans and benefits;
7 (i) exercising the right of the protected person to disclaim any interest that may be disclaimed;
8 (j) exercising the right of the protected person to revoke or modify a revocable trust or to surrender the
9 right to revoke or modify a revocable trust. The court may not authorize or require the conservator to exercise
10 the right to revoke or modify a revocable trust if the instrument governing the trust:

- 11 (i) evidences an intent to reserve the right of revocation or modification exclusively to the protected
12 person;
13 (ii) provides expressly that a conservator may not revoke or modify the trust; or
14 (iii) otherwise evidences an intent that would be inconsistent with authorizing or requiring the conservator
15 to exercise the right to revoke or modify the trust.

16 (3) If an existing trust has been or is being amended, the order of the court may authorize the
17 conservator to execute, after the trust amendment, a new "pour over" will or codicil that devises to the trustee of
18 the amended trust other property of the protected person that had not previously been transferred to the trust.

19
20 **NEW SECTION. Section 134. Notice of hearing.** Notice of the hearing of the petition must be given,
21 regardless of age, for the period and in the manner provided by 72-1-301 to all of the following:

- 22 (1) the persons required to be named in a petition for the appointment of a conservator;
23 (2) so far as is known to the petitioner, beneficiaries under any document executed by the protected
24 person that may have testamentary effect unless the court for good cause dispenses with such notice;
25 (3) if the proposed action involves a trust, to all persons entitled to receive notice with respect to such
26 an action under [sections 1 through 132];
27 (4) so far as is known to the petitioner, the persons who, if the protected person were to die immediately,
28 would be the protected person's heirs under the laws of intestate succession unless the court for good cause
29 dispenses with the notice; and
30 (5) other persons as the court may order.

1

2 **NEW SECTION. Section 135. Consent or lack of capacity of protected person -- adequate**
3 **provision for protected person and dependents.** The court may make an order authorizing or requiring the
4 proposed action under [sections 133 through 139] only if the court determines all of the following:

5 (1) the protected person either:

6 (a) is not opposed to the proposed action; or

7 (b) if opposed to the proposed action, lacks legal capacity for the proposed action; and

8 (2) either the proposed action will have no adverse effect on the estate or the estate remaining after the
9 proposed action is taken will be adequate to provide for the needs of the protected person and for the support
10 of those legally entitled to support, maintenance, and education from the protected person, taking into account
11 the age, physical condition, standards of living, and all other relevant circumstances of the protected person and
12 of those legally entitled to support, maintenance, and education from the protected person.

13

14 **NEW SECTION. Section 136. Circumstances to be considered in determining whether to**
15 **authorize or require proposed action.** In determining whether to authorize or require a proposed action under
16 [sections 133 through 139], the court shall take into consideration all of the relevant circumstances, which may
17 include but are not limited to the following:

18 (1) whether the protected person has legal capacity for the proposed transaction and, if not, the
19 probability of the protected person's recovery of legal capacity;

20 (2) the past donative declarations, practices, and conduct of the protected person;

21 (3) the traits of the protected person;

22 (4) the relationship and intimacy of the prospective donees with the protected person, their standards
23 of living, and the extent to which they would be natural objects of the protected person's bounty by any objective
24 test based on the relationship, intimacy, and standards of living;

25 (5) the wishes of the protected person;

26 (6) any known estate plan of the protected person, including but not limited to:

27 (a) the protected person's will;

28 (b) any trust of which the protected person is the settlor or beneficiary;

29 (c) any power of appointment created by or exercisable by the protected person; and

30 (d) any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of

1 benefits or interests at the protected person's death to another or others that the protected person may have
2 originated;

3 (7) the manner in which the estate would devolve upon the protected person's death, giving
4 consideration to the age and the mental and physical condition of the protected person, the prospective devisees
5 or heirs of the protected person, and the prospective donees;

6 (8) the value, liquidity, and productiveness of the estate;

7 (9) the minimization of current or prospective income, estate, inheritance, or other taxes or expenses
8 of administration;

9 (10) changes of tax laws and other laws that would likely have motivated the protected person to alter
10 the protected person's estate plan;

11 (11) the likelihood from all the circumstances that the protected person as a reasonably prudent person
12 would take the proposed action if the protected person had the capacity to do so;

13 (12) whether any beneficiary is the spouse of the protected person;

14 (13) whether a beneficiary has committed physical abuse, neglect, false imprisonment, or financial abuse
15 against the protected person after the protected person was substantially unable to manage his or her financial
16 resources or resist fraud or undue influence and whether the protected person's disability persisted throughout
17 the time of the hearing on the proposed action; or

18 (14) the mandate of [section 135] that if the proposed action is taken, the remaining assets of the estate
19 will be adequate to provide for the needs of the protected person and for the support, maintenance and education
20 of those legally entitled to receive such from the protected person.

21
22 **NEW SECTION. Section 137. Order.** After hearing, the court in its discretion may approve, modify and
23 approve, or disapprove the proposed action and may authorize or direct the conservator to transfer or dispose
24 of assets or take other action as provided in the court's order.

25
26 **NEW SECTION. Section 138. No duty to propose action.** Nothing in [sections 133 through 139]
27 imposes any duty on the conservator to propose any action under [sections 133 through 139], and the
28 conservator is not liable for failure to propose any action under [sections 133 through 139].

29
30 **NEW SECTION. Section 139. Production of protected person's other relevant estate plan**

1 **documents.** (1) As used in this section, "estate plan of the protected person" includes but is not limited to:

2 (a) the protected person's will;

3 (b) any trust of which the protected person is the settlor or beneficiary;

4 (c) any power of appointment created by or exercisable by the protected person; and

5 (d) any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of
6 benefits or interests at the protected person's death to another or others that the protected person may have
7 originated.

8 (2) Notwithstanding 26-1-803 or any case law relating to the attorney-client privilege, the court in its
9 discretion may order that any person having possession of any document constituting all or part of the estate plan
10 of the protected person shall deliver the document to the court for examination by the court and, in the discretion
11 of the court, by the attorneys for the persons who have appeared in the proceedings under [sections 133 through
12 139] in connection with the petition filed under [sections 133 through 139].

13 (3) Unless the court otherwise orders, a person who examines any document produced pursuant to an
14 order under this section may not disclose the contents of the document to any other person. If that disclosure is
15 made, the court may adjudge the person making the disclosure to be in contempt of court.

16 (4) For good cause, the court may order that a document constituting all or part of the estate plan of the
17 protected person, whether or not produced pursuant to an order under this section, must be delivered for
18 safekeeping to the custodian designated by the court. The court may impose conditions that it determines are
19 appropriate for holding and safeguarding the document. The court may authorize the conservator to take any
20 action a depositor may take under Montana law.

21
22 **NEW SECTION. Section 140. Liability for creditor claims and statutory allowances.** A grantee
23 beneficiary of a beneficiary deed is liable for an allowed claim against the transferor's probate estate and statutory
24 allowances to a surviving spouse and children to the extent provided in [section 141].
25

26 **NEW SECTION. Section 141. Liability of nonprobate transferees for creditor claims and statutory**
27 **allowances.** (1) As used in this section, "nonprobate transfer" means a valid transfer effective at death, other
28 than a transfer of a survivorship interest in a joint tenancy of real estate, by a transferor whose last domicile was
29 in this state to the extent that the transferor immediately before death had power, acting alone, to prevent the
30 transfer by revocation or withdrawal and instead to use the property for the benefit of the transferor or apply it to

1 discharge claims against the transferor's probate estate.

2 (2) Except as otherwise provided by statute, a transferee of a nonprobate transfer is subject to liability
3 to any probate estate of the decedent for allowed claims against the decedent's probate estate and statutory
4 allowances to the decedent's spouse and children to the extent the estate is insufficient to satisfy those claims
5 and allowances. The liability of a nonprobate transferee may not exceed the value of nonprobate transfers
6 received or controlled by that transferee.

7 (3) Nonprobate transferees are liable for the insufficiency described in subsection (2) in the following
8 order of priority:

9 (a) a transferee designated in the decedent's will or any other governing instrument, as provided in the
10 instrument;

11 (b) the trustee of a trust serving as the principal nonprobate instrument in the decedent's estate plan as
12 shown by its designation as devisee of the decedent's residuary estate or by other facts or circumstances, to the
13 extent of the value of the nonprobate transfer received or controlled;

14 (c) other nonprobate transferees in proportion to the values received.

15 (4) Unless otherwise provided by the trust instrument, interests of beneficiaries in all trusts incurring
16 liabilities under this section abate as necessary to satisfy the liability, as if all of the trust instruments were a single
17 will and the interests were devised under it.

18 (5) A provision made in one instrument may direct the apportionment of the liability among the
19 nonprobate transferees taking under that or any other governing instrument. If a provision in one instrument
20 conflicts with a provision in another, the later one prevails.

21 (6) Upon due notice to a nonprobate transferee, the liability imposed by this section is enforceable in
22 proceedings in this state, whether or not the transferee is located in this state.

23 (7) A proceeding under this section may not be commenced unless the personal representative of the
24 decedent's estate has received a written demand for the proceeding from the surviving spouse or a child, to the
25 extent that statutory allowances are affected, or a creditor. If the personal representative declines or fails to
26 commence a proceeding after demand, a person making demand may commence the proceeding in the name
27 of the decedent's estate, at the expense of the person making the demand and not of the estate. A personal
28 representative who declines in good faith to commence a requested proceeding incurs no personal liability for
29 declining.

30 (8) A proceeding under this section must be commenced within 1 year after the decedent's death, but

1 a proceeding on behalf of a creditor whose claim was allowed after proceedings challenging disallowance of the
2 claim may be commenced within 60 days after final allowance of the claim.

3 (9) Unless a written notice asserting that a decedent's probate estate is nonexistent or insufficient to pay
4 allowed claims and statutory allowances has been received from the decedent's personal representative, the
5 following provisions apply:

6 (a) Payment or delivery of assets by a financial institution, registrar, or other obligor to a nonprobate
7 transferee in accordance with the terms of the governing instrument controlling the transfer releases the obligor
8 from all claims for amounts paid or assets delivered.

9 (b) A trustee receiving or controlling a nonprobate transfer is released from liability under this section
10 with respect to any assets distributed to the trust's beneficiaries. Each beneficiary, to the extent of the distribution
11 received, becomes liable for the amount of the trustee's liability attributable to assets received by the beneficiary.

12

13 **Section 142.** Section 31-2-209, MCA, is amended to read:

14 **"31-2-209. Assignment -- when void.** An assignment for the benefit of creditors is void against any
15 creditor of the assignor not assenting to the assignment in the following cases:

16 (1) if the assignment gives a preference dependent upon any condition or contingency or with any power
17 of revocation reserved;

18 (2) if the assignment tends to coerce any creditor to release or compromise the creditor's demand;

19 (3) if the assignment provides for the payment of any claim known by the assignor to be false or
20 fraudulent or for the payment of more upon any claim than is known to be justly due from the assignor;

21 (4) if the assignment reserves any interest in the assigned property or in any part of the property to the
22 assignor or for the assignor's benefit before all existing debts are paid;

23 (5) if the assignment confers upon the assignee any power that, if exercised, might prevent or delay the
24 immediate conversion of the assigned property to the purposes of the trust;

25 (6) if the assignment exempts the assignor from liability for neglect of duty or misconduct;

26 ~~(7) if the assignment violates 72-34-105."~~

27

28 **Section 143.** Section 32-1-102, MCA, is amended to read:

29 **"32-1-102. Institutions to which chapter is applicable.** (1) The word "bank" as used in this chapter
30 means any corporation that has been incorporated to conduct the business of receiving money on deposit or

1 transacting a trust or investment business, as defined in this chapter.

2 (2) The soliciting, receiving, or accepting of money or its equivalent on deposit as a regular business is
3 doing a commercial or savings bank business, whether the deposit is made subject to check or is evidenced by
4 a certificate of deposit, a passbook, a note, or other receipt. This section does not apply to or include money or
5 its equivalent left in escrow or left with an agent pending investment in real estate or securities for or on account
6 of the agent's principal.

7 (3) It is unlawful for any corporation, partnership, firm, or individual to engage in or transact a banking
8 business within this state except by means of a corporation duly organized for that purpose.

9 (4) Banks are divided into the following classes:

10 (a) commercial banks;

11 (b) savings banks;

12 (c) trust companies;

13 (d) investment companies.

14 (5) This chapter does not apply to:

15 (a) any investment company or corporation established prior to March 8, 1927, under authority of the
16 law of Montana not accepting, receiving, or holding money on deposit;

17 ~~—— (6) This chapter does not apply to a~~

18 ~~(b) a student financial institution, as defined in 32-1-115; or~~

19 ~~(c) a nonprofit corporation that serves as trustee of one or more trusts in which it is expressly designated~~
20 ~~under the terms of the trust as having a present or future beneficial interest, vested or contingent."~~

21

22 **Section 144.** Section 32-3-506, MCA, is amended to read:

23 **"32-3-506. Shares in trust.** (1) Shares may be issued in the name of a revocable trust if the ~~trustor~~
24 ~~settlor~~ is a member, or shares may be issued in the name of an irrevocable trust if either the ~~trustor~~ ~~settlor~~ or the
25 beneficiary is a member. A beneficiary, unless a member in the beneficiary's own right, may not be permitted to
26 vote, obtain loans, or hold office or be required to pay an entrance or membership fee.

27 (2) Payment of part or all of the shares described in subsection (1) to a trustee, to the extent of the
28 payment, discharges the liability of the credit union to the trustee and the beneficiary, and the credit union is not
29 obligated to see to the application of the payment."

30

1 **Section 145.** Section 35-2-118, MCA, is amended to read:

2 **"35-2-118. General powers.** (1) Unless its articles of incorporation provide otherwise, a corporation has
3 perpetual duration and succession in its corporate name and has the same powers as an individual to do all
4 things necessary or convenient to carry out its affairs including, without limitation, power:

5 (a) to sue and be sued, complain, and defend in its corporate name;

6 (b) to have a corporate seal, which may be altered at will, and to use it or a facsimile of the seal by
7 impressing, affixing, or in any other manner reproducing it;

8 (c) to make and amend bylaws, consistent with its articles of incorporation or with the laws of this state,
9 for regulating and managing the affairs of the corporation;

10 (d) to purchase, receive, lease, or otherwise acquire and to own, hold, improve, use, and otherwise deal
11 with real or personal property or any legal or equitable interest in property, wherever located;

12 (e) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its
13 property;

14 (f) to purchase, receive, subscribe for, or otherwise acquire any other entity; to own, hold, vote, use, sell,
15 mortgage, lend, pledge, or otherwise dispose of any other entity; and to deal in and with shares or other interests
16 in or obligations of any other entity;

17 (g) to make contracts and guaranties; to incur liabilities; to borrow money; to issue notes, bonds, and
18 other obligations; and to secure any of its obligations by mortgage or pledge of any of its property, franchises,
19 or income;

20 (h) to lend money, invest and reinvest its funds, and receive and hold real and personal property as
21 security for repayment, except as limited by 35-2-435;

22 (i) to be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or
23 other entity;

24 (j) to conduct its activities, locate offices, and exercise the powers granted by this chapter in the state
25 or out of the state;

26 (k) to elect or appoint directors, officers, employees, and agents of the corporation; to define their duties;
27 and to fix their compensation;

28 (l) to pay pensions and establish pension plans, pension trusts, and other benefit and incentive plans
29 for any or all of its current or former directors, officers, employees, and agents;

30 (m) to make donations consistent with law for the public welfare or for charitable, religious, scientific, or

1 educational purposes and for other purposes that further the corporate interest;
 2 (n) to impose dues, assessments, admission, and transfer fees upon its members;
 3 (o) to establish conditions for admission of members, admit members, and issue memberships;
 4 (p) to carry on a business; ~~or~~
 5 (q) to serve as trustee of any trust in which it is expressly designated under the terms of the trust as
 6 having a present or future beneficial interest, vested or contingent; or
 7 ~~(r)~~ to do all things necessary or convenient consistent with law to further the activities and affairs of
 8 the corporation.

9 (2) A corporation may not have or issue shares of stock."

10
 11 **Section 146.** Section 72-1-103, MCA, is amended to read:

12 **"72-1-103. General definitions.** Subject to additional definitions contained in the subsequent chapters
 13 that are applicable to specific chapters, parts, or sections and unless the context otherwise requires, in chapters
 14 1 through ~~5~~ 6, the following definitions apply:

15 (1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual
 16 authorized to make decisions concerning another's health care, and an individual authorized to make decisions
 17 for another under a natural death act.

18 (2) "Application" means a written request to the clerk for an order of informal probate or appointment
 19 under chapter 3, part 2.

20 (3) "Beneficiary", as it relates to:

21 (a) a trust beneficiary, includes a person who has any present or future interest, vested or contingent,
 22 and also includes the owner of an interest by assignment or other transfer;

23 (b) a charitable trust, includes any person entitled to enforce the trust;

24 (c) a beneficiary of a beneficiary designation, refers to a beneficiary of:

25 (i) an account with POD designation or a security registered in beneficiary form (TOD); or

26 (ii) any other nonprobate transfer at death; and

27 (d) a beneficiary designated in a governing instrument, includes a grantee of a deed, a devisee, a trust
 28 beneficiary, a beneficiary of a beneficiary designation, a donee, and a person in whose favor a power of attorney
 29 or a power held in any individual, fiduciary, or representative capacity is exercised.

30 (4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of:

- 1 (a) an account with POD designation or a security registered in beneficiary form (TOD); or
2 (b) any other nonprobate transfer at death.
- 3 (5) "Child" includes an individual entitled to take as a child under chapters 1 through 5 by intestate
4 succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster
5 child, a grandchild, or any more remote descendant.
- 6 (6) (a) "Claims", in respect to estates of decedents and protected persons, includes liabilities of the
7 decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate that
8 arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses
9 and expenses of administration.
- 10 (b) The term does not include estate taxes or demands or disputes regarding title of a decedent or
11 protected person to specific assets alleged to be included in the estate.
- 12 (7) "Clerk" or "clerk of court" means the clerk of the district court.
- 13 (8) "Conservator" means a person who is appointed by a court to manage the estate of a protected
14 person.
- 15 (9) "Court" means the district court in this state having jurisdiction in matters relating to the affairs of
16 decedents.
- 17 (10) "Descendant" of an individual means all of the individual's descendants of all generations, with the
18 relationship of parent and child at each generation being determined by the definition of child and parent
19 contained in this section.
- 20 (11) "Devise" when used as a noun means a testamentary disposition of real or personal property and
21 when used as a verb means to dispose of real or personal property by will.
- 22 (12) "Devisee" means a person designated in a will to receive a devise. For purposes of chapter 3, in the
23 case of a devise to an existing trust or trustee or to a trustee or trust described by will, the trust or trustee is the
24 devisee and the beneficiaries are not devisees.
- 25 (13) "Disability" means cause for a protective order as described by 72-5-409.
- 26 (14) "Distributee" means any person who has received property of a decedent from the decedent's
27 personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the
28 extent of distributed assets or increment to distributed assets remaining in the trustee's hands. A beneficiary of
29 a testamentary trust to whom the trustee has distributed property received from a personal representative is a
30 distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee

1 to whom assets are transferred by will, to the extent of the devised assets.

2 (15) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to
3 chapters 1 through 5 as originally constituted and as it exists from time to time during administration.

4 (16) "Exempt property" means that property of a decedent's estate that is described in 72-2-413.

5 (17) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

6 (18) "Foreign personal representative" means a personal representative appointed by another jurisdiction.

7 (19) "Formal proceedings" means proceedings conducted before a judge with notice to interested
8 persons.

9 (20) "Governing instrument" means a deed; will; trust; insurance or annuity policy; account with POD
10 designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar benefit
11 plan; instrument creating or exercising a power of appointment or a power of attorney; or dispositive, appointive,
12 or nominative instrument of any similar type.

13 (21) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person
14 pursuant to testamentary or court appointment but excludes one who is merely a guardian ad litem.

15 (22) "Heirs", except as controlled by 72-2-721, means persons, including the surviving spouse and the
16 state, who are entitled under the statutes of intestate succession to the property of a decedent.

17 (23) "Incapacitated person" has the meaning provided in 72-5-101.

18 (24) "Informal proceedings" means proceedings conducted without notice to interested persons by the
19 clerk of court for probate of a will or appointment of a personal representative.

20 (25) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any
21 others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected
22 person. The term also includes persons having priority for appointment as personal representative and other
23 fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time
24 to time and must be determined according to the particular purposes of and matter involved in any proceeding.

25 (26) "Issue" of a person means a descendant.

26 (27) "Joint tenants with the right of survivorship" includes co-owners of property held under circumstances
27 that entitle one or more to the whole of the property on the death of the other or others but excludes forms of
28 co-ownership registration in which the underlying ownership of each party is in proportion to that party's
29 contribution.

30 (28) "Lease" includes an oil, gas, coal, or other mineral lease.

1 (29) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters
2 of conservatorship.

3 (30) "Minor" means a person who is under 18 years of age.

4 (31) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as
5 security.

6 (32) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of
7 death.

8 (33) "Organization" means a corporation, business trust, estate, trust, partnership, joint venture,
9 association, government or governmental subdivision or agency, or any other legal or commercial entity.

10 (34) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without
11 a will, as a parent under chapters 1 through 5 by intestate succession from the child whose relationship is in
12 question and excludes any person who is only a stepparent, foster parent, or grandparent.

13 (35) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or
14 subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

15 (36) "Person" means an individual, a corporation, an organization, or other legal entity.

16 (37) "Personal representative" includes executor, administrator, successor personal representative,
17 special administrator, and persons who perform substantially the same function under the law governing their
18 status. "General personal representative" excludes special administrator.

19 (38) "Petition" means a written request to the court for an order after notice.

20 (39) "Proceeding" includes action at law and suit in equity.

21 (40) "Property" includes both real and personal property or any interest in that property and means
22 anything that may be the subject of ownership.

23 (41) "Protected person" has the meaning provided in 72-5-101.

24 (42) "Protective proceeding" has the meaning provided in 72-5-101.

25 (43) "Security" includes any note; stock; treasury stock; bond; debenture; evidence of indebtedness;
26 certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under
27 such a title or lease; collateral trust certificate; transferable share; voting trust certificate; in general, any interest
28 or instrument commonly known as a security; any certificate of interest or participation; or any temporary or
29 interim certificate, receipt, or certificate of deposit for or any warrant or right to subscribe to or purchase any of
30 the foregoing.

1 (44) "Settlement", in reference to a decedent's estate, includes the full process of administration,
2 distribution, and closing.

3 (45) "Special administrator" means a personal representative as described by chapter 3, part 7.

4 (46) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto
5 Rico, or any territory or insular possession subject to the jurisdiction of the United States.

6 (47) "Successor personal representative" means a personal representative, other than a special
7 administrator, who is appointed to succeed a previously appointed personal representative.

8 (48) "Successors" means persons, other than creditors, who are entitled to property of a decedent under
9 the decedent's will or chapters 1 through 5.

10 (49) "Supervised administration" refers to the proceedings described in chapter 3, part 4.

11 (50) "Survive" means that an individual has neither predeceased an event, including the death of another
12 individual, nor is considered to have predeceased an event under 72-2-114 or 72-2-712. The term includes its
13 derivatives, such as "survives", "survived", "survivor", and "surviving".

14 (51) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

15 (52) "Testator" includes an individual of either sex.

16 (53) "Trust" includes an express trust, private or charitable, with additions to the trust, wherever and
17 however created. The term also includes a trust created or determined by judgment or decree under which the
18 trust is to be administered in the manner of an express trust. The term excludes other constructive trusts and
19 excludes resulting trusts; conservatorships; personal representatives; trust accounts as defined in 72-6-111 and
20 Title 72, chapter 6, parts 2 and 3; custodial arrangements pursuant to chapter 26; business trusts providing for
21 certificates to be issued to beneficiaries; common trust funds; voting trusts; security arrangements; liquidation
22 trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or
23 employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.

24 (54) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or
25 confirmed by court.

26 (55) "Ward" means an individual described in 72-5-101.

27 (56) "Will" includes codicil and any testamentary instrument that merely appoints an executor, revokes
28 or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class
29 to succeed to property of the decedent passing by intestate succession."
30

1 **Section 147.** Section 72-1-310, MCA, is amended to read:

2 **"72-1-310. Permitted pleadings -- verification required.** (1) The following pleadings are permitted in
3 probate ~~and trust~~ proceedings:

4 (a) an application, petition, report, or account filed pursuant to this title; and

5 (b) an objection or response filed pursuant to this title to an application, petition, report, or account.

6 (2) Except as provided in 25-4-203 regarding verification by an agent or attorney, the verification must
7 be made as follows:

8 (a) An application must be verified by the applicant or, if there are two or more parties joining the
9 application, by any one of the applicants.

10 (b) A petition must be verified by the petitioner or, if there are two or more parties joining the petition, by
11 any one of the petitioners.

12 (c) A report or account must be verified by the person who has the duty to make the report or account
13 or, if there are two or more persons having a duty to make the report or account, by any one of the persons
14 having the duty.

15 (d) An objection or response must be verified by the objector or respondent or, if there are two or more
16 parties joining in the objection or response, by any one of the objectors or respondents."

17

18 **Section 148.** Section 72-1-311, MCA, is amended to read:

19 **"72-1-311. Affidavit or verified petition as evidence in uncontested proceedings.** In any probate
20 ~~or trust~~ matter, an affidavit or verified petition must be received as evidence when offered in an uncontested
21 proceeding under this title."

22

23 **Section 149.** Section 72-1-312, MCA, is amended to read:

24 **"72-1-312. Attorney signature -- pleadings.** In addition to the verification required by 25-4-203 and
25 72-1-310, every application and other pleading filed in connection with any probate ~~or trust~~ proceeding must be
26 signed by the attorney of the person filing the pleading if the person is represented by an attorney. The verification
27 must be made by the person executing or filing the document with the court as provided in 72-1-310."

28

29 **Section 150.** Section 72-6-206, MCA, is amended to read:

30 **"72-6-206. Applicability of beneficial ownership provisions.** The provisions of 72-6-211 through

1 72-6-214 and 72-6-216 concerning beneficial ownership as between parties or as between parties and
 2 beneficiaries apply only to controversies between those persons and their creditors and other successors and
 3 do not apply to the right of those persons to payment as determined by the terms of the account. Sections
 4 72-6-221 through 72-6-227 govern the liability and setoff rights of financial institutions that make payments
 5 pursuant to it."

6
 7 **Section 151.** Section 72-6-214, MCA, is amended to read:
 8 **"72-6-214. Accounts and transfers nontestamentary.** Except as provided in Title 72, chapter 2, part
 9 2, or as a consequence of and to the extent directed by ~~72-6-215~~ [section 141], a transfer resulting from the
 10 application of 72-6-212 is effective by reason of the terms of the account involved and this part and is not
 11 testamentary or subject to Title 72, chapters 1 through 5."

12
 13 **Section 152.** Section 72-16-1001, MCA, is amended to read:
 14 **"72-16-1001. Definitions.** As used in this part, unless the context requires otherwise, the following
 15 definitions apply:
 16 (1) "Department" means the department of revenue provided for in 2-15-1301.
 17 (2) "Direct skip" has the meaning given in section 2612(c), Internal Revenue Code.
 18 (3) "Federal generation-skipping transfer tax" means the tax imposed by section 2601, Internal Revenue
 19 Code.
 20 (4) "Generation-skipping transfer" means the generation-skipping transfer defined in section 2611,
 21 Internal Revenue Code, when the original transferor is a resident of Montana on the date of the original transfer
 22 or when the property is real or personal property located in Montana.
 23 (5) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.
 24 (6) "Original transferor" means any grantor, donor, ~~trustor~~ settlor, or testator who by grant, gift, trust, or
 25 will makes a transfer of real or personal property that results in a federal generation-skipping transfer tax."

26
 27 **Section 153.** Section 72-34-424, MCA, is amended to read:
 28 **"72-34-424. Adjustments between principal and income.** (1) Subject to subsection (2), a trustee may
 29 make an adjustment between principal and income to the extent the trustee considers necessary if all of the
 30 following conditions are satisfied:

- 1 (a) the trustee invests and manages trust assets under the prudent investor rule under ~~72-34-603~~
2 [section 112];
- 3 (b) the trust describes the amount that must or may be distributed to a beneficiary by referring to the
4 trust's income; and
- 5 (c) the trustee determines, after applying the rules in 72-34-423(1) and considering any power the trustee
6 may have under the trust to invade principal or accumulate income, that the trustee is unable to comply with
7 72-34-423(2).
- 8 (2) A trustee may not make an adjustment between principal and income in any of the following
9 circumstances:
- 10 (a) when it would diminish the income interest in a trust:
- 11 (i) that requires all of the income to be paid at least annually to a spouse; and
- 12 (ii) for which, if the trustee did not have the power to make the adjustment, an estate tax or gift tax marital
13 deduction would be allowed, in whole or in part;
- 14 (b) when it would reduce the actuarial value of the income interest in a trust to which a person transfers
15 property with the intent to qualify for a gift tax exclusion;
- 16 (c) when it would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the
17 value of the trust assets;
- 18 (d) when it would be made from any amount that is permanently set aside for charitable purposes under
19 a will or trust, unless both income and principal are set aside;
- 20 (e) when possessing or exercising the power to make an adjustment would cause an individual to be
21 treated as the owner of all or part of the trust for income tax purposes and the individual would not be treated as
22 the owner if the trustee did not possess the power to make an adjustment;
- 23 (f) when possessing or exercising the power to make an adjustment would cause all or part of the trust
24 assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee
25 or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did
26 not possess the power to make an adjustment; or
- 27 (g) when the trustee is a beneficiary of the trust.
- 28 (3) ~~Notwithstanding 72-33-611,~~ if subsection (2)(e), (2)(f), or (2)(g) of this section applies to a trustee
29 and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment
30 unless the exercise of the power by the remaining trustee or trustees is not permitted by the trust.

1 (4) A trustee may release the entire power conferred by subsection (1) or may release only the power
2 to adjust from income to principal or the power to adjust from principal to income in either of the following
3 circumstances:

4 (a) if the trustee is uncertain about whether possessing or exercising the power will cause a result
5 described in subsections (2)(a) through (2)(f); or

6 (b) if the trustee determines that possessing or exercising the power will or may deprive the trust of a
7 tax benefit or impose a tax burden not described in subsection (2).

8 (5) A release under subsection (4) may be permanent or for a specified period, including a period
9 measured by the life of an individual.

10 (6) A trust that limits the power of a trustee to make an adjustment between principal and income does
11 not affect the application of this section unless it is clear from the trust that it is intended to deny the trustee the
12 power of adjustment provided by subsection (1).

13 (7) In deciding whether and to what extent to exercise the power to make adjustments under this section,
14 the trustee may consider, but is not limited to considering, any of the following:

15 (a) the nature, purpose, and expected duration of the trust;

16 (b) the intent of the ~~trustor~~ settlor;

17 (c) the identity and circumstances of the beneficiaries;

18 (d) the needs for liquidity, regularity of income, and preservation and appreciation of capital;

19 (e) the assets held in the trust, the extent to which the assets consist of financial assets, interests in
20 closely held enterprises, tangible and intangible personal property, or real property, the extent to which an asset
21 is used by a beneficiary, and whether an asset was purchased by the trustee or received from the ~~trustor~~ settlor;

22 (f) the net amount allocated to income under other statutes and the increase or decrease in the value
23 of the principal assets, which the trustee may estimate as to assets for which market values are not readily
24 available;

25 (g) whether and to what extent the trust gives the trustee the power to invade principal or accumulate
26 income or prohibits the trustee from invading principal or accumulating income and the extent to which the trustee
27 has exercised a power from time to time to invade principal or accumulate income;

28 (h) the actual and anticipated effect of economic conditions on principal and income and effects of
29 inflation and deflation; or

30 (i) the anticipated tax consequences of an adjustment.

1 (8) Nothing in this part or this section is intended to create or imply a duty to make an adjustment, and
 2 a trustee is not liable for not considering whether to make an adjustment or for choosing not to make an
 3 adjustment."

4

5 **Section 154.** Section 72-34-446, MCA, is amended to read:

6 **"72-34-446. Transactions in derivatives -- allocations of receipts and disbursements -- options**
 7 **to buy or sell property -- allocation of amounts received or paid.** (1) In this section, "derivative" means a
 8 contract or financial instrument or a combination of contracts and financial instruments that gives a trust the right
 9 or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets
 10 or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

11 (2) To the extent that a trustee does not account under 72-34-435 for transactions in derivatives, the
 12 trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

13 (3) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property
 14 when the option is granted, grants an option that permits another person to sell property to the trust, or acquires
 15 an option to buy property for the trust or an option to sell an asset owned by the trust and the trustee or other
 16 owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the
 17 option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain
 18 or loss realized upon the exercise of an option, including an option granted to a ~~trustee~~ settlor of the trust for
 19 services rendered, must be allocated to principal."

20

21 **Section 155.** Section 72-36-206, MCA, is amended to read:

22 **"72-36-206. Effects on real property transactions.** (1) This section relates only to conveyances of real
 23 property to or from a trust and supplements but does not modify other substantive provisions of ~~Title 72, chapters~~
 24 ~~33 through 36, [sections 1 through 132]~~ relating to the creation or validity of trusts.

25 (2) Except as otherwise provided in ~~Title 72, chapters 33 through 36 [sections 1 through 132]~~, a
 26 conveyance of real property to a trustee designated as such in the conveyance vests the whole estate conveyed
 27 in the trustee, subject only to the trustee's duties. The beneficiaries of the trust take no estate or interest in the
 28 real property, but may determine or enforce the terms of the trust as provided in ~~chapters 33 through 36 [sections~~
 29 1 through 132].

30 (3) An instrument creating or amending a trust need not be recorded, but may be recorded if properly

1 acknowledged.

2 (4) If there is no clear reference to or designation of a grantee as trustee in a conveyance or in a
3 separately recorded instrument recorded in the same county as the conveyance and describing the same
4 property as described in the conveyance, the conveyance must be considered to be absolute to the grantee, in
5 favor of purchasers or encumbrancers from the grantee, who were without actual knowledge and who acted for
6 a valuable consideration, despite any valid trust that may exist.

7 (5) Unless limitations upon a trustee's power or authority are set forth in the recorded conveyance of real
8 property to the trustee or in a separate trust instrument, portion of a separate trust instrument, or abstract of a
9 separate trust instrument recorded in the same county, there are no limitations upon the trustee's power or
10 authority to convey or encumber the real property in favor of third persons who were without actual knowledge
11 and who acted for a valuable consideration. A separate trust instrument incorporated by reference in a
12 conveyance to a trustee may not limit the trustee's power or authority to convey or encumber unless the
13 limitations are set forth in the trust instrument, portion of a trust instrument, or abstract of a trust instrument that
14 is also recorded in the county where the real property is located. An amendment to a recorded trust instrument
15 may not affect the power or authority of a trustee to convey or encumber unless it is also recorded in the same
16 place.

17 (6) A subsequent conveyance from a person designated in the original conveyance as trustee or from
18 the successor trustee conveys the whole estate vested in the trustee, except as limited by the terms of the
19 conveyance. The identity of a successor trustee may be established by a recorded affidavit of the successor
20 trustee specifying the successor trustee's name and address and the date and circumstances of succession and
21 confirming that the successor trustee is currently lawfully serving in that capacity.

22 (7) In an action or proceeding by a third person involving the real property granted to a trustee, the
23 person designated as trustee in the original conveyance, or the successor trustee as established in subsection
24 (6), or, if none, the person then actually serving as trustee, or, if none, any beneficiary designated by the court
25 to represent the interests of the beneficiaries is considered the only necessary representative of the trust and of
26 all persons with an interest in the trust. A judgment is binding upon and conclusive against the trust and all
27 persons interested in the trust as to all matters finally adjudicated in the judgment.

28 (8) The designation of the name of a trust in a recorded conveyance vests the estate in the trustee of
29 the trust. A subsequent conveyance may be made by the trustee. The identity of a party serving as trustee may
30 be established by a recorded affidavit of the party or by another recorded instrument specifying the trustee's name

1 and address and confirming that the party is currently serving as the trustee."

2

3 **Section 156.** Section 77-1-219, MCA, is amended to read:

4 **"77-1-219. Public school land purchases -- considerations -- distributions.** (1) The board may
5 request the board of examiners to issue bonds for the purpose of purchasing interests in and appurtenances to
6 real property selected by the board in accordance with the requirements of this section. Upon issuance of the
7 bonds, the board shall purchase the real property and its appurtenances.

8 (2) Prior to requesting the issuance of bonds under subsection (1), the board shall consider the following:

9 (a) the income-generating potential of the real property and appurtenances;

10 (b) the opportunity for sustainable forest management activities and outcomes as described in 76-13-701
11 and 76-13-702; and

12 (c) the opportunity for recreational use of the real property and appurtenances consistent with Title 77,
13 chapter 1, part 8.

14 (3) Prior to requesting the issuance of bonds, the board or the department, at the board's direction, shall
15 complete a cost-benefit analysis of potential real property and appurtenance purchases. This cost-benefit analysis
16 must be made available to the public upon request.

17 (4) Prior to purchasing any real property and appurtenances, the board shall determine that the benefits
18 of the purchase are significant and that the financial risks are prudent. In order to reach that determination, the
19 board shall examine the purchase of any real property and appurtenances as if the board had a fiduciary duty
20 as a reasonably prudent trustee of a perpetual trust. For the purposes of this section, that duty requires the board
21 to:

22 (a) discharge its duties with the care, skill, and diligence that a prudent person acting in a similar capacity
23 with the same resources and familiar with similar matters should exercise in the conduct of an enterprise of similar
24 character and aims;

25 (b) manage the land holdings purchased pursuant to 77-1-218 and this section in accordance with an
26 asset management plan to minimize the risk of loss and maximize the sustained rate of return;

27 (c) discharge its duties and powers solely in the interest of and for the benefit of the trust; and

28 (d) discharge its duties subject to the fiduciary standards set forth in ~~72-34-114~~ [section 88].

29 (5) All interests in real property and appurtenances acquired under this section must be managed
30 pursuant to this title."

1

2 **Section 157.** Section 77-1-229, MCA, is amended to read:

3 **"77-1-229. Public land trust purchases.** (1) Subject to legislative appropriation, the board is authorized
4 to evaluate potential purchases and purchase interests in and appurtenances to real property from the proceeds
5 of the account established in 77-1-228 pursuant to the limitations of 77-1-220, 77-1-228, and this section.
6 Transactional costs may not exceed 7% of the purchase price of acquired property. Prior to purchasing interests
7 in and appurtenances to real property, the board shall consider the following:

8 (a) the income-generating potential of the real property and appurtenances;

9 (b) the opportunity for sustainable forest management activities and outcomes as described in 76-13-701
10 and 76-13-702;

11 (c) the opportunity for recreational use of the real property and appurtenances consistent with Title 77,
12 chapter 1, part 8; and

13 (d) the cost-benefits of potential real property and appurtenance purchases. This cost-benefit analysis
14 must be made available to the public upon request.

15 (2) Prior to purchasing any real property and appurtenances, the board shall determine that the benefits
16 of the purchase are significant and outweigh the financial risks. In order to reach that determination, the board
17 shall examine the purchase of any real property and appurtenances as if the board had a fiduciary duty as a
18 reasonably prudent trustee of a perpetual trust. For the purposes of this section, that duty requires the board to:

19 (a) discharge its duties with the care, skill, and diligence that a prudent person acting in a similar capacity
20 with the same resources and familiar with similar matters should exercise in the conduct of an enterprise of similar
21 character and aims;

22 (b) manage the land holdings purchased pursuant to this section in accordance with an asset
23 management plan to minimize the risk of loss and maximize the sustained rate of return;

24 (c) discharge its duties and powers solely in the interest of and for the benefit of the public land trust;

25 (d) discharge its duties subject to the fiduciary standards set forth in ~~72-34-114~~ section 88; and

26 (e) determine the potential for job creation.

27 (3) All interests in real property and appurtenances acquired under this section must be managed
28 pursuant to this title and are subject to the provisions of Article X, section 11, of the Montana constitution.

29 (4) After deductions for administrative costs pursuant to 77-1-109, the net interest and income earned
30 on real property and appurtenances purchased with funds from the account established in 77-1-228 must be

1 distributed to the guarantee account provided for in 20-9-622 for distribution to public schools."
2

3

Section 158. Section 77-2-364, MCA, is amended to read:

4

"77-2-364. Land banking purchases. (1) The board may select and purchase, lease, receive by
5 donation, hold in trust, or in any manner acquire for and in the name of the state of Montana, in trust for the
6 beneficiaries specified in sections 10 through 19 of The Enabling Act of Congress (approved February 22, 1889,
7 25 Stat. 676), as amended, any interest in real property and improvements, tracts, and leaseholds of land that
8 the board considers proper in order to best provide prudent, maximum, long-term revenue for the beneficiaries.

9

(2) Sales of state land may be initiated only by the board, by the department, or at the request of a
10 lessee, pursuant to 77-1-202, 77-1-301, 77-2-301, or 77-2-308. The board shall ensure that the full market value
11 of the land sold is realized for each trust by using the appraisal, sale, advertising, and competitive bid procedures
12 contained within 77-2-303, 77-2-321, 77-2-322, 77-2-323, and 77-2-324. The estimated fair market value must
13 be determined by a Montana-licensed and Montana-certified appraiser.

14

(3) When it is not inconsistent with the purpose of the trust, the board shall purchase land possessing
15 legal access for all legal purposes.

16

(4) When purchasing land, easements, or improvements for the existing trusts, the board shall develop
17 and apply appraisal and revenue projection procedures to ensure that the land or easements proposed for
18 purchase or that the improvements proposed to be acquired are likely to produce more net revenue for the
19 affected trust than the revenue that was produced from the land that was sold. The board may not purchase land,
20 easements, or improvements pursuant to 77-2-361 through 77-2-367 unless it has first prudently determined that
21 the land, easements, or improvements are likely to produce a greater or equal annual rate of return, as may be
22 reasonably expected over a 20-year accounting period for Class 1, 3, and 4 lands and over a 60-year accounting
23 period for Class 2 lands, as described in 77-1-401, with an acceptable level of risk for the affected trust, than the
24 current annual rate of return from the state land that has been sold pursuant to 77-2-363. As guidance, the board
25 shall use generally accepted accounting standards and the Uniform Appraisal Standards for Federal Land
26 Acquisitions published by the U.S. department of justice and the appraisal institute.

27

(5) Prior to purchasing any land, easements, or improvements, the board shall determine that the
28 financial risks and benefits of the purchase are prudent, financially productive investments that are consistent with
29 the board's fiduciary duty as a reasonably prudent trustee of a perpetual trust. For the purposes of implementing
30 77-2-361 through 77-2-367, that duty requires the board to:

1 (a) discharge its duties with the care, skill, prudence, and diligence that a prudent person acting in a
2 similar capacity with the same resources and familiar with similar matters should exercise in the conduct of an
3 enterprise of similar character and aims;

4 (b) diversify the land holdings of each trust to minimize the risk of loss and maximize the sustained rate
5 of return;

6 (c) discharge its duties and powers solely in the interest of and for the benefit of the trust managed;

7 (d) discharge its duties subject to the fiduciary standards set forth in ~~72-34-114~~ [section 88]; and

8 (e) maintain, as closely as possible, the existing land base of each trust, consistent with the state's
9 fiduciary duty.

10 (6) Prior to purchasing a parcel of land in excess of 160 acres in any particular county, the board shall
11 consult with the county commissioners of the county in which the parcel is located."
12

13 **Section 159.** Section 82-1-304, MCA, is amended to read:

14 **"82-1-304. Administration of trust.** (1) The administration of the trust must comply with the appropriate
15 provisions regulating trusts contained in Title 72.

16 (2) Trustee or attorney fees may not be paid from the trust proceeds.

17 (3) All bonuses, rental payments, royalties, and other income must be paid to the trustee until the trust
18 is terminated and notice of its termination given to all interested parties. The trustee shall distribute all money held
19 in the trust to the person or persons entitled to the money upon the order of the district court.

20 (4) A trust in favor of unlocatable owners must be kept in force until the unlocatable owners of the mineral
21 interest in question have successfully claimed their share of the funds held in trust and have filed the notice, as
22 provided in 82-1-306.

23 (5) The trustee shall invest funds in a prudent manner, as provided in ~~72-34-114~~ [section 113]. Fifty
24 percent of the interest earned on each trust must be credited to the department of revenue or, if the clerk of the
25 court is the trustee, to the general fund of the county in which the mineral interest is located to defray the costs
26 of administration.

27 (6) Funds held in the trusts are subject to the provisions governing abandoned property contained in Title
28 70, chapter 9."
29

30 NEW SECTION. **Section 160. Codification instruction.** (1) [Sections 1 through 132] are intended to

1 be codified as an integral part of Title 72, and the provisions of Title 72 apply to [sections 1 through 132].

2 (2) [Sections 133 through 139] are intended to be codified as an integral part of Title 72, chapter 5, part
3 4, and the provisions of Title 72, chapter 5, part 4, apply to [sections 133 through 139].

4 (3) [Section 140] is intended to be codified as an integral part of Title 72, chapter 6, part 1, and the
5 provisions of Title 72, chapter 6, part 1, apply to [section 140].

6 (4) [Section 141] is intended to be codified as an integral part of Title 72, chapter 6, part 2, and the
7 provisions of Title 72, chapter 6, part 2, apply to [section 141].

8

9 **NEW SECTION. Section 161. Severability.** If a part of [this act] is invalid, all valid parts that are
10 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
11 the part remains in effect in all valid applications that are severable from the invalid applications.

12

13 **NEW SECTION. Section 162. Repealer.** The following sections of the Montana Code Annotated are
14 repealed:

15 72-6-122. Rights of creditors and others.

16 72-6-215. Rights of creditors and others.

17 72-33-101. Short title.

18 72-33-102. General rule concerning application of trust code.

19 72-33-103. Common law as law of state.

20 72-33-104. Constructive and resulting trusts not affected.

21 72-33-105. Application of code to charitable trusts.

22 72-33-106. Laws affecting construction and operation of wills apply to trusts.

23 72-33-107. Reference to statutes -- amendments and additions.

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21

22 **NEW SECTION. Section 163. Effective date.** [This act] is effective October 1, 2013.

23

24 **NEW SECTION. Section 164. Application to existing relationships.** (1) Except as otherwise provided
25 in [this act], on [the effective date of this act]:

26 (a) [this act] applies to all trusts created before, on, or after [the effective date of this act];

27 (b) [this act] applies to all judicial proceedings concerning trusts commenced on or after [the effective
28 date of this act];

29 (c) [this act] applies to judicial proceedings concerning trusts commenced before [the effective date of
30 this act] unless the court finds that application of a particular provision of [this act] would substantially interfere

1 with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the
2 particular provision of [this act] does not apply and the superseded law applies;

3 (d) any rule of construction or presumption provided in [this act] applies to trust instruments executed
4 before [the effective date of this act] unless there is a clear indication of a contrary intent in the terms of the trust;
5 and

6 (e) an act done before [the effective date of this act] is not affected by [this act].

7 (2) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has
8 commenced to run under any other statute before [the effective date of this act], that statute continues to apply
9 to the right even if it has been repealed or superseded.

10 - END -